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October 2, 2002

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: **Bell, Incorporated v. Bell Packaging Corporation**
Cancellation No. 31904
Our Ref.: Z-1604

Dear Sir:

Enclosed please find MOTION FOR SUMMARY JUDGMENT (WITH ATTACHED AFFIDAVIT AND 5 NUMBERED EXHIBITS), MOTION TO SUSPEND PENDING DECISION ON MOTION FOR SUMMARY JUDGMENT and CERTIFICATE OF SERVICE for the above-identified Cancellation proceeding.

If you have any questions, please let us know.

Respectfully submitted,

GIPPLE & HALE


J.W. Gipple

JWG/llb
Enclosure

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

BELL, INCORPORATED *
Petitioner, *
v. * Cancellation No. 31904
BELL PACKAGING CORPORATION *
Respondent. *
*

The Honorable Commissioner
Of Patents
Washington, D.C. 20231

MOTION FOR SUMMARY JUDGMENT

This Motion is brought pursuant to Trademark Rules of Practice 2.116 and Federal Rules of Civil Procedure, Rule 56(b). Rule 56(c) states that:

“The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

I. Brief Description of This Cancellation

Respondent has registered its trademark BELL PACKAGING CORPORATION for the goods and services specified in Registration No. 2,089,082 on August 19, 1997. The application was filed July 3, 1996, claiming use since May 24, 1994.

Petitioner has sought to cancel the Registration No. 2,089,082 on the grounds that it had established rights and goodwill in BELL as a tradename, trademark and service mark for goods and services similar to those identified in the registration long prior to Registrant's first use in 1994.

II. The Reason this Motion Should be Granted.

If Petitioner had any substantial use of BELL as a tradename, trademark or service mark for a paperboard packaging products business prior to 1994, then Respondent is not entitled to the rights and legal presumptions resulting from Registration No. 2,089,082.

The attached Affidavit of Mark Graham, and the exhibits thereto, prove that Petitioner had a very substantial business in paperboard packaging products, under the name BELL PAPER BOX, INC. long prior to 1994, which has since continued and increased.

Applicant did business as BELL PAPER BOX, INC. until changing its name to BELL, INC. Both tradenames are dominated by BELL, since "Inc." and "Paper Box, Inc." are non-distinctive terms in the context of their use. Similarly, with Respondent's mark, BELL PACKAGING CORPORATION, "Bell" is the distinctive word since "PACKAGING CORPORATION" is descriptive or generic. So both parties are using the same distinctive name or mark, BELL, in connection with very similar or identical products and services. Petitioner's use of BELL commenced long prior to Respondent's use. These are uncontroverted facts; Petitioner believes they are incontrovertible facts.

Conclusion

Petitioner submits that on the basis of uncontroverted facts presented in the Affidavit of Mark Graham and exhibits thereto, it is entitled to summary judgment.

Respectfully submitted,

BELL, INCORPORATED



J.W. Gipple
Gipple & Hale
Attorneys for Petitioner

October 2, 2002

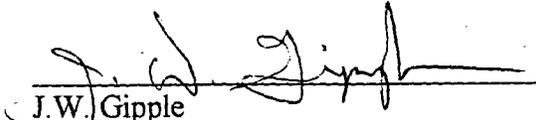
J.W. Gipple
GIPPLE & HALE
(703) 448-1770 Ext. 302
P. O. Box 40513
Washington, D.C. 20016
Attorney Ref.: Z-1604

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion for Summary Judgment** is being served upon Counsel for OPPOSER:

Anita Nesser, Esquire
Baker Botts, LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201-2980

this 2nd day of October, 2002.



J.W. Gipple
Attorney for Applicant

GIPPLE & HALE
P. O. Box 40513
Washington, D.C. 20016
(703) 448-1770 Ext. 302

GIPPLE & HALE

Certificate of Mailing

I hereby certify that this paper is being deposited with the U.S. Postal Service, First Class, to the Trademark Trial and Appeal Board, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, this 2nd day of October, 2002.

Date: 10/02/2002

Signature: Kisa Lynn Bryant

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

BELL, INCORPORATED

*

Petitioner,

*

v.

*

Cancellation No. 31904

BELL PACKAGING CORPORATION

*

Respondent.

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*

The Honorable Commissioner
Of Patents
Washington, D.C. 20231

**MOTION TO SUSPEND PENDING DECISION
ON MOTION FOR SUMMARY JUDGMENT**

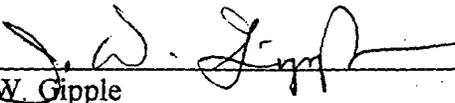
Concurrently herewith Petitioner files a Motion for Summary Judgment.

