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Filing date: **06/09/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215038
Party	Plaintiff Marshall Amplification plc
Correspondence Address	JOHN A CLIFFORD MERCHANT & GOULD PC PO BOX 2910 MINNEAPOLIS, MN 55402 0910 UNITED STATES jclifford@merchantgould.com, aavery@merchantgould.com, dockmpls@merchantgould.com, aries@merchantgould.com, hkliebenstein@merchantgould.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Heather J. Kliebenstein
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Signature	/Heather J. Kliebenstein/
Date	06/09/2014
Attachments	2014 06 09 Motion to Dismiss Counterclaim.pdf(931433 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Marshall Amplification PLC,)	
)	
Opposer,)	Opposition No. 91215038
)	
v.)	
)	
Kiaico, Inc.)	Serial No.: 85/904,663
)	Mark: MARSHAL A.R.T.
)	
Applicant.)	
)	

**OPPOSER'S MOTION TO DISMISS FOR FAILURE TO
TIMELY PLEAD A COMPULSORY COUNTERCLAIM**

I. INTRODUCTION

Opposer Marshall Amplification PLC (“Opposer”) respectfully requests the Board dismiss Applicant Kiaico, Inc.’s (“Applicant”) Counterclaim to Cancel RN 3940239 for failure to comply with Fed. R. Civ. P. 13(a), 37 CFR § 2.106(b) and 37 CFR § 2.114(b)(2). Pursuant to these rules, a counterclaim seeking to cancel a registration pled in an opposition is compulsory and must be filed with the answer. Here, Applicant answered the Notice of Opposition on March 25, 2014. (Dkt. No. 6.) Two weeks later, on April 7, Applicant filed a document titled “Counterclaim to Cancel RN 3940239,” without stipulation or leave to amend from the Board. The pleading sought to cancel a mark asserted by Opposer in its Notice of Opposition: U.S. Reg. No. 3,940,239 (“the ‘239 Registration”) for the mark MARSHALL AMPLIFICATION in connection with clothing in Class 25. (Dkt. No. 7.) This counterclaim is compulsory and it is late. It should be dismissed with prejudice and without leave to amend.

II. PROCEDURAL BACKGROUND

Opposer filed this Notice of Opposition on February 21, 2014, after months of attempting to resolve this dispute with Applicant. (Dkt. No. 1.) The opposition seeks to prevent registration

of Kiaico's Application Serial No. 85/904,663 for the mark MARSHAL A.R.T. in connection with a variety of clothing items in Class 25. (*Id.*) Opposer pled a likelihood of confusion with its '239 Registration for MARSHALL AMPLIFICATION in connection with clothing. (*Id.* at ¶¶ 3, 10.)

Despite Opposer's reasonable efforts to settle this dispute, on March 25, 2014, Applicant filed its Answer, denying the salient allegations. The Answer denied Opposer's priority and claims of confusion. (Dkt. No. 6 at ¶¶ 3, 10.) The Answer also included an Affirmative Defense alleging non-use and abandonment of Opposer's '239 Registration. (*Id.* at Affirmative Defs. ¶ 7.) Two weeks later, on April 7, 2014, Applicant filed a counterclaim for cancellation of the '239 Registration.¹ (Dkt. No. 7.) Applicant did not ask for Opposer's permission or seek leave from the Board.

The counterclaim to cancel the '239 Application has three grounds. First, Applicant alleges that its U.S. Reg. No. 3,986,050 for the mark U.S. MARSHAL A.R.T. ("the '050 Registration") for clothing in International Class 25, filed December 1, 2007, predates the June 11, 2010 filing date of the '239 Registration, thus making Applicant the senior user. (Dkt. No. 7 at ¶¶ 1-3.) Second, Applicant alleges non-use based on its mistaken belief that Opposer has never actively used its mark in connection with the goods identified in the registration. (*Id.* at ¶ 4.) Third, Applicant mistakenly asserts that Opposer has not used the mark in commerce for the 3 years prior to the date of the counterclaim. (*Id.* at ¶¶ 4-9.)

