

LAW OFFICES
GABLE & GOTWALS
A PROFESSIONAL CORPORATION

1100 ONEOK PLAZA • 100 WEST FIFTH STREET • TULSA, OKLAHOMA 74103-4217
TELEPHONE 918/595-4800 • FAX 918/595-4990 • WWW.GABLELAW.COM

TTAB

February 20, 2006

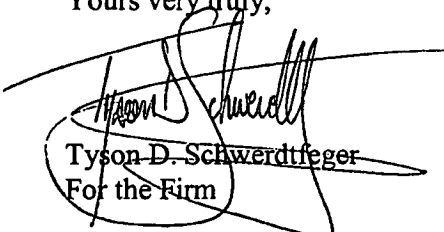
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: *Samar, LLC v. Arcticshield, Inc.*, Opposition No. 91153307,
Serial No. 76/509,382, Opposition No. 91163331, Serial No.
76/509,381

To Whom It May Concern:

Enclosed for filing is an original and three copies of Applicant's Answer to Amended Notice of Opposition. Please return a file-stamped copy to me in the enclosed self-addressed stamped envelope. Thank you for your assistance.

Yours very truly,


Tyson D. Schwerdtfeger
For the Firm

TDS:pw
Enclosure

STEVEN L. BARGHOIS
SARA F. BARRY
JOHN M. BENSON
GENE C. BUZZARD
DENNIS C. CAMERON
TIMOTHY A. CARNEY
CASON P. CARTER
PATRICK W. CIPOLLA
ERIK K. DAILEY
JOHN D. DALE
RENEE DENKOS
SIDNEY G. DUNAGAN
THEODORE Q. ELIOT
AMELIA A. FOGLEMAN
JOHN J. GRIFFIN, III
JEFFREY D. HUSSELL
OLIVER S. HOWARD
DAVID L. KEARNEY
DAVID E. KEGLOVITS
ERIC R. KING
STEPHEN W. LAKE
DOUGLAS J. MAY
SIEPPARD F. MIERS, JR.
J. DANIEL MORGAN
JOSEPH W. MORRIS
ELIZABETH R. MURATET
RAMA A. NASREDDINE
DANIEL A. NICKEL
RICHARD B. NOUILLES
MICHAEL L. PATE
MASON G. PATTERSON
TERRY D. RAGSDALE
JEFFREY C. RAMBACH
RONALD N. RICKETS
ROB F. ROBERTSON
SCOTT R. ROWLAND
STEPHEN A. SCHULLER
TYSON D. SCHWERDTFEGER
LISA TRAYLOR SILVESTRI
M. BENJAMIN SINGLETARY
LEISA M. STEWART
AMY M. STIPE
JAMES M. STURDIVANT
SIDNEY K. SWINSON
MIA WAHLBERG
JEREMY K. WEBB*
BRADLEY W. WELSH

OF COUNSEL
FRANK J. CATALANO*
RICHARD W. GABLE
CHAD M. HIRCHIS
PAUL H. JOHNSON*
LINDA A. KING
MICHAEL E. SELLERS*
JOSEPH T. TIAU

RETIRED
JOHN L. ARRINGTON
CHARLES P. GOTWALS
DONALD A. KIHLE

*also registered in the
U.S. Patent/Trademark Office

*admitted to Texas
Oklahoma pending

G. ELLIS GABLE
(1903-2001)

FIFTEENTH FLOOR
ONE LEADERSHIP SQUARE
211 NORTH ROBINSON
OKLAHOMA CITY, OK 73102-710
TELEPHONE (405) 233-3300
FAX (405) 233-2873

GABLE

GOTWALS



02-24-2006

U.S. Patent & TMO/TM Mail Rcpt Dt. #34

{560159;}

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

SARAMAR, LLC,)	Opposition No.: 91163307
)	Serial No.: 76/509,382
Opposer,)	
)	
vs.)	
)	
ARCTICSHIELD, INC.,)	Opposition No.: 91163331
)	Serial No.: 76/509,381
Applicant.)	

APPLICANT'S ANSWER TO AMENDED NOTICE OF OPPOSITION

Applicant, ArcticShield, Inc., through its attorneys, hereby responds to the Opposer's Amended Notice of Opposition. Applicant answers the Amended Notice of Opposition as follows:

1. In response to the allegations of paragraph 1, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 1, and based thereon denies each and every such averment.

2. In response to the allegations of paragraph 2, Applicant admits an application to register the trademark EX-SCENT Serial No. 78-110,238, for "thermal underwear, tops and bottoms, shirts, T-shirts, pants, turtlenecks, mock turtlenecks, underwear" has been allowed by the USPTO. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments that Opposer filed this application on February 21, 2002, and based thereon denies each and every such averment. Applicant denies all other averments of paragraph 2.

3. In response to the allegations of paragraph 3, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 3, and based thereon denies each and every such averment.

4. In response to the allegations of paragraph 4, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 4, and based thereon denies each and every such averment.

5. In response to the allegations of paragraph 5, Applicant admits the averment that Applicant seeks to register X SCENT & Design for "clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls" and denies all other averments of paragraph 5.

6. The averments of paragraph 6 are denied.

7. The averments of paragraph 7 are denied.

8. The averments of paragraph 8 are denied.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts the following:

Abandonment of Opposer's Application for Registration

9. The allegations of paragraphs 1-8 are incorporated herein by reference.

10. Opposer's intent-to-use application 78-110,238 for the mark "EX-SCENT" was allowed on June 17, 2003.

11. Opposer's cut-off date for filing a Statement of Use or Request for Extension of Time was December 17, 2003.

12. Opposer's application was abandoned on December 18, 2003 for failure to timely file a Statement of use or Request for Extension of Time.

