

ESTTA Tracking number: **ESTTA8932**

Filing date: **05/19/2004**

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

Proceeding	91160023
Party	Plaintiff Remington Products Company, L.L.C. Remington Products Company, L.L.C. 60 Main Street Bridgeport, CT 06604 UNITED STATES
Correspondence Address	BARRY A. COOPER GOTTLIEB, RACKMAN & REISMAN, P.C. 270 MADISON AVENUE, 8TH FLOOR NEW YORK, NY 10016 UNITED STATES
Submission	Opposer's Opposition to Applicant's Motion to Dismiss and Opposer's Motion for Sanctions and supporting declarations
Filer's Name	Barry A. Cooper
Filer's e-mail	bcooper@grr.com
Signature	/Barry A. Cooper/
Date	05/19/2004
Attachments	023Opp.Remington.Frederic.pdf (9 pages)

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

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REMINGTON PRODUCTS COMPANY, LLC,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91160023
	:	
FREDERIC REMINGTON TRUST 1861,	:	
	:	
Applicant.	:	
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**OPPOSER’S OPPOSITION TO APPLICANT’S MOTION TO DISMISS
AND
OPPOSER’S MOTION FOR SANCTIONS**

Opposer Remington Products Company LLC (“Opposer”), by its attorneys, submits this memorandum in opposition to the Motion to Dismiss filed by Applicant Frederic Remington Trust 1861 (“Applicant”). Opposer also seeks sanctions against Applicant for making false statements regarding service of the Motion to Dismiss and Applicant’s Answer. As a sanction, Opposer requests that the Board grant this Opposition. The declaration of Barry A. Cooper and the declaration of Marisol Lopez-DaRosso, are also submitted herewith.

The Motion to Dismiss

Applicant’s motion to dismiss is based entirely on the faulty premise that Opposer’s Notice of Opposition (“Notice”) was not filed until 125 days after the mark of the subject application was published for opposition purposes. The record will show that the subject mark was published for opposition on November 25, 2003 and that 120 days from the date of publication was March 24, 2004.

Applicant contends that the Notice was not filed until March 29, 2004, as indicated by the ESSTA records of the PTO.

Notwithstanding Applicant's argument, the record also shows that the Notice, along with the necessary filing fee, was mailed to the PTO via first class mail deposited with the U.S. Post Office on March 24, 2004, as indicated by the certificate of mailing annexed to the Notice. The declaration of Marisol Lopez-DaRosso, an employee in the office of Opposer's attorneys, confirms that the Notice was mailed on that date.

Trademark Rule §2.197(a) states, unambiguously, that a document shall be considered to be filed in the Office if it is mailed prior to the expiration period (§2.197(a)(1)(i)), if it is properly addressed and deposited with the U.S. Postal Service with sufficient postage as first class mail (§2.197(a)(1)(i)(B)), and if it includes a signed certificate of such mailing (§2.197(a)(1)(ii)). Filing a notice of opposition by mailing the same pursuant to 37 CFR §2.197 is expressly recognized as an authorized method of filing. TBMP §306.01.

Since the Notice was sent to the PTO pursuant to Rule §2.197 and since Opposer complied with the requirements thereof, Opposer's Notice must be deemed to have been filed as of March 24, 2004, the 120th day for opposing Applicant's application.

The Motion for Sanctions

Applicant's Motion to Dismiss includes a certificate of service which states that a copy of the motion was served on counsel for Opposer, by mail, "on the 6th day of May, 2004." The certificate is signed by an "M. Lim".

Applicant's Answer likewise has a certificate of service indicating that it was served on May 6, 2004.

Contrary to Applicant's representation, and as indicated by the envelopes annexed to the Cooper declaration, the motion was not mailed until May 13, 2004 – one week later than as stated by Applicant. The same is true of Applicant's Answer.

This discrepancy cannot be explained by Applicant representing itself pro se. One does not have to be an attorney to know the date that something is mailed. The statement is a flagrant misrepresentation of each date of service and, as indicated by the envelopes, is an out-and-out lie.

Perhaps Applicant wished the Board to believe that Opposer would file its opposition to the Motion to Dismiss in an untimely fashion – it would be due on May 26, 2004, according to Applicant's certificate of service – rather than on June 2, 2004, as the envelope establishes. Perhaps Applicant wished that the Board would decide the motion before Opposer filed its opposition thereto. But whatever the reason, a lie is a lie and simply should not be tolerated.

Opposer therefore requests that the Board sanction Applicant, and as such a sanction, that the Opposition be sustained.

