ESTTA Tracking number: **ESTTA3848**

Filing date: **12/13/2003**

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

Proceeding	91152811
Party	Defendant GEBR. HOFFMANN AG. EISENBAHNSTRASSE 71 CHX CH-3601 THUN,
Correspondence Address	J. STEPHEN SIMMS SIMMS SHOWERS LLP 20 S CHARLES ST, STE 702 BALTIMORE, MD 21201
Submission	Reply Supporting Hoffman's (Applicant's) Motion to Vacate Default
Filer's Name	J. Stephen Simms
Filer's e-mail	jssimms@simmsshowers.com
Signature	/s/ J. Stephen Simms
Date	12/13/2003
Attachments	121103 Reply supporting motion to vacate.pdf (41 pages)

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

Applicant: Gebr. Hoffman AG
Serial No.: 75/545,553
Filing Date: August 31, 1998
Mark: DESIGN ONLY

Published in the Official Gazette on April 23, 2002.

J.L. Clark, Inc.,	)	
	)	
Opposer,	)	
	)	
	)	Opposition No. 91152811
v.	)	
	)	
Gebr. Hoffman AG,	)	
	)	
Applicant.	)	
	)	

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REPLY SUPPORTING HOFFMAN'S (APPLICANT'S) MOTION
TO VACATE DEFAULT

> The courts and the Board are reluctant to grant judgments by default and tend to resolve doubt in favor of setting aside a default, since the law favors deciding cases on their merits. *Morris v. Charnin*, 85 F.R.D. 689 (S.D.N.Y.1980); *Alopari v. O'Leary*, 154 F.Supp. 78 (E.D.Penn.1957); *Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62 (TTAB 1985); *Regent Baby Products Corp. v. Dundee Mills, Inc.*, 199 USPQ 571 (TTAB 1978).

Paolo's Associates Limited Partnership v. Paolo Bodo, 21 USPQ2d 1899, at 3 (Comm'r 1990)(Cited with approval in TBMP § 317.01 ("Default - In General"); affirming Board's setting aside of a default, where there was a docketing error in the respondent's office).

TBMP § 317.02 ("Setting Aside Notice of Default") states in pertinent part as follows:

> If a defendant which has failed to file a timely answer to the complaint responds to a notice of default by filing a satisfactory showing of good cause why default judgment should not be entered against it, the Board will set aside the notice of default. See FRCP 55(c). . . .

> Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action.
>
> The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. **Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant**. . . .

(Emphasis added).

The Board now should vacate its default. J.L. Clark fails to cite **any applicable support** for its position.[1]

Let's first set this dispute in proper context and out of rhetoric. Hoffman's application is meritorious - the Examiner has determined that. J.L. Clark is not prejudiced at all and claims no prejudice. Hoffman has proceeded and will continue to proceed in good faith.

Hoffman has steadily pursued its application over a 4½ year period.[2] Hoffman's answer was only due on October 2, 2003; the Board issued its Show Cause order by mail to Hoffman on

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[1] As Hoffman shows herein, in J.L. Clark's over-eager attempt to exploit the situation, J.L. Clark carelessly and substantially overreaches, and repeatedly violates Fed. R. Civ. P. 11.

J.L. Clark carelessly mis-cites to "TBMP § 312.02" (see response, at 2-3); this appears to be a typographical error and attempt to refer to 317.02. Comparing the actual text of TBMP § 317.02 to what J.L. Clark apparently tries to cite it for, however, the mis-citation to 312.02 is apt; TBMP § 317.02 in truth, clearly calls for the default, here, to be vacated.

[2] J.L. Clark's contention that Hoffman engaged in any "systematic pattern of delay" is a violation of Fed. R. Civ. P.11, and bad faith pleading. J.L. Clark can provide no support for this, because, there is none. The fact is, that the parties exchanged settlement offers, took time to consider them, and settlement discussions never proceeded.

November 4, 2004, 33 days later. As soon as the Show Cause order arrived, Hoffman immediately filed its Answer and initial response the Show Cause order.

It would be wrong for the Board, an abuse of discretion, to decide a the merits of Hoffman's meritorious mark - which Hoffman has consistently pursued before the U.S. Patent and Trademark Office since 1998 - - on a 33 day delay in an answer, and then, J.L. Clark's attempt to win not on the merits, but with a "gotcha" default.

Hoffman's Application for its Trademark is Meritorious: First, Hoffman is a Swiss corporation, which holds valid and enforceable Madrid Protocol/World Intellectual Property Organization ("WIPO"), and, Switzerland, trademark registrations, for its "KLICK-KLACK" lid. (See Exhibit A hereto).

Second, the Examiner of the U.S. Patent and Trademark Office ("USPTO") determined that Hoffman's application **is** meritorious and therefore the Office published Hoffman's registration for opposition, on April 4, 2002.[3] The examiner determined that Hoffman's **proper mark** was the following:

> **Description of Mark:** The mark consists of the configuration of the KLICK-KLACK metal lid for cans. The KLICK-KLACK lid has acquired distinctiveness under section 2(f) of the Trademark Act to distinguish origin because of the unique sound created when the lid is opened or closed. KLICK to open. KLACK to close. The mark, therefore, consists of the sound created by the non-functional shape of the goods.

Significantly, what J.L. Clark fails to disclose to you, is, that the Examiner approved Hoffman's mark for registration, **over J.L. Clark's letter of protest**. Exhibit C hereto is a copy of J.L. Clark's letter of protest; Exhibit D hereto is Hoffman's response to the Examiner's

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[3] A copy of the current record of the Hoffman registration proceedings, from the USPTO web site, is Exhibit B hereto.

questions (on the basis of which, the Examiner denied Clark's opposition).

You will see from this that J.L. Clark then tried, unsuccessfully, to raise exactly the same objection to Hoffman's mark, that J.L. Clark does now. The Examiner **rejected** J.L. Clark's protest, finding, Hoffman's request for its mark, to be meritorious.

That is the first and overriding thing to remember here. Hoffman holds a valid and enforceable trademark for its "KLICK-KLACK" lid. WIPO has confirmed this, Switzerland has confirmed this, and the USPTO's Examiner has confirmed this.

J.L. Clark Neither Claims - Nor Can Show - any "Prejudice"; J.L. Clark is the Opposer, but, Has Failed to be Diligent with Its Own Opposition: What J.L. Clark further also fails to disclose to the Board, is J.L. Clark's own lack of diligence **with its own complaint**.

As set out herein, J.L. Clark agreed to suspend its own proceedings, to negotiate a license with Applicant. Applicant, through counsel, proposed several approaches to a licence. Applicant thereafter heard nothing, including no counter-proposals, from J.L. Clark.[4]

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[4] A copy of J.L. Clark's letter - proposing settlement - is Exhibit E hereto. Significantly - although it is the Opposer, and, agreed to stay its own proceedings - J.L. Clark never followed up on this letter.

J.L. Clark violates Fed. R. Civ. P. 11 again when it states, entirely without support, that Hoffman "ignored" Clark's settlement letter. In fact, Hoffman considered the letter; as the Board will see from the letter, it is significantly overreaching. There is no "gross negligence," and of course, Clark cannot give any facts, that shows, any.

