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

Proceeding	92047383
Party	Defendant BRACE INTERNATIONAL, INC. BRACE INTERNATIONAL, INC. 1413 B Woodmont Lane Atlanta, GA 30318
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Attachments	Sawa Answer.pdf (15 pages)(556390 bytes)

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

SAWATACON LIMITED and)	
MR. THOMAS M. SAWA,)	
)	
Petitioners,)	
)	
v.)	Cancellation No. 92047383
)	
BRACE INTERNATIONAL, INC.)	
)	
Registrant.)	
_____)	

REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION

Registrant, Brace International, Inc., by and through its undersigned counsel, hereby responds to the petition for cancellation as follows:

(1)

Unnumbered allegation 1: In the early 1980s, I, Thomas M. Sawa, invented a shoulder brace and with the help of John Cooper of Cooper Sporting Goods.

Answer: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in unnumbered allegation 1 of the petition for cancellation and therefore denies the same.

(2)

Unnumbered allegation 2: Cooper later became Bauer-Nike, at which time they were instrumental in developing my product.

Answer: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in unnumbered allegation 2 of the petition for cancellation and therefore denies the same.

(3)

Unnumbered allegation 3: This product was patented in both Canada and the United States (documentation available upon request).

Answer: Registrant admits that Thomas M. Sawa (“Sawa”) is the inventor listed on United States Patent Nos. 4,735,198 and 7,081,101 and co-inventor of the invention referenced in United States Patent No. 5,267,928. Registrant is without knowledge or information sufficient to form a belief as to whether the shoulder brace invented by Sawa with the help of John Cooper is the subject of any of the aforementioned patent registrations and therefore denies the same. Registrant is also without knowledge or information sufficient to form a belief as to whether the aforementioned “product” was patented in Canada and therefore denies the same.

(4)

Unnumbered allegation 4: During the transfer of Cooper to Bauer and ultimately to Nike, I was forced to seek alternatives for manufacturing and distribution which led to a company called Hood International, which was bought by Camp International USA.

Answer: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in unnumbered allegation 4 of the petition for cancellation and therefore denies same.

(5)

Unnumbered allegation 5: This eventually led me to Mr. Robert Dreesch who was a patient of mine and his brother Andre Dreesch with whom I entered into a business

relationship to manufacture and distribute the Sawa shoulder brace out of Phoenix, Arizona.

Answer: Registrant admits that Andre Dreesch and Robert Dreesch entered into an exclusive license with Sawatacon Limited (“Sawatacon”) for the manufacture and sale of shoulder braces in the United States covered by U.S. Patent No. 4,735,198 (hereinafter the “Exclusive License”). Registrant further admits that Robert Dreesch was, at one time, a patient of Sawa and is the brother of Andre Dreesch. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in unnumbered allegation 5 of the petition for cancellation and therefore denies the same.

(6)

Unnumbered allegation 6: The company, Brace International, owned by the Dreeschs agreed under a licensing agreement to manufacture and distribute the Sawa shoulder brace under my patent (documentation available upon request).

Answer: Registrant admits that Robert Dreesch and Andre Dreesch entered into the Exclusive License. Registrant further admits that Robert Dreesch and Andre Dreesch formed a corporation called Brace International, Inc. after entering into the Exclusive License. Registrant further admits that Brace International is currently owned by Andre Dreesch and Robert Dreesch. Registrant denies the remaining portions of unnumbered allegation 6.

(7)

Unnumbered allegation 7: The company eventually moved to Atlanta, Georgia as a marketing move by the Dreeschs because the Olympics were coming to Atlanta.

Answer: Registrant admits that it moved to Atlanta, Georgia. Registrant denies all remaining portions of the allegations included in unnumbered allegation 7 that are not expressly admitted.

(8)

Unnumbered allegation 8: The relationship was strained at first as we had to rearrange the contract because the Dreeschs could not meet their royalty commitment (documents available upon request).

Answer: Denied.

(9)

Unnumbered allegation 9: The braces, however, were manufactured and distributed by Brace International and I did receive some royalties (documentation available upon request).

Answer: Registrant admits that it manufactured and distributed shoulder braces in the United States covered by United States Patent No. 4,735,198. Registrant further admits that it remitted royalties to Sawatacon. Registrant denies all remaining portions of unnumbered allegation 9 that are not expressly admitted.

(10)

Unnumbered allegation 10: The relationship continued to be unsettled and upon a second renewal of the relationship, Robert Dreesch was now the sole owner of Brace International and he notified me in writing that he did not wish to contract (documentation available upon request).

