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

Proceeding	92061456
Party	Defendant Church & Dwight Co., Inc.
Correspondence Address	CHURCH & DWIGHT CO INC 500 CHARLES EWING BOULEVARD EWING, NJ 08628 UNITED STATES brooks.bruneau@fisherbroyles.com
Submission	Other Motions/Papers
Filer's Name	Brooks R. Bruneau
Filer's e-mail	docketing@fisherbroyles.com, brooks.bruneau@fisherbroyles.com, denise.mcculloch@fisherbroyles.com
Signature	/brooks r. bruneau/
Date	08/12/2015
Attachments	ANSWER TO FIRST AMENDED PETITION TO CANCEL.pdf(1582313 bytes)

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

_____	:	Cancellation No. 92061456
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 TO FIRST AMENDED PETITION TO CANCEL

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 Amended 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 because it was not included, and to the extent Petitioner intends to rely upon Exhibit A to the original Petition, Respondent denies that document is a status and title copy.

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. Respondent admits its 3 subject registrations have been registered for less than five years, and denies all other allegations within paragraph number 8.

9. Respondent realleges and repeats its responses to paragraphs 1 through 8 as if fully set forth herein.

10. Denied.

11. The allegation of paragraph number 11 does not identify the mark in conflict with Respondent's three cited trademark registrations. Accordingly, Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in paragraph number 11, and therefore denies same leaving Petitioner to its proofs.

WHEREFORE, Respondent respectfully requests that the Petition to Cancel its U.S. Registration Nos. 4081154; 4133033; and 4137686 be dismissed with prejudice.

12. Respondent realleges and repeats its responses to paragraphs 1 through 11 as if fully set forth herein.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

WHEREFORE, Respondent respectfully requests that the Petition to Cancel be dismissed with prejudice.

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 the counsel for Petitioner, Mark C. Johnson:

Continued on Next Page

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

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 is registered with the FDA 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 of FDA regulations, 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” by Petitioner 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” by Petitioner 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 channels of trade.

13. Petitioner has alleged that “at all times material hereto” Respondent has not utilized its ARMOR and ARMOR & Design trademarks under Registrations 4081154 and 4133033 as a source indicator for the goods “as required under Section 45 of the Trademark Act”.

14. This claim under Section 45 cannot be brought before the Board. The adequacy of specimens of use is solely a matter of ex parte examination. *Century 21 Real Estate Corp. v. Century Life of Am.*, 10 USPQ 2d 2035 (TTAB 1989); *Dragon Bleu (SARL) v. VENM, LLC*, 112 USPQ 2d 1925, see footnote 12, (TTAB 2014).

15. Respondent’s specimens of use for its application serial numbers 85166387 and 85284939, which matured into Registration Nos. 4081154 and 4133033, were accepted by the U.S. Trademark Office for the listed goods in the underlying applications. Accordingly, the specimens of use cannot be challenged as not functioning as a trademark for the goods under Section 45, and such a claim must be dismissed.

16. Accordingly, Petitioner's claim under Section 45 fails to state a claim upon which relief can be granted under F.R.Civ.P. 12(b) (6), and Respondent reserves the right to file the appropriate motion to dismiss **if the Board does not dismiss the claim sua sponte.**

WHEREFORE, Respondent requests the First Amended Petition to Cancel be dismissed with prejudice.

Respectfully submitted:

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

Date: August 12, 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 First Amended Petition to Cancel was electronically filed with the Trademark Trial and Appeal Board this 12th day of August, 2015.

/Brooks R. Bruneau/
(Signature)

August 12, 2015
(Date of Signature)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer to First Amended Petition to Cancel was served upon Petitioner's counsel, via First Class Mail, postage prepaid, and via email, on this 12th day of August, 2015, addressed as follows:

MARK C. JOHNSON
THE CONCEPT LAW GROUP, P.A.
MUSEUM PLAZA
200 SOUTH ANDREWS AVE
SUITE 100
FORT LAUDERDALE, FLORIDA 33301-2000
mjohnson@conceptlaw.com

CHURCH & DWIGHT CO., INC.
Respondent

Date: August 12, 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

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



**GRAPHIC
ARMOR**[™]
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

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



**GRAPHIC
ARMOR**[™]
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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

Exhibit 2



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Proprietary Name:	Graphic Armor
Classification Name:	CONDOM
Product Code:	HIS
Device Class:	2
Regulation Number:	884.5300
Medical Specialty:	Obstetrics/Gynecology
Registered Establishment Name:	GRAPHIC ARMOR LLC
Registered Establishment Number:	3011190729
Owner/Operator:	Graphic Armor LLC
Owner/Operator Number:	10047441
Establishment Operations:	Repackager/Relabeler

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