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

Proceeding	91218800
Party	Plaintiff Kimberly-Clark Worldwide, Inc.
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Attachments	Reply to Motion in Opposition to Opposer's Motion for Leave to Amend Notice of Opposition-21923936.pdf(92633 bytes )

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

KIMBERLY-CLARK WORLDWIDE, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91218800
	)	
MATOSANTOS COMMERCIAL CORP.	)	
	)	
Applicant.	)	

**OPPOSER’S REPLY**  
**TO MOTION IN OPPOSITION TO OPPOSER’S MOTION FOR LEAVE TO AMEND**  
**NOTICE OF OPPOSITION**

Pursuant to 37 C.F.R. §§ 2.107 and 2.116(a) and Rule 15(a), Fed.R.Civ.P., Opposer Kimberly-Clark Worldwide, Inc. (hereinafter “Opposer” or “Kimberly-Clark”) filed, on September 10, 2015 its Motion for Leave to Amend Notice of Opposition. Applicant, Matosantos Commercial Corp. (Applicant) filed on November 19, 2015 its Motion in Opposition thereto. Opposer now files this Rely.

**Discussion**

1. **Applicant asserts that the Motion to Amend is Untimely and Incorrectly Impugns Opposer’s Motives and Position**

Applicant asserts that “Opposer was allegedly using its purported new puppy design and claimed rights over the same, but it failed to include it on its Notice of Opposition or even mention it as grounds to justify its Opposition. Instead, it decided to wait until it had a registration over it in order to then abandon those registrations used as grounds for its original

Opposition and practically file a new case against Applicant over a new and different puppy design, ..... it could have included the design as part of the Opposition.”

Applicant did included the Puppy Design Registration No. 4,656,343 at issue in its original Opposition by reference (i) in Paragraph 3 to the “numerous registrations for Opposer’s Puppy Design mark for various goods in Classes 3 and 16 including the following U. S. federal trademark registrations [which were specifically reference]...” and (ii) in Paragraph 6 the exact image of the Puppy Design Mark covered by Registration No. 4,656,343 appears multiple times. There is no surprise as to the use of this Registration as a basis for Opposer’s Opposition, and thus no prejudice to Applicant. Opposer made it clear that it had many registrations for the Puppy Design, and Applicant had access to all prior, current and pending U. S. registrations and applications of Opposer by virtue of the USPTO Trademark Database available as public record.

Applicant impugns the motives and positions of Opposer (for example in its assertions “Opposer decided not to include the current design as part of the Opposition;” “...seems like a questionable attempt, showed interest in reaching a coexistence agreement with Applicant”; ) without any support or evidence. Opposer can clearly state it had no such intention to hide or not include any Puppy Design, in fact the multiple images include in Paragraph 6 of the Opposition are evidence to the contrary.

Opposer adds no new claims to its Opposition, as the original Opposition set out a claim that Applicant’s Alleged mark, when used in Connection with Applicant’s Goods, violates Section 2(d) of the Lanham Act. Common law rights are an appropriate basis for an Opposition under Section 2(d). Even if Opposer’s Amended Opposition is not accepted, it has included the Puppy Design Mark covered by Registration No. 4,656,343 already and has asserted its common

law rights as the basis of its Opposition. The Amended Opposition clarifies the status of several Puppy Design Mark registrations, both expired and registered.

## 2. No Prejudice to Applicant

As noted above, the Puppy Design Mark covered by Registration No. 4,656,343 was included in the original Opposition, and Applicant has access to not only this Puppy Design Mark details, but all of Opposer's prior, current and pending registrations as a matter of public record. In addition, Opposer provided Applicant with a copy of the proposed Amended Opposition and requested consent to filing on September 21, 2015. Applicant has not been prejudiced in any way as to required filings as discovery was and is still open. Moreover, Applicant should not be heard to complain of prejudice when it had notice of this amendment even before it served its Initial Disclosures (due September 18, 2015) on October 13, 2015, only after notice from Opposer of their tardiness.

## 3. Summary and Conclusion

All legal and factual issues relevant to Kimberly-Clark's claim were presented to Matosantos in the original Opposition and by email of September 21, 2015, requesting consent to file the Amended Opposition. Discovery has not yet closed and the testimony periods have not yet commenced. Matosantos provided its Initial Disclosures on October 13, 2015, over 30 days late. To allow disposition of this case on the merits and in the interests of justice, Kimberly-Clark requests that its proposed Amended Notice of Opposition be entered since the requirements imposed by Rule 15(a), Fed.R.Civ.P. have been met.

Respectfully Submitted,

/s/Jennifer E. Hoekel

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION has been forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 7th day of December, 2015, to the following:

Samuel F. Pamias  
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/s/Jennifer E. Hoekel

Jennifer E. Hoekel  
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