

TTAB

VIVA 10.2-024

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

In the Matter of Application Serial No. 76/444,871
Filed: August 26, 2002
Published on April 15, 2003
Mark: **CARTEX - Class 014**



08-25-2003
U.S. Patent & TMO/tm Mail Rcpt Dt. #74

CARTIER, INCORPORATED AND
CARTIER INTERNATIONAL B.V.

Opposer,

v.

Opposition No. 91/157,213

VIVA TIME CORP.

Applicant.

August 21, 2003

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

ANSWER TO NOTICE OF OPPOSITION

Sir:

Applicant, **VIVA TIME CORP.**, through its attorneys, answers the Notice of Opposition, as follows:

- 1) Applicant does not have sufficient information to admit or deny the allegations of paragraphs 1, 8, and 9 and leaves Opposer to its proofs.
- 2) Applicant admits to paragraphs 2, 3, 4, 5, 6, 7, and 10 of the Notice of Opposition.
- 3) Applicant denies the allegations in paragraphs 11, 12, and 13.

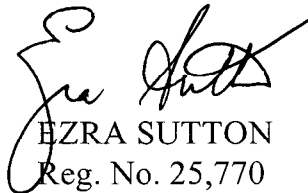
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AFFIRMATIVE DEFENSES

- 4) Opposer's allegations are barred by laches, acquiescence, and estoppel.
- 5) Opposer's trademark rights, if any, are limited to the mark **CARTIER**, which is dissimilar and is not confusingly similar to Applicant's mark **CARTEX**.
- 6) **CARTEX** is not confusingly similar to **CARTIER** since it has a distinguishable and different sound, appearance, spelling, connotation, and commercial impression.
- 7) Applicant's mark would not dilute opposer's mark **CARTIER**.
- 8) Opposer cannot claim exclusive rights to all marks in Class 14 with the prefix **CAR** or **CART** based on extensive third party usage in Opposer's field of goods.
- 9) Opposer does not satisfy the requirements for establishing dilution of a famous mark set forth in the U.S. Supreme Court decision in Moseley v. V. Secret Catalogue et al. 537 U.S. 418(2003).

Respectfully submitted,

EZRA SUTTON, P.A.
Attorneys for Applicant



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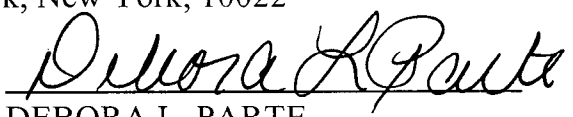
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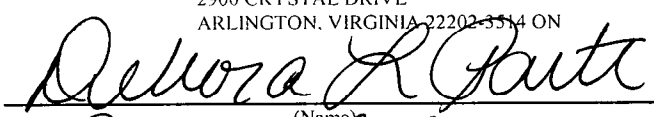
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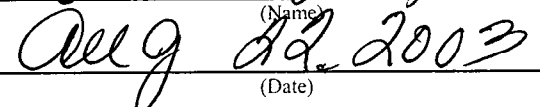
CERTIFICATE OF SERVICE

I, DEBORA L. PARTE, certify that applicant's **ANSWER TO NOTICE OF OPPOSITION** was served by fax and first-class, postage prepaid mail on this 22nd day of August, 2003 upon the attorneys for the Opposer, namely, Ethan Horwitz, Esq. of Goodwin Proctor, LLP, 599 Lexington Avenue, New York, New York, 10022


DEBORA L. PARTE

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE
AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO:
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VIRGINIA 22202-3514 ON



(Name)


(Date)