J.L. Clark further violates Fed. R. Civ. P.11, stating that Hoffman lied about Hoffman's interest in settlement. This statement is unprofessional. This, like J.L. Clark's unfounded statement that Hoffman "systematically" delayed, entirely lacks support, and is further bad faith pleading on Clark's part. In fact, considering the overreaching nature of Clark's settlement demand, a valid question to ask is, whether Clark was ever serious, about settlement in the first place, or, whether the demand was Clark's own attempt at delay.

(continued...)

Of course, nothing has prevented J.L. Clark from prosecuting its own case, taking discovery in these proceedings, or filing motions - **but J.L. Clark has failed entirely to do that**.[5] Instead, J.L. Clark was content to allow the six (6) month settlement period to pass, and do nothing, not even, to request its own default.

And, even after the period ran, Clark did absolutely nothing for months more, until the Board's show cause notice.

J.L. Clark speculates on Hoffman's supposed idea of the strength of Hoffman's own mark, but, it must be remembered, that it is Hoffman which has valid International and Swiss marks, and, a mark published for comment in the Gazette after approval by the USPTO Examiner. Consequently, more suspect, considering J.L. Clark's lax prosecution of its own opposition, is, the strength of the opposition. That is, it may well be, that J.L. Clark knows that it is unable to succeed on the merits, and so hung back, did nothing in the proceedings, and now attempts to win, not on the merits, but through a default.

The Appeal Board issued its Show Cause Order *sua sponte* and not at the behest of J.L.

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[4](...continued)
The Board should consider, the lack of restraint, with which J.L. Clark departs from the factual record, and is quick to accuse Hoffman of "lies" and "deceit." The Board should consider that this makes all of J.L. Clark's assertions suspect.

What J.L. Clark of course glosses over, is, that it completely ignored its own proceedings, as well as, its supposedly reciprocal interest, in settlement. Left unanswered by J.L. Clark, is why **it** , as opposer, allowed its own proceeding to languish. At the very best, J.L. Clark has no "clean hands" here.

[5] Of course, it was J.L. Clark as Opposer, which agreed to delay its own proceedings, and never followed up on settling them. Hoffman is the Respondent. J.L. Clark can say as well of itself, that it "did not do one thing during the entire six month suspension period." (See J.L. Clark Response, at 2).

Clark. For J.L. Clark now to insist on a default - that it never requested - when J.L. Clark was content to do nothing with its own proceedings (and was content to have them suspended) - is simple opportunism on J.L. Clark's part.

The Delay Was Only 33 Days Past The Time For Filing An Answer. Hoffman is Located in Switzerland, and Its Principals Were Considering How to Proceed Next with the J.L. Clark Opposition: Although Hoffman's application is clearly meritorious, nevertheless it has taken a long time to move through the USPTO.

The cost of pursuing the application has continued to mount. It also has not been clear to Hoffman, whether there is a sufficient market for the "KLICK KLACK" product, to warrant further expenses of proceeding.[6]

When the Board resumed the J.L. Clark proceedings, Hoffman took further time to consider, whether continued cost of the proceedings measured against potential sales, merited continuing the proceedings, in particular, continuing to oppose the J.L. Clark opposition. U.S. sales of the KLIK KLAK can have been modest. After some consideration, Hoffman decided to continue (as Hoffman's answer, and request to vacate the default, shows). Unfortunately, that consideration took more time, than the initial time given for answer.

Hoffman, however, is fully prepared and determined, having undertaken this consideration, and also having fully considered J.L. Clark's settlement offer, to continue to press its application.

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[6] J.L. Clark, again without any support and in further violation of Fed. R. Civ. P. 11, contends that Hoffman has "reaped" some sort of "unjust benefit." In fact, sales of the KLICK KLACK can have been modest - as J.L. Clark certainly knows (but chose to plead despite of that), since, J.L. Clark attempts to sell a similar product, in marketplace.

The Board Should Vacate the Default, Consistent with the Clear Standards of Fed. R. Civ. P. 55(a): First, it should be remembered that the Board's Show Cause Order, is for vacating a default, under Fed. R. Civ. P. 55(a) (and not a default judgment, which requires a higher showing, under Rule 55(b)).

The Commissioner, this Board, and the courts, have long held that Rule 55 is **not** meant to impose judgment after short time lapses, but instead, is only meant to punish deliberate flouting of court orders or other contumacious conduct. *See Advanced Communication Design v. Premier Retail Networks*, 46 Fed. Appx. 964, 970 (Fed. Cir. 2002).

There is **absolutely no such conduct here** - - and J.L. Clark cites, **none**.

TBMP Rule 317.02, the authorities cited therein, and all other valid authorities on the subject, are **uniform**, that in deciding whether the Notice of Default should be set aside, courts have advocated the analysis of several factors. Namely, the factors considered, as set out above, are "the length and reason for the delay along with consideration of whether the defendant [defaulting party] acted in good faith; the prejudice that the delay causes the plaintiff [non-defaulting party]; and, whether the defendant has a meritorious defense. *Advanced Communication Design v. Premier Retail Networks*, 46 Fed. Appx. 964, 970 (Fed. Cir. 2002).

Such interpretation of Rule 55 is well-settled across the nation. *See KPS & Assoc. v. Designs by FMC,* 318 F.3d 1 (1st Cir. 2003); *O.J. Distributing v. Hornell Brewing Company*, 340 F.3d 345 (6th Cir. 2003); *Johnson v. Dayton Electric Manufacturing*, 140 F.3d 781 (8th Cir. 1998), including, in proceedings before this Board.

In examining these three factors, the court in *O.J. Distributing* held that "a district court **abuses its discretion** in denying a motion to set aside an entry of default when two of the factors

have been demonstrated by the defendant." *O.J. Distributing,* 340 F.3d at 353 (emphasis added).

Here, Hoffman demonstrates that **all three** of the factors - warranting vacating a Fed. R.Civ. P. 55(a) default - are present.

In the instant case, the Board's decision to enter Notice of Default was by the Board itself not J.L. Clark. That J.L. Clark did not move for the default indicates that it did not perceive its interests prejudiced by the delay. Not surprisingly, now that default has been entered J.L. Clark supports it, but this does not show that it has been prejudiced or harmed by the delay, rather it just demonstrates J.L. Clark's opportunism.[7]

Significantly, J.L. Clark **claims no prejudice by any delay**. The case J.L. Clark relies on to enforce a default judgment, *DeLorme Publishing v. Eartha's Inc.*, 60 USPQ2d 1222 (2001), analyzes the same factors as every other court across the country when interpreting Rule 55. However, the defaulting party in *DeLorme* waited **more than six months** (not the brief period here) to file an answer after it was due. Further, the notice of default was brought by the non-defaulting party after it **made several attempts** to get the defaulting party to answer.

In contrast, **nothing at all** has been heard from J.L. Clark -the opposer in this case - in nearly a year - since its January, 2003 settlement letter, until of course, its very recent, opportunistic "response" to the Board's default notice.

