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

07-19-2002

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #70

In the matter of Application Serial No. 75/831,386
Filed on October 25, 1999
For the Mark DEPEND-A-THONG

Kimberly-Clark Corporation)
Opposer,)
)
v.) Opposition
No. 91150288
)
PANO. Inc.)
Applicant)

TRADEMARK TRIAL AND APPEAL BOARD
02 JUL 24 AM 8:33

ANSWER

BOX TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

In the matter of the application for the registration of the designation DEPEND-A-THONG, serial no. 75-831,386 by Pano, Inc. this letter serves as answer to the opposition of said registration by Kimberly-Clark Corp. The following points are made in response to opposition.

1. Applicant is aware that Opposer has been and remains engaged in the business of manufacturing, marketing and selling various goods in interstate commerce, including disposable incontinence products.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth that Opposer's goods are considered as "adult diapers" by some consumers or that they are purchased largely by adults. Applicant's goods consist solely of a non-functioning adult-sized thong resembling a "diaper".
3. Applicant is without knowledge or information sufficient to form a belief as to the truth that Opposer's incontinence products under the DEPEND trademark include in U.S. trademark registrations and applications, RN 1,199,263; RN 1,154,489; RN 2,462,652; RN 2,462,651; RN 2,456,180;

RN 2,458,285; RN 2,453,929; RN 2,451,893; RN 2,458,283; RN 2,453,928; RN 2,456,159; RN 2,451,884; RN 2,313,961; and RN 1,714,955; SN. 76/268,522; SN. 76/107,999.

4. Applicant is aware that Opposer's use of DEPEND in interstate commerce in connection with its goods is prior to the October 25, 1999 date of filing of Applicant's Intent to Use Application and prior to any use made by Applicant of the trademark, DEPEND-A-THONG.
5. Applicant denies that use of DEPEND-A-THONG interferes with Opposer's use of DEPEND and applicant denies that registration of the term will seriously damage Opposer as there is no likelihood of confusion with respect to Applicant's actual goods.

Wherefore, Applicant believes that the use of the mark DEPEND-A-THONG in no way damages or interferes with Opposer's use of the mark DEPEND, we request the registration be approved.

Respectfully Submitted,
PANO, INC.
380 Darbys Run
Bay Village, Ohio 44140
(440) 895-9333

Patricia L. Mulder
President

cc:

Gregg Marrazzo
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Certificate of mailing

I hereby certify that this correspondence was deposited with the United States Postal Service as Priority mail, postage prepaid, in an envelope addressed to: Box TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on this 17th day of July, 2002.

Patricia L. Mulder, President, PANO, INC.

Certificate of service

The undersigned certifies that a copy of the foregoing ANSWER was served via first Class Mail service, postage prepaid, this 17th day of July, 2002, upon Gregg Marrazzo, Kimberly-Clark Corporation, 401 North Lake Street, Neenah, WI. 54956 and Jeffery A Handelman and Thomas M. Williams, Brinks Hofer Gilson & Lione, P.O. Box 10395, Chicago, Illinois 60610.

Patricia L. Mulder, President, PANO, INC.