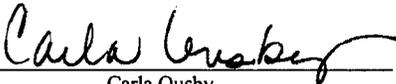


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>FORT JAMES OPERATING COMPANY and GEORGIA-PACIFIC CORPORATION,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>BRAWNY PLASTICS, INC.,</p> <p style="text-align: center;">Registrant.</p>	<p>REGISTRATION NO. 0940243</p> <p>MARK: BRAWNY</p> <p>CANCELLATION NO. 92044395</p> <p>I hereby certify that on April <u>15</u>, 2005, this paper is being deposited with the U.S. Postal Service by "Express Mail Post Office to Addressee" service with Express Mail Label No. ED027952305US for delivery to the Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451.</p> <p style="text-align: center;"> Carla Ousby</p>
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**MOTION TO SUSPEND; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Applicant Brawny Plastics, Inc. ("BPI") and NexTep, Inc. ("NexTep") hereby move to suspend this Cancellation proceeding in light of the action commenced in the District of Nevada on April 14, 2005, styled: NexTep, Inc. v. Fort James Operating Company, et. al., Case No. CV-N-05-0227-ECR-RAM (the "Nevada Action"). Because the outcome of the Nevada Action will have a bearing on the issues before the Board, this Motion should be granted in full.

I. BACKGROUND

NexTep is a Nevada corporation with its principal place of business located in Reno, Nevada. April 15, 2005 Declaration of Matthew D. Francis ("Francis Decl."), § 2. NexTep is in the business of developing, manufacturing, marketing, and selling innovative household goods, which include polyethylene bags and trash cans. Id.

NexTep is the owner of United States Federal Trademark Registration No. 0940243 ("243 Reg.") for the trademark "Brawny" in International Class 20 for polyethylene bags. Francis Decl., § 3, Exhibit B. NexTep was assigned all rights, title, and interest in the '243 Reg. by BPI on August 6, 2003 via a "Trademark Sale, Assignment and License" agreement. Francis Decl., § 3, Exhibit C. This assignment was subsequently recorded in the United States Patent



and Trademark Office (“PTO”). Francis Decl., § 3, Exhibit D.

On or about March 28, 2005, Petitioners filed their Petition for Cancellation (“Petition”) to cancel the ‘243 Reg. See Cancellation No. 92044395. Francis Decl., § 4. The Petition wrongfully names BPI as the Registrant, since NexTep is the owner of record for the ‘243 Reg. Id., see Petition, p. 1. The basis for the Petition is that NexTep’s predecessor BPI allegedly made fraudulent statements to the PTO regarding its use of the Brawny mark, and that the assignment to NexTep of the ‘243 Reg. was a sham transaction “in contravention of the Lanham Act.” Id., p. 5.

On April 14, 2005, NexTep filed a declaratory judgment action in the United States District Court for the District of Nevada. Francis Decl., § 5, Exhibit A, pp. 1-6. In the Nevada Action, NexTep asked the Court to declare, among other things, that its rights in the “Brawny” mark are superior to Opposers’ alleged rights, and that NexTep’s use of that mark does not infringe any of Opposers’ alleged rights. Francis Decl., § 5, Exhibit A, pp. 5-6. Further, NexTep requested that the Court declare that the assignment of the ‘243 Reg. was valid. Francis Decl., § 5, Exhibit A, p. 6.

No Answer is due to the Petition until May 16, 2005, and discovery does not even open until April 26, 2005. Francis Decl., § 5, Exhibit E.

II. ARGUMENT

TBMP Rule 510.02(a) provides that “[o]rdinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board.” Id., citing The Other Telephone Co. v. Connecticut Nat’l Telephone Co., Inc., 181 U.S.P.Q. 125, 126 (TTAB1974), Tokaido v. Honda Assoc., Inc., 179 U.S.P.Q. 861, 862 (TTAB 1973) Whopper-Burger v. Burger King Corp., 171 U.S.P.Q. 805, 807 (TTAB 1971)(citations omitted). Professor McCarthy also notes that “[i]t is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues.” 5 J.T. McCarthy, McCarthy on Trademarks and Unfair Competition (“McCarthy”) § 32:47, pp. 32:97-99 (4th Ed. 2004), citing Alfred

Dunhill of London, Inc. v. Dunhill Tailored Clothes, Inc., 130 U.S.P.Q 412, 413 n. 1 (CCPA 1961), and Whopper-Burger, 171 U.S.P.Q. at 807. This is the case even when a court action is commenced after commencement of the Board proceeding. 5 McCarthy § 32:47, pp. 32:98-99, citing Midland Cooperatives, Inc. v. Midland Int'l Corp., 164 U.S.P.Q. 579, 580 (CCPA 1970).

When this authority is considered in light of the facts discussed above, it is clear that this Cancellation proceeding should be immediately suspended. Specifically, the relevant parties and the same issues are involved in both matters, and the final determination of the Nevada Action will have a bearing on the issues before the Board. See supra. Like the pending Petition, the Nevada Action seeks to determine priority and ownership of the “Brawny” mark as well as the alleged infringement and injury to Opposers. Id. Also, the Nevada Action seeks to resolve the issue of whether the assignment of the ‘243 Reg. was valid – which it was. Francis Decl., § 5, Exhibit A, p. 6. As a result, there is no need to duplicate efforts in both the District of Nevada and this Board and force the parties to incur unnecessary legal expenses in both venues. Further, it would be wasteful to take up this Board’s time with issues that are ripe for determination by the District Court.

III. CONCLUSION

In light of the foregoing, BPI’s and NexTep’s Motion to Suspend should be granted in full.