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[7] Wright and Miller explain that:

> When a party appears unduly anxious to win by default, for example, if the party fails to notify his opponent of the default - the court may be generous toward the party moving for relief under Rule 55(c).

C. Wright, A. Miller, M. Kane, 10A Federal Practice and Procedure § 2693, at 106 (1998 & Supp. 2003).

The "DeLorme" type of neglect is not present in the instant case. J.L. Clark did not petition for a default judgment, rather, the Board itself noted the default. As soon as Hoffman was aware of the Notice, it provided its answer and explanation to the Board. Unlike the defaulting party in *DeLorme*, Hoffman's answer was provided seven days after the Board noted the default, and immediately after Hoffman's counsel received the Notice. The situation in *DeLorme* is not the situation in the instant case.

The case was suspended for six months on order of the Board in February 2003 at the behest of both parties. The delay was meant to allow for negotiations between the parties. Admittedly, neither side vigorously pursued negotiations during this period. J.L. Clark states in its Brief to the Show Cause Order, that it sent one letter during this period. Similarly, Hoffman sent one letter during this period. Counsel for each party, initially, also exchanged brief telephone calls.

It is Hoffman's position that it would still like to negotiate a settlement, provided that J.L. Clark modifies its so-far overreaching position, and fully intends to do this with much more alacrity as it expects J.L. Clark to do so as well.

In the meantime, Hoffman fully intends to press its application, and oppose J.L. Clark's opposition. Nevertheless, the slow pace of negotiations on both sides demonstrates the lack of prejudice caused by the delay, and that the delay was not deliberate or willful conduct.

Finally, Hoffman's argument in the above proceeding is meritorious and deserving of the Board's judgment. Fundamentally, again, the Examiner has determined that Hoffman's application is meritorious, and that the application should be published in the Official Gazette - which it has been. Hoffman has contended to the Examiner, and will continue to contend in this

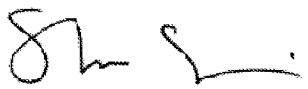
case, with well documented support, that its design has the distinctiveness deserving of trademark protection. Hoffman has presented its argument in this regard to the Board in its initial application. If the Board were to dismiss this case based on the failure to comply with the deadline rather than on the case's merits, injustice would be the result.

Therefore under the three factors traditionally analyzed under Rule 55 to ascertain whether a notice of default should be removed--did the defaulting party act with good faith, is there prejudice to the other party, and is there a meritorious argument--Hoffman believes it has met all three of these factors.

Therefore, Hoffman, respectfully requests the Board now to set aside the Notice of Default entered on November 4, 2003 and direct that the case to proceed on its merits.

Dated: December 13, 2003.

Respectfully submitted,



J. Stephen Simms
Stephen S. McCloskey
Simms Showers LLP
20 S. Charles Street
Suite 702
Baltimore, Maryland 21202
(410-783-5795)

Attorneys for Applicant Gebr. Hoffman AG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 13, 2003, a copy of the foregoing was sent via First Class Mail, postage paid, to:

Andrew J. Heinisch
Leydig, Voit & Mayer, Ltd.
6815 Weaver Road, Suite 300
Rockford, Illinois 61114-8018

Attorney for J.L. Clark, Inc.

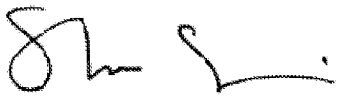


EXHIBIT A

ORGANISATION MONDIALE
DE LA PROPRIÉTÉ INTELLECTUELLE

34, chemin des Colombettes, case postale 18, CH-1211 Genève 20 (Suisse)
Tél.: (41-22) 338 9111 - Télécopieur (marques internationales): (41-22) 740 1429
Messagerie électronique: intreg.mail@wipo.int - Internet: http://www.ompi.int

ARRANGEMENT ET PROTOCOLE
DE MADRID

CERTIFICAT D'ENREGISTREMENT

Le Bureau international de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) certifie que les indications figurant dans le présent certificat sont conformes aux inscriptions portées au registre international tenu en vertu de l'Arrangement et du Protocole de Madrid.

Salvatore Di Palma
Directeur adjoint et Chef, Section de l'Administration
Département des enregistrements internationaux

Genève, le 22 juin 2000

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18 avril 2000 **734 252**

Gebr. Hoffmann AG
Eisenbahnstrasse 71,
CH-3602 Thun
(Suisse).

Nom et adresse du mandataire: Hans Rudolf Gachnang Patentanwalt, Badstrasse 5, CH-8500 Frauenfeld (Suisse).

Classification des éléments figuratifs:
19.8.

Indication relative à la nature de la marque ou au type de marque: marque tridimensionnelle.
Liste des produits et services:
6 Fermetures (couvercles) métalliques de récipients.
20 Fermetures (couvercles) non métalliques de récipients.
Enregistrement de base: Suisse, 22.06.1998, 471371.
Désignations selon l'Arrangement de Madrid: Allemagne, Autriche, Benelux, Espagne, France, Italie, Liechtenstein, République tchèque.
Désignations selon le Protocole de Madrid: Danemark, Finlande, Norvège, Royaume-Uni, Suède.
Déclaration d'intention d'utiliser la marque: Royaume-Uni.
Date de notification: 22.06.2000
Langue de la demande internationale: Français

Gebr. Hoffmann AG
Eisenbahnstrasse 71
Postfach
CH-3602 Thun
Telefon 033 341414
Telefax 033 351510/Telex 921170

HOFFMANN VERPACKUNGEN

Wortmarke für Klipp-Klapp-Dose

Name:	**KLIPP-KLAPP®**	
	Schweiz	**International**
Markennummern:	**418099**	**641316**
Int. Klasse:	06	06
Benennung:	Dosendeckel aus Metall	Fermetures de boîtes métalliques
Registrierungstag:	07.09.1995	22.09.1995
Registrierungsnr.:	3070/1995.1	641316
Hinterlegungstag:	22.03.1995	10.08.1995
Ablauf:	22.03.2005	10.08.2015
Anmelder:	Gebr. Hoffmann AG, CH-3602 Thun	

****

Name:	**KLICK-KLACK®**	
	Schweiz	**International**
Markennummern:	**424801**	**654241**
Int. Klasse:	06	06
Benennung:	Dosendeckel aus Metall	Fermetures de boîtes métalliques
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Ablauf:	22.02.2006	01.05.2006
Anmelder:	Gebr. Hoffmann AG, CH-3602 Thun	

Thun, 17.07.96 / VS
D:MARKET/SORT/RDGEZ/KLKLMARK.DOC

H.R. GACHNANG, PATENTANWALT, BADSTR. 5, 8500 FRAUENFELD

MARKENURKUNDE

Anmelder:	Gebr. Hoffmann AG 3602 Thun
Land:	**Schweiz**
Int. Klassen:	06 20
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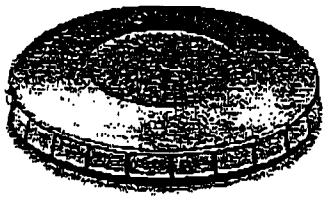
Name:	3D Marke für Deckel (Klipp-Klapp)



