

ESTTA Tracking number: **ESTTA683154**

Filing date: **07/13/2015**

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

Proceeding	92061456
Party	Defendant Church & Dwight Co., Inc.
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Signature	/brooks r. bruneau/
Date	07/13/2015
Attachments	Answer to Graphic Armor Petition to Cancel fnl.pdf(1597872 bytes )

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

_____	:	<b>Cancellation No. 92061456</b>
GRAPHIC ARMOR, LLC,	:	
	:	Registration No. 4081154
Petitioner,	:	for the mark ARMOR
	:	Date of Registration: January 3, 2012
v.	:	
	:	Registration No. 4133033
CHURCH & DWIGHT CO., INC.	:	for the mark ARMOR & Design
	:	Date of Registration: April 24, 2012
Respondent.	:	
	:	Registration No. 4147686
	:	For the mark ARMOR
	:	Date of Registration: May 22, 2012
_____	:	

**ANSWER**

Church & Dwight Co., Inc., (“Respondent”) a corporation of the State of Delaware, with a business address of 500 Charles Ewing Blvd., Ewing, New Jersey 08628, hereby answers the allegations contained within the Petition for Cancellation filed by Graphic Armor, LLC (“Petitioner”) as follows:

1. Based upon the information contained within the U.S. Trademark Office records, Respondent admits Petitioner filed application serial No. 86383755 and denies all other allegations in paragraph number 1 including the description of Exhibit A.
2. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph number 2, and therefore denies same, leaving Petitioner to its proofs.
3. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph number 3, and therefore denies same, leaving Petitioner to its proofs.
4. Respondent admits that it sells, and offers for sale, condoms and lubricants for use with condoms. Respondent denies all other allegations contained within paragraph number 4.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. The allegation in paragraph no. 9 does not identify any mark other than Respondent's marks. Accordingly, Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in paragraph number 9, and therefore denies same leaving Petitioner to its proofs.

10. Denied.

### **Affirmative Defenses**

1. Petitioner's example of use for Class 10 in its United States Trademark Application Serial No. 85383755 for "GRAPHIC ARMOR" was not in use in U.S. commerce at the time that Petitioner filed that application. More specifically, the specimen of use set forth at Exhibit 1 is just wording superimposed over a foil package where the wording is not printed on the actual foil packaging making it a false specimen of use. Accordingly the entire application is void and cannot be relied upon by Petitioner in this proceeding.

2. The signature to the Declaration in Petitioner's Application Serial No. 86383755 affirmed "the specimen(s) shows the mark as used on or in connection with the goods/services in the application" which is untrue in violation of that Declaration. Therefore, the entire application is void for failure to submit a genuine example of use in compliance with the following Declaration signed by Petitioner's counsel, Mark C. Johnson:

### Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in

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connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature: /Mark C. Johnson/ Date Signed: 09/03/2014  
Signatory's Name: Mark C. Johnson  
Signatory's Position: Attorney for Applicant, Florida Bar member

RAM Sale Number: 86383755  
RAM Accounting Date: 09/03/2014

3. Mark C. Johnson, identified in Application Serial No. 86383755 for "GRAPHIC ARMOR" as attorney for Applicant and a member of the Florida Bar, signed the above Declaration affirming use of the mark in commerce in connection with the Class 10 goods and Class 40 services [see paragraph No. 4]. Accordingly, Mr. Johnson is a material witness to this case, and cannot represent the Petitioner.

4. Graphic Armor, LLC is not a manufacturer of condoms, and therefore, cannot act as a contract manufacturer as asserted in Class 40 in its Application Serial No. 86383755 for "GRAPHIC

ARMOR,” in U.S. commerce. Specifically, Graphic Armor, LLC is not registered as a manufacturer of condoms with the United States Food and Drug Agency (FDA), nor was it as of its claimed dates of first use of its “GRAPHIC ARMOR” mark as declared by Mark C. Johnson in the application Declaration.

5. Graphic Armor, LLC’s registered with the FDA is as a re-packager/re-labeler of condoms pursuant to the documents set forth at Exhibit 2, and therefore, its allegation of use “GRAPHIC ARMOR” as a trademark in U.S. commerce for contract manufacturing of condoms, as verified by the signed Declaration of Mark C. Johnson, is untrue making the entire Application Serial No. 86383755 void such that it cannot be relied upon by Petitioner during this proceeding, and also makes Mr. Johnson a material witness to this case who cannot represent the Petitioner.

6. Any prior or current use of the mark GRAPHIC ARMOR by Petitioner and/or any claimed predecessor in interest was without FDA regulatory compliance and was therefore a per se violation making any such use not valid use in U.S. Commerce for priority purposes.

7. Graphic Armor, LLC, and any alleged predecessor in interest, was not using the “GRAPHIC ARMOR” trademark in connection with condoms in U.S. commerce, on January 1, 2010 as alleged in its Application Serial No. 86383755 and its Petition.

