

ORIGINAL

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD



TREK BICYCLE CORPORATION, INC.)
)
Opposer,)
)
v.)
)
GREAT PLAINS MANUFACTURING)
INCORPORATED)
)
Applicant.)

02-27-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Opposition No. 91158673
Serial No. 78/182,435

APPLICANT'S MOTION TO FILE
FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION

Applicant, pursuant to Rule 15(a) F.R.Civ.P, and §507.02 of the TBMP, moves to amend its Answer by filing the First Amended Answer as accompanies this motion. In support of this motion, Applicant states:

(1) Both Rule 15(a) and §507.02 TBMP, state that the Board should liberally grant leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of adverse party or parties.

(2) The requested amendment merely corrects a typographical error which appeared in Paragraph 16 of the Answer, having left out the word "not." Paragraph 16 should have read and would now read after the amendment:

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as first class mail in an envelope addressed to BOX TTAB - NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on this 24th day of February, 2004.

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Dasuki Swain

“Applicant’s mark and Opposer’s claimed marks are not similar so as to cause a likelihood of confusion and a bar from registration pursuant to Section 15 USC §1052(d).”

(3) Applicant has consulted attorney for the Opposer, Ms. Mary Catherine Merz, who has consented to the filing of this First Amended Answer.

(4) The First Amended Answer does not change the Answer as filed in any way other than that as noted above with respect to Paragraph 16.

(5) The parties have just begun discovery, and this amendment does not change in any material manner, the discovery which the parties are undertaking.

WHEREFORE, the Applicant seeks leave of the Board to file the amended pleading as attached hereto as Exhibit 1, and requests that the same be filed as the First Amended Answer on behalf of the Applicant.

Respectfully submitted,
GREAT PLAINS MANUFACTURING CO., INC.

HOVEY WILLIAMS LLP

By  _____

Michael Elbein
Stephen D. Timmons
Cheryl L. Burbach
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
(816) 474-9050


ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Applicant's Motion to File First Amended Answer to Notice of Opposition was mailed, first class, postage prepaid, this 24~~th~~, day of February, 2004, to the following:

Mary Catherine Merz, Esq.
MERZ & ASSOCIATES, P.C.
1140 Lake Street, Suite 304
Oak Park, Illinois 60301

ATTORNEYS FOR OPPOSER



**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

TREK BICYCLE CORPORATION, INC.)	
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Opposer,)	Opposition No. 91158673
)	Serial No. 78/182,435
v.)	
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GREAT PLAINS MANUFACTURING)	
INCORPORATED)	
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Applicant.)	

**FIRST AMENDED ANSWER TO
NOTICE OF OPPOSITION**

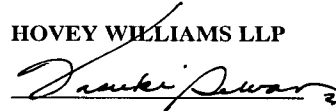
Applicant, Great Plains Manufacturing, Inc., in answer to the Notice of Opposition filed by Trek Bicycle Corporation states as follows:

1. Applicant admits the allegations of paragraph 1.
2. Applicant admits the allegations of paragraph 2.
3. Applicant admits the allegations of paragraph 3.
4. Applicant is without sufficient information to admit or deny the allegations of paragraph 4 and therefore, denies the same.
5. Applicant is without sufficient information to admit or deny the allegations of paragraph 5 and therefore, denies the same.

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HOVEY WILLIAMS LLP



6. Applicant is without sufficient information to admit or deny the allegations of paragraph 6 and therefore, denies the same.

7. Applicant is without sufficient information to admit or deny the allegations of paragraph 7 and therefore, denies the same.

8. Applicant is without sufficient information to admit or deny the allegations of paragraph 8 and therefore, denies the same.

9. Applicant is without sufficient information to admit or deny the allegations of paragraph 9 and therefore, denies the same.

10. Applicant is without sufficient information to admit or deny the allegations of paragraph 10 and therefore, denies the same.

11. Applicant is without sufficient information to admit or deny the allegations of paragraph 11 and therefore, denies the same.

12. Applicant admits that it has no license, consent or permission from Opposer to use or register TREKER as alleged in paragraph 12; Applicant states that it needs no license, consent or permission from Opposer to use or register Applicant's TREKER mark.

13. Applicant denies the allegations of paragraph 13.

14. Applicant denies the allegations of paragraph 14.

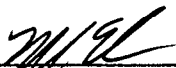
15. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

16. Applicant's mark and Opposer's claimed marks are not similar so as to cause a likelihood of confusion and a bar from registration pursuant to Section 15 USC §1052(d).

WHEREFORE, having fully responded, Applicant requests that the Notice of Opposition be dismissed.

Respectfully submitted,
GREAT PLAINS MANUFACTURING CO., INC.

HOVEY WILLIAMS LLP

By  _____

Michael Elbein
Stephen D. Timmons
Cheryl L. Burbach
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
(816) 474-9050


ATTORNEYS FOR APPLICANT

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Mary Catherine Merz, Esq.
MERZ & ASSOCIATES, P.C.
1140 Lake Street, Suite 304
Oak Park, Illinois 60301

ATTORNEYS FOR OPPOSER

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ttab

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February 24, 2004

02-27-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

VIA FIRST CLASS MAIL

Box TTAB - NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

**Re: Trek Bicycle Corporation v. Great Plains Manufacturing Incorporated
Opposition No. 91158673 re TREKER**

Dear Sir or Madam:

Enclosed please find the materials necessary for transmittal of Applicant's Motion to File First Amended Answer to Notice of Opposition regarding the above-referenced opposition, as follows:

1. Original and two copies of Applicant's Motion to File First Amended Answer to Notice of Opposition (with Exhibit A - First Amended Answer to Notice of Opposition) regarding the pending application for TREKER; and
2. A self-addressed stamped postal acknowledgment card.

Please do not hesitate to contact the undersigned at (816) 474-9051, Extension 386, if you have any questions.

Kind Regards,

Vasuki Selvan

Vasuki Selvan
Trademark Specialist

Enclosures