

T/TAB

03-06-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #61

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 5 Attorneys for Applicant
 GREENBALL CORPORATION

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

TRADEMARK TRIAL AND
 APPEAL BOARD
 03 MAR 19 AM 9:30

10 In the Matter of: Application Serial No. 76/347,403
 11 Trademark: SHREDDER
 12 Int'l Class: 12
 13 Published: May 14, 2002

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Opposition No. 91153015

Declaration of H. G. ROBERT FONG IN RESPONSE TO ORDER TO SHOW CAUSE RE DEFAULT

26
 27 I, H. G. Robert Fong, declare and state, as follows:
 28 1. I am an attorney licensed to practice in the Courts of the

1 State of California and can practice before the United States
2 Trademark Trial and Appeal Board. I represent Greenball Corporation
3 in this matter.

4 2. This declaration is made in response to the TTAB's order to
5 show cause why judgment by default should not be entered against
6 applicant in accordance with Fed. R. Civ. P. 559b).

7 3. This matter involves an opposition filed by Schrader-
8 Bridgeport International, Inc. to the "SHREDDER" mark applied to off
9 road tires by Applicant. Opposer does not claim to use its "SCHRADER"
10 mark on tires. Applicant's mark is a common noun; Opposer's mark is
11 a surname well-known in the pneumatic valve trade. Applicant's mark,
12 it is submitted, is not confusingly similar to Opposer's mark and is
13 not likely to cause confusion.

14 4. Apparently, The TTAB served by mail a copy of the SCHRADER-
15 BRIDGEPORT's opposition on or about September 28, 2002 to the
16 declarant at the law offices of "Ku, Fong & Chen, LLP." As set forth
17 above, your declarant's law firm is now named "Ku & Fong," a
18 fictitious business name for the declarant. The time period when the
19 Opposition was served was a hectic one for the former law firm. My
20 secretary had terminated with the firm in the middle of a 7 week trial
21 that summer, and the paralegal/manager who was handling the trademark
22 matters tendered here resignation effective in September 2002, but
23 with an agreement to work part time and to assist, until her new
24 position no longer allowed her to do so. Unfortunately, the
25 Opposition came at time when the old law firm was struggling to
26 survive with the creation of a new partnership involving 3 partners.
27 The old firm consisted of two partners, myself and Frank W. Chen. The
28 proposed new partner was assigned the task of taking over the

1 trademark matters. Over the ensuing months, I learned that this take
2 over did not fully occur and as a result, this matter was allowed to
3 go into a default. The proposed partnership failed with the old firm
4 dissolving effective January 31, 2003, the day the OSC was mailed by
5 the TTAB.

6 5. The default was not intentional. It was not the fault of the
7 client, Greenball Corporation, but was caused by an inadvertent error
8 on the part of the former law firm, Ku, Fong & Chen, LLP, and the
9 failure to calendar the answer. This error should not fall upon the
10 shoulders of the client, Greenball corporation. For this reason, I
11 ask that the TTAB allow the filing of the proposed answer which is
12 attached hereto.

13 6. I know of no prejudice to Opposer, SCHRADER-BRIDGEPORT
14 INTERNATIONAL CORPORATION. Opposer had at least twice in the past
15 requested time to determine whether it should file an opposition, and
16 Applicant acceded to these requests at least twice before. When I
17 received the OSC in the mail, I contacted Opposer's counsel, Scott
18 Slavick, to request a stipulation to vacate the default and to allow
19 the filing of an answer. Approximately one week thereafter, I was
20 informed that his client refused.

21 7. On March 3, 2003, I called Mr. Slavick to propose a
22 resolution that permitted Greenball to continue use of the mark,
23 limited to its current use on tires, with a stipulation that the
24 default could be vacated and the Applicant's application withdrawn,
25 thereby resolving what I believe was the major issue, that is,
26 registration of the mark. Opposer has not sued Applicant for its use
27 of the "SHREDDER" mark on tires, hence, the only issue appears to be
28 one of registration with a fear that the mark might be expanded from

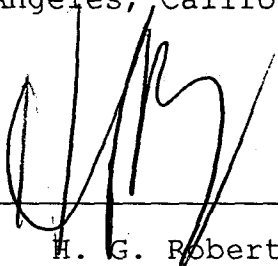
1 tires to other products.

2 8. Applicant does not want the default to become res judicata
3 or collateral estoppel as to the allegations in the opposition, such
4 that the default could be used against it in any litigation.
5 Applicant believes that its answer is meritorious and that it should
6 be allowed to defend its application on the merits.

7 9. As a practical matter, the case may become moot, as a result
8 of a proposed resolution between Applicant and Opposer. This
9 resolution requires that the relief sought herein be allowed.

10 10. In short, your declarant submits that a default judgment
11 should not be entered, but that Applicant should be allowed relief to
12 file the enclosed answer, based upon excusable neglect and the lack
13 of prejudice.