Dated: April 15, 2005

Respectfully Submitted,

By: 
Michael D. Rounds
Matthew D. Francis
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

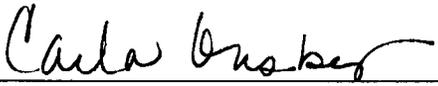
Attorneys for Registrant

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the within document entitled **Motion to Suspend; Memorandum of Points and Authorities in Support Thereof**, addressed as follows:

Judith A. Powell
James H. Sullivan
Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, Georgia 30309-4530

Dated: April 15, 2005



Carla Ousby



DECLARATION OF MATTHEW D. FRANCIS

I, Matthew D. Francis, do hereby declare and state:

1. I am counsel of record for Brawny Plastics, Inc. ("BPI") and NexTep, Inc. ("NexTep") in this Cancellation proceeding. This declaration is based upon my personal knowledge and is made in Support of BPI's and NexTep's Motion to Suspend; Memorandum of Points and Authorities in Support Thereof.

2. NexTep a Nevada corporation with its principal place of business located in Reno, Nevada. See Complaint, p. 2, §§ 3, 7, a true and correct copy of which is attached hereto as Exhibit A. NexTep is in the business of developing, manufacturing, marketing, and selling innovative household goods, which include polyethylene bags and trash cans. Exhibit A, p. 2, § 7.

3. NexTep is the owner of United States Federal Trademark Registration No. 0940243 ("243 Reg.") for the trademark "Brawny" in International Class 20 for polyethylene bags. A true and correct copy of the '243 Reg. is attached hereto as Exhibit B. NexTep was assigned all rights, title, and interest in the '243 Reg. by BPI on August 6, 2003 via a "Trademark Sale, Assignment and License" agreement. A true and correct copy of this Agreement is attached hereto as Exhibit C. This assignment was subsequently recorded in the United States Patent and Trademark Office ("PTO"). A true and correct copy of this assignment is attached hereto as Exhibit D.

4. On or about March 28, 2005, Petitioners filed their Petition for Cancellation to cancel the '243 Reg. See Cancellation No. 92044395. The Petition wrongfully names BPI as the Registrant, since NexTep is the owner of record for the '243 Reg. See Petition, p. 1. The basis for the Petition is that NexTep's predecessor BPI allegedly made fraudulent statements to the PTO regarding its use of the Brawny mark, and that the assignment to NexTep of the '243 Reg. was a sham transaction "in contravention of the Lanham Act." Id., p. 5.

5. On April 14, 2005, NexTep filed a declaratory judgment action in the United States District Court For the District of Nevada. Exhibit A, pp. 1-6. In the Nevada Action, NexTep asked the Court to declare, among other things, that its rights in the "Brawny" mark are superior

to Opposers' alleged rights, and that NexTep's use of that mark does not infringe any of Opposers' alleged rights. Exhibit A, pp. 5-6. Further, NexTep requested that the Court declare that the assignment of the '243 Reg. was valid. Id., p. 6.

6. No Answer is due to the Petition until May 16, 2005, and discovery does not even open until April 26, 2005. See Notice re: Cancellation, a true and correct copy of which is attached hereto as Exhibit E.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: 4/15/05

By: 
MATTHEW D. FRANCIS

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Michael D. Rounds
State Bar No. 4374
Matthew D. Francis
State Bar No. 6978
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorneys for Plaintiff
Nextep, Inc.

FILED
05 APR 14 PM 2:04
LANCE S. WILSON
CLERK
BY _____
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

CV-N-05-0227-ECR-RAM

NEXTEP, INC., a Nevada
corporation,

Plaintiff,

v.

FORT JAMES OPERATING
COMPANY, a Virginia
corporation, GEORGIA PACIFIC
CORPORATION, a Georgia
corporation,

Defendants.

) COMPLAINT

) JURY DEMAND

Plaintiff NexTep, Inc. ("Plaintiff"), for its Complaint
against Defendants Fort James Operating Company ("Fort James")
and Georgia-Pacific Corporation ("Georgia-Pacific") (collectively
"Defendants") alleges the following:

JURISDICTION AND VENUE

1. This is an action for declaratory relief pursuant to
28 U.S.C. §§ 2201-2202 from claims of trademark infringement
made by Defendants under 15 U.S.C. §§ 1125, 1052 and 1063.

1 Jurisdiction is based on federal question pursuant to 28 U.S.C.
2 § 1338(a) and (b).

3 2. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and
4 in the Reno Division of the District of Nevada.

5 THE PARTIES

6 3. Plaintiff is a Nevada corporation with its principal
7 place of business located at 1575 Delucchi Lane, Suite 218,
8 Reno, Nevada 89502.

9 4. Upon information and belief, Fort James is a Virginia
10 corporation with a principal place of business located at 133
11 Peachtree Street, N.E., Atlanta, Georgia 30303.

12 5. Upon information and belief, Georgia-Pacific is a
13 Georgia corporation with a principal place of business located
14 at 133 Peachtree Street, N.E., Atlanta, Georgia 30303.

15 6. Upon information and belief, Fort James is a wholly
16 owned subsidiary of Georgia-Pacific.

17 FACTS

18 7. Plaintiff is a Nevada-based company that is in the
19 business of developing, manufacturing, marketing, and selling
20 innovative household goods. Such goods include, but are not
21 limited to, polyethylene bags and trash cans.

22 8. Plaintiff is the owner of United States Federal
23 Trademark Registration No. 0940243 ("243 Reg.") for the
24 trademark "Brawny" in International Class 20 for polyethylene
25 bags. A copy of the '243 Reg. is attached hereto as Exhibit A.
26 Plaintiff and its predecessors have used this mark in commerce
27
28

1 since July 6, 1971 on polyethylene bags. Id. Plaintiff was
2 assigned all rights, title, and interest in the '243 Reg. by
3 Brawny Plastics, Inc. ("BPI") on August 6, 2003. This
4 assignment was subsequently recorded in the United States Patent
5 and Trademark Office ("PTO"). A copy of this assignment is
6 attached as Exhibit B.

