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Date of Deposit: October 17, 2002

Our File Ref.: 10710/146

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



In The Matter of: Application Serial No. 75/831,328

10-17-2002

Trademark: Miscellaneous Design

U.S. Patent & TMO/TM Mail Rcpt Dt. #76

Goods: electric power tools, namely, drills and screwdrivers, sold in retail stores, through internet retailers, catalog distributors, industrial and construction distributors, and in hardware and home improvement centers

Published: September 17, 2002

Ryobi Technologies, Inc.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
Milwaukee Electric Tool Corporation,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Commissioner for Trademarks
BOX TTAB FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

10/28/2002 TSMITH 00000044 75831328
01 FC:6402 300.00 OP

Ryobi Technologies, Inc., a Delaware corporation having its principal place of business in Anderson, South Carolina ("Opposer"), believes that it will be damaged by the registration of the miscellaneous design, Serial No. 75/831,328 ("Applicant's Design"), applied for by Milwaukee Electric Tool Corporation, with its principal place of

business in Brookfield, Wisconsin (“Applicant”), and hereby opposes said application for registration.

As grounds for the Opposition, Opposer states as follows:

1. Opposer, directly and through related companies, has been engaged in the business of marketing and selling electric power tools and related goods in interstate commerce. Opposer markets and sells electric power tools in various colors, including a red-and-black color scheme.

2. Upon information and belief, Applicant also is engaged in the business of marketing and selling electric power tools and related goods in interstate commerce.

3. Opposer and Applicant are competitors with respect to the marketing and sale of electric power tools and related goods.

4. Applicant has applied to register Applicant’s Design, a decorative and ornamental red, grey, and black color scheme, as a trademark for “electric power tools, namely, drills and screwdrivers, sold in retail stores, through internet retailers, catalog distributors, industrial and construction distributors, and in hardware and home improvement centers.” This application was given Serial No. 75/831,328.

5. A number of other entities, including Opposer, have used and are using similar decorative and ornamental red-and-black color schemes for electric power tools and related goods. Like Applicant’s Design, these other designs have been used and are used in a decorative manner covering the surface of the electric power tools and the related goods. As a result of this widespread use of such decorative designs, the consuming public perceives Applicant’s Design merely as a decorative or ornamental feature of the goods and not as an indicator of the source of the goods. Thus, Applicant’s

WHEREFORE, Opposer, Ryobi Technologies, Inc., prays that its Opposition be sustained and that Application Serial No. 75/831,328 be denied registration.

The filing fee for this Opposition, in the amount of three hundred dollars (\$300.00), is enclosed. This document is submitted in duplicate.

Respectfully submitted,

Ryobi Technologies, Inc.

Dated: October 17, 2002

By:



Jerome Gilson, Esq.

Jack C. Berenzweig, Esq.

Nanette M. Norton, Esq.

Thomas M. Williams, Esq.

BRINKS HOFER GILSON & LIONE

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**BRINKS
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The Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

A PROFESSIONAL CORPORATION
INTELLECTUAL PROPERTY ATTORNEYS

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Re: Ryobi Technologies, Inc. v. Milwaukee Electric Tool Corporation
Mark: Miscellaneous Design
Serial No.: 75/831,328
Our Case No.: 10710/146

SAN JOSE, CA
INDIANAPOLIS, IN
ANN ARBOR, MI
ARLINGTON, VA

Dear Sir/Madam:

Enclosed for filing is the following document:

1. Notice of Opposition (in dup.);
2. Filing fee in the amount of \$300.00.



10-17-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #76

The Assistant Commissioner is hereby authorized to charge payment of any additional filing fees required to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

If you have any questions, please contact the undersigned at the above telephone number.

Sincerely,

Thomas M. Williams

TMW/jlc
Enclosures

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COPYRIGHTS
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