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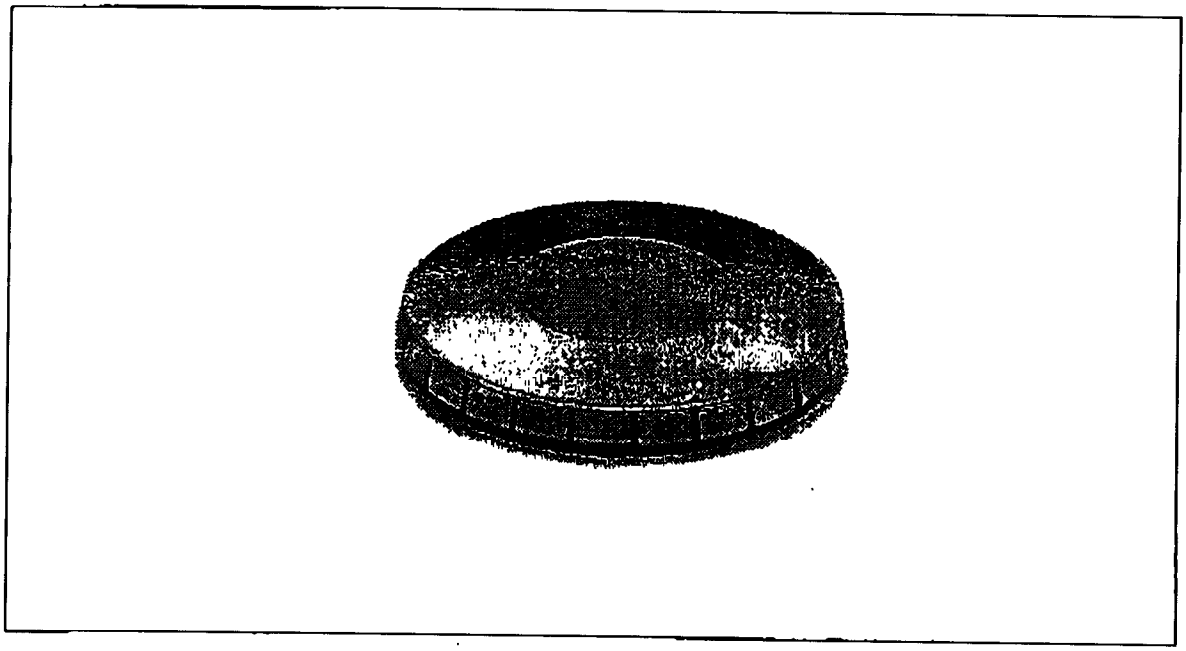
Erteilungstag:	18.04.2000
Hinterlegungsnr.:	05033/1998
Hinterlegungstag:	22.06.1998
Fälligkeit der Erneuerungsgebühr:	erstmals 22. Juni 2008
erste Laufzeit:	22.06.2008
Unser Zeichen:	G 3658Ma
Erstellungsdatum:	16.05.2000

Eidgenössisches Institut ...istiges Eigentum
Institut Fédéral de la Pro... Intellectuelle
Istituto Federale della Proprietà Intellettuale
Swiss Federal Institute of Intellectual Property
Einsteinstrasse 2 · CH-3003 Bern · Telefon +41 31 325 25 25 · Fax +41 31 325 25 26 · http://www.ige.ch

Bescheinigung über die Eintragung einer Marke

Wir bestätigen Ihnen folgende Angaben, die ins schweizerische Markenregister eingetragen wurden.
Die Eintragung ist während 10 Jahren vom Hinterlegungsdatum an gültig.

Die Markendaten wurden wie folgt im Schweizerischen Handelsamtsblatt Nr. 0092 vom 11. Mai 2000 veröffentlicht:
Hinterlegungsdatum: 22. Juni 1998 Marke: 471371



Markeninhaber/in
Gebr. Hoffmann AG
Eisenbahnstrasse 71
3602 Thun

Vertreter/in
Hans Rudolf Gachnang
Patentanwalt
Badstrasse 5
8500 Frauenfeld

Verzeichnis der Waren und/oder Dienstleistungen
6 Gebindedeckel aus Metall.
20 Gebindedeckel nicht aus Metall.

Internationale Klassifikation
6, 20

H.R. GACHNANG, PATENTANWALT, BADSTR. 5, 8500 FRAUENFELD

MARKENURKUNDE

Anmelder:	Gebr. Hoffmann AG 3601 Thun
Land:	**International**
Benennungen:	AT DE BENELUX ES FR IT LI CZ (gemäss Madrider Markenabkommen) DK GB SE FI NO (gemäss Madrider Protokoll) (beantragte Ausdehnung HU PL SI SK vom 19.6.2000 noch nicht berücksichtigt)
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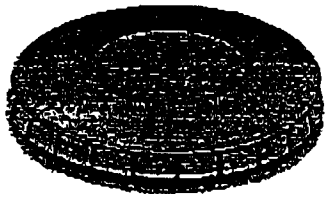
Name:	3D Marke für Deckel (Klipp-Klapp)



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Erteilungstag:	22.06.2000
Hinterlegungsnr.:	734252
Hinterlegungstag:	18.04.2000
Priorität: Nummer: Land:	22.06.1998 471371 Schweiz
Fälligkeit der Erneuerungsgebühr:	Apr.18 (erstmals 2010)
erste Laufzeit:	18.04.2010
Unser Zeichen:	G 3668Ma
Erstellungsdatum:	23.06.2000

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

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Registration Number: (NOT AVAILABLE)

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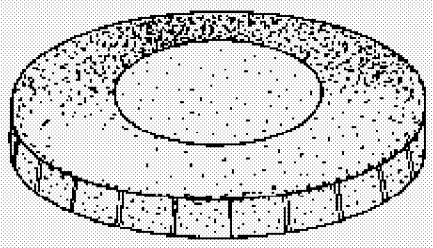

Standard Character claim: No

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2002-12-26

Filing Date: 1998-08-31

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 114

Attorney Assigned:
STRASER RICHARD A Employee Location

Current Location: 845 -TTAB

Date In Location: 2002-12-26

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Gebr. Hoffmann AG.

Address:
Gebr. Hoffmann AG.
Eisenbahnstrasse 71
CH-3601 Thun,
Switzerland
Legal Entity Type: Corporation
State or Country of Incorporation: Switzerland

GOODS AND/OR SERVICES

METAL LIDS FOR CANS
International Class: 006

First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b), 44(e)

NON-METAL LIDS FOR CANS
International Class: 020
First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b), 44(e)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of the configuration of the KLICK-KLACK metal lid for cans. The KLICK-KLACK lid has acquired distinctiveness under section 2(f) of the Trademark Act to distinguish origin because of the unique sound created when the lid is opened or closed. KLICK to open. KLACK to close. The mark, therefore, consists of the sound created by the non-functional shape of the goods.