Regardless of the merits of these claims, the facts underlying Applicant's counterclaim existed when the Answer was filed, and Applicant was aware of them. Applicant's failure to

¹ The Board entered Kiaico's Counterclaim on May 12, 2014. (Dkt. No. 9.) This response is timely under the Scheduling Order and 37 CFR § 2.106(b)(2)(iii).

include its counterclaim in its Answer is nothing more than uninformed, baseless litigation strategy, aimed at pressuring Opposer to settle this opposition.

III. APPLICANT'S COUNTERCLAIM TO CANCEL THE '239 REGISTRATION IS LATE AND SHOULD BE DISMISSED WITH PREJUDICE

The rules provide that cancellation counterclaims must be filed with the answer, unless the Applicant can show the grounds did not exist, or were unknown at that time. 37 CFR §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) state:

A defense attacking the validity of any one or more of the registrations pleaded in the petition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed.

Further, TBMP § 313.04 also provides that counterclaims must be brought in the Answer if the grounds for that counterclaim are known to the applicant at the time the answer is filed.

In its belated Counterclaim, Applicant asserts the '239 Registration should be cancelled for three reasons: (1) a likelihood of confusion in with Applicant's '050 Registration for U.S. Marshall A.R.T., (2) non-use and (3) abandonment. The grounds for this counterclaim existed at the time Applicant's Answer was filed two weeks earlier. There is no indication in the counterclaim to the contrary. (Dkt. No. 7.) The counterclaim should be dismissed under 37 CFR §§ 2.106(b)(2)(i) and 2.114(b)(2)(i). *See also* TMBP § 311.02(b) (3d ed. 2011) ("The Board will not entertain a defense that attacks the validity of a registration pleaded by a plaintiff unless the defendant timely files a counterclaim . . ."); *Motion Picture Assoc. of Am., Inc. v. Respect Sportswear, Inc.*, Opp. No. 91153141, 2005 TTAB LEXIS 223, *6-9 (TTAB May 26, 2005) (denying motion to amend answer to add a counterclaim and dismissing co-pending cancellation proceeding, both as untimely, because facts relating to genericness counterclaim were available even prior to opposition based on applicant's statements to opposer); *see S & L Acquisition Co. v. Helene Arpels, Inc.*, 9 U.S.P.Q.2d (BNA) 1221, 1223-24 (TTAB 1987) (finding applicant was

estopped from asserting counterclaims not brought in conjunction with its answer where supporting facts were clearly available at that time).

This counterclaim should be dismissed with prejudice, without leave to amend, because Applicant *knew* the grounds for this counterclaim months before the April 7 filing date. TBMP § 313.04 (3d ed. 2011). When Applicant filed its Answer on March 24, 2014, Applicant knew of the '239 Registration. The '239 Registration was asserted in Opposer's February 21, 2014 Notice of Opposition. (Dkt. No. 1 at ¶ 3.) Applicant's Answer denied the priority and relevance of the '239 Registration. (Dkt. No. 6 at ¶ 3.) Applicant also asserted the '239 Registration was not used and was abandoned via an affirmative defense. (Dkt. No. 6 at Affirmative Def. ¶ 7). Applicant reviewed the Notice of Opposition, answered it substantively, and knew of the grounds for its counterclaim. Applicant has no colorable argument to the contrary.

The record shows Applicant knew of the grounds for its counterclaim to cancel the '293 Registration months before the Notice of Opposition in this matter was even filed. On December 12, 2013, Applicant's previous counsel of record² requested reconsideration of the Board's decision to grant Opposer an extension of time to file its Notice of Opposition under 37 C.F.R. § 2.102. (Declaration of Heather J. Kliebenstein, Exs. A-B.) In the request, Applicant's counsel pointed out Opposer's '239 Registration, its filing date and the goods identified. (*Id.*, Ex. B at 3.) Applicant's counsel also noted Applicant's '050 Registration, its filing date and the goods identified. (*Id.*, Ex. B at 2.) The facts underlying Applicant's counterclaim were known well before Applicant filed its Answer on March 25, 2014.

² Applicant is currently proceeding *pro se* in this litigation. This is by Applicant's choice, however, as Applicant retained counsel on four separate occasions and in each instance counsel withdrew from representation. (Kliebenstein Decl. at ¶ 4.)

