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

CLARK EQUIPMENT COMPANY,

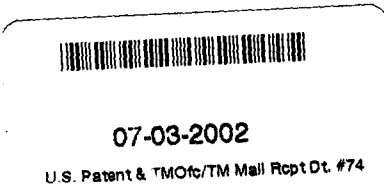
Opposition No. 124,677

Opposer,

v.

BALCRANK PRODUCTS, INC.

Applicant.



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TRADEMARK TRIAL AND
APPEAL BOARD

APPLICANT'S RESPONSE TO ORDER TO SHOW CAUSE

With reference to the Trademark Trial and Appeal Board letter mailed on June 25, 2002, applicant respectfully requests the Board to withhold judgment by default in accordance with Federal Rule of Civil Procedures 55(b) and submits the following in support of the request.

Applicant believed and now still believes that beginning from a time prior to January 11, 2002 and continuing to date the opposition has been moving toward settlement and with that in mind, applicant erroneously concluded that the time to file an answer would be held in abeyance.

Applicant had prepared a timely answer on January 3, 2002 and an amendment to the application consistent with the agreement with opposer on January 10, 2002 but withheld filing either pending confirmation from opposer which still has not been received but which is expected based on ongoing contacts with opposer's counsel.

Copies of correspondence in this matter as well as the proposed amendatory response and answer are submitted in support of applicant's position that the failure to file a timely answer though in error was unintentional and inadvertent.

Applicant's accordingly respectfully requests that judgment by default not be entered and that time for taking action be reset in accordance with the Stipulated Motion to Amend Scheduling Order dated and filed by the opposer on 24, June, 2002.

Dated this 2nd day of July, 2002.

Respectfully submitted,



Arthur J. Plantamura
Attorney for Applicant
(Tel) 973-515-2453

AJP/mis:1802

Enclosures

- Amendment to Application
- Answer to opposition
- Copies of communication between opposer and applicant
- Copy of stipulated motion of 06/24/02

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

CLARK EQUIPMENT COMPANY,

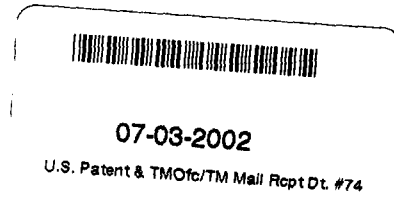
Opposition No. 124,677

Opposer,

v.

BALCRANK PRODUCTS, INC.

Applicant.



ANSWER
TO NOTICE OF OPPOSITION

BOX ITAB – FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

In answer to the above identified opposition to the application for registration of the trademark BOBCAT long in use in commerce by applicant and as the brand name for pumps to dispense vehicle servicing fluids, applicant denies that the opposer, Clark Equipment Company (“Opposer”) would be damaged by the registration of Applicant’s mark and requests that the opposition be dismissed.

Applicant states as follows:

1. Applicant

- (a) acknowledges the existence of multiple BOBCAT registrations including among others the registrations listed in paragraph 1 of Opposer’s statement of opposition;
- (b) has insufficient knowledge or information to form a belief as to the truth of the averment concerning Opposer’s stated usages of said registered marks;

(c) denies that Opposer has presented conclusive evidence that applicant's pumps are related goods encompassed within those of registration no 2,027,135 which are applied to manuals or catalogues or are within Opposer's listed registrations and denies that applicant pumps are "related goods"; and

(d) denies that Opposer has the exclusive right to use the mark in commerce.

2. With respect to Opposer's statement in paragraph 2, 3 and 4 of the opposition statement, applicant is without knowledge or information sufficient to form a belief as to the truth of Opposer's averments.
3. Applicant denies Opposer's averment of paragraph 5 that applicant's goods are "within the goods" covered by any of Opposer's registrations.
4. For reasons amplified below applicant denies that allegations of Opposer's paragraph 6 that applicants pumps would be likely to cause customer confusion as to the source of applicant's pumps or in anyway to be likely to dilute the current status of the BOBCAT mark.
5. In the opposition statement Opposer has listed registration applicable to components of vehicles and fluids such as motor oil and lubricants as to the relevant goods, none of which are confusingly similar to applicant's mechanical equipment apparatus, i.e. used in servicing motor vehicles.
6. Applicant does not market vehicles or components parts for vehicles. Applicants do not market fluids per se such as transmissions or motor oil or any service fluid used in vehicle operation whatsoever.
7. Applicant in essence markets a tool used for services and does not market any product of the kind alluded to by the opposer.
8. Applicants mark has been in use on pumps sold only to professional servicing installations for a period of more than five years without a single instance of customer confusion or of independent indication of conflict with opposer as to source or conflict with any other source. This history is believed to be substantially indicative of the absence of likelihood of confusion.

