

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

Riddell, Inc. and )  
Ridmark Corporation, )  
 )  
Opposers, )  
v. )  
 )  
Century Incorporated, )  
 )  
 )  
Applicant. )

Opposition No. 91160109  
Serial No.: 76/449,114



Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

03-01-2005  
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

**APPLICANT’S MOTION TO DISMISS FOR FAILURE  
TO PROSECUTE AND SUPPORTING BRIEF**

Century Incorporated (“Applicant”), moves for dismissal of the opposition pursuant to 37 CFR § 2.132(a). In support of its motion, Applicant states:

1. In their Notice of Opposition, filed on April 1, 2004, Opposers alleged, *inter alia*, that (a) they are the owners of five registered trademarks, (b) the goods sold by the parties under their respective marks “are identical and/or substantially similar and/or related;” (c) the similarity in the parties’ respective marks is likely to cause confusion, mistake and/or deception, and (d) registration of Applicant’s mark will damage Opposers.

2. In its Answer to the Notice of Opposition, Applicant denied Opposers’ allegations.

3. Applicant’s denial of the material allegations set forth in the Notice of Opposition placed Opposers on notice.

4. The discovery period closed on October 2004.

5. The Opposers' testimony period closed on January 28, 2005.

6. Opposers failed to offer any evidence during their testimony period to support the allegations set forth in their Notice of Opposition.

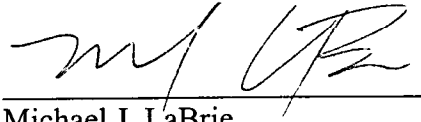
7. Applicant is entitled to seek immediate judgment in its favor pursuant to 37 CFR § 2.132(a), which provides in pertinent part: “[i]f the time for taking testimony of any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may ... move for dismissal on the ground of the failure of the plaintiff to prosecute.”

8. Absent Opposers' proof of excusable neglect, the opposition should be dismissed with prejudice. *Polyjohn Enters. Corp. v. 1-800 TOILETS Inc.*, 61 U.S.P.Q.2d 1860 (TTAB 2002) (dismissing opposition proceeding for failure to prosecute upon a finding that Opposer's failure to present evidence during its testimony period was not the result of excusable neglect) *Atlanta-Fulton County Zoo Inc. v. DePalma*, 45 U.S.P.Q.2d 1858 (TTAB 1998) (same); *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 U.S.P.Q.2d 1710 (Fed. Cir. 1991) (affirming dismissal of trademark opposition for failure to prosecute where Opposer failed to submit evidence during its testimony period); *Sanyo Watch Co. v. Sanyo Electric Co.*, 691 F.2d 1019, 215 U.S.P.Q. 833 (Fed. Cir. 1982) (same).

9. The instant motion is timely filed. Applicant's testimony period opens on February 28, 2005. See TTAB Manual of Procedure, §534.02(2003), which provides in pertinent part “[a] motion for judgment under 37 CFR §2.132(a) should be filed before the opening of the moving party's testimony period....”

10. For the reasons set forth above, Applicant respectfully requests the Board grant its Motion to Dismiss and dismiss Opposers' opposition with prejudice.

Respectfully submitted,



February 24, 2005  
Date

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing correspondence was hand-delivered this 24th day of February, 2005 to:

Jeffrey R. Gargano  
Peter M. Siavelis  
Wallenstein Wagner & Rockey, Ltd.  
311 South Wacker Drive, 53<sup>rd</sup> Floor  
Chicago, IL 60606-6630

Attorneys for Opposers

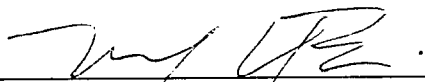
Dated: February 24, 2005

  
\_\_\_\_\_  
Michael J. LaBrie

CERTIFICATE OF MAILING

I hereby certify that the foregoing correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Arlington VA 22313-1451, on February 24, 2005.

Dated: February 24, 2005

  
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Michael J. LaBrie

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**REVOCAION AND REAPPOINTMENT OF POWER OF ATTORNEY**

Applicant, Century Incorporated, hereby revoke all previous Powers of Attorney granted by them in the above Opposition, and hereby appoint McAfee & Taft as its attorneys, including the following attorneys to litigate the above-referenced Opposition, and to transact all business in the Patent and Trademark Office in connection therewith:

C. Clark Dougherty, Jr., Registration No. 24,208;  
E. Harrison Gilbert, III, Registration No. 29,156;  
Neal R. Kennedy, Registration No. 31,383;  
Clifford C. Dougherty, III, Registration No. 31,607;  
William D. Hall, Registration No. 35,535  
Anthony L. Rahhal, Registration No. 37,562;  
Michael J. LaBrie, Registration No. 39,507;  
Jean L. Pinkston, Registration No. 45,014;  
Barbara Krebs Yuill, Registration No. 54,562;  
Michael D. McClintock;  
J. Bradley Klepper;  
Jennifer B. Rader; and  
Charles L. McLawhorn, III;

all of McAFEE & TAFT, Tenth Floor, Two Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102, Telephone No. (405) 235-9621, each a member of the Bar of the State of Oklahoma.

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FAX No. (405) 235-0439

All previous Powers of Attorney of Applicant in the subject Opposition are hereby  
revoked.

CENTURY INCORPORATED

2-22-05

Date

By Steve M. Meston  
Steve M. Meston  
Chief Financial Officer/Treasurer

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I hereby certify that a true and correct copy of the foregoing correspondence was hand-delivered this 24th day of February, 2005 to:

Jeffrey R. Gargano  
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Michael J. LaBrie