Applicant did not learn of any new facts between its March 25 Answer and April 7 Counterclaim. No discovery has been taken in this opposition. Actual use of the '239 Registration in the marketplace, as well as information about the relatedness of the goods and channels of trade, and the sophistication of the consumer, have been available to Applicant since at least the time it filed its request for reconsideration of the extension of time. Applicant's Counterclaim to Cancel RN 3940239 Registration should be dismissed, with prejudice and without leave to amend, as untimely.

IV. CONCLUSION

For the foregoing reasons, all of the grounds for Applicant's Counterclaim to Cancel RN 3940239 were available to it at the time it filed its Answer. It is therefore untimely and should be dismissed, with prejudice and without leave to amend.

Respectfully submitted,

MERCHANT & GOULD P.C.

By its attorneys,



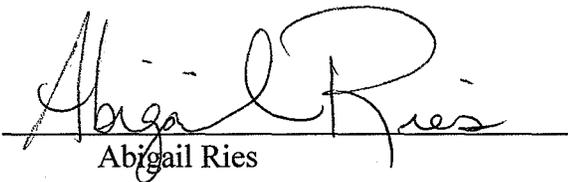
Date: June 9, 2014

John A. Clifford
Heather Kliebenstein
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
Tel. 612.336.4616
Fax 612.332.9081

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposer's Motion to Dismiss for Failure to Timely Plead Compulsory Counterclaim was served, via first-class mail, postage prepaid on this 9th day of June 2014.

Dan Healy
CEO, Kiaico, Inc.
10th Floor 445 Park Avenue
New York, NY 10022


Abigail Ries

the Board regarding his representation of Applicant. (Dkt. No. 4.) Mr. Krugman promptly withdrew representation on March 12, 2014. (Dkt. No. 5.)

The undersigned declares that all statements made of her own knowledge are true to the best of her knowledge; and all statements made on information and belief are believed to be true.

6-9-14

Date



Heather J. Kliebenstein

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Declaration of Heather J.

Kliebenstein was served, via first-class mail, postage prepaid on this 9th day of June 2014.

Dan Healy
CEO, Kiaico, Inc.
10th Floor 445 Park Avenue
New York, NY 10022


Abigail Ries

EXHIBIT A

ESTTA Tracking number: **ESTTA567530**

Filing date: **10/28/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant:	Kiaico, Inc.
Application Serial Number:	85904663
Application Filing Date:	04/15/2013
Mark:	MARSHAL A.R.T.
Date of Publication	08/27/2013

60 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Marshall Amplification plc, Denbigh Road, Bletchley, Milton Keynes, Buckinghamshire, MK1 1DQ, UNITED KINGDOM respectfully requests that he/she/it be granted an additional 60-day extension of time to file a notice of opposition against the above-identified mark for cause shown .

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 10/26/2013. Marshall Amplification plc respectfully requests that the time period within which to file an opposition be extended until 12/25/2013.

Respectfully submitted,
/John A. Clifford/
10/28/2013

John A. Clifford

Merchant & Gould P.C.

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UNITED STATES

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612.336.4616

EXHIBIT B

Cheryl L. Black
Attorney at Law

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December 12, 2013

By Hand

United States Patent and Trademark Office
Trademark Assistance Center
James Madison Building – East Wing
Concourse Level, Room C55
600 Dulany Street
Alexandria, VA 22314
ATTN: Trademark Trial and Appeal Board

**Re: Request for Reconsideration of Grant of Extension of Time to Oppose
Application Serial No. 85/904,663 for the mark MARSHAL A.R.T. and
Application Serial No. 85/904,324 for the mark MARSHAL A.R.T.
AMERICAN RENEGADE TRACKER**

Dear Chief Judge Rogers:

Applicant Kiaico, Inc. ("Applicant"), owner of the above-referenced applications, by counsel, respectfully requests relief from the Trademark Trial and Appeal Board's (Board") decision to grant (1) a second extension of time to oppose Application Serial No. 85/904,663 ("App '663") and (2) a thirty-day extension of time to oppose Application Serial No. 85/904,324 ("App '324"). Applicant does not believe that Marshall Amplification PLC ("Potential Opposer"), by counsel, has made a showing of good cause and questions whether the threat to file groundless oppositions with the Board is an attempt by Potential Opposer to prolong the registration process and unfairly raise the cost of entry for Applicant to compete in the marketplace with federally registered trademarks.