7 9. Plaintiff is also the owner of United States Federal
8 Trademark Application Serial No. 78/268,015 (" '015 App.") for
9 the trademark "Brawny" in International Class 6 for "metal trash
10 receptacles for commercial, household and domestic use," and
11 International Class 21 for "plastic trash receptacles for
12 household use." Plaintiff was assigned all rights, title, and
13 interest in the '015 App. by BPI on March 17, 2005, and this
14 assignment was subsequently recorded in the PTO. A copy of this
15 assignment is attached hereto as Exhibit C. Plaintiff commenced
16 using the "Brawny" mark in conjunction with the sale of plastic
17 trash receptacles on at least June 21, 2004.

18 10. While Plaintiffs awaited a Notice of Allowance from
19 the PTO, Defendants filed a Notice of Opposition (the
20 "Opposition") in the Trademark Trial and Appeal Board regarding
21 the '015 App. on or about January 20, 2005. A copy of this
22 Notice of Opposition is attached hereto as Exhibit D.

23 11. In the Opposition, Defendants allege that Plaintiff's
24 use of the "Brawny" trademark for paper goods and cleaning
25 products provide it with superior rights in the "Brawny" mark.
26 Id. Defendants further allege that Plaintiff's use of the
27
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1 "Brawny" mark is likely to cause confusion in the minds of the
2 consuming public, is likely to injure their business
3 reputations, and is likely to dilute the distinctive quality of
4 their "Brawny" mark. Id., citing 15 U.S.C. §§ 1052(a), 1063(a),
5 and 1125 (a, c). As a result, Defendants request that
6 Plaintiff's registration for the '015 App. be refused. Id.

7 12. In addition to the foregoing, on or about March 28,
8 2005, Defendants filed a Petition for Cancellation to cancel the
9 '243 Reg., which Plaintiff owns all rights, title and interest
10 in. A copy of this Petition for Cancellation is attached hereto
11 as Exhibit E.

12 13. The basis for Defendants' Petition is that NexTep's
13 predecessor BPI allegedly made fraudulent statements to the PTO
14 regarding its use of the Brawny mark, and that the assignment to
15 NexTep of the '243 Reg. was a sham transaction "in contravention
16 of the Lanham Act." Exhibit E.

17
18 CLAIM I
19 DECLARATORY RELIEF
20 (28 U.S.C. §§ 2201-2202)

21 14. Plaintiff repeats, realleges and reiterates each and
22 every paragraph set forth above as if fully set forth herein.

23 15. By reason of the foregoing allegations, an actual case
24 or controversy has arisen and exists between Plaintiff and
25 Defendants as to the ownership, infringement, enforceability,
26 and validity of the "Brawny" mark and Defendant's federal
27 trademark application(s) and registration.
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5. That the assignment of the '243 Reg. was valid;

6. That all of Defendants' trademark registrations and applications be canceled;

7. For attorney's fees and costs pursuant to 15 U.S.C. § 1117; and

8. For such other and further relief as this Court deems just and proper.

DATED this 14 day of April, 2005.

WATSON ROUNDS

By: 
Michael D. Rounds
Matthew D. Francis
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorneys for Plaintiff
NexTep, Inc.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), NexTep, Inc. hereby
demands a jury trial on all issues triable by jury.

DATED this 14 day of April, 2005.

WATSON ROUNDS

By: 
Michael D. Rounds
Matthew D. Francis
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorneys for Plaintiff
NexTep, Inc.

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Exhibit A



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List At: OR to record: **Record 49 out of 54**

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark **BRAWNY**

Goods and Services IC 020. US 002. G & S: POLYETHYLENE BAGS. FIRST USE: 19710706. FIRST USE IN COMMERCE: 19710706

Mark Drawing Code (1) TYPED DRAWING

Serial Number 72399973

Filing Date August 12, 1971

Current Filing Basis 1A

Original Filing Basis 1A

Registration Number 0940243

Registration Date August 8, 1972

Owner (REGISTRANT) CHICAGO TRANSPARENT, INC. CORPORATION ILLINOIS 2700 N. PAULINE CHICAGO ILLINOIS 60614

 (LAST LISTED OWNER) NEXTEP, INC. CORPORATION NEVADA P.O. BOX 11188 RENO NEVADA 89510

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record BURTON S. EHRLICH

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030501.

Renewal 1ST RENEWAL 20030501

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Exhibit B



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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title**Total Assignments: 6****Serial #:** 72399973**Filing Dt:** 08/12/1971**Reg #:** 0940243**Reg. Dt:** 08/08/1972**Registrant:** CHICAGO TRANSPARENT, INC.**Mark:** BRAUNNY**Assignment: 1****Reel/Frame:** 0257/0277**Received:****Recorded:** 09/09/1974**Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL**Assignor:** CHICAGO TRANSPARENT INC.**Exec Dt:** 08/28/1974**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** CORPORATION**Citizenship:** MARYLAND**Assignee:** CONSOLIDATED FOODS CORPORATION135 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603**Correspondent:** BREZINA & BUCKINGHAM3747 GRAND BLVD.
BROOKFIELD, IL 60513**Assignment: 2****Reel/Frame:** 0385/0946**Received:****Recorded:** 02/23/1981**Pages:** 1**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOOD WILL AS OF MAY 8, 1978**Assignor:** CONSOLIDATED FOODS CORPORATION**Exec Dt:** 01/22/1981**Entity Type:** UNKNOWN**Citizenship:** NONE**Entity Type:** CORPORATION**Citizenship:** RHODE ISLAND**Assignee:** CHICAGO TRANSPARENT PRODUCTS, INC.2700 NORTH PAULINA ST.
CHICAGO, ILLINOIS 60614**Correspondent:** BREZINA AND BUCKINGHAM8733 ROCKEFELLER AVE.
8733 ROCKEFELLER AVE.
BROOKFIELD, IL 60513**Assignment: 3****Reel/Frame:** 0549/0090**Received:****Recorded:** 01/12/1987**Pages:** 10**Conveyance:** ASSIGNS SECURITY INTEREST SUBJECT TO LICENSE RECITED**Assignor:** CHICAGO TP INC.**Exec Dt:** 12/29/1986**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** UNKNOWN**Citizenship:** NONE**Assignee:** BT COMMERCIAL CORPORATION**Correspondent:** SIDLEY & AUSTINONE FIRST NATIONAL PLAZA
CHICAGO, IL 60603**Assignment: 4**

