

ESTTA Tracking number: **ESTTA56305**

Filing date: **12/06/2005**

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

Proceeding	92044876
Party	Plaintiff PRINTING TECHNOLOGY, INC. ,
Correspondence Address	ALAN I. CYRLIN WASSERMAN, COMDEN CASSELMAN & PEARSON, LLP 5567 RESEDA BLVD., SUITE 330 TARZANA, CA 91357 acyrlin@wccplaw.com
Submission	Other Motions/Papers
Filer's Name	Alan I. Cyrlin, Esq.
Filer's e-mail	acyrlin@wccplaw.com
Signature	/aic/
Date	12/06/2005
Attachments	oppstay.pdf (9 pages)

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

Registration No.: 28579961
Mark: CHOOSE QUALITY

PRINTING TECHNOLOGY, INC.,)	
)	
Petitioner)	
)	
v.)	
)	Cancellation No. 92044876
WAZANA BROTHERS INTERNATIONAL, INC)	
)	
Respondent)	
)	
)	

**PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO SUSPEND
PROCEEDINGS PURSUANT TO 37 CFR § 2.117(A)
BASED UPON FILING OF CIVIL ACTION, DECLARATION OF
ALAN I. CYRLIN AND EXHIBIT IN SUPPORT THEREOF**

Wazana Brothers International, Inc.'s (hereinafter "Respondent" or "Wazana") motion should be denied for several reasons.

Initially, Wazana's motion is incomplete. Specifically, Wazana's motion failed to include copies of all the pleadings in the civil action. This is important because there have been several pleadings filed in the civil action which may inform this Board's decision whether to stay the proceedings, including Petitioner's motion to dismiss or alternatively for a more definite statement. (See docket from Pacer, attached hereto as Exhibit "A").

More importantly, contrary to Wazana's contention, the resolution of the civil action will not resolve all issues in the present cancellation proceeding. This proceeding concerns the issue of whether Wazana's registration for the mark CHOOSE QUALITY is valid. The issue in the federal action is whether Petitioner has infringed on the mark. A court may find that there has been no

infringement, even if the mark is valid. For example, there may not be any infringement if Petitioner used CHOOSE QUALITY solely in a non-trademark sense. Nevertheless, even if Petitioner prevails in the federal lawsuit, it will still be damaged by the registration, especially in light of Wazana's unseemly attempt to monopolize the word "quality." Similarly, several affirmative defenses exist which would defeat Wazana's infringement claim (e.g., waiver, estoppel, statute of limitations) which would not be applicable in this cancellation proceeding. Additionally, Wazana is suing Petitioner not only for infringement on the registration, but also alleged infringement on Wazana's alleged common law rights. Thus, the resolution of the federal lawsuit will not necessarily resolve all issues in the present cancellation proceedings. In sum, the issue of whether the registration was properly issued is wholly within the province of the Patent and Trademark Office, and impacts on whether Wazana owns a valid mark and can successfully prevail against Petitioner for infringement of a registered mark. Accordingly, this proceeding should not be stayed.

Moreover, the District Court is poised to stay the civil action to permit this TTAB proceeding to proceed. Petitioner has notified Wazana and the District Court of Petitioner's intention to stay the civil action. (See Cyrlin Decl., at ¶3.) During a hearing held on December 5, 2005, the District Court judge (after granting, in part, Petitioner's motion to dismiss) responded favorably to a motion to stay the civil action, pending the resolution of this Cancellation proceeding. Although the motion to stay the civil action has not been filed, (as the parties continue to "meet-and-confer" on that issue) there is a strong likelihood that the District Court will grant a motion to stay the civil action in order for the TTAB to adjudicate whether the registration was properly issued.

Lastly, the civil action was only recently filed and it has not progressed substantially. In fact, considerable discovery, law and motion, and preparation will be required before the case reaches the point of a final hearing. If Wazana's motion is granted, this cancellation proceeding will be substantially delayed. This delay will harm the public and consumers. Until the registration is cancelled, Wazana will continue to attempt to monopolize the word "quality" and the phrase "choose

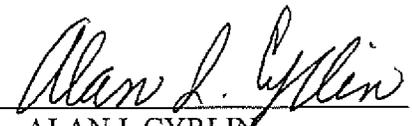
quality." Wazana is misusing the registration and the alleged mark by attempting to intimidate competitors from using the word "quality" or the phrase "choose quality"; this unfair competition practiced by Wazana will continue until the registration is cancelled.

Accordingly, the Motion should be denied and this Cancellation Proceeding seeking cancellation of the registration for CHOOSE QUALITY should proceed without delay.

DATED: December 6, 2005

Respectfully submitted,

PRINTING TECHNOLOGY, INC.