12-12-2013

U.S. Patent and Trademark Office #72

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BACKGROUND

Applicant's Marks

Applicant is the owner of U.S. Registration No. 3,986,050 for the mark U.S. MARSHAL A.R.T.¹ A copy of the United States Patent and Trademark Office ("USPTO") printout of the registration is attached hereto as Exhibit A. Among the list of goods identified in the registration are a variety of clothing items. The registration was issued on June 28, 2011, with priority rights dating back to December 1, 2007, the filing date of the application.

Applicant is also the owner of U.S. Registration No. 4,072,057 for the mark U.S. MARSHAL AMERICAN RENEGADE TRACKER. A copy of the USPTO printout of the registration is attached as Exhibit B. The goods listed in the registration are a variety of clothing items. The registration was issued on December 13, 2011 with priority rights dating back to April 14, 2011, the filing date of the application.

App '663 was filed April 15, 2013 for the mark MARSHAL A.R.T. used to identify a variety of clothing items. The mark in App '663 is derived from the marks in the prior registrations and used on the same goods. App '663 published for opposition on August 27, 2013. On September 24, 2013, Potential Opposer filed a request for a thirty-day extension of time to oppose. The Board granted the extension until October 26, 2013, whereupon Potential Opposer filed a request to extend the time to oppose for an additional sixty days to investigate the claim. The Board granted the extension until December 25, 2013.

On April 15, 2013, Applicant also filed App '324 for the mark MARSHAL A.R.T. AMERICAN RENEGADE TRACKER used to identify a variety of clothing items. Applicant's registration for MARSHAL AMERICAN RENEGADE TRACKER used on clothing and issued as U.S. Registration No. 4,072,057 was claimed in the application. Potential Opposer filed a request for a thirty-day extension of time to oppose the companion application. The Board granted the extension until December 28, 2013.

Potential Opposer's Relevant Marks

A search of the USPTO trademark database retrieved an application filed by Potential Opposer for MARSHALL (stylized form) used in connection with, among other things, a variety of clothing items. The application, identified as Serial No. 79/021,928, was filed

¹ The registration incorrectly identifies the owner as Kiaco, Inc., a Delaware corporation. An amendment under Section 7(h) of the Trademark Act, 15 U.S.C. §1057(h) has been filed to correct this inadvertent error.

on October 13, 2005 based on an international registration and subsequently abandoned on November 6, 2006 for failure to respond to an Office action. According to the file record, the trademark examining attorney refused registration of the application under Section 2(d) of the Trademark Act based on a likelihood of confusion citing several trademark registrations, most which were owned by the same registrant and all of which were comprised in whole or in part of the word MARSHALLS. Among the cited registrations were U.S. Registration No. 1,066,952 for MARSHALLS used in connection with retail clothing store services and U.S. Registration No. 2,161,385 for MARSHALLS used in connection with a variety of clothing items. The application was also refused under Section 2(e)(4) of the Trademark Act on the ground that the mark is primarily merely a surname.

On June 11, 2010, Potential Opposer filed an application for MARSHALL AMPLIFICATION (stylized form) used in connection with a variety of clothing items. The application matured into U.S. Registration No. 3,940,239 on April 5, 2011.

NO GOOD CAUSE SHOWN

Pursuant to Trademark Rule 2.102(a), 37 C.F.R. §2.102(a), any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file a request to extend the time to file an opposition. Section 2.102(c), reads as follows:

The time for filing an opposition shall not be extended beyond 180 days from the date of publication. Any request to extend the time for filing an opposition must be filed before thirty days have expired from the date of publication or before the expiration of a previously granted extension of time, as appropriate. Requests to extend the time for filing an opposition must be filed as follows:

- (1) A person may file a first request for either a thirty-day extension of time, which will be granted upon request, or a ninety-day extension of time, which will be granted only for good cause shown.
- (2) If a person was granted a thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, which will be granted only for good cause shown.
- (3) After receiving one or two extensions of time totaling ninety days, a person may file one final request for an extension of time for an additional sixty days. The Board will grant this request only upon written consent or stipulation signed by the applicant or its authorized representative, or a written request by the potential oppose or its authorized representative

stating that the applicant or its authorized representative has consented to the request, or a showing of extraordinary circumstances. No further extensions of time to file an opposition will be granted under any circumstances.

