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

Proceeding	92047363
Party	Defendant Nexpak Corporation Nexpak Corporation 3475 Forest Lake Drive, Suite 200 Uniontown, OH 44685
Correspondence Address	Nexpak Corporation 3475 Forest Lake Drive, Suite 200 Uniontown, OH 44685 UNITED STATES
Submission	Answer
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Date	05/22/2007
Attachments	20070522Answer.pdf (8 pages)(30283 bytes)

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

Fey Industries, Inc., Petitioner, v. Nexpak Corporation, Registrant

Cancellation Number 92047363

Mark: TRIMPAK

Registration Number: 3,206,104

Filing date: April 7, 2006

Registration date: February 6, 2007

ANSWER

Registrant Nexpak Corporation, by and through counsel, hereby responds to the Petition for Cancellation as follows:

1. Registrant admits the information contained in Paragraph 1 of the Petition for Cancellation.

2. Registrant denies it filed an intent-to-use application on April 7, 2006. Answering further, Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 of the Petition for Cancellation and therefore denies the same.

3. Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of the Petition for Cancellation and therefore denies the same.

4. Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 of the Petition for Cancellation and therefore denies the same.

5. Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 of the Petition for Cancellation and therefore denies the same.

6. Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 of the Petition for Cancellation and therefore denies the same.

7. Registrant denies the allegation contained in Paragraph 7 of the Petition for Cancellation.

8. Registrant denies Petitioner has ever owned a Federal registration for the TRIMPAK mark. Answering further, Registrant denies the allegation contained in Paragraph 8 of the Petition for Cancellation.

9. Upon information and belief, Registrant admits both parties sell products generally described as media storage products. Answering further, Registrant denies the parties' goods are closely related and/or identical. Answering further, Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 9 of the Petition for Cancellation and therefore denies the same.

10. Upon information and belief, Registrant denies Petitioner sells security containers as listed in Petition's trademark registration application. Answering further, Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Petition for Cancellation and therefore denies the same.

11. Upon information and belief, Registrant admits the Registrant's mark is identical in sight and sound to Petition's alleged mark. Answering further, Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Petition for Cancellation and therefore denies the same.

12. Registrant denies the allegations contained in Paragraph 12 of the Petition for Cancellation.

13. Registrant denies the allegations contained in Paragraph 13 of the Petition for Cancellation.

14. Registrant denies the allegations contained in Paragraph 14 of the Petition for Cancellation.

15. Registrant admits it knew of Petitioner's allegations of rights but believed then and continues to believe its rights are superior as used with the Registrant's goods, that the goods are sufficiently different to prevent a likelihood of confusion, and that the purchasers and channels of trade are sufficiently different to prevent a likelihood of confusion. Answering further, Registrant was then and is now otherwise without sufficient information or knowledge to form a belief as to the existence and scope of Petitioner's rights. Registrant thus denies the allegations contained in Paragraph 15 of the Petition for Cancellation.

16. Registrant admits one of Registrant's salesmen contacted Petitioner regarding Petitioner's use of the mark. Upon information and belief, the salesman acted without approval of Registrant or legal counsel. Answering further, Registrant is without sufficient information or knowledge to form a belief

as to the truth of the allegations contained in Paragraph 16 of the Petition for Cancellation and therefore denies the same.

17. Registrant admits that Petitioner sent a letter dated June 9, 2005, alleging that Petitioner had established prior rights in the TRIMPAK mark. Answering further, Registrant is without sufficient information or knowledge to form a belief as to the actual existence or scope of Petitioner's rights

18. Registrant admits that Petitioner's attorney sent an email on March 29, 2006, to Registrant's attorney with a digital photograph attached to the email that allegedly showed Petition's use of the TRIMPAK mark with Petitioner's goods as of 2006. Answering further, Registrant denies receiving labels confirming Petitioner's first use of the mark in 1995. Answering further, Registrant is without sufficient information or knowledge to form a belief as to the truth of the remaining information contained in Paragraph 18 of the Petition for Cancellation regarding the use of the mark in 1995.

19. Registrant admits the information contained in Paragraph 19 of the Petition for Cancellation.

20. Registrant admits the information contained in Paragraph 20 of the Petition for Cancellation.

21. Registrant admits it filed trademark registration application serial number 78856796 on April 7, 2006. Answering further, Registrant denies that it had actual knowledge any priority rights in the TRIMPAK mark.

22. Registrant denies the allegation contained in Paragraph 22 of the Petition for Cancellation.

23. Registrant denies the allegation contained in Paragraph 23 of the Petition for Cancellation.

24. Registrant denies the allegation contained in Paragraph 24 of the Petition for Cancellation.

25. Registrant denies the allegations contained in Paragraph 25 of the Petition for Cancellation.

26. Registrant denies the allegations contained in Paragraph 26 of the Petition for Cancellation.

27. Upon information and belief, Petitioner has been aware of registrant's use of the TRIMPAK mark with Registrant's products for many years and is thus barred under one or more of the doctrines of waiver, laches, unclean hands,

acquiescence, fraud, and estoppel from seeking to cancel, or otherwise contesting, Registrant's trademark rights.

28. There is no likelihood of confusion or likelihood of damage to Petitioner's rights. Registrant's goods sold under the TRIMPAK mark are sufficiently different from Petitioner's alleged rights to prevent confusion in the relevant marketplace and among the relevant consumers.

WHEREFORE, Registrant requests that the Petition for Cancellation be dismissed with prejudice.

Respectfully Submitted on 22 May 2007,

/Fred H. Zollinger III/

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Fred H. Zollinger III, Reg. No. 39,438

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Certificate of Service

I hereby certify that a true and complete copy of the foregoing ANSWER has been served on Gregory Golla, by mailing said copy on 22 May 2007, via First Class Mail, postage prepaid to:

Gregory Golla

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/Fred H. Zollinger III/

Fred H. Zollinger III, Attorney for Registrant

22 May 2007