9. Additionally over this entire period, exceeding five years, there has arisen no suggestion or incident whatsoever giving rise to confusion or to any objection by opposer to applicant's use of the mark in commerce.
10. Because of the distinct channels of trade opposer has not suffered damage, and is not likely to suffer damage, from Applicant's continuing use of the mark in commerce. Opposer is believed to have been entirely without knowledge of Applicant's branded product and in the event that Opposer was aware of Applicant's BOBCAT branded product, Opposer is regarded as having acquiesced in Applicant's continued use. Due to absence of likelihood of confusion or conflict, applicant's use of the mark is not likely to cause damage to Opposer.
11. Based on at least the foregoing facts, customers for Applicant's goods who install professional facilities would not be confused, mistaken, or deceived as to whether Applicant's goods originate with or are sponsored or authorized by Opposer. Applicant's use and registration of its mark in connection with its pumps does not, and would not, in anyway damage Opposer. Additionally, applicant's use of its mark is regarded as not in any significant measure contributing to a further dilution of Opposer's mark.

WHEREFORE, Applicant prays that this opposition be dismissed and that applicant's mark be processed to formal registration.

Dated this 2nd day of July, 2002.

By: Arthur J. Mantamura
Arthur J. Mantamura
Attorney for Applicant



07-03-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Re: **Opposition No. 124,677**
Serial No.: 75/858,519
Clark Equipment Company, Opposer

Applicant: Balcrank Products, Inc.

Serial No. 75/858,519

Mark: BOBCAT

Examiner: Matthew C. Kline, Esq.
Examining Attorney, Law Office 104

Honorable Commissioner of Patents Parsippany, NJ
& Trademarks
Washington, D.C. 20231

PROPOSED AMENDMENT TO THE REGISTRATION APPLICATION

Sir:

This is response to the Notice of Opposition mailed by the USPTO on December 6, 2001 (Paper No. 3).

Pursuant to agreement with counsel for opposer, Applicant amends the identification of goods as follows:

-- Pumps used in professional servicing facilities, other than facilities of construction equipment, for dispensing vehicles servicing fluids, including oil, anti-freeze, coolant and windshield washer fluid. --

REMARKS

The newly adopted identification of goods, subject to the approval of the USPTO Trademark Examining Attorney, is acceptable, to Applicant and pursuant to discussions with Opposer's counsel is believed to be acceptable to Opposer. Applicant files this amendment and in fact was prepared to file this amendment prior to the expiration of time to file an answer to suspend the proceedings in order to afford ample time for consideration of this resolution. However, due to the expectation of imminent resolution of the opposition with opposer, applicant inadvertently and unintentionally failed to submit the amendment in a timely manner.

Applicant requests that the amendment be forwarded to the Examining Attorney and requests that it be approved for entry. In the event that the USPTO Examining Attorney finds that the amendment cannot be approved it is requested that the Examining Attorney explain by telephone the reason for non-approval.

Dated this Ind day of July, 2002.

Respectfully submitted,

By:



Arthur J. Plantamura
Attorney for Applicant
Tel. 973-515-2453
Fax 973-515-3244

**MICHAEL BEST
& FRIEDRICH LLP**
Attorneys at Law

www.mbf-law.com



07-03-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

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Telephone (414) 271-6560

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(Michael Best & Friedrich LLC)

Member: Lex Mundi,
A Global Network of more than
150 Independent Firms

January 11, 2002

VIA FACSIMILE (973) 515-3244

Mr. Arthur J. Plantamura
General Chemical Corporation
90 East Halsey Road
Parsippany, NJ 07054

Re: Clark Equipment Company v. Balcrank Products, Inc.
File No. 017267/9046

Dear Arthur:

Thank you for your telephone call of Tuesday, January 8, 2002. During that conversation, you proposed limiting your client's description of goods to pumps used in professional servicing facilities, exclusive of those which service construction equipment. Our client is in the process of reviewing your proposal, and I will get back to you as soon as I can with our position on the matter.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP

Dyann L. Kostello

DLK:plp

cc: James M. Plasynski

**MICHAEL BEST
& FRIEDRICH LLP**
Attorneys at Law

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Member: Lex Mundi,
A Global Network of more than
150 Independent Firms

March 1, 2002

Mr. Arthur J. Plantamura
General Chemical Corporation
90 East Halsey Road
Parsippany, NJ 07054

RECEIVED

MAR 05 2002

LEGAL DEPT.