In this instance, Potential Opposer was granted a thirty-day extension to file an opposition. Thereafter, no further extension should have been granted without good cause shown. There appears to be no case law on the issue of what constitutes good cause shown in a request for extension of time to file an opposition. The only guidance that Applicant could find is set forth in §207.02 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"). According to the TBMP, for extensions up to 120 days from the date of publication,

[a] showing of good cause for an extension of time to oppose over thirty days must set forth the reasons why additional time is needed for filing an opposition. Circumstances that may constitute good cause include applicant's consent to the extension, settlement negotiations between the parties, the filing of a letter of protest by the potential opposer, an amendment of the subject application, the filing of a petition to the Director from the grant or denial of a previous extension, and civil litigation between the parties.

The standard for good cause shown is necessarily lower than the standard for extensions beyond 120 days. Only extraordinary circumstances or written consent to extend signed by the applicant or applicant's attorney are sufficient to grant an extension beyond 120 days from the date of publication. 37 C.F.R. §2.102(c). The Board made certain to delineate the two standards in TBMP §207.03 which reads in part,

Extraordinary circumstances are those which are beyond what is usual or ordinary, for example fire, extreme weather, or death. Settlement negotiations between the parties, the filing of a letter of protest by the potential opposer, the pendency of a post-publication amendment, or civil litigation between the parties do not constitute extraordinary circumstances.

The delineation between good cause shown and the reasons that an initial thirty-day extension is automatically granted is less clear. ESTTA, electronic filing system for the Board, contains a list of reasons that a party can give to establish good cause. These reasons include additional time to investigate the claim, additional time to confer with counsel, additional time to seek counsel, and engagement in settlement discussions with applicant. Unlike the examples provided in TBMP §207.02, with the exception of

settlement negotiations, none of these reasons involve the applicant nor demonstrate movement toward an amicable resolution, or conversely, full-fledged litigation. Instead, they allow the potential opposer to put the applicant in a holding pattern and unnecessarily prolong pendency toward the issuance of a registration or the institution of an opposition.

Although not explicitly stated, it could be implied that the purpose of the initial thirty-day extension period is to afford a potential opposer time to retain counsel, to confer with counsel and to investigate whether there is a valid claim to support a notice of opposition. Thirty days beyond the thirty-day opposition period seems sufficient to retain counsel and "assess" whether to pursue the matter. Because the hiring of counsel and investigation of claims does not involve the applicant, it would not appear at first blush to fall within the same category of circumstances described in TBMP §207.02 for good cause shown, such as contacting the applicant to negotiate a settlement or seeking further action against the application by filing a letter of protest with the USPTO or a complaint in civil court. Instead, they are the types of reasons that would justify the grant of an automatic extension. Thirty days is long enough for a potential opposer to assess whether and how to challenge the registration of the mark but is not unduly burdensome to the applicant who theretofore has met the requirements to receive a federal trademark registration.

For the foregoing reasons, Applicant respectfully requests reconsideration of the grant of the second extension of time granted Potential Opposer on the ground that an additional sixty days to investigate the claim does not constitute good cause shown as contemplated by Trademark Rule 2.102(c) or TBMP §207.02.

AGGRESSIVE LITIGATION TACTICS

In this instance, Potential Opposer filed an initial thirty-day extension period then a sixty-day extension of time to oppose App '663 and subsequently filed a thirty-day request to extend Applicant's companion application App '324 for MARSHAL A.R.T. AMERICAN RENEGADE TRACKER. The hold on App '324 brings into question Potential Opposer's motive for filing requests to extend the time to oppose Applicant's marks.

