

IN THE U.S. PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LCN Apparel, Inc. v. YM Inc. (Sales))
)
Opposition no. 91161164)
)
Ser. no. 76353682)

MOTION TO ACCEPT LATE-FILED ANSWER

YM inc. (Sales) (“YM”) moves the Board to accept the accompanying late-filed answer in these proceedings. As discussed below, the answer should be accepted because 1) the delay in filing the answer was not the result of willful conduct or gross neglect on the part of the defendant, 2) the opposer LCN Apparel, Inc. will not be substantially prejudiced by the delay, and 3) the defendant has a meritorious defense to the action.

The delay was the result of the deadline for the answer not being properly docketed in the office of the undersigned attorney. Two separate oppositions have been filed against this application, this being the second. The deadline for answering the first opposition was accurately docketed, and the undersigned conjectures that docketed deadline for the first opposition caused the deadline for the second opposition to be overlooked. YM had no awareness or part in the mistake, and this motion is being filed immediately upon the error being brought to the counsel’s attention.

Because the answer is being filed less than four weeks late, and there is a prior pending opposition against the same application, it does not appear that there can be substantial prejudice to the opposer.

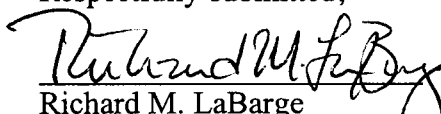
YM also has a meritorious defense based on the fact that the opposer’s alleged ESCO mark for clothing must be relatively weak, since it was registered over a prior registration for



ECKO UNLTD. for clothing. Given that it appears that clothing purchasers are able to recognize that ESCO clothes and ECKO UNLTD. clothes come from different sources, they are similarly likely to recognize that the applicant's EXCO products come from yet another source. The applicant is not aware of any instance of actual confusion, and no such instance has been alleged by either of the opposers.

Consequently, pursuant to TBMP 312.02, the answer should be accepted.

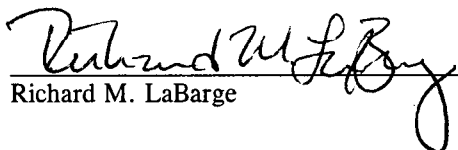
Respectfully submitted,


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September 9, 2004

Certificate of Mailing and Service

I certify that this document is being filed on this date with the Patent and Trademark Office pursuant to 37 CFR section 1.8 and served on this date upon opposing counsel by mailing a copy by first class mail to Peter Vranum, Janvey, Gordon, Herlands, Randolph & Cox, 355 Lexington Avenue, New York, New York 10017.


Richard M. LaBarge

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09-13-2004

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

ANSWER TO OPPOSITION

In response to the July 6, 2004 notice of opposition, YM inc. (Sales) (“YM”) responds to the numbered paragraphs of the June 21, 2004 opposition (repeated below) as follows:

1. Opposer, LCN Apparel, Inc., is now and has been engaged in the design, sale and distribution of clothing, footwear and headwear products, including, but not limited to men’s, women’s and children’s clothing, namely sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, visors, caps, dresses, shoes, sneakers, boots, wristbands, socks, t-shirts, belts, undergarments, neckties, dress shirts, collared shirts, rugby shirts, knit shirts, shorts and sandals.

Response: YM is without knowledge or information sufficient to form a belief as to the truth of the averment of this paragraph.

2. Opposer has used and presently uses the mark “ESCO” in connection with the design, sale and distribution of the products identified in paragraph 1.

Response: YM is without knowledge or information sufficient to form a belief as to the truth of the averment of this paragraph.

3. Opposer is the owner of a trademark registration for “ESCO” (Registration No. 2,588,727 dated July 2, 2002). A copy of the trademark office database page setting forth the particulars of this registration is annexed hereto as Exhibit A.

Response: YM admits that a TESS printout is attached to the copy of the opposition that YM received and that the printout reflects the current data in the TARR system, but is without knowledge or information sufficient to form a belief as to whether LCN is still the owner of the cited registration.

4. Since on or about at least February, 1998, Opposer has used and continues to use in interstate commerce the mark "ESCO" in connection with the various products described in paragraph 1 herein extensively throughout the United States. By reason of such extensive use and promotion, Opposer has attained an enviable reputation for high standards of quality, and the mark ESCO and variations thereof have become distinctive of an associated in the minds of the trade and purchasing public with the Opposer.

Response: YM is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

5. Both Applicant's mark and Opposer's mark are nearly identical, the only difference being that Applicant's mark has the letter "X" as its second letter, while the Petitioner's [sic] mark has the letter "S." The marks are nearly identical in sound and appearance and have a similar commercial impression. The goods of the Applicant are related and/or identical to the various products of Opposer as described in paragraph 1 herein, and are likely to move within the same channels of trade and be purchased by the same class of purchaser. It is clear that Applicant's mark is likely, when used in association with the goods of Applicant, to cause confusion or to deceive purchasers in the mistaken belief that the goods of Applicant emanate from, are offered for sale, or are sold by Opposer or under Opposer's approval, sponsorship or control, all to the great damage of Opposer.

Response: YM denies that the marks are "nearly identical" and "nearly identical in sound and appearance," and denies that the mark will have the affect stated. YM admits that the only difference is spelling is in the second of the four letters, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

6. Opposer believes that Applicant's selection of the mark EXCO may take advantage of the nationwide reputation of Opposer and its mark EXCO, and related marks, and may take advantage of the goodwill of Opposer gained by extensive and persistent advertising and expenditures of large sums of money therefore, and if continued in commerce, will be likely to confuse, mislead or deceive the trade and members of the public in suggesting to them that Applicant's mark identifies goods sold, sponsored or approved by Opposer or to suggest falsely a trade connection between Opposer and Applicant.

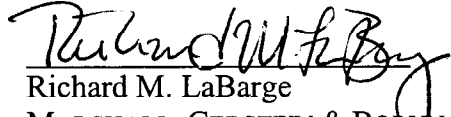
Response: YM is without knowledge or information sufficient to form a belief as to what LCN actually believes, but denies that the stated conjecture is accurate.

7. If specified goods of Applicant are inferior in quality, there will be irreparable injury to opposer's valuable goodwill and its registered marks. Furthermore, the

use and registration of the mark EXCO will dilute the distinctive character of
Opposer's valuable registered trademark ESCO.

Response: Denied.

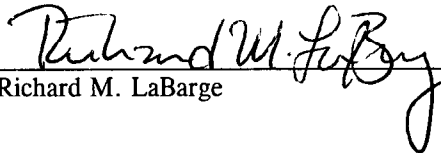
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