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

Proceeding	92051579
Party	Defendant Commercial Furniture Group, Inc. (by merger with Howe Furniture Corporation)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HUMANSCALE CORPORATION)	Cancellation No. 92051579
)	
Petitioner,)	Trademark: DIFFRIENT
)	
v.)	Reg. No.: 1,632,391
)	
COMMERCIAL FURNITURE GROUP,)	
INC.)	
)	
Respondent.)	
_____)	

**RESPONDENT’S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS PETITIONER’S PETITION TO CANCEL**

In its Petition for Cancellation (the “Petition”), Humanscale Corporation (“Humanscale”) seeks cancellation of Reg. No. 1,632,291 owned by Commercial Furniture Group, Inc. (“CF Group”). That registration is for the trademark DIFFRIENT for “furniture - namely, tables,” and, indisputably, has been used by CF Group in interstate commerce continuously since at least as early as March 18, 1989, and has been registered on the Principal Register since January 22, 1991. Notably, in this proceeding, Humanscale does not assert any right to use any DIFFRIENT mark that is “senior” to CF Group’s established, valid, and enforceable common law trademark rights acquired through Commerical Furniture’s continuous and exclusive use of the DIFFRIENT mark for tables. Rather, Humanscale seeks to cancel CF Group’s trademark registration by asserting the purported rights of a third-party – furniture designer Mr. Neils Diffrient – under the apparent belief that such cancellation under 15 U.S.C. § 1052(c) would clear the path for Humanscale to register its own DIFFRIENT marks.

Most of Humanscale’s Opposition to CF Group’s Motion to Dismiss is simply a futile attempt to characterize as “exclusive” what is on its face at best a “naked,” non-exclusive trademark

license from Mr. Diffrient. The agreement between Humanscale and Mr. Diffrient is clear, concise, and unambiguous:

“I, Neils Diffrient, hereby consent to the use and registration by Humanscale Corporation of the name “Diffrient World” as a trademark for the following goods: furniture, namely, seating, chairs, and stools.”

Whether Humanscale’s license or right to register from Mr. Diffrient is exclusive or non-exclusive, however, is immaterial, because Humanscale has failed to allege sufficient facts demonstrating that Humanscale may stand in the place of Mr. Diffrient and affirmatively assert what is his personal right under 15 U.S.C. § 1052(c). The written consent is conspicuously devoid of any right on the part of Humanscale to seek to cancel CF Group’s registration for “tables,” and is itself limited to authorizing Humanscale to use the mark for “seating, chairs and stools.”

Recognizing the weakness of its “exclusive license” claim, Humanscale ultimately suggests, without any supporting law, that any party with any rights originating from an individual can seek to cancel a registration on behalf of such individual under 15 U.S.C. § 1052(c). Like Humanscale, CF Group’s counsel was also unable to find a *single* case suggesting that a person other than the individual himself or herself can assert the personal right under 15 U.S.C. § 1052(c).

As reaffirmed by its Opposition to the Motion to Dismiss, Humanscale has clearly failed to plead facts that, if true, would establish its standing to seek cancellation of the registration pursuant to 15 U.S.C. § 1052(c). Therefore, this proceeding must be dismissed.

CONCLUSION

WHEREFORE, Respondent prays that the Board (i) enter an order dismissing this proceeding with prejudice and (ii) grant such other and further relief as it deems just and proper.

Dated: February 3, 2010

Respectfully submitted,

/s/ Jason L. Ross

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the above and foregoing Combined Motion to Dismiss and Memorandum in Support was submitted to the Trademark Trial and Appeal Board electronically via the Internet on February 3, 2010, and was mailed via the United States Postal Service, with postage prepaid, on February 3, 2010, to the following:

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