Foreign Application Number: 050331998
Foreign Registration Number: 471371
Foreign Registration Date: 2000-09-07
Country: Switzerland
Foreign Filing Date: 1998-06-22
Foreign Expiration Date: 2008-06-22

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2002-12-26 - Opposition instituted for Proceeding

2002-12-26 - Opposition instituted for Proceeding

2002-09-09 - Opposition instituted for Proceeding

2002-05-23 - Extension of time to oppose - Filed

2002-04-23 - Published for opposition

2002-04-03 - Notice of publication

2001-11-09 - Approved for Pub - Principal Register (Initial exam)

2001-11-09 - Examiner's amendment mailed

2001-08-23 - Communication received from applicant

2000-10-16 - Unresponsive paper received

2001-02-26 - Non-final action mailed

2001-02-16 - Previous allowance count withdrawn

2001-01-29 - Letter of Protest accepted

2000-11-28 - Approved for Pub - Principal Register (Initial exam)

2000-09-18 - Communication received from applicant

2000-03-02 - Communication received from applicant

2000-04-10 - Final refusal mailed

2000-04-06 - Case file assigned to examining attorney

1999-11-24 - Communication received from applicant

1999-05-24 - Non-final action mailed

1999-04-29 - Case file assigned to examining attorney

1998-09-28 - Communication received from applicant

CONTACT INFORMATION

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EXHIBIT C

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*ADMITTED IN ILLINOIS ONLY

lsullivan@leydig.com

September 15, 2000

09-15-2000
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #01

Office of the Assistant
Commissioner of Trademarks
Attn: Administrator for Trademark
Classification and Practice
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Application Serial No. 75/545553 for the Configuration of a Click-Clack Tin in the Name of Gebr. Hoffman AG (Our Ref. 500875)

Dear Sirs:

LETTER OF PROTEST

It has come to our attention that Gebr. Hoffman AG is seeking to register the configuration of a "click-clack" tin container shape. We enclose for consideration on behalf of our client, J.L. Clark, patents showing the utilitarian function of a "click-clack" tin. We also enclose computer printouts showing use by others in the United States.

J.L. Clark respectfully requests that its Letter of Protest be granted and that the enclosed documents be brought to the attention of the Examining Attorney as grounds for rejection.

Very truly yours,

LEYDIG, VOIT & MAYER, LTD.

By: _____
Lynn A. Sullivan

LAS/hwc Hoffman protest let
Enclosures

cc: Andrew J. Heinisch, Esq. (w/o encl.)

CERTIFICATE OF MAILING VIA EXPRESS MAIL

"Express Mail" mailing label number TB059842233US

Date of Deposit: September 15, 2000

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" Service under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Office of the Assistant Commissioner for Trademarks, Attn: Administration for Trademark Classification and Practice, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Brian D. Sandstrom

(Typed or printed name of person mailing paper or fee)

Brian D. Sandstrom

(Signature of person mailing paper or fee)

M:\DOC\TM\LATJHCLARK\HOFFMAN LET OF PROTEST

EXHIBIT D

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Re: TRADEMARK LAW OFFICE 14
Serial No.: 75/545553
Applicant: Hoffmannn Neopac A.G.
Mark: Miscellaneous Design

HOFFMANN NEOPAC A.G.'S RESPONSE TO OFFICE ACTION

Introduction

Hoffmann Neopac A.G., applicant, by its undersigned attorneys, submits this Response to the Office Action dated February 26, 2001 signed by Richard A. Straser, Examining Attorney, regarding the above-referenced matter. As is more fully set forth below, it is respectfully requested that the United States Patent and Trademark Office (USPTO) grant registration on the Principle Register of applicant's proposed design because the proposed design is non-functional and has acquired distinctiveness within the meaning of applicable law.

Facts

Hoffmann Neopac A.G. (hereinafter "Hoffmann"), located in Thun, Switzerland, has continuously manufactured a variety of products including high quality, distinctive, metal containers since the latter part of the 19th century, and has exported those containers around the world including to the United States. (Affidavit of Kurt Lüthi, Exhibit 1, para. 1, 3). Early in the 20th century, Hoffmann developed one of its speciality products, the distinctive KLICK-KLACK tin can. The can incorporates a "magic closure" for opening and closing a can such that when pressure is applied from above the can opens with a "click" and pressing the side edge of the lid causes the teeth of the lid to close tightly again around the body with a "clack" sound. (Ex. 1, para. 2). Hoffmann has manufactured the KLICK-KLACK can in the same form since the first part of the 20th century, with substantial innovations in the 1990's. (Ex. 1, paras. 3-6). Hoffmann enjoys registration of this design in Europe. Hoffmann has applied to the USPTO for registration of its design on the Principle Register.[1]

Apparently, Hoffmann's application was rejected on the basis of information appended to a Letter of Protest filed on behalf of J. L. Clark (of Rockford, IL) by Leydig Voit Mayer Ltd. of Chicago. That information consists of expired U.S. Patent 1,739,759 - Hothersall issued December 17, 1929 and described by the Letter of Protect as a "click-clack" tin. Other evidence appended to the Letter of Protest

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[1]Details of Hoffmann's proposed design have been previously set forth in Hoffmann's application and supporting drawings, and are not repeated in detail here.

are computer printouts of advertisements for a) reproducing and fusing art to metal such as, among others, "Click-Clack" tins; and b) "Hoffmann Euro-Style Drawn Tins", by Western Specialty Container of Ontario, CA, applicant's exclusive distributors for North and South America.[2]

The two figures of the Hothersall patent clearly show a cap with a raised domed central portion (22), a connected frusto-conical portion (23) having a channel portion (24) which continues outwardly and upwardly to form an outer raised margin (25), thence turned downwardly to provide a descending skirt (26) slit at intervals to form segmental locking fingers (27) which have inwardly turned engaging flanges (28). It is important to note that the description of the frusto-conical portion leads, of necessity, to the raised domed portion located, in its "closed state", in a plane which is substantially the same as the plane of the outer raised margin. In its "open state", the domed portion is below the plane of the outer raised margin.

Since Hoffmann's lid has no raised outer margin, its overall appearance is entirely different and distinct from that of the prior art: In its "closed state" the domed portion lied in a plane above that of the outer margin (which is not raised), and in its "open state" the domed portion may or may not lie below the plane of the outer margin. In its closed state, Hoffmann's design assumes a frusto-conical configuration, i.e., from its center it is downwardly inclined to an outer margin.

The images of the "Click-Clack" tins shown in the xerographic copies of the Alumaline® and Brass computer printout (possibly originating with the owner of U.S. trademarks 2,123,271 and 2,232,727 - Nelson B. Boone Company, Inc. of Louisville, NY) indicate a lid with a substantially flat inner surface surrounded by a raised or bulging margin from which fingers descend not unlike those of the Hothersall device. This structure, too, is different from that of Hoffmann's miscellaneous design in that it fails to reach a raised central domed portion. Within its periphery, the lid appears to be substantially flat.

Hoffmann submits that the Letter of Protest and its supporting documentation at best demonstrate *de facto* similarity of function, but for the reasons set forth below, do not constitute *de jure* similarity of function under applicable law.

