

TTAB

LETTER OF TRANSMITTAL  
NOTICE OF OPPOSITION

September 13, 2005

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

ATTN: TRADEMARK LAW OFFICE 106

Re: Applicant: NCR CORPORATION  
For the Mark: "NCR UNIVERSAL INK JET REFILL KIT"  
Serial No. 78458888

Dear Sirs:

Enclosed are the following:

1. Notice of Opposition filed by Computer Business Works
2. Return Receipt Postcard Addressed to Attorney of record for Computer Business Works.

Respectfully submitted,

Date: September 13, 2005

By:

  
Brian M. Carpenter  
Attorney for Computer Business Works

THE SONI LAW FIRM  
55 South Lake Avenue, Suite 720  
Pasadena, California 91101  
(626)683.7600



09-15-2005

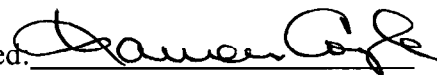
U.S. Patent & TMO/TM Mail Rcpt Dt. #58

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as **Express Mail No. EV731312974US** in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451

Date: September 13, 2005

Signed:

  
Lauren Coyle

EV731312974US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: ) Law Office 106  
)  
NCR Corporation, ) Trademark Attorney: Singh Tejbir  
)  
Mark: **NCR UNIVERSAL INK JET** )  
**REFILL KIT** )  
)  
Serial No.: **78/458888** )  
)  
Filing Date: April 29, 2004 )  
)

**NOTICE OF OPPOSITION**

**COMPUTER BUSINESS WORKS (“CBW”), the Applicant of Trademark Serial No.’s . 78058253 (“UNIVERSAL INK JET REFILL SYSTEM”) and 78063220 (“UNIVERSAL”) hereby opposes the Application of NCR Corporation for the above captioned trademark registration.**

CBW opposes the NCR application on the grounds that CBW filed its applications for the Universal marks long prior to the NCR filing and that CBW would be damaged by the registration of the NCR requested mark.

**A. CBW was the First to File.**

CBW filed its application for the **UNIVERSAL INK JET REFILL SYSTEM** mark (78058253) on 04/12/2001 and it filed the **UNIVERSAL** mark on 05/11/2001. NCR, on the other hand, filed its application for the requested mark on 07/29/2004. As such, CBW filed its applications long before those of NCR and is thereby entitled to the presumption of first use, especially since the NCR application was filed as a section 1(b) , as a “ bona fide intention to use

a mark in commerce.”

**B. CBW Would be Damaged by the Registration of the NCR Requested Mark.**

There is a clear likelihood of confusion between the requested marks of CBW (UNIVERSAL INK JET REFILL SYSTEM) and NCR (NCR UNIVERSAL INK JET REFILL), which is magnified by the fact that both applicants seek registration for the goods of universal ink jet refill kits. In fact, NCR filed this application some 4 years after the CBW Applications exactly for that purpose - to create confusion as to the origin of the goods so as to confuse the market and the customers in order to pirate CBW's business.

If the NCR application were to be granted, CBW would be damaged in at least two ways. First, NCR's registration would preclude CBW from obtaining a registration for the desired mark, despite its earlier filed application and its earlier use in commerce. This would preclude CBW from promoting its goods under its own registered trademark and it would preclude CBW from exercising its right to prevent other future counterfeiters and profiteers from using the mark, as CBW would lack the rights of a Trademark registrant.

Secondly, CBW would be damaged as the marketplace would be misled to believe that NCR is the original, correct and only source of origin of Universal Ink Refill Kits, a situation that is belied by its only recent entry into that marketplace. When determining whether there is a likelihood of confusion, the question is not whether people will confuse the marks, but rather whether the marks will confuse the people into believing that the goods they identify emanate from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks

create the same overall impression. *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

Here, the marks create the same overall impression - that of the source of origin for these products. Accordingly, should NCR acquire the requested registration, consumers of ink jet refill products will be led to believe NCR was the originator and is the "Registered" and primary source for these products. Should the marketplace see such a misrepresentation, CBW would be damaged by the unjustified loss of reputation and more importantly, by the loss of sales resulting therefrom.

**C. Conclusion:**

Based on its status as the first to use in commerce and the first to file, as well as the clear likelihood of confusion and resulting damage, Computer Business Works respectfully submits the above opposition to NCR Trademark application Serial No. **78/458888** and hereby requests the application be refused registration.

Dated: September 13, 2005

Respectfully submitted,

By: 

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