14 I declare under penalty of perjury under the laws of the United
15 States of American that the foregoing is true and correct and that
16 this declaration was executed in Los Angeles, California on March 3,
17 2003.

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H. G. Robert Fong

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PROOF OF SERVICE VIA U.S. MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 West Sixth Street, Suite 528, Los Angeles, California 90014-1225.

On March 3, 2003, I served the foregoing documents described as

Declaration of H. G. ROBERT FONG IN RESPONSE TO ORDER TO SHOW CAUSE RE DEFAULT

on the interested parties in this action X by placing the original X a true copy thereof enclosed in sealed envelopes addressed as follows:

John T. Gabrielides
Scott J. Slavick
Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, Illinois 60610

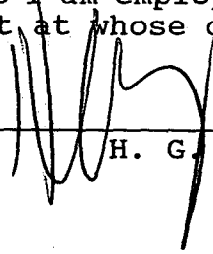
X BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 3, 2003, at Los Angeles, California.

 STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



H. G. Robert Fong

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 8 Attorneys for Applicant
 9 **GREENBALL CORPORATION**

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

12 In the Matter of: Application Serial No. 76/347,403

13 Trademark: SHREDDER

14 Int'l Class: 12

15 Published: May 14, 2002

16 **SCHRADER-BRIDGEPORT**) **Opposition No. 91153015**
 17 **INTERNATIONAL, INC.,**)
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vs.

GREENBALL CORPORATION,

Applicant

**Answer of Greenball Corporation to
 Opposition**

Applicant, **GREENBALL CORPORATION**, submits the following answer to the Opposition filed on behalf of Opposer, **SCHRADER-BRIDGEPORT**

1 INTERNATIONAL, INC.:

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3 1. Answering Paragraph 1, Applicant lacks sufficient
4 knowledge, information or belief to truthfully admit or deny the
5 allegations contained in Paragraph 1, and based upon such lack of
6 knowledge, information and belief denies both generally and
7 specifically each, every and all the allegations contained therein and
8 the whole thereof.

9

10 2. Answering Paragraph 2, Applicant lacks sufficient
11 knowledge, information or belief to truthfully admit or deny the
12 allegations contained in Paragraph 2, and based upon such lack of
13 knowledge, information and belief denies both generally and
14 specifically each, every and all the allegations contained therein and
15 the whole thereof.

16

17 3. Answering Paragraph 3, Applicant lacks sufficient
18 knowledge, information or belief to truthfully admit or deny the
19 allegations contained in Paragraph 3, and based upon such lack of
20 knowledge, information and belief denies both generally and
21 specifically each, every and all the allegations contained therein and
22 the whole thereof.

23

24 4. Answering Paragraph 4, Applicant admits that Applicant on
25 or about December 12, 2001 applied to register the word SHREDDER, was
26 given an application number and which was published, as alleged.
27 Except as expressly admitted, Applicant denies both generally and
28 specifically, each, every, and all the remaining allegations contained

1 therein and the whole thereof.

2

3 5. Answering Paragraph 5, Applicant admits the allegations
4 contained therein.

5

6 6. Answering Paragraph 6, Applicant admits the allegations
7 contained therein.

8

9 7. Answering Paragraph 7, Applicant denies both generally and
10 specifically each, every, and all the allegations contained in
11 Paragraph 7, and the whole thereof.

12

13 8. Answering Paragraph 8, Applicant lacks sufficient
14 knowledge, information or belief to truthfully admit or deny the
15 allegations contained in Paragraph 8, and based upon such lack of
16 knowledge, information and belief denies both generally and
17 specifically each, every and all the allegations contained therein and
18 the whole thereof.

19

20 9. Answering Paragraph 9, Applicant denies both generally and
21 specifically each, every, and all the allegations contained in
22 Paragraph 9, and the whole thereof.

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24 10. Answering Paragraph 10, Applicant denies both generally
25 and specifically each, every, and all the allegations contained in
26 Paragraph 10, and the whole thereof.

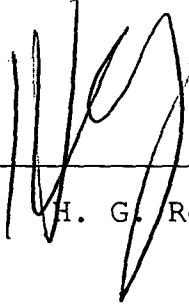
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28 WHEREFORE, Applicant, GREENBALL CORPORATION prays that the

1 Opposition be denied and overruled, and that Application Serial No.
2 76/347,403 be granted registration.

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March 3, 2003



H. G. Robert Fong

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Answer of Greenball Corporation to Opposition

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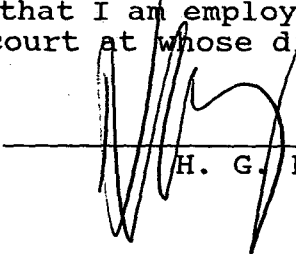
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