If granted, the Motion would be dispositive of all issues presented by this cancellation and no further proceedings would be needed.

Accordingly, Petitioner requests that these proceedings be suspended until a decision on the Motion for Summary Judgment has been rendered and, if the Motion is denied, the testimony periods be reset.

Respectfully submitted,

BELL, INCORPORATED



J.W. Gipple
Gipple & Hale
Attorneys for Petitioner

October 2, 2002

J.W. Gipple
GIPPLE & HALE
(703) 448-1770 Ext. 302
P. O. Box 40513
Washington, D.C. 20016
Attorney Ref.: Z-1604

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion to Suspend Pending Decision on Summary Judgment** is being served upon Counsel for OPPOSER:

Anita Nesser, Esquire
Baker Botts, LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201-2980

this 2nd day of October, 2002.


J.W. Gipple
Attorney for Applicant

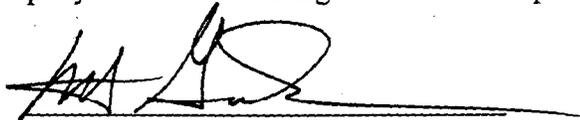
GIPPLE & HALE
P. O. Box 40513
Washington, D.C. 20016
(703) 448-1770 Ext. 302

AFFIDAVIT OF MARK GRAHAM

I, the undersigned, Mark Graham, do hereby swear and affirm as follows:

1. I am 56 years of age, a citizen of the United States of America and domiciled in Sioux Falls, South Dakota.
2. I acquired all assets of Bell Paper Box, Inc. in 1976. At that time its business was the manufacture and sale of paper and paperboard packaging products. It had annual sales of approximately \$40,000.
3. From the records of Bell Paper Box, Inc. (hereinafter referred to as "the Company"), which I acquired in 1976, I found evidence that the company had been in paper and paperboard packaging products business nationwide since 1920.
4. Since my acquisition of the company, and to the present day, it has continuously remained active in the business of designing, manufacturing, promoting and selling paperboard packaging products to customers throughout the United States.
5. For the past ten years, the company's annual sales of paperboard packaging products have increased from approximately \$18,000,000 to in excess of \$30,000,000.
6. I attached hereto as Exhibit 1, the initial pages of the company's tax returns for the past ten years.
7. I attach hereto as Exhibit 2, the initial pages of audit reports for the past ten years.
8. Continuously since 1976 (and to my best knowledge and belief, long prior thereto) the company has used BELL or BELL PAPER BOX as its trade name, and it is so known to its customers and in its industry.

9. Continuously since 1976, the company has also used BELL or BELL PAPER BOX as a service mark in connection with its service of custom designing and producing paperboard containers for specific customer's needs, and as a trademark applied to some of its containers.
10. I attach hereto as Exhibit 3, an example of service mark use.
11. I attach hereto as Exhibit 4, an example of trademark use.
12. Continuously, and consistently since 1976, all of the company's advertising has been directed to promoting its trade name and marks BELL and BELL PAPER BOX.
13. I attached hereto as Exhibit 5, reports reflecting the company's advertising budget for the past several years.
14. In December of 2000, the company's name was changed to Bell Incorporated.

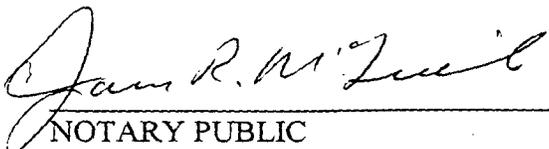


Mark Graham

September 27, 2002

COUNTY OF: LINCOLN.)
STATE OF SOUTH DAKOTA)

On this day, September 27, 2002, MARK GRAHAM appeared before me, a Notary Public in and for the County and State above written, and acknowledged to me that the above is true and correct to the best of his knowledge and belief and that he executed the same, under oath and under penalty of perjury as his true and correct statement.



NOTARY PUBLIC

My Commission Expires:
OCTOBER 8, 2002

The Received stamp of the United States Patent and Trademark Office, imp[re]ssed herein acknowledges filing of:

Description of paper: MOTION FOR SUMMARY JUDGMENT WITH ATTACHED AFFIDAVIT AND 5 NUMBERED EXHIBITS; MOTION TO SUSPEND PENDING DECISION ON MOTION FOR SUMMARY JUDGMENT and CERTIFICATE OF SERVICE

Bell, Inc. v. Bell Packaging Corp.
Cancellation No. 31904

Attorney File No.: Z-1604