Reel/Frame: 2613/0290 **Received:** 11/08/2002**Recorded:** 11/04/2002**Pages:** 6**Conveyance:** CHANGE OF NAME**Assignor:** CHICAGO TRANSPARENT PRODUCTS, INC.**Exec Dt:** 05/15/1995**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Assignee:** BRAWNY PLASTICS, INC.2700 NORTH PAULINA STREET
CHICAGO, ILLINOIS 60614**Correspondent:** ARNSTEIN & LEHR
BURTON S. EHRLICH
1200 S. RIVERSIDE PLAZA
SUITE 1200
CHICAGO, IL 60606**Assignment: 5****Reel/Frame:** 3052/0694 **Received:** 03/24/2005**Recorded:** 03/24/2005**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** BRAWNY PLASTICS, INC.**Exec Dt:** 08/06/2003**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** CORPORATION**Citizenship:** NEVADA**Assignee:** NEXTEP, INC.P.O. BOX 11188
RENO, NEVADA 89510**Correspondent:** MATTHEW D. FRANCIS
5371 KIETZKE LANE
RENO, NV 89511**Assignment: 6****Reel/Frame:** 3059/0580 **Received:** 10/05/2004**Recorded:** 10/01/2004**Pages:** 4**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** BRAWNY PLASTICS, INC.**Exec Dt:** 08/06/2003**Entity Type:** CORPORATION**Citizenship:** NONE**Entity Type:** CORPORATION**Citizenship:** NONE**Assignee:** NEXTEP, INC.P.O. BOX 11188
RENO, NEVADA 89510**Correspondent:** SIERRA PATENT GROUP, LTD.
NANCY J. THOMPSON
P.O. BOX 6149
STATELINE, NV 89449

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Exhibit C



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Trademark Assignment Abstract of Title

Total Assignments: 1

Serial #: 78268015

Filing Dt: 06/27/2003

Reg #: NONE

Reg. Dt:

Applicant: Brawny Plastics, Inc.

Mark: BRAWNY

Assignment: 1

Reel/Frame: 3050/0540

Received: 03/22/2005

Recorded: 03/22/2005

Pages: 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: BRAWNY PLASTICS, INC.

Exec Dt: 03/17/2005

Entity Type: CORPORATION

Citizenship: ILLINOIS

Assignee: NEXTEP, INC.

P.O. BOX 11188

RENO, NEVADA 89510

Entity Type: CORPORATION

Citizenship: NEVADA

Correspondent: MATTHEW D. FRANCIS

5371 KIETZKE LANE

RENO, NV 89511

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Exhibit D

T-T A13

CERTIFICATE OF MAILING (37 CFR 1.10)

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on January 19, 2005

Judith A. Powell

Name of Person Mailing Paper

Judith A Powell
Signature

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

FORT JAMES OPERATING)
COMPANY and GEORGIA-PACIFIC)
CORPORATION,)
)
Opposers,)
)
v.)
)
BRAWNY PLASTICS, INC.)
)
)
Applicant.)

Application No. 78/268,015

Mark: BRAWNY

Opposition No. _____

NOTICE OF OPPOSITION

Opposers Fort James Operating Company and Georgia-Pacific Corporation ("Opposers"), file this Notice of Opposition against Application Serial No. 78/268,015 for the mark BRAWNY filed by Brawny Plastics, Inc. ("Applicant"), because Opposers believe that they will be damaged by registration of the mark which is the subject matter of Application No. 78/268,015. As grounds for opposition, Opposers allege as follows:

1. Opposer Fort James Operating Company ("Fort James") is a Virginia corporation with a principal place of business located at 133 Peachtree Street, N.E., Atlanta, Georgia 30303. Opposer Fort James is a wholly-owned subsidiary of Georgia-Pacific Corporation ("Georgia-Pacific"), a related company.

01/25/2005 KGTBBONS 00000050 78268015

01 FC:6402

600.00 DP



01-20-2005

U.S. Patent & TMO/TM Mail Rcpt DL #64

2. Opposer Georgia-Pacific is a Georgia corporation with a principal place of business located at 133 Peachtree Street, N.E. Atlanta, Georgia 30303.

3. A proper extension of time to oppose the instant application through and including January 19, 2005, has been obtained.

4. Opposer Fort James is the owner of the following marks, and corresponding trademark registrations, hereinafter referred to collectively as the "BRAWNY Marks":

Mark	Registration or Serial No.	Goods	Date of First Use
BRAWNY	78/443,780	Household cleaning implements, namely, scrub brush, broom, dust pan, grout brush, squeegee and plunger	12/29/2004
BRAWNY	78/402,314	Household gloves made of rubber and cotton knit for general use, and disposable latex gloves, cleaning pads, scrubber sponges	07/19/2004
BRAWNY	78/356,377	Scrub Sponges for cleaning, namely copper fiber Scrubbers, Stainless steel scrubbers, Plastic scrubbers, Nylon Scrubbers, Foam for General use, Disposable Latex Gloves	07/19/2004
BRAWNY	78/307,184	Household cleaning Cloths	07/30/2004
BRAWNY	78/307,171	Pre-Moistened Hand and Facial Wipes	03/10/2003
BRAWNY MAN	2875601	Paper Goods Namely, Calendars	04/18/2003
BRAWNY PROFESSIONAL	2849299	Paper Towels	09/30/1999
BRAWNY	2635343	Paper Products Namely, Paper Napkins	01/21/2002
DO YOU KNOW	2766328	Paper Towels and Paper	06/10/2002

A BRAWNY MAN?		Napkins	
BRAWNY and Design	2165829	Paper Towels	1975
BRAWNY	1062207	Paper Towels	10/2/1974

5. Opposer Georgia-Pacific acts as the sales agent for the BRAWNY branded products.

6. Opposers market household cleaning goods in retail channels throughout the United States.

7. Opposers manufacture, market and distribute the number 2 selling branded paper towel under the well-known BRAWNY name and mark. Opposers' napkin sold under the BRAWNY name and mark is also among the top-selling branded napkins. Opposers also manufacture, market, and distribute moistened wipes under the BRAWNY name and mark.