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[2]The Western Specialty Container document relates to Hoffmann's containers and would thus seem not to qualify as a reference in the present context. This document is from Western Specialty's web page and, in its current version (attached as Exhibit 2) refers to "Hoffmann Euro-Style Drawn Tins" and states: "The 'Clic-Clac ©' is perhaps the most unique tin in the HOFFMANN LINE." Id. This would seem to indicate, paraphrasing Judge Learned Hand in the case of Crescent Tool Co. v. Kilborn & Bishop Co., 247 F. 299 (2nd Cir. 1917), that the appearance of articles of the kind sought to be protected by the trademark in Hoffmann's application have become associated in the public mind with Hoffmann as the manufacturer or source.

The Proposed Design is Non-Functional

Without question, the design of a product may be registrable on the Principle Register.

> The breadth of the definition of marks registerable . . . has been held to embrace not just word marks, . . . and symbol marks, . . . but also "trade dress" – a category that originally included only the packaging, or "dressing," of a product, but in recent years has been expanded by many courts of appeals to encompass the design of a product.

Wal-Mart Stores, Inc. v. Samara Brothers, Inc., 529 U.S. 205, 209 (2000). The examining attorney refused registration on the Principle Register because "the proposed mark appears to be functional".[3] See Office Action p. 1. As recognized by the examining attorney the term "functional" has multiple meanings, only one of which can justify the denial of the registration of a mark. If a proposed mark is *de jure* functional it is unregistrable, but if the proposed design is merely *de facto* functional, it may be registrable on the Principle Register.

It is well established that:

> One who seeks to register (or protect) a product or container configuration as a trademark must demonstrate that its design is "nonfunctional," . . . and that the design functions as an indication of source, whether inherently so, because of its distinctive nature . . . or through acquisition of secondary meaning. These two requirements must, however, be kept separate from one another.

In re Morton-Norwich Products, Inc., 671 F.2d 1332, 1343, 213 U.S.P.Q. (BNA) 9 (CCPA 1982). In Morton-Norwich the court recognized that trademark protection typically "was limited, . . . to those designs of articles and containers, or features thereof, which were 'nonfunctional'". Id. at 1336. The court drew a distinction between *de jure* functional and *de facto* functional.

> . . . we must speak in terms of de facto functionality and de jure functionality, the former being the use of "functional" in the lay sense, indicating that although the design of a product, a container, or a feature of

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[3]The matter of the allegedly unacceptable drawing mentioned in the Office Action has been clarified during a subsequent telephone conference between Examining Attorney Straser and Karl Hormann, prior attorney for Hoffmann, on August 14, 2001. Apparently, the Examining Attorney had referred to the originally submitted drawing rather than the formal drawing acknowledged to have been received by the USPTO on October 16, 2000. During the telephone conference, Mr. Hormann was informed by Mr. Straser that the latter drawing is acceptable. Therefore, no additional drawings are attached herewith.

> either is directed to performance of a function, it may be legally recognized as an indication of source. De jure functionality, of course, would be used to indicate the opposite - - such a design may not be protected as a trademark.

Id. at 1337. The distinction between *de facto* functionality and *de jure* functionality was defined in In re: R.M. Smith, 734 F.2d 1482, 1484, 222 U.S.P.Q. (BNA) 1, 3 (Fed. Cir. 1984) as:

> In essence, de facto functional means that the design of a product has a function, i.e., a bottle of any design holds fluid. De jure functionality, on the other hand, means that the product is in its particular shape because it works better in this shape.

Courts have looked to a variety of factors for performing the functionality analysis necessary in trademark cases:

> (1) whether the design yields any utilitarian or aesthetic advantage not related to reputation; (2) whether alternative designs are available; (3) whether advertising touts the utilitarian advantages of the design; and (4) whether the particular design results from a comparatively simple or inexpensive method of manufacture. . . . Also relevant is whether the party asserting trademark rights intended the product design, when creating it, to serve as a trademark.

Chrysler Corporation v. Vanzant, 44 F. Supp. 2d 1062, 1969 (C.D. Cal. 1999). "No one factor is dispositive; all should be weighed collectively." Id. (quoting Vuitton et Fils S.A. v. J. Young Entertainment, Inc., 644 F.2d 769, 773-74 (9th Cir. 1981)). "In sum, the 'crux' of the distinction between de facto and de jure functionality - - determining eligibility for trademark protection or not - - is a design's effect on competition." Brunswick Corporation v. British Seagull Limited, 35 F.3d 1527, 1531, 32 U.S.P.Q. 2d (BNA) 1120 (Fed. Cir. 1994), cert. denied, 514 U.S. 1050 (1995)..

Analysis of these factors demonstrates that Hoffmann's proposed mark is non-functional in the sense that it is not *de jure* functional. With respect to the first factor "utilitarian" has been defined to mean "'superior in function (de facto) or economy of manufacture', which 'superiority' is determined in light of competitive necessity to copy." In re Morton v. Norwich Products, Inc., 671 F.2d supra at 1339.

> [I]t is clear that courts in the past have considered the public policy involved in this area of law as, not the right to slavishly copy articles which are not protected by patent or copyright, but the need to copy those articles, which is more properly termed the right to compete effectively.

Id. at 1339. The Hoffmann KLICK-KLACK design is not a design which competitors "need" to copy in order to compete effectively. As set forth in the affidavit of Kurt Lüthi, other competitors have designs

similar but not identical to the KLICK-KLACK mark which permit containers to be opened and closed in the functional sense, without requiring such containers to be opened and closed in the exact design of the KLICK-KLACK cans. (Ex. 1. para. 11). Various methods of "push-pull" container lids, as well as myriad designs of screw type design are just two broad, general examples of other designs to accomplish the function of opening and closing a can. Further, variations in flange design and rim usage present other viable alternative designs. (Ex. 1, para. 11).

KLICK-KLACK is not superior in function, rather it is distinctive and unique to distinguish Hoffmann from other designs for the opening and closing of cans. Further, in In re Zippo Mfg. Co., 50 U.S.P.Q. 2d 1852 (T.T.A.B. 1999), the Trademark Trial and Appeal Board stated: "Inasmuch as several alternative designs are currently competing in the marketplace for these products, it does not appear that applicant's design has in any way hindered competition." (Id. 1999 T.T.A.B. LEXIS 130 at 12). Accordingly, the design feature of the goods embodied in the proposed mark is not superior to other available designs, such as those of the Hothersall patent, and does not provide a competitive advantage to a user and cannot, therefore be *de jure* functional. Nor would it, in view of the available alternative designs, be costly to be without applicant's design.

The same facts employed in the "utilitarian advantage" factor analysis likewise demonstrate that as to the second factor considered, alternative designs are not only available, but are in fact, in use by other competitors. Third, Hoffmann advertises the distinctive nature of its KLICK-KLACK cans, such advertisement is directed towards the distinctiveness of the KLICK-KLACK can, as opposed to any utilitarian advantage, as set forth above. (Ex. 1, para. 4, 5, 8). Fourth, there is nothing to suggest that the Hoffmann design is less expensive than other means to open and close tin cans. Lastly, and most importantly, there is no evidence presented that registration of Hoffmann's proposed mark would adversely affect competition, and such competition currently exists in the form of various alternative designs. The proposed mark embodies a design feature which is clearly one of many equally feasible, efficient and competitive alternatives. In sum, the proposed mark while *de facto* functional is not *de jure* functional.