8. Graphic Armor, LLC, and any alleged predecessor in interest, was not offering contract manufacturing in the field of condoms in connection with the “GRAPHIC ARMOR” trademark on January 1, 2010 as alleged in its Application Serial No. 86383755 and its Petition.

9. Any claimed dates of first use by Graphic Armor, LLC based upon use by a predecessor in interest is not supported by a valid chain of title.

10. Petitioner's "GRAPHIC ARMOR" mark was not legally in use in U.S. commerce as of the filing date of Application Serial No. 86383755, such that Petitioner may not rely upon such alleged use of the "GRAPHIC ARMOR" trademark in connection with the Class 10 goods and the Class 40 services prior to or after the application filing date.

11. Any use of "GRAPHIC ARMOR" in connection with goods and/or services in classes 10 and 40 prior to Respondent's use of its ARMOR mark was not continuous, and/or by a valid predecessor in interest. Accordingly, Respondent has priority in use of its ARMOR marks set forth above in the caption.

12. Any use of "GRAPHIC ARMOR" in connection with condoms and contract manufacturing in the field of condoms prior to Respondent's use of its ARMOR mark was in different channels of trade, separate from sales of Respondent's goods such that there have been no instances of actual confusion and Respondent has priority in use of its ARMOR marks within its retail sales channel trade.

**WHEREFORE**, Respondent respectfully requests that the Petition to cancel its U.S. Registration Nos. 4081154; 4133033; and 4147686 be dismissed with prejudice.

Respectfully submitted:

**Church & Dwight Co., Inc.**

Date: July 13, 2015

BY: /Brooks R. Bruneau/  
Brooks R. Bruneau, Esq.  
Attorney for Respondent  
FISHERBROYLES, LLP  
100 Overlook Center  
Second Floor  
Princeton, NJ 08540  
Tel: 609-454-6772

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this Answer to the Petition to Cancel was electronically filed with the Trademark Trial and Appeal Board this 13<sup>th</sup> day of July, 2015.

/Brooks R. Bruneau/

(Signature)

July 13, 2015

(Date of Signature)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Answer to the Petition to Cancel was served upon Petitioner's counsel, via First Class Mail, postage prepaid, on this 13<sup>th</sup> day of July, 2015, addressed as follows:

MARK C. JOHNSON  
THE CONCEPT LAW GROUP, P.A.  
200 SOUTH ANDREWS AVE  
SUITE 100  
FORT LAUDERDALE, FLORIDA 33301-2000

**CHURCH & DWIGHT CO., INC.**

Date: July 13, 2015

BY: /Brooks R. Bruneau/  
Brooks R. Bruneau, Esq.  
Attorney for Respondent  
FISHERBROYLES, LLP  
100 Overlook Center  
Second Floor  
Princeton, NJ 08540  
Tel: 609-454-6772

# EXHIBIT 1

Introducing the world's first condoms to feature  
high quality custom print right on the latex!  
Design yours at [GraphicArmor.com](http://GraphicArmor.com)

Before using, please see directions for use inside the package.  
Distributed by Graphic Armor, LLC Boca Raton, Florida USA



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*Custom Imprinted Latex Condoms*

Introducing the world's first condoms to feature  
high quality custom print right on the latex!  
Design yours at [GraphicArmor.com](http://GraphicArmor.com)

Before using, please see directions for use inside the package.  
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## World's First Printed Condoms!

Custom Condoms | Premium Protection

Graphic Armor is the exclusive producer and distributor of the world's first condoms to feature custom photo-quality print right on the latex! Imagine your design, photograph, business name, logo, or custom copy printed directly the inside of an approved latex condom! We like to call these "Picture Condoms™" or "Imagine Condoms™."

Graphic Armor also specializes in the creation of custom designed condom foil wrappers and retail packaging, which enables us to produce your custom condom concept from start-to-finish.

### Premium Protection

All of the custom condoms produced by Graphic Armor are crafted using high quality, premium latex in an ultra-modern facility. Every condom that we sell meets all internal standards for safety and reliability. Our condoms are FDA approved, CE certified, ISO and CCC compliant and manufactured to exceed the toughest regulations worldwide to ensure that you're not just promoting your organization or idea, but that you are promoting safer sex as well!



Actual Factory Made Condoms

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## Establishment Registration & Device Listing

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<a href="#">New Search</a>	<a href="#">Back To Search Results</a>
<b>Proprietary Name:</b>	Graphic Armor
<b>Classification Name:</b>	CONDOM
<b>Product Code:</b>	<a href="#">HIS</a>
<b>Device Class:</b>	2
<b>Regulation Number:</b>	<a href="#">884.5300</a>
<b>Medical Specialty:</b>	Obstetrics/Gynecology
<b>Registered Establishment Name:</b>	<a href="#">GRAPHIC ARMOR LLC</a>
<b>Registered Establishment Number:</b>	3011190729
<b>Owner/Operator:</b>	<a href="#">Graphic Armor LLC</a>
<b>Owner/Operator Number:</b>	10047441
<b>Establishment Operations:</b>	<b>Repackager/Relabeler</b>

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### U.S. Food and Drug Administration

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