8. In addition, through a license agreement, Opposers market and sell a wide variety of household cleaning and related goods under the BRAWNY Mark, including brushes, brooms, sponges, cleaning cloths, scrubbers, and gloves.

9. Opposers, together with their predecessors in interest have used the BRAWNY mark for almost 30 years.

10. Opposers have continuously and exclusively used the BRAWNY Marks in connection with the respective goods identified in Paragraph 4 in United States commerce since each of the indicated dates of first use.

11. Opposers have sold billions of dollars of products under the BRAWNY Marks and have spent millions of dollars in marketing of goods under the BRAWNY Marks.

12. By virtue of the widespread sales and extensive advertising and promotion of the Opposers' products bearing the BRAWNY Marks, the BRAWNY Marks are well known by the

general public and in the relevant industries, are recognized and relied upon as identifying the Opposers' goods and as distinguishing them from the goods and services of others, and have come to represent and symbolize extremely valuable goodwill belonging exclusively to the Opposers.

13. By virtue of Opposers' extensive use and promotion, Opposers' BRAWNY marks have acquired a high degree of distinctiveness.

14. By virtue of Opposers' extensive use and promotion, Opposers' BRAWNY Marks had become famous before Applicant filed its application to register Applicant's Mark.

15. Applicant is the owner of Application No. 78/268,015 for the mark BRAWNY ("Applicant's Mark").

16. Applicant filed the instant application on an intent-to-use basis on June 27, 2003, for "metal trash receptacles for commercial, household and domestic use," in International Class 6 and "plastic trash receptacles for household use" in International Class 21.

17. Opposers' rights in the BRAWNY Marks are superior to Applicant's filing date for Applicant's Mark.

18. The use and registration of Applicant's Mark is likely to cause confusion in the minds of the purchasing public and to cause the purchasing public to assume that the goods identified by Applicant's Mark are sold by Opposers or that such goods originate with or are in some way connected to Opposers, which they are not, in violation of 15 U.S.C. §§ 1052(a) and 1125(a).

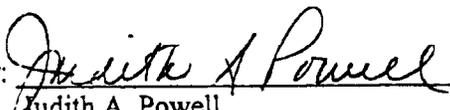
19. The use and registration of Applicant's Mark is likely to injure Opposers' business reputations and dilute the distinctive quality of the BRAWNY Marks in violation of Section 13(a) and Section 43(c) of the Trademark Act, 15 U.S.C. §§ 1063(a) and 1125(c).

20. Use and registration of the Applicant's Mark will be injurious to Opposers.
21. A duplicate copy of this Notice and the requisite filing fees are enclosed herewith.

WHEREFORE, Opposers believe that they will be damaged by the registration of the Applicant's Mark and pray that said Application No. 78/268,015 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposers.

Dated: January 19, 2005

Respectfully submitted,

By: 
Judith A. Powell
Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, Georgia 30309-4530
(404) 815-6500

Attorneys for Opposers

Exhibit E

TTAB

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

FORT JAMES OPERATING)	
COMPANY and GEORGLA-PACIFIC)	
CORPORATION,)	
)	
Petitioners,)	REGISTRATION NO.: 940,243
)	
)	Mark: BRAWNY
v.)	
)	CANCELLATION NO.: _____
BRAWNY PLASTICS, INC.,)	
)	
Registrant.)	

12399913

PETITION FOR CANCELLATION

Petitioners, Fort James Operating Company ("Fort James") and Georgia-Pacific Corporation ("Georgia-Pacific") (collectively, "Petitioners"), believe that they will be damaged by the continued registration of Registration No. 940,243 owned by Registrant, Brawny Plastics, Inc. ("Registrant"), and therefore petition the Board to cancel same. Pursuant to 37 C.F.R. §§ 2.111 and 2.112(a), and as grounds for cancellation, Petitioners allege as follows:

1. Petitioner Fort James is a Virginia corporation with a principal place of business located at 133 Peachtree Street, N.E., Atlanta, Georgia 30303. Fort James is a wholly-owned subsidiary of Petitioner Georgia-Pacific, a related company. Prior to its acquisition by Georgia-Pacific in 2000, Fort James' predecessor in interest was a major manufacturer and distributor of consumer products, including paper towels, tissue, napkins and related products.

2. Petitioner Georgia-Pacific is a Georgia corporation with a principal place of business located at 133 Peachtree Street, N.E., Atlanta, Georgia 30303. Georgia-Pacific is the

leading global producer of tissue products and one of the world's leading manufacturers and marketers of other consumer products, including but not limited to packaging and paper, as well as building products.

3. Petitioners manufacture, market, and distribute the Number 2 best-selling brand of paper towels in the United States under the well-known mark, BRAWNY®. Additionally, Petitioners manufacture, market, and distribute a top-selling napkin under the BRAWNY® Mark. Petitioners also manufacture, market, and distribute moistened wipes under the BRAWNY brand name and mark.

4. In addition, through a license agreement, Petitioners market and sell a wide variety of household cleaning tools and related goods under the BRAWNY brand name and mark, including brushes, brooms, sponges, cleaning cloths, scrubbers, and gloves.