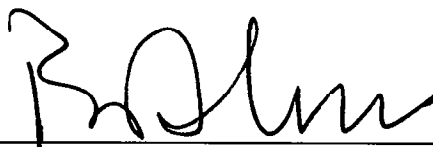
Conclusion

For the above reasons, Applicant's Motion to Dismiss should be denied, and Opposer's Motion for Sanctions should be granted.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.
George Gottlieb
Barry A. Cooper
Steven Stern
Attorneys for Opposer
270 Madison Avenue
New York, New York 10016
(212) 684-3900

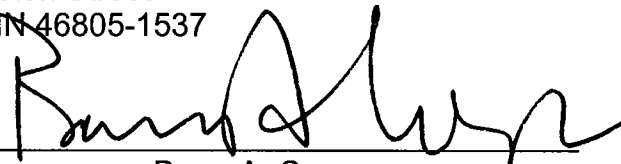
Dated: New York, New York
May 19, 2004

By 
Barry A. Cooper

CERTIFICATE OF SERVICE

I, Barry A. Cooper, hereby certify that a true and correct copy of the foregoing **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS AND OPPOSER'S MOTION FOR SANCTIONS, DECLARATION OF BARRY A. COOPER and DECLARATION OF MARISOL LOPEZ-DAROSSO** were mailed by First Class Mail, postage prepaid, this day of May, 2004 to:

S.H. Yoo, Trustee, in Pro Se
Frederic Remington Trust 1861
c/o Dean Shideler, Consultant
3539 Rolston Street
Fort Wayne, IN 46805-1537

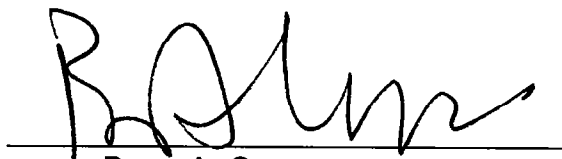

Barry A. Cooper

CERTIFICATE OF FILING

I hereby certify that a copy of **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS AND OPPOSER'S MOTION FOR SANCTIONS, DECLARATION OF BARRY A. COOPER and DECLARATION OF MARISOL LOPEZ-DAROSSO** were filed by ESTTA to:

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202

on May 19, 2004.



Barry A. Cooper

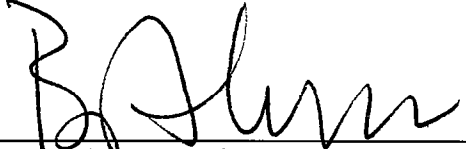
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REMINGTON PRODUCTS COMPANY, LLC,	:	
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Opposer,	:	
	:	
v.	:	Opposition No. 91160040
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FREDERIC REMINGTON TRUST 1861,	:	
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Applicant.	:	
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DECLARATION OF BARRY A. COOPER

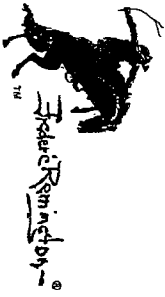
Barry A. Cooper, under penalty of perjury, declares as follows:

1. I am one of the attorneys for Opposer in the above matter. I submit this declaration in support of Opposer's Motion for Sanctions against Applicant.
2. Applicant's certificate of service on its Notice to Dismiss states that a copy of the motion was mailed to Opposer's counsel on May 6, 2004.
3. Annexed hereto is a true copy of the envelope received from Applicant in which the Motion to Dismiss was received. Also annexed hereto is a true copy of the envelope in which Applicant's Answer was received. The postmark on each envelope is May 13, 2004.



Barry A. Cooper

Dated: New York, New York
May 19, 2004



Frederic Remington Trust 1861
 c/o Dean Shideler
 3539 Rolston St.
 Fort Wayne, IN 46805

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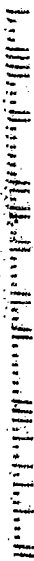


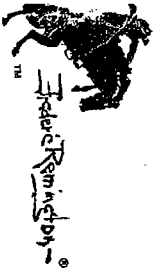
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Gottlieb, Rakman & Reisman, P.C.
 Steve Stern
 270 Madison Ave
 New York, New York 10016

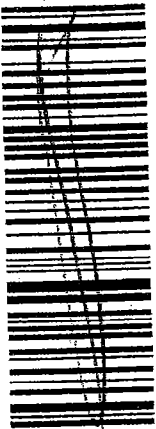
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Frederic Remington Trust 1861
 c/o Dean Shideler
 3539 Rolston St.
 Fort Wayne, IN 46805

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Steve Stern
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New York, New York 10016

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	:	
FREDERIC REMINGTON TRUST 1861,	:	
	:	
Applicant.	:	
-----X		

DECLARATION OF MARISOL LOPEZ-DAROSSO

Marisol Lopez-DAROSSO, under penalty of perjury, declares as follows:

1. I am an employee at Gottlieb, Rackman & Reisman, P.C., attorneys for Opposer in the above matter. I submit this declaration in opposition to Applicant's Motion to Dismiss.

2. I am the person who signed the Certificate of Mailing of the Notice of Opposition in the above matter.

3. I reiterate that two copies of the Notice of Opposition, along with a check for the filing fee, were sent by first class U.S. Mail, postage prepaid, in an envelope addressed to "Box TTAB Fee, Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202" on March 24, 2004.


Marisol Lopez-DaRosso

Dated: New York, New York
May 19, 2004