Answer: Denied as stated. Registrant admits that Robert Dreesch currently owns ninety (90) percent of Brace International, Inc. and Andre Dreesch currently owns ten

(10) percent of Brace International, Inc. Registrant further admits that on or around June 2001, Registrant, pursuant to the terms of the Exclusive License, terminated the Exclusive License. Registrant denies all remaining portions of unnumbered allegation 10 that are not expressly admitted.

(11)

Unnumbered allegation 11: Under the original contract it was quite clear that the true owner of both the patent and the logo belonged to me (documentation available upon request).

Answer: Registrant admits that under the Exclusive License, Sawa was the owner of United States Patent No. 4,735,198. Registrant denies all remaining portions of unnumbered allegation 11 that are not expressly admitted.

(12)

Unnumbered allegation 12: It was only by accident in a conversation between Robert Dreesch and my accountant, Mr. Jim Anderson of Anderson Incorporated, that we discovered the mark/logo SAWA was registered under the name of Robert Dreesch of Brace International without my knowledge or consent.

Answer: Registrant admits that it is the owner of United States Trademark Registration No. 1,977,928 for the mark SAWA for orthopedic braces. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations not specifically admitted that are set forth in unnumbered allegation 12 of the petition for cancellation and therefore denies the same.

(13)

Unnumbered allegation 13: Mr. Dreesch has subsequently and frequently, without my permission, used my name and placed it on sites on the internet which point to the website of Brace International.

Answer: Registrant admits that it is the owner of United States Trademark Registration No. 1,977,928 for the mark SAWA for orthopaedic braces and has used the mark continuously in commerce since as early as March 1989. Registrant denies the remaining portions of unnumbered allegation 13 that are not expressly admitted.

(14)

Unnumbered allegation 14: This creates obvious confusion regarding the SAWA shoulder brace and grossly misleads the public.

Answer: Denied.

(15)

Unnumbered allegation 15: Mr. Dreesch has also infringed on my patent as he has, without my permission, copied my brace and is selling it openly under the following names: SAWA, MAXX, SAWAMAXX.

Answer: Denied.

(16)

Unnumbered allegation 16: This has created confusion between the genuine SAWA shoulder brace which is my product and the unauthorized imitators named above.

Answer: Denied.

(17)

Unnumbered allegation 17: Proof of the above can be substantiated by available documentation upon request including first sales in the USA under my exclusive authorization.

Answer: Denied.

(18)

Unnumbered allegation 18: In addition to the above concerns I am further stating that, given that I am a practicing sports chiropractor, I am concerned that products illegally promoted will be given undue credibility because of my professional status.

Answer: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in unnumbered allegation 18 of the petition for cancellation and therefore denies the same.

(19)

Unnumbered allegation 19: I do not want to have the public misled by a product that seems to suggest that I am directly involved in it when I am not.

Answer: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in unnumbered allegation 19 of the petition for cancellation and therefore denies the same.

(20)

Unnumbered allegation 20: It has now been brought to my attention that Mr. Dreesch, in attempting to renew the mark (10/24/06) has applied for the mark using patent #5,267,928 on a tag actually attached to each product sold.

Answer: Registrant admits that it filed a renewal for United States Trademark Registration No. 1,977,928 on or about October 24, 2006. Registrant further admits that the specimen submitted in connection with the renewal is a picture of a tag which contains the wording "Pat. #5,267,928." Registrant denies all remaining portions of unnumbered allegation 20 not expressly admitted.

(21)

Unnumbered allegation 21: This patent is owned jointly by myself and Mr. Raymond Barile.

Answer: Denied.

(22)

Unnumbered allegation 22: At no time was I ever contacted in order to maintain this patent nor have I ever assigned this patent to Mr. Dreesch.

Answer: Registrant admits that United States Patent No. 5,267,928 has not been assigned to either Robert Dreesch or Andre Dreesch individually. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations not specifically admitted that are set forth in unnumbered allegation 22 of the petition for cancellation and therefore denies the same.

(23)

Unnumbered allegation 23: It was under agreement between Dreesch, Barile, and myself that the costs of the application was to be borne by Brace International for the exclusive rights under license to manufacture and distribute this product (documentation available upon request).

Answer: Denied.

(24)

Unnumbered allegation 24: In addition to the above, Mr. Dreesch, by way of Declaration, has signed on at least two occasions that he knows of no conflict with the name SAWA and that he is the rightful owner of this designation.

Answer: Registrant admits that Robert Dreesch, as President of Registrant, has executed signed declarations in support of United States Trademark Registration No. 1,977,928. The documents speak for themselves. Registrant denies unnumbered allegation 24 to the extent that it improperly paraphrases or restates the actual language used in the declarations. Registrant further denies all portions of unnumbered allegation 24 not expressly admitted.