While container lids or closures of the kind sought to be protected by the miscellaneous design mark of the Hoffmann application are not designed for any specific products, the case of Best Lock Corp. v. Schlage Lock Co. 413 F.2d 1195, 162 U.S.P.Q. 552 (C.C.P.A. 1969) is, nevertheless relevant. "[S]ome articles, made in a purely arbitrary configuration . . . may perform a function . . . which would equally well be served by containers of many other shapes, and in such circumstances the incidental function should not by itself preclude trademark registrability if the other conditions precedent are present." Id. at 1199. It is not its incidental function as a container closure which Hoffmann seeks to protect but, rather, its unique configuration which distinguishes it from the other devices addressed in the Letter of Protest by which the function "would equally well be served". There is no reason which should stand in the way of obtaining trademark protection for Hoffmann's unique design.

The Proposed Design has Acquired Distinctiveness

In addition to demonstrating that a proposed mark is non-functional, as that term is defined in

applicable law, in order for a mark to be registered on the Principle Register, the design also must have "acquired distinctiveness." See In re Morton-Norwich Products, Inc., 671 F.2d 1332, 1343, 213 U.S.P.Q. (BNA) 9 (CCPA 1982). Again, courts look to a variety of factors in determining acquired distinctiveness.

> To determine whether a trademark has acquired distinctiveness by the attachment of secondary meaning, we examine the following considerations: (1) the length or exclusivity of use of the mark; (2) the size or prominence of the plaintiff's enterprise; (3) the existence of substantial advertising by the plaintiff; (4) established place in the market; and (5) proof of intentional copying.

Times Mirror Magazines, Inc. v. Las Vegas Sports News LLC, 212 F.3d 157, 166, 54 U.S.P.Q. 2d (BNA) 1577 (3rd Cir. 2000), cert. denied, 531 U.S. 1071 (2001). As set forth in the affidavit of Mr. Lüthi, Hoffmann has used the design at issue since the early 20th century. (Ex. 1, para. 1, 2, 3 and 6). United States sales of KLICK-KLACK cans has generated substantial income in the past 5 years and in excess of $1 million in calendar year 2000 alone. (Ex. 1, para. 9). For cans of any similarity to the Hoffmann design, Hoffmann's market share is believed to be greater than 50%, but decreasing due to intentional copying of its design. (Ex. 1. para. 7, 10). Hoffmann expends substantial dollars in advertising its KLICK-KLACK design through a variety of promotional media on its own and indirectly through the promotional efforts of its authorized distributors. (Ex. 1, para. 8). Competitors, especially from China, have mimicked the design. (Ex. 1, para. 10). As set forth throughout Mr. Lüthi's affidavit, Hoffmann's KLICK-KLACK design is what has established its place in this market. Hoffmann's proposed mark meets the requirements of acquired distinctiveness.

Conclusion

For all of the foregoing reasons, Hoffmann's proposed design should be registered on the Principle Register because it is a non-functional (i.e., *de facto* functional only) and the design has acquired distinctiveness as determined by applicable law. The applicant is ready to supplement its Response as required by the USPTO or respond to any specific queries posed by the USPTO.

Respectfully submitted,

J. Stephen Simms
Greber & Simms
20 S. Charles Street
Suite 702
Baltimore, Maryland 21201
(410) 783-5795
Attorneys for Hoffmann Neopac A.G.

AFFIDAVIT OF KURT LÜTHI

Kurt Lüthi certifies as follows under penalties of perjury:

1. I am Managing Director of Hoffmannn Neopac AG ("Hoffmannn"), which is a company with its principal manufacturing operations located in Thun, Switzerland. Hoffmann or its predecessor companies has manufactured high quality packaging, including, distinctive metal containers, continuously since the latter part of the 19th Century, and has exported those containers around the world, including, to the United States. Hoffmann applies a process-oriented quality management system based on ISO 9001 that also includes the important areas of safety, hygiene and environmental protection. The top priority of Hoffmann's quality policy is to ensure satisfied customers by providing excellent products and services.

2. Hoffmann in the first part of the 20th Century, developed as one of its speciality products, the distinctive KLICK-KLACK tin can, with a "magic closure." When pressure is applied from above, the can opens with a "click" and pressing sideways on the edge of the lid causes the teeth to close tight again around the body with a "clack"

3. The history of the Hoffmann KLICK-KLACK can goes back to the early days of this century. Using that idea, Hoffmann developed its distinctive design, with a raised, rounded edge running around the can.

4. For many decades, this can was used to market an extremely wide variety of products, ranging from confectionery and medicines for arthritis patients to fish-bait. However, the "old" KLICK-KLACK can more or less fell into oblivion at the start of the 1990's. The sharp, unprotected edges of the lid were considered to be a risk in terms of product liability. Then came the day when a renowned manufacturer of confectionery in Germany was looking for

a smart, fresh packaging for a new product aimed at a young target group. This packaging had to stand out distinctly from the other product lines in the manufacturer's range, and it also had to reflect the high quality of the contents.

5. To launch the can with the new diameter of 76 mm, Hoffmann upgraded its production line and gave the can a new look. The problem with the sharp edges of the lid was solved with the help of a new process, which represents an innovation in tin plate packaging. This involves a special coating for the lid, which gives the can its warm and shiny external appearance. This appearance, combined with the design that Hoffmann innovated, is distinct to Hoffmann.

6. **The length of time or exclusivity of the design**: Hoffmann accordingly has been manufacturing the KLICK-KLACK can in essentially the same form, since the first part of the 20th Century, with substantial innovations in the 1990s. Hoffmann has directly, or indirectly through its customers, imported the KLICK-KLACK can into the United States, since at least 1965.

7. **The size, prominence or market share of Hoffmann**: The market for KLICK-KLACK cans is very specialized, focusing on high-value added candies and cosmetics, for which their manufacturers want to emphasize the quality of their products, by high quality, unique packaging. Hoffmann believes that it has a greater than 50% share of the market, for cans of any similarity to KLICK-KLACK cans.

8. **Substantial advertising of the design by Hoffmann**: Particularly since the first part of the 1990s, when Hoffmann improved the KLICK-KLACK design, Hoffmann has done very substantial advertising and promotion of its KLICK-KLACK design, including, through repeated packaging and packaging-related trade shows throughout the year across the United

States, and in nationally-circulated trade media. Hoffmann also has pursued United States distribution through an agreement with Independent Can Company, a nationally-known manufacturer of tin containers located in Maryland, and its subsidiary, Western Specialty Container, in California. Independent Can and Western Speciality Container, have also promoted and sold the KLICK-KLACK can throughout the United States.

9. Sales: During the years 1998 through 2001, Hoffmann's approximate sales of KLICK-KLACK cans into the United States, directly or through customers buying the cans from Hoffman and importing to the United States, has been the following:

1998: $9,000
1999: $277,000
2000: $1,227,000
2001: (first half) $225,000

10. Proof of intentional copying of the design: In 2001, the growth of Hoffmann's sales of KLICK-KLACK cans has decreased, because of copying of Hoffmann's design. There have been increasing knock-offs of Hoffmann's KLICK-KLACK product, imported from China and sold at below-market products. Hoffmann believes that at least four, and perhaps more, Chinese manufacturers have copied Hoffmann's KLICK-KLACK product; Hoffmann and its sales representatives are increasingly seeing such products on the market, offered in competition with Hoffmann's authentic KLICK-KLACK cans.

