

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

Mark: WILD GEESE
Serial No. 76/074,330
Filed: June 6, 2000
Published: January 28, 2003

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AUSTIN NICHOLS & CO., INCORPORATED,	:
	:
Opposer,	:
	:
v.	: Opposition No. 91155165
	:
STICHTING LODESTAR,	:
	:
Applicant.	:
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OPPOSER’S REPLY IN SUPPORT OF ITS MOTION TO RE-OPEN THE RECORD

Opposer Austin Nichols & Co., Inc. (“Opposer”) submits this reply pursuant to 37 C.F.R. § 2.127(a) in support of its Motion to Re-Open the Record in Order To Introduce Limited, Newly Discovered Evidence. Opposer believes a reply is necessary and appropriate to respond to Applicant’s mischaracterization of Opposer’s position on this motion.

ARGUMENT

First, Opposer has contended throughout this proceeding -- and still contends -- that materials relating to foreign trademark registrations and proceedings are not relevant to the instant proceeding and should be excluded from evidence. Opposer has made its position on this point very clear. Opposer first objected to Applicant’s attempts to introduce such materials in its initial brief dated February 18, 2005 (cited herein as “Opp. Mem.”), at 3, n. 2, and again in



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its reply brief filed April 8, 2005 (cited herein as "Opp. Rep.") at 19, citing Fuji Photo Film Co. Inc. v. Shinohara Shoji Kabushiki Kaisha, 225 U.S.P.Q. 540 (5th Cir. 1985).

Applicant, in contrast, has attempted to introduce evidence relating to foreign registrations and proceedings. In Applicant's brief dated March 18, 2005 (cited herein as "App. Mem."), Applicant discussed foreign registrations in numerous jurisdictions, and asserted that "the only two matters [proceedings in foreign jurisdictions involving the WILD GEESE designation and the WILD TURKEY marks] that have been decided by a tribunal have found in favor of Applicant." App. Mem. 14.

Thus, it is Applicant, not Opposer, whose arguments gave rise to this motion in the first place. Ironically, Applicant's response ignores its role in creating the present issue. Applicant now contends in its response that the New Zealand opinion is "irrelevant" (App. Response at 1), has "no probative value" (App. Response at 2), and is "completely irrelevant" (App. Response at 3). Opposer agrees, and reiterates that all references to activities in foreign jurisdictions (not just the New Zealand proceeding) should be excluded.

Second, Applicant mischaracterizes Opposer's stated reason for introducing the new evidence, specifically regarding the New Zealand decision. The purpose of Opposer's motion is to correct Applicant's statement that "the only two matters [proceedings in foreign jurisdictions involving the WILD GEESE designation and the WILD TURKEY marks] that have been decided by a tribunal have found in favor of Applicant." App. Mem. 14. That statement became no longer true when the High Court of New Zealand issued its opinion. Thus, in its motion, Opposer seeks to have the record accurate and complete in case the Board decides to consider evidence of foreign registrations and proceedings.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board re-open the record to allow Opposer to introduce newly discovered and limited evidence of the New Zealand Decision.

Dated: June 28, 2005

Respectfully submitted,

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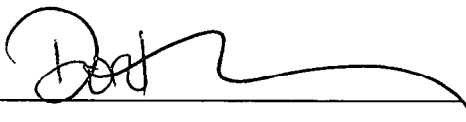
CERTIFICATE OF MAILING AND SERVICE

I certify that on June 28, 2005, the foregoing **OPPOSER'S BRIEF IN SUPPORT OF ITS MOTION TO RE-OPEN THE RECORD** is being deposited with the United States Postal Service by first-class mail addressed to:

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
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I further certify that on June 28, 2005, the foregoing **OPPOSER'S BRIEF IN SUPPORT OF ITS MOTION TO RE-OPEN THE RECORD** is being served by Federal Express Overnight Delivery addressed to:

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