(25)

Unnumbered allegation 25: These documents were signed and registered to the Commissioner of the Patents and Trademarks in the United States.

Answer: Registrant admits that the declarations for United States Trademark Registration No. 1,977,928 were signed and filed with the United States Patent and Trademark Office. Registrant denies all portions of unnumbered allegation 25 not expressly admitted.

(26)

Unnumbered allegation 26: In conclusion, it is my position that Mr. Dreesch has fraudulently obtained ownership of the SAWA trademark.

Answer: Registrant denies that it fraudulently obtained ownership of the SAWA trademark. Registrant further denies all portions of unnumbered allegation 26 not expressly admitted.

(27)

Unnumbered allegation 27: This is not an acronym but my surname which is linked to my Sports Chiropractic Practice.

Answer: Denied.

(28)

Unnumbered allegation 28: I was the sole inventor of the SAWA shoulder brace.

Answer: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in unnumbered allegation 28 of the petition for cancellation and therefore denies the same.

(29)

Unnumbered allegation 29: His use and manufacturing of the SAWA shoulder brace is illegal and misleading to the public.

Answer: Denied.

(30)

Unnumbered allegation 30: I respectfully request that the Office of Commission take appropriate action to correct this matter.

Answer: Unnumbered allegation 30 is a request for relief for which no response by Registrant is necessary.

(31)

Unnumbered allegation 31: Should you require any further information or documentation I would be happy to provide this for you at your request.

Answer: Unnumbered allegation 31 is an offer to provide additional information to the Trademark Trial and Appeal Board that does not appear to require a response from Registrant and therefore stands denied.

AFFIRMATIVE DEFENSES

CLAIM PRECLUSION

(32)

Petitioners are barred from seeking cancellation of Registrant's registration under the doctrine of claim preclusion.

(33)

Sawatacon previously petitioned for the cancellation of Registrant's mark in Cancellation No. 92032081 on substantially the same set of facts.

(34)

On April 19, 2005, the Trademark Trial and Appeal Board ("Board") entered an order that Sawatacon show cause why its petition to cancel should not be dismissed for failing to respond to a Board order.

(35)

On June 3, 2005, after receiving no reply to its order to show cause, the Board entered a judgment in favor of Registrant.

(36)

Sawatacon's failure to respond to the order to show cause constituted a concession of the case under Trademark Rule 2.127(a).

(37)

Petitioners' current petition to cancel arises from the same series of transactions and operative facts that formed the basis of Sawatacon's previous petition to cancel.

LACHES

(38)

Petitioners are barred from seeking cancellation of the Registrant's registration under the doctrine of laches.

WAIVER

(39)

Petitioners are barred from seeking cancellation of Registrant's registration under the doctrine of waiver.

ACQUIESCENCE

(40)

Petitioners have acquiesced in Registrant's adoption, registration and use of the mark that is the subject of the registration sought to be cancelled.

ESTOPPEL

(41)

Petitioners are barred from seeking cancellation of Registrant's registration under the doctrine of estoppel.

INCONTESTABILITY OF RIGHTS

(42)

Petitioners are barred from seeking cancellation of Registrant's registration since Registrant's rights in the registration have become incontestable.

FAILURE TO PLEAD FRAUD WITH SPECIFICITY

(43)

Petitioners are not entitled to relief under a theory of fraud because Petitioners have failed to plead fraud with particularity.

LEGAL AUTHORITY

(44)

Petitioner Sawatacon, a Canadian company, is barred from seeking cancellation of Registrant's registration because Sawa has failed to indicate his capacity to act on behalf of Sawatacon either as an officer of Sawatacon or as a properly qualified Canadian attorney.

WHEREFORE, Registrant respectfully requests that Petitioners' Petition for Cancellation be dismissed with prejudice, and that Petitioners be denied all relief requested in their Petition for Cancellation.

DATED this 27th day of June, 2007.

Respectfully submitted,
GREENBERG TRAUER LLP

By:

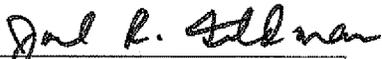

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**Attorneys for BRACE
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that Registrant's Answer is being electronically transmitted to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 through the TEAS electronic filing system on June ~~27~~, 2007.



Joel R. Feldman, Esq.

CERTIFICATE OF SERVICE

I hereby certify that this ANSWER, is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage fully prepaid addressed to:

Thomas Sawa, President
Sawatacon Limited
2087 Dundas Street East Unit 102
Mississauga, ON L4X 1M2

This 27th day of June, 2007



Joel R. Feldman, Esq.