By: 
ALAN I. CYRLIN

WASSERMAN, COMDEN, CASSELMAN
& PEARSON, L.L.P.

5567 Reseda Boulevard, Suite 330

Post Office Box 7033

Tarzana, California 91357-7033

Tel. (818) 609-2367 / Fax: (818) 345 0162

Attorneys for Petitioner

DECLARATION OF ALAN I. CYRLIN

Alan I. Cyrlin declares:

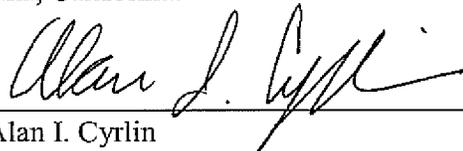
1. I am an attorney licensed to practice in the State of California. I am a member of the firm of Wasserman, Comden, Casselman & Pearson L.L.P., attorneys of record for Petitioner, Printing Technology, Inc.

2. A true and correct copy of the docket summary obtained from Pacer in the matter Wazana Brothers International, Inc. v. Printing Technology, Inc. / Case No. CV 05-5596 MMM hereinafter "**the Civil Action**", which I obtained on December 6, 2005, is attached hereto and marked as Exhibit "A" and is incorporated by this reference.

3. It is the Petitioner's intention to file a motion to stay the Civil Action. Counsel for Petitioner is in the process of meeting and conferring with Wazana's counsel concerning that contemplated motion.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on December 6, 2005, at Tarzana, California.



Alan I. Cyrlin

(SSx), AO279, DISCOVERY, MANADR

**U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:05-cv-05596-MMM-SS**

Wazana Brothers International Inc v. Printing Technology Inc et al
Assigned to: Honorable Margaret M. Morrow
Referred to: Magistrate Judge Suzanne H. Segal
Cause: 15:1114 Trademark Infringement

Date Filed: 08/02/2005
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Wazana Brothers International Inc
a California Corporation
doing business as
Micro Solutions Enterprises

represented by **Darren S Enenstein**
Moldo Davidson Fraioli Seror and Sestanovich
1925 Century Park East, 16th Floor
Los Angeles, CA 90067
310-551-3100
Email: denenstein@mdfslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jessica C Barfield-McCarren
Moldo Davidson Fraioli Seror and Sestanovich
1925 Century Park East, 16th Floor
Los Angeles, CA 90067
310-551-3100
Email: jbarfield-mccarren@mdfslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ned M Gelhaar
Moldo Davidson Fraioli Seror and Sestanovich
1925 Century Park East, 16th Floor
Los Angeles, CA 90067
310-551-3100
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Printing Technology Inc
a California Corporation

represented by **Alan I Cyrlin**
Wasserman Comden Casselman &
EXHIBIT A PAGE 5

Pearson
 5567 Reseda Blvd, Ste 330
 P O Box 7033
 Tarzana, CA 91357-7033
 818-609-2367
 Fax: 818-705-8147
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas J Speiss III
 Wasserman Comden Casselman and
 Pearson
 5567 Reseda Boulevard, Suite 330
 P O Box 7033
 Tarzana, CA 91357
 818-705-6800
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Does

1-10 inclusive

Date Filed	#	Docket Text
08/02/2005	1	COMPLAINT against Defendant Printing Technology Inc, Does 1-10. (Filing fee \$ 250.00 paid.) Jury Demand, filed by plaintiff Wazana Brothers International Inc.(jp,) (Entered: 08/04/2005)
08/02/2005		20 DAYS Summons Issued re Complaint - (Discovery)[1] as to Defendants Printing Technology Inc, Does 1-10. (jp,) (Entered: 08/04/2005)
08/02/2005	2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Wazana Brothers International Inc. (jp,) (Entered: 08/04/2005)
08/02/2005		REPORT ON THE FILING OF AN ACTION REGARDING TRADEMARK (cc: form mailed to Washington, D.C.) (Opening) (jp,) (Entered: 08/04/2005)
08/02/2005	3	NOTICE TO PARTIES OF ADR PILOT PROGRAM filed.(jp,) (Entered: 08/04/2005)
08/02/2005		FAX number for Attorneys Jessica Carrie Barfield-McCarren, Darren S Eenstein, Ned M Gelhaar is 310-551-0238. (jp,) (Entered: 08/04/2005)
08/18/2005	4	PROOF OF SERVICE Executed by plaintiff Wazana Brothers International Inc, upon Printing Technology Inc, a California corporation; served on 8/8/2005, answer due 8/28/2005. The Summons and Complaint were served by personal service, by Federal Rules of Civil Procedure statute, upon Steve K Wasserman, Registered Agent for Service of