5. Petitioner Fort James is the owner of, inter alia, the following trademark applications and registrations (hereinafter collectively referred to as the "BRAWNY Marks"):

Mark	Registration or Serial No.	Goods	Date of First Use
BRAWNY	1,062,207	Paper Towels	10/2/1974
 BRAWNY and Design	2,165,829	Paper Towels	1975
DO YOU KNOW A BRAWNY MAN?	2,766,328	Paper Towels and Paper Napkins	06/10/2002
BRAWNY	2,635,343	Paper Products Namely, Paper Napkins	01/21/2002

BRAWNY PROFESSIONAL	2,849,299	Paper Towels	09/30/1999
BRAWNY MAN	2,875,601	Paper Goods Namely, Calendars	04/18/2003
BRAWNY	2,929,823	Paper towels and napkins	10/15/2003
	78/278,384	Paper towels and napkins	10/01/2003
BRAWNY	78/307,170	Paper towel dispenser	12/29/2004
BRAWNY	78/307,171	Pre-Moistened Hand and Facial Wipes	03/10/2003
BRAWNY	78/307,174	Toilet bowl brush	07/19/2004
BRAWNY	78/307,184	Household cleaning Cloths	07/30/2004
BRAWNY	78/356,377	Scrub Sponges for cleaning, namely copper fiber Scrubbers, Stainless steel scrubbers, Plastic scrubbers, Nylon Scrubbers, Foam for General use, Disposable Latex Gloves	07/19/2004
BRAWNY	78/402,314	Household gloves made of rubber and cotton knit for general use, and disposable latex gloves, cleaning pads, scrubber sponges	07/19/2004
BRAWNY	78/404,561	Dust cloths	07/19/2004
BRAWNY	78/443,780	Household cleaning implements, namely, scrub brush, broom, dust pan, grout brush, squeegee and plunger	12/29/2004

6. Petitioners, together with their predecessors in interest, have continuously and exclusively used the BRAWNY Marks in connection with the above-identified goods since each

of the indicated dates of first use; cumulatively, the BRAWNY Marks have been in continuous use for more than thirty (30) years.

7. Petitioners have sold billions of dollars worth of the above-identified products bearing the BRAWNY Marks. In the last five years alone, Petitioners have distributed more than 70 million cases of BRAWNY® paper towels in the United States alone, with gross sales exceeding \$1 billion.

8. Moreover, Petitioners have spent millions of dollars advertising and marketing its goods sold in connection with the BRAWNY Marks. In the last five years alone, Petitioners have expended over \$70 million in advertising and promoting BRAWNY® paper towels.

9. By virtue of the widespread sales and extensive advertising and promotion of Petitioners' products bearing the BRAWNY Marks, the BRAWNY Marks are well known by the general public and in the relevant industries, are recognized and relied upon as identifying Petitioners' goods and as distinguishing them from the goods and services of others, and have come to represent and symbolize extremely valuable goodwill belonging exclusively to the Petitioners.

10. By virtue of Petitioners' extensive use and promotion, Petitioners' BRAWNY Marks have acquired a high degree of distinctiveness.

11. By virtue of Petitioners' extensive use and promotion, Petitioners' BRAWNY Marks have become famous.

12. Upon information and belief, Registrant is an Illinois corporation, with an address of record of 2700 North Paulina Street, Chicago, Illinois 60614, and is the last listed owner (by assignment and change of corporate name) of U.S. Registration No. 940,243 for the designation

BRAWNY in International Class 20 for "polyethylene bags." Registrant claims a first use date of July 6, 1971 for this designation.

13. Upon information and belief, Registrant has abandoned any rights it may have claimed in its BRAWNY designation by failing to continuously use the mark in commerce.

14. Upon information and belief, in its May 1, 2003 Declaration of Use in Commerce for Renewal of Registration No. 940,243, Registrant made false and fraudulent statements knowingly intended to mislead the United States Patent and Trademark Office ("U.S.P.T.O.") regarding Registrant's continued use of the BRAWNY designation in commerce.

15. Upon information and belief, in the summer of 2003, Registrant attempted to transfer any rights it had to Registration No. 940,243 to a third party, Nextep, Inc. ("Nextep"). Upon information and belief, said conveyance of the registration, devoid of any goodwill of the business connected to Registrant's alleged use of the BRAWNY designation, was a sham transaction in contravention of the Lanham Act. Neither Registrant nor Nextep recorded this transfer with the U.S.P.T.O.

16. Registration No. 940,243 is now being used by, or with the permission of, Registrant so as to misrepresent the source of the plastic bags on or in connection with which Registrant's BRAWNY designation is being used.

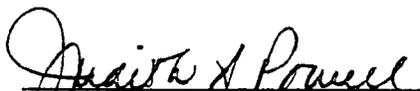
17. For all of the foregoing reasons, U.S. Registration No. 940,243 should therefore be canceled pursuant to 15 U.S.C. §1064(3).

18. Pursuant to 37 C.F.R. §§ 2.6(a)(16) and 2.112(a), please find enclosed herewith the required fee of \$600.00 and a duplicate copy of this Petition. The clerk is authorized to charge the Kilpatrick Stockton LLP Trademark Deposit Account No. 11-0860 for any additional fees.

WHEREFORE, Petitioner prays that Registrant's Registration No. 940,243 be canceled.

Dated: March 24, 2005

Respectfully Submitted:



Judith A. Powell
James H. Sullivan
Kilpatrick Stockton LLP
1100 Peachtree Street
Atlanta, Georgia 30309
(404) 815-6500

Attorneys for Petitioners

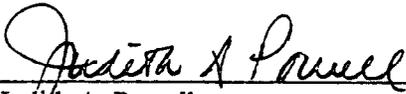
CERTIFICATE OF EXPRESS MAIL

"EXPRESS MAIL" mailing number: EV607732125US

DATE OF DEPOSIT: March 24, 2005

DOCUMENT: PETITION FOR CANCELLATION AGAINST
U.S. REGISTRATION NO. 940,243

I hereby certify that this paper and fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on date indicated above and is addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451.