Pursuant to the Trademark Technical and Conforming Amendment Act of 2010, Public Law 111-146, the Department of Commerce was tasked with conducting a study and issuing a report on trademark litigation tactics to determine if and to what extent small businesses are disproportionately adversely affected in these enforcement battles. The agency's report to Congress was released in April 2011. The accompanying letter to

Congress includes a quote taken from Senator Patrick Leahy's introduction to the study. It reads in pertinent part,

I am concerned that large corporations are at times abusing the substantial rights Congress has granted them in their intellectual property to the detriment of small businesses...When a corporation exaggerates the scope of its rights far beyond a reasonable interpretation in an attempt to bully a small business out of the market that is wrong.

The Department of Commerce in consultation with the Intellectual Property Enforcement Coordinator engaged stakeholder organizations and the trademark community at large in efforts to gather data on the issue. The study received a lot of publicity and feedback. In a section of the report entitled "Size and Resource Imbalances" commenters are cited as stating the problem of aggressive tactics by overreachers (1) clogs the legal system with invalid claims, (2) places small companies and individuals in difficult positions of surrendering lawfully used and valid trademarks because it is the only financially-feasible option, and (3) causes companies to go out of business because of the costs for rebranding.

The report also includes recommendations for curbing these aggressive enforcement tactics. Among the suggestions for the USPTO and TTAB actions, commenters recommended that the Board (1) amend its rules to impose sanctions for such tactics, (2) heighten scrutiny for known "trademark bullies," and (3) monitor progress of proceedings to prevent undue delays and costs.

In this case, there seems to be no legitimate basis for extending the time to file an opposition against App '663 for ninety days or App '324 for thirty days. The only common element between Applicant's marks and Potential Opposer's mark is MARSHAL and MARSHALL, respectively. This same element—MARSHALL—was the full mark in Potential Opposer's abandoned application (Ser. No. 79/021,928) that was refused on two statutory grounds. For this reason, Applicant wonders whether Potential Opposer, a large corporation with significantly more resources than Applicant, is trying to harass or intimidate Applicant beyond any legitimate rights and claims it may have under the law. Perhaps a careful review of the facts set forth in this request for reconsideration will lead Potential Opposer to reevaluate its assessment of any potential claim against Applicant and conclude that Applicant is entitled to federal protection of its trademark rights without delay.

Applicant looks to the Board to reach a similar conclusion. Accordingly, Applicant requests that the Board carefully reconsider Potential Opposer's sixty-day extension

request against App `663 and reject any subsequent requests for extensions of time to oppose App `324. Applicant also asks that the Board carefully monitor any opposition that may ensue involving the applications at issue and assist in the avoidance of any protracted proceeding and its associated costs.

Respectfully submitted,
KIAICO, INC.



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Attorney for Applicant

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Mark: U.S. MARSHAL A.R.T.

U.S. Marshal A.R.T.

US Serial Number: 77341814 Application Filing Date: Dec. 01, 2007
US Registration Number: 3986050 Registration Date: Jun. 28, 2011
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Jun. 28, 2011
Publication Date: Sep. 21, 2010 Notice of Allowance Date: Nov. 16, 2010

Mark Information

Mark Literal Elements: U.S. MARSHAL A.R.T.
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK
Disclaimer: "U.S." AND "ART"

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Publications, namely, children's activity books, children's coloring books, comic books, cookbooks; Printed matter, namely, greeting cards, post cards, stickers, heat transfer paper, stationery, posters; telephone and address books, engagement books, diaries, calendars, bookmarks, color prints, trading cards, book covers, decalcomania stickers, paper signs and banners; Stationery, namely, pens of all types, pencils of all types, and cases therefor, drawing rulers, staplers, pencil sharpeners, markers, rubber stamps, envelopes, memo pads, notebooks, notepads, ring binders, folders; Paper party goods, namely, hats, napkins, place mats and decorations, paper party favors of all types, gift wrapping paper, paper holiday decorations; and Bags, namely, merchandise bags, paper and plastic party bags, lunch bags

International Class(es): 016 - Primary Class U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 04, 2001

Use in Commerce: Jun. 27, 2010

For: Plates, bowls, cups, mugs, namely, paper plates, bowls and cups; thermoplastic and melamine plates, bowls and cups; decorative boxes made of porcelain; statuary or marquettes made of porcelain; lunch boxes and lunch pails, commemorative plates, cake molds, canteens, sports bottles sold empty, porcelain holiday ornaments