EXHIBIT A PAGE 6

		Process. Due Dilligence declaration not attached. Original Summons not returned. (mg,) (Entered: 08/19/2005)
08/23/2005	5	STIPULATION Extending Time to file a response to the complaint. Printing Technology Incs answer is due 9/19/2005. Filed by defendant Printing Technology Inc. (mg,) (Entered: 08/24/2005)
09/19/2005	6	CERTIFICATION of Interested Parties filed by Defendant Printing Technology Inc. (mg,) (Entered: 09/20/2005)
09/19/2005	7	NOTICE OF MOTION AND MOTION to Dismiss all claims for failure to state a claim upon which relief can be granted, or alternatively, for a more definite statement of the acts purportedly conducted by the defendant; filed by defendant Printing Technology Inc. Motion set for hearing on 12/5/2005 at 10:00 AM before Honorable Margaret M. Morrow. Lodged proposed order. (mg,) (Entered: 09/26/2005)
09/19/2005	8	DECLARATION of Thomas J Speiss, III in support of MOTION to Dismiss or for a More Definite Statement [7] filed by defendant Printing Technology Inc. (mg,) (Entered: 09/26/2005)
09/26/2005	9	MINUTES by Judge Margaret M. Morrow: On 9/19/05 defendant Printing Technology Inc filed a MOTION to Dismiss or for More Definite Statement [7]. The Court hereby advances the briefing schedule as follows: Any Opposition by plaintiff must be filed no later than 10/24/2005. Any Reply by defendant must be filed no later than 11/7/2005. Court Reporter: N/A. (mg,) (Entered: 09/27/2005)
09/29/2005	10	PROOF OF SERVICE filed by defendant Printing Technology Inc. Order advancing briefing schedule 9 was served on 9/28/05. (mg,) (Entered: 10/03/2005)
10/04/2005	11	NOTICE of Change of Address by attorneys Jessica C Barfield-McCarren, Darren S Enenstein, Ned M Gelhaar attorneys for Plaintiff Wazana Brothers International Inc, changing firm name to Moldo Davidson Fraioli Seror and Sestanovich. Filed by plaintiff Wazana Brothers International Inc. The address and telephone will remain the same. The new web address will be www.mdflaw.com. Darren Enensteins e-mail will be DEnenstein@mdflaw.com. (mg,) (Entered: 10/05/2005)
10/24/2005	12	MEMORANDUM IN OPPOSITION to MOTION to Dismiss Case [7] filed by plaintiff Wazana Brothers International Inc. (mg,) (Entered: 10/26/2005)
10/26/2005	13	MINUTES (IN CHAMBERS ORDER) by Judge Margaret M. Morrow: Counsel are hereby notified that a Scheduling Conference has been set for 12/5/2005 at 10:00 AM before Honorable Margaret M. Morrow. Counsel are directed to comply with Rule 26(f) of the FRCP in a timely fashion and to file a Joint Rule 26(f) Report on or before 11/21/2005. Court Reporter: N/A. (mg,) (Entered: 10/27/2005)
11/07/2005	14	REPLY to Opposition regarding MOTION to Dismiss [7] filed by

EXHIBIT A PAGE 7

		defendant Printing Technology Inc. (mg,) (Entered: 11/09/2005)
11/21/2005	15	OBJECTION to plaintiffs Statement of Inability of Counsel to Agree on Joint Rule 26(f) Report, and Submission of Partial Report, filed by Defendant Printing Technology Inc. (mg,) (Entered: 11/29/2005)
11/21/2005	16	STATEMENT of Inability of Counsel to agree on Joint Rule 26(f) Report and Submission of Partial Report filed by Plaintiff Wazana Brothers International Inc (ir,) (Entered: 11/29/2005)
11/30/2005	17	ADR PILOT PROGRAM QUESTIONNAIRE filed by attorney Ned M Gelhaar for plaintiff and Thomas J Speiss III on behalf Defendant (mg,) (Entered: 11/30/2005)

PACER Service Center			
Transaction Receipt			
12/06/2005 10:29:43			
PACER Login:	wc0103	Client Code:	
Description:	Docket Report	Search Criteria:	2:05-cv-05596-MMM-SS
Billable Pages:	2	Cost:	0.16

EXHIBIT A PAGE 8

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served upon the attorney for Respondent, Darren S. Enenstein, this 6th day of December 2005 by depositing it with the United States Post Office, postage prepaid, addressed to: Darren S. Enenstein, Moldo, Davidson, Fraioli, Seror & Sestanovich, LLP/ 1925 Century Park East, 16th Floor, Los Angeles, California 90067, with a courtesy copy sent by fax to the aforementioned at fax no. (310) 551-0238.

ALAN I. CYRLIN
WASSERMAN, COMDEN, CASSELMAN
& PEARSON, L.L.P.
5567 Reseda Boulevard, Suite 330
Post Office Box 7033
Tarzana, California 91357-7033



Alan I. Cyrlin