Judith A. Powell



United States Patent and Trademark Office

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Trademark Electronic Search System(Tess)

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List At: OR to record: **Record 49 out of 54**

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark **BRAWNY**

Goods and Services IC 020. US 002. G & S: POLYETHYLENE BAGS. FIRST USE: 19710706. FIRST USE IN COMMERCE: 19710706

Mark Drawing Code (1) TYPED DRAWING

Serial Number 72399973

Filing Date August 12, 1971

Current Filing Basis 1A

Original Filing Basis 1A

Registration Number 0940243

Registration Date August 8, 1972

Owner (REGISTRANT) CHICAGO TRANSPARENT, INC. CORPORATION ILLINOIS 2700 N. PAULINE CHICAGO ILLINOIS 60614

 (LAST LISTED OWNER) NEXTEP, INC. CORPORATION NEVADA P.O. BOX 11188 RENO NEVADA 89510

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record BURTON S. EHRlich

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030501.

Renewal 1ST RENEWAL 20030501

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TRADEMARK SALE, ASSIGNMENT AND LICENSE

THIS AGREEMENT is entered into this 6th day of August, 2003, by and between Brawny Plastics, Inc., 2700 N. Paulina Street, Chicago, Illinois 60614 ("Seller") and Nextep, Inc., P.O. Box 11488, Reno, Nevada 89510 ("Buyer").

✓ WHEREAS, Seller, is the owner of the trademark BRAWNY, U.S. Registration No. 840243 for use in connection with "polyethylene bags" in International Class 20, with first use of said trademark commencing at least as early as July 6, 1971, said registration having been renewed on the Principal Register for an additional ten year term pursuant to United States Patent and Trademark Office Notice dated March 5, 2001; and

✓ WHEREAS, Seller is the owner of a pending U.S. trademark application BRAWNY, Serial No. 78/268015 for use in connection with "plastic and metal trash and refuse containers and receptacles," in International Class 22 filed June 27, 2003, on an intent to use basis;

WHEREAS, Buyer is desirous of using the trademark BRAWNY in connection with the same, similar or related goods as shown in the existing registration and/or pending application, and Seller is agreeable to the sale, assignment and lease of those marks, together with the goodwill of the business symbolized thereby; provided that Buyer licenses Seller so that Seller can continue to use BRAWNY for polyethylene bags in connection with its continuing business as more fully described below;

THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Sale and Assignment: Seller hereby sells and assigns, for good and valuable consideration, including the right of Seller to use the mark BRAWNY in the future pursuant to an exclusive, irrevocable, royalty-free license (as more fully described below in Paragraph 4) as well as the payment by Buyer to Seller of the sum of One Hundred Thousand Dollars (\$100,000), Fifty Thousand Dollars (\$50,000) of which is due upon execution of this Agreement and thereafter the sum of Fifty Thousand Dollars (\$50,000) due for payment in six equal monthly installments of Eight Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents (\$8,333.33) each installment, paid on the first day of the month commencing after the execution of this Agreement and for an additional five (5) months thereafter paid on the first day of each of said succeeding months, all Seller's rights, title and interest in the federally registered BRAWNY trademark, together with the goodwill of the business symbolized thereby and the registration pertaining thereto.
2. Seller's Rights on Default: In the event Buyer fails to make any of the payments described in paragraph 1, above, on the dates required, and if such failure to pay is not cured within five (5) working days after notice from Seller, (a) the entire sum remaining to be paid to Seller shall be immediately due and owing, (b) Buyer shall forthwith cease use of the marks assigned and/or licensed hereunder, (c) all right and title in marks

assigned hereunder shall revert to seller, and (d) Buyer shall pay all legal fees and costs of Seller incurred in enforcing the payment of such accelerated sum and in enforcing its restored rights in relation to the Buyer.

3. Seller's Security Interest in the Marks: To secure Seller's rights of payment hereunder, Buyer hereby conveys to Seller a purchase money security interest in the marks, and Seller is authorized hereunder to file UCC-1 financing statement memorializing such security interest in the form attached.

4. License of BRAWNY mark for use with containers and receptacles: Seller hereby licenses Buyer, on an exclusive, irrevocable, royalty-free basis, to use the mark BRAWNY in connection with plastic and metal trash and refuse containers and receptacles. To the extent applicable, Seller agrees to use the mark on the goods or labels as well as on packaging, advertising and promotional materials, in a manner approved by Buyer, which approval shall not be unreasonably withheld. Seller further agrees to sell and assign that mark, and the pending federal trademark application for BRAWNY, Serial No. 78/288015, together with the goodwill of the business symbolized thereby, to Buyer upon the filing of a verified statement of use by Buyer, said statement of use to be based on the licensed use provided for in this paragraph. The assignment of the trademark application for BRAWNY, Serial No. 78/288015 will be memorialized in a separate sale and assignment to be executed upon the filing of the verified statement of use by Buyer.

C E
\$0.00 ✓
✓

5. License Back to Seller: Buyer hereby agrees to license Seller or its assignee, on an exclusive irrevocable, royalty-free basis, for use of the federally registered mark BRAWNY in connection with the sale of 13, 20 and 33 gallon-sized polyethylene bags for a term of six (6) months following the date of this Agreement. To the extent applicable, Seller agrees to use the mark on the goods or labels as well as on packaging, advertising and promotional materials, in a manner approved by Buyer, which approval shall not be unreasonably withheld, and in no event of a less quality than Seller has used or displayed the mark to the date of this Agreement.

C E

6. Intention Date: This Agreement will commence on the date written above.

7. Term: The term of this Agreement shall be for as long as the Buyer or its assignee maintains the U.S. registration in the trademark BRAWNY or continues to use said mark in Buyer's business on a common law basis, or until an event of default specified in paragraph 2 of this Agreement.

8. Infringement: If Seller learns of any infringements of the mark, it shall promptly notify Buyer of same. Buyer shall bear the responsibility and expense for taking any legal action in connection with any such infringements.