International Class(es): 021 - Primary Class U.S Class(es): 002, 013, 023, 029, 030, 033, 040, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 04, 2001

Use in Commerce: Jun. 27, 2010

For: Clothing, namely, shirts, t-shirts, sweatshirts, sweat pants, sweat suits, pants, skirts, shorts, sarongs, vests, boxer shorts, underwear, jackets, coats, rain wear, pullovers, sweaters, jumpers, overalls, rompers, infant wear, socks, shoes, slippers, Halloween and masquerade costumes, promotional mascot character costumes, sleep wear, robes, hats, caps, bandanas, headbands, gloves, mufflers, scarves, swim wear, beach cover ups

International Class(es): 025 - Primary Class U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 04, 2001

Use in Commerce: Jun. 27, 2010

For: Toys, namely, plush toys, puppets, finger puppets, stuffed toys, hand held units for playing electronic games, dolls, toy action figures and accessories therefor, collectible toy figures, cases for action figures, cases for play accessories, toy building blocks, toy construction blocks, toy banks, toy mobiles, bath toys; pull toys, swim toys, namely, pool rings and inflatable swim toys; swim floats for recreational use, sand toys, toy vehicles, action skill games, board games, card games, jigsaw puzzles, manipulative puzzles, toy model hobby craft kits, toy modeling dough, body boards, skate boards, boomerangs, kites, flying discs, golf balls, beach balls, sport balls, toy gliders, balloons, bubble making wand and solution sets, yo-yos, jump ropes, costume masks, party favors in the nature of small toys, bobble head dolls, adult and children's party games, pet toys, piñatas, Christmas tree ornaments, molded toy plastic figurines, snow globes, and playing cards

EXHIBIT

A

International Class(es): 028 - Primary Class

U.S Class(es): 022, 023, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 04, 2001

Use in Commerce: Jun. 27, 2010

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Kiaco, Inc.
Owner Address: 445 Park Ave.
New York, NEW YORK 10022
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent Name/Address: Dan Healy
KIACO Inc.
445 Park Avenue, 10th. Floor
New York, NEW YORK 10022
UNITED STATES

Phone: 973-628-0500

Correspondent e-mail: mrkiai@kiaicoinc.com

Correspondent e-mail Authorized: Yes

Domestic Representative

Domestic Representative Name: Dan Healy

Phone: 973-628-0500

Domestic Representative e-mail: mrkiai@kiaicoinc.com

Domestic Representative e-mail Authorized: Yes

Prosecution History

Date	Description	Proceeding Number
Oct. 15, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 15, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Oct. 14, 2013	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Oct. 06, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 06, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 28, 2011	REGISTERED-PRINCIPAL REGISTER	
May 27, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
May 26, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	70884
May 24, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
May 05, 2011	STATEMENT OF USE PROCESSING COMPLETE	76538
May 02, 2011	USE AMENDMENT FILED	76538
May 04, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76538
May 02, 2011	TEAS STATEMENT OF USE RECEIVED	
Feb. 16, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Feb. 16, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	

Nov. 16, 2010	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Sep. 21, 2010	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Sep. 21, 2010	PUBLISHED FOR OPPOSITION	
Aug. 14, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	70884
Aug. 13, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jul. 23, 2010	AMENDMENT FROM APPLICANT ENTERED	70884
Jul. 23, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	70884
Jul. 23, 2010	ASSIGNED TO LIE	70884
Jul. 14, 2010	PAPER RECEIVED	
Jan. 12, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jan. 12, 2010	NON-FINAL ACTION E-MAILED	6325
Jan. 12, 2010	NON-FINAL ACTION WRITTEN	78440
Jan. 11, 2010	ATTORNEY REVIEW/DECISION ON AMENDMENT REQUIRED	
Jul. 23, 2009	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 13, 2009	ATTORNEY REVOKED AND/OR APPOINTED	
Jul. 13, 2009	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 11, 2009	PETITION GRANTED - REMAIL OFFICE ACTION	67832
Oct. 27, 2008	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Oct. 27, 2008	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Oct. 27, 2008	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 27, 2008	TEAS PETITION TO REVIVE RECEIVED	
Oct. 23, 2008	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	
Oct. 23, 2008	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	
Jul. 28, 2008	ATTORNEY REVOKED AND/OR APPOINTED	
Jul. 28, 2008	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Mar. 19, 2008	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 19, 2008	NON-FINAL ACTION E-MAILED	6325
Mar. 19, 2008	NON-FINAL ACTION WRITTEN	78440
Mar. 12, 2008	ASSIGNED TO EXAMINER	78440
Dec. 06, 2007	NOTICE OF PSEUDO MARK MAILED	
Dec. 05, 2007	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None
File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: May 26, 2011