11. Availability of Alternative Designs: I am also familiar with other designs of KLICK-KLACK-type cans in the marketplace, which are different than Hoffman's design. Hoffman's design is not the only way to design a can, which has a top that opens by putting downward pressure on the lid. For example, other cans have straight flanges, and no rim; some have fewer flanges and no rim. The distinguishing design feature of the Hoffman can - - and

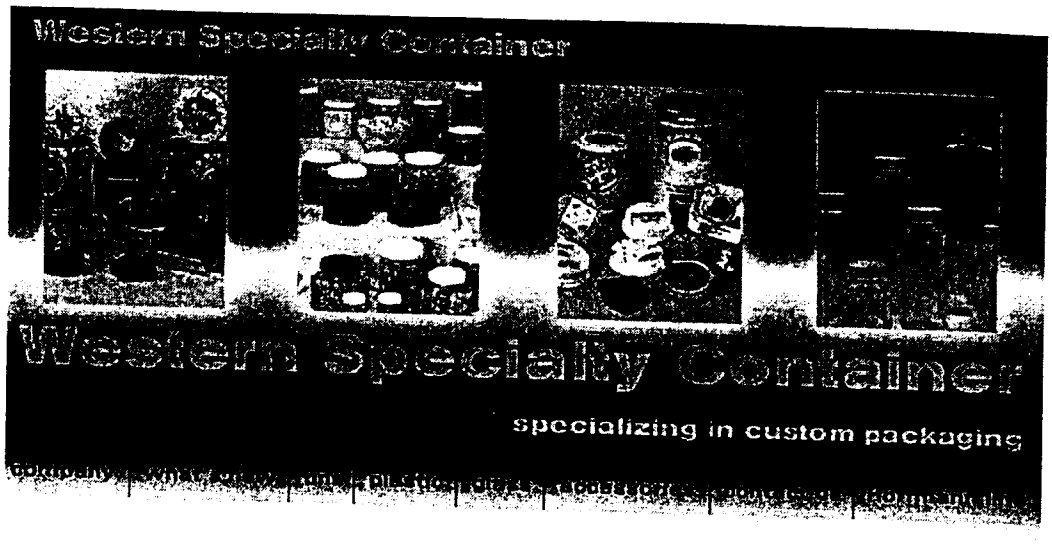
which is now being copied intentionally, now that Hoffman has successfully introduced this distinctive design into the marketplace - - is the rim which causes the can to flare out at the top.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 17, 2001.

Kürt Luthi

HOFFMANN
Packaging Solutions
HOFFMANN NEOPAC AG
CH-3602 THUN



Independent Can Company

2040 S. Lynx Place
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Phone: (909).923.6150
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e-mail: sales@westernspecialty.com

Specializing in custom packaging

2040 S. Lynx Place
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Western Specialty Container

specializing in custom packaging

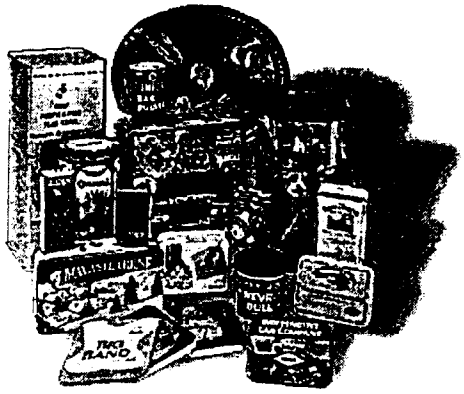
tins

Tin cans – centuries old and still the #1 form of packaging. Western Specialty Container, in partnership with Independent Can, is the premier manufacturer of decorative, fully lithographed tins in the country.

- Cookie Tins
- Candy Tins
- Popcorn Tins
- Sample Tins
- Nut Tins
- Holiday Tins
- All Occasion Tins
- Gift Tins
- Round, Square, Rectangular and Irregularly Shaped Tins
- Embossed Tins

Use our tins for fundraising, holding CD's, storage or promotional programs. The possibilities are endless. Check out these unique designs:

Custom Designs
Stock Designs
Hoffmann
Euro-Style Drawn Tins



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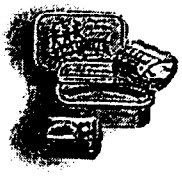
MINI OVALS, ROUNDS, & RECTANGLES

The Mini Ovals, Rounds, and Rectangles are generally recognized as "Pill Box" tins and are well suited for this intended use. They are small enough to carry in a pocket, purse, or attaché. The oval and round tins come with a plastic insert which serves to provide a tighter fit on the lid. Additional applications for the Mini Tins would include candy, mints, cosmetics, jewelry, and simply a novelty box.

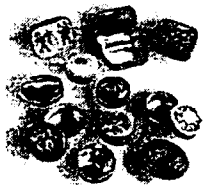
The varied applications of the HOFFMANN LINE of decorative tins are endless. The classic shapes and styles offer a unique form of packaging that is certain to boost your sales. Is it time to introduce a new look or an additional item to your product line? Consider then, how these unique tins will enrich your packaging and promote increased sales of your products.

Western Specialty Container is committed to offering only the finest quality containers. The HOFFMANN LINE of decorative tins overwhelmingly presents quality craftsmanship, brilliant decoration, and unique shapes. If you would like more information about the HOFFMANN LINE please contact a Western Specialty Container sales representative for assistance. A listing of sizes and shapes are in our catalog.

return to stock designs



HOFFMANN
PACKAGING SOLUTIONS



The "Hoffmann Line" is now being offered exclusively to the North and South American markets by WESTERN SPECIALTY CONTAINER, a division of Independent Can Co. The focus of Western Specialty will be on Hoffmann's small two piece drawn tins.

SQUARE & RECTANGULAR HINGED TINS

Square and rectangular tins are highly desired shapes by consumers. Add the hinge and the perceived value dramatically increases in the consumer's mind. These tins are perfectly suited for a variety of products such as:

- Hard Candy, Jelly Beans, Mints
- Throat Lozenges, Cosmetics, Pencils
- AND Artist Paints, Cigarettes,
- CD's, Computer Discs, and Travel Games.

"CLIC-CLAC©" & LARGE ROUND TINS

The "Clic-Clac©" is perhaps the most unique tin in the HOFFMANN LINE. It's innovative lid and closing feature makes it nearly impossible for the inquisitive consumer to pass by the tin without picking it up for a closer look. Where do you want see your product? In the consumers hand. Once the consumer picks up your product you have just gained the competitive edge over your competitors! And more likely than not your product will go from the customers hand to the cash register. The "Clic-Clac©" and the 'Large Round Tins' are ideal for confectionery products, individual serving snacks, salves and ointments, candles and waxes, cosmetics and many more products.