Re: Clark Equipment Company v. Balcrank Products, Inc.
File No. 017267/9046

Dear Arthur:

This is in furtherance of our previous telephone conversations regarding a potential resolution of this opposition. Bobcat would be willing to amicably settle the opposition on the general terms that Balcrank would agree not to object to, oppose or in any other manner challenge Bobcat's use or registration in the future of its mark for any goods or services and would agree to limit its use of the BOBCAT mark to its current use, to not expand its use of that mark beyond its current use, and to specify in the agreement and in the trademark application that the goods for which it is currently used are limited to commercial applications such as automotive servicing facilities and do not encompass compact equipment, including but not limited to construction equipment.

Please let me know if this is generally acceptable, and we will draft appropriate settlement documents.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP


Dyann L. Kostello

DLK:plp

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LEGAL DEPARTMENT

90 EAST HALSEY ROAD
PARSIPPANY, NJ 07054
Phone: (973) 515-0900
Fax: (973) 515-3244

March 26, 2002

Dyann L. Kostello, Esq.
Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202-4108

RE: Clark Equipment v. Balcrank Products, Inc.

Dear Dyann:

Thank you for your letter of March 7, 2002.

We have considered the "BOBCAT" terms for resolving the Opposition and find them generally suitable.

The sole ambiguity appears in the language in the last two lines of the main paragraph of your letter, which reads:

" - - and do not encompass compact equipment, including but not limited to construction equipment - -"

We do not believe that Bobcat's intent is that the Balcrank equipped servicing facilities must turn away a customer with construction equipment, which may show up at the facility for service. Your confirmation, that an exclusion of this kind is not intended, would be appreciated.

Very truly yours,


Arthur J. Plantamura

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

CLARK EQUIPMENT COMPANY)

Opposition No. 124, 677

Opposer,)

v.)

BALCRANK PRODUCTS, INC.,)

Opposed Mark: BOBCAT

Applicant.)

RECEIVED

JUN 28 2002

LEGAL DEPT.



07-03-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #74

STIPULATED MOTION TO AMEND SCHEDULING ORDER

The parties, by their attorneys, hereby move the Board to modify the scheduling order in this opposition as set forth below on the grounds that Applicant and Opposer have been communicating with one another and need additional time to determine whether a settlement can be reached. Arthur J. Plantamura, the attorney for the Applicant, agreed to the ninety (90)-day extension of time to amend the deadlines as set forth in the scheduling order in a telephone conversation with attorney Patricia A. Motta on June 20, 2002. The foregoing motion is made in good faith and not for the purposes of delay and is being submitted in triplicate in accordance with Trademark Rules 2.1.2(d) and 2.121(d).

PROPOSED SCHEDULE

	<u>Current</u>	<u>Requested</u>
THE PERIOD FOR DISCOVERY TO CLOSE	June 24, 2002	September 22, 2002
Testimony period for party in position of plaintiff to close (opening thirty days prior thereto)	September 22, 2002	December 23, 2002

Testimony period for party
in position of defendant
to close (opening thirty
days prior thereto)

November 21, 2002 February 19, 2003

Rebuttal testimony period
to close (opening fifteen days
prior thereto)

January 5, 2003 April 5, 2003

Brief of the party in position
of Plaintiff

March 6, 2003 June 4, 2003

Brief of the party in position
of Defendant


April 5, 2003 July 4, 2003

Dated this 24th day of June, 2002.

Respectfully Submitted,

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Applicant

By:


Dyan L. Kostello
Patricia A. Motta

P. O. ADDRESS:

100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202-4108
(414) 271-6560

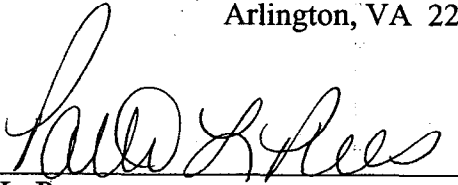
CERTIFICATE OF MAILING AND OF SERVICE

I hereby certify that a true copy of the foregoing Stipulated Motion to Amend Scheduling Order has been served on Applicant by sending the same via first-class regular United States mail to Applicant's attorney:

Arthur J. Plantamura
General Chemical Corporation
90 East Halsey Road
Parsippany, NJ 07054

on the 24th day of June, 2002 and that the original of said document was filed on the same day with the U.S.P.T.O. by depositing the same with the U.S. Postal Service, First Class Mail, postage prepaid, as addressed to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



Patti L. Pues