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Mark: U.S. MARSHAL AMERICAN RENEGADE TRACKER

U.S. MARSHAL AMERICAN
RENEGADE TRACKER

US Serial Number: 85295698
US Registration Number: 4072057

Application Filing Date: Apr. 14, 2011
Registration Date: Dec. 13, 2011

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 13, 2011

Publication Date: Aug. 16, 2011

Notice of Allowance Date: Oct. 11, 2011

Mark Information

Mark Literal Elements: U.S. MARSHAL AMERICAN RENEGADE TRACKER

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "U.S." AND "AMERICAN"

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Clothing, namely, shirts, t-shirts, sweatshirts, sweat pants, sweat suits, pants, skirts, shorts, sarongs, vests, boxer shorts, underwear, jackets, coats, rain wear, pullovers, sweaters, jumpers, overalls, rompers, infant wear, socks, shoes, slippers, Halloween and masquerade costumes, promotional mascot character costumes, sleep wear, robes, hats, caps, bandanas, headbands, gloves, mufflers, scarves, swim wear, beach cover ups

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 01, 1982

Use in Commerce: Jun. 27, 2010

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Kiaico, Inc.

Owner Address: 445 Park Avenue
New York, NEW YORK 10022
UNITED STATES

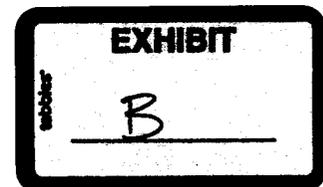
Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent Name/Address: Dan Healy
KIAICO Inc.
445 Park Avenue, 10th. Floor



New York, NEW YORK 10022
UNITED STATES

Phone: 973-628-0500

Correspondent e-mail: mrkiaia@kiaicoinc.com

Correspondent e-mail Yes
Authorized:

Domestic Representative

Domestic Representative Name: Dan Healy

Phone: 973-628-0500

Domestic Representative e-mail: mrkiaia@kiaicoinc.com

Domestic Representative Yes
e-mail Authorized:

Prosecution History

Date	Description	Proceeding Number
Oct. 15, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 15, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Oct. 14, 2013	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Oct. 06, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 06, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Dec. 13, 2011	REGISTERED-PRINCIPAL REGISTER	
Nov. 08, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Nov. 07, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	70633
Nov. 07, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 18, 2011	STATEMENT OF USE PROCESSING COMPLETE	76874
Oct. 14, 2011	USE AMENDMENT FILED	76874
Oct. 18, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76874
Oct. 14, 2011	TEAS STATEMENT OF USE RECEIVED	
Oct. 11, 2011	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 16, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 16, 2011	PUBLISHED FOR OPPOSITION	
Jul. 13, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	70633
Jul. 11, 2011	ASSIGNED TO LIE	70633
Jun. 16, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 16, 2011	EXAMINER'S AMENDMENT ENTERED	88888
Jun. 16, 2011	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jun. 16, 2011	EXAMINERS AMENDMENT E-MAILED	6328
Jun. 16, 2011	EXAMINERS AMENDMENT -WRITTEN	74671
Jun. 13, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 13, 2011	NON-FINAL ACTION E-MAILED	6325
Jun. 13, 2011	NON-FINAL ACTION WRITTEN	74671
Jun. 02, 2011	ASSIGNED TO EXAMINER	74671
Apr. 19, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 18, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Nov. 07, 2011