- 9. Approval: This Agreement is subject to the approval of Seller's lien holder, which approval shall be the responsibility of Seller to obtain, no later than ten (10) working days from the date of this Agreement.
- 10. Effect on Assignment: This Agreement will be binding upon and inure to the benefit of the parties, their successors, assigns, affiliated and related companies, and shall be assignable by either party.

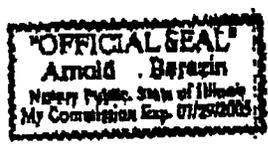
DATE: August 6, 2003

BRAWNY PLASTICS, INC.

By: [Signature]
Its President

State of Illinois, County of Cook.
County of Cook
Signed before me this _____
Day of July, 2003.

[Signature]
Notary Public



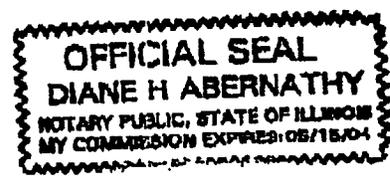
NEXTEP, INC.

[Signature]
Its Treasurer & C.O.O.

State of NV

Signed before me this 8-22-03
Day of July, 2003.

[Signature]
Notary Public





United States Patent and Trademark Office

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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title**Total Assignments: 6****Serial #:** 72399973 **Filing Dt:** 08/12/1971 **Reg #:** 0940243 **Reg. Dt:** 08/08/1972**Registrant:** CHICAGO TRANSPARENT, INC.**Mark:** BRAUNY**Assignment: 1****Reel/Frame:** 0257/0277 **Received:** **Recorded:** 09/09/1974 **Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL**Assignor:** CHICAGO TRANSPARENT INC.**Exec Dt:** 08/28/1974**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** CORPORATION**Citizenship:** MARYLAND**Assignee:** CONSOLIDATED FOODS CORPORATION

135 SOUTH LASALLE STREET

CHICAGO, ILLINOIS 60603

Correspondent: BREZINA & BUCKINGHAM

3747 GRAND BLVD.

BROOKFIELD, IL 60513

Assignment: 2**Reel/Frame:** 0385/0946 **Received:** **Recorded:** 02/23/1981 **Pages:** 1**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOOD WILL AS OF MAY 8, 1978**Assignor:** CONSOLIDATED FOODS CORPORATION**Exec Dt:** 01/22/1981**Entity Type:** UNKNOWN**Citizenship:** NONE**Entity Type:** CORPORATION**Citizenship:** RHODE ISLAND**Assignee:** CHICAGO TRANSPARENT PRODUCTS, INC.

2700 NORTH PAULINA ST.

CHICAGO, ILLINOIS 60614

Correspondent: BREZINA AND BUCKINGHAM

8733 ROCKEFELLER AVE.

8733 ROCKEFELLER AVE.

BROOKFIELD, IL 60513

Assignment: 3**Reel/Frame:** 0549/0090 **Received:** **Recorded:** 01/12/1987 **Pages:** 10**Conveyance:** ASSIGNS SECURITY INTEREST SUBJECT TO LICENSE RECITED**Assignor:** CHICAGO TP INC.**Exec Dt:** 12/29/1986**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** UNKNOWN**Citizenship:** NONE**Assignee:** BT COMMERCIAL CORPORATION**Correspondent:** SIDLEY & AUSTIN

ONE FIRST NATIONAL PLAZA

CHICAGO, IL 60603

Assignment: 4

Reel/Frame: 2613/0290 **Received:** 11/08/2002**Recorded:** 11/04/2002**Pages:** 6**Conveyance:** CHANGE OF NAME**Assignor:** CHICAGO TRANSPARENT PRODUCTS, INC.**Exec Dt:** 05/15/1995**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Assignee:** BRAWNY PLASTICS, INC.2700 NORTH PAULINA STREET
CHICAGO, ILLINOIS 60614**Correspondent:** ARNSTEIN & LEHR
BURTON S. EHRLICH
1200 S. RIVERSIDE PLAZA
SUITE 1200
CHICAGO, IL 60606**Assignment: 5****Reel/Frame:** 3052/0694 **Received:** 03/24/2005**Recorded:** 03/24/2005**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** BRAWNY PLASTICS, INC.**Exec Dt:** 08/06/2003**Entity Type:** CORPORATION**Citizenship:** ILLINOIS**Entity Type:** CORPORATION**Citizenship:** NEVADA**Assignee:** NEXTEP, INC.P.O. BOX 11188
RENO, NEVADA 89510**Correspondent:** MATTHEW D. FRANCIS
5371 KIETZKE LANE
RENO, NV 89511**Assignment: 6****Reel/Frame:** 3059/0580 **Received:** 10/05/2004**Recorded:** 10/01/2004**Pages:** 4**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** BRAWNY PLASTICS, INC.**Exec Dt:** 08/06/2003**Entity Type:** CORPORATION**Citizenship:** NONE**Entity Type:** CORPORATION**Citizenship:** NONE**Assignee:** NEXTEP, INC.P.O. BOX 11188
RENO, NEVADA 89510**Correspondent:** SIERRA PATENT GROUP, LTD.
NANCY J. THOMPSON
P.O. BOX 6149
STATELINE, NV 89449

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 6, 2005

NEXTEP, INC.
P.O. BOX 11188
RENO, NV 89510

Cancellation No. 92044396
Reg. No. 940243

JUDITH A. POWELL
KILPATRICK STOCKTON LLP
1100 PEACHTREE STREET
ATLANTA, GA 30309

FORT JAMES OPERATING COMPANY AND
GEORGIA-PACIFIC CORPORATION

V.

BRAWNY PLASTICS, INC.

Michelle Greenfield, Legal Assistant:

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open:	April 26, 2005
Discovery period to close:	October 23, 2005
30-day testimony period for party in position of plaintiff to close:	January 21, 2006
30-day testimony period for party in position of defendant to close:	March 22, 2006
15-day rebuttal testimony period for plaintiff to close:	May 06, 2006

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.