13. Opposer's first use of the mark "EX-SCENT" is alleged to have occurred on December 31, 2003, after the date of abandonment of Opposer's application.

14. Applicant's intent-to-use application for the mark "X SCENT" and the mark "X

SCENT AND DESIGN" was filed on April 25, 2003, before the dates of abandonment of Opposer's application and before the first use by Opposer of the mark EX-SCENT.

15. Applicant's first use of the mark "X SCENT" and the mark "X SCENT AND DESIGN" occurred in August, 2003 and, therefore, Applicant is the senior user in this opposition.

16. Applicant has continuously used the mark "X SCENT" and the mark "X SCENT AND DESIGN" since the date of first use.

17. Applicant's intent-to-use application filing date precedes the date of abandonment of Opposer's application and, therefore, Applicant is the senior applicant in this opposition.

18. Opposer's abandoned application cannot be revived to priority over the right of a senior user and senior applicant for registration.

Acquiescence, Laches and/or Estoppel

19. The allegations of paragraphs 1-18 are incorporated herein by reference.

20. Opposer's failure to timely file a request for extension of time resulted, by statute, in abandonment of Opposer's application 78-110,238 on December 18, 2003.

21. The USPTO entered its notice of abandonment of Opposer's application 78-110,238 on April 6, 2004.

22. On April 12, 2004, the USPTO advised Applicant that Opposer's application was abandoned and that consideration of Opposer's application 78-110,238 as a potential bar to registration of Applicant's mark was withdrawn.

23. Opposer did not file a petition to revive its abandoned application until May 26, 2004, more than five months after Opposer allowed its application 78-110,238 to become abandoned and almost two months after the Notice of Abandonment was entered.

24. Applicant relied on Opposer's abandonment and Applicant's resulting superior rights.

25. Applicant's reliance has been to its great detriment and material prejudice in that Applicant has expended large sums of money in furtherance of its mark and has created considerable, valuable goodwill related thereto.

26. Opposer is estopped by acquiescence, laches and/or estoppel from asserting its trademark application No. 78-110,238 that it permitted to become abandoned.

Prior Innocent Adoption

27. The allegations of paragraphs 1-26 are incorporated herein by reference.

28. Applicant adopted, applied for registration of and used its mark without knowledge of Opposer's then pending application 78-110,238.

29. Applicant's use of its mark X SCENT and the mark X SCENT AND DESIGN was initiated prior to Opposer's use of the mark EX-SCENT.

30. Applicant has established an association of its marks with Applicant and Applicant's goods and has created in the mind of the relevant purchasing public an association of its mark with a single source for the goods.

No Likelihood of Confusion

31. The allegations of paragraphs 1-30 are incorporated herein by reference.

32. There is no likelihood of confusion of the marks of Applicant and Opposer by members of the relevant purchasing public.

Failure to State a Claim

33. The allegations of paragraphs 31-32 are incorporated herein by reference.

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

granted.

APPLICANT'S COUNTERCLAIM FOR CANCELLATION

ArcticShield, Inc., believes that it is and will be damaged by Registration No. 2,913,784 and hereby petitions to cancel same.

Description of Saramar's registration: Filed on February 21, 2002 for the mark "EX-SCENT" registered on December 21, 2004, on the Principal Register in International Class 25 for "thermal underwear, tops and bottoms, shirts, T-shirts, pants, turtlenecks, mock turtlenecks, underwear."

As grounds for cancellation, ArcticShield, Inc. alleges:

1. Saramar, LLC applied for, and ultimately obtained, a registered trademark for the mark "EX-SCENT" for "thermal underwear, tops and bottoms, shirts, T-shirts, pants, turtlenecks, mock turtlenecks, underwear," identified as Registration No. 2,913,784.
2. Saramar filed its application for trademark on February 21, 2002, which was U.S. Trademark Application Serial No. 78/110,238 for the mark "EX-SCENT" for "thermal underwear, tops and bottoms, shirts, t-shirts, pants, turtlenecks, mock turtlenecks, [and] underwear" in International Class 25.
3. The PTO issued Notice of Allowance of the PTO document bearing the date of June 17, 2003.
4. As of December 18, 2003, due to failure to timely file a Statement of Use or a Request for Extension of Time to File a Statement of Use, Saramar's application was abandoned.
5. On December 18, 2003, Saramar filed a Request for Extension of Time to File a Statement of Use asserting a mailing date of June 24, 2003 for the Notice of Allowance.
6. On March 27, 2004, the USPTO provided Saramar with Notice of Late Received

Document specifically stating that Saramar's Request for Extension of Time to File a Statement of Use was due on December 17, 2004.

7. The USPTO entered Notice of Abandonment of Saramar's application 78/110,238 on April 6, 2004.

8. Saramar's Petition to Revive its abandoned application, filed on or about May 20, 2004, asserts that the due date for Saramar's Request for Extension of Time was December 24, 2003.

9. ArcticShield, Inc., is the owner of U.S. Trademark Application Serial No. 76/509,381 for the mark "X SCENT" and U.S. Trademark Application Serial No. 76/509,382 for the mark "X SCENT and design" for "clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls," in International Class 25.

10. On April 12, 2004, the USPTO advised ArcticShield that Saramar's application was abandoned and that consideration of Saramar's application 78/110,238 as a potential bar to registration of ArcticShield's mark was withdrawn.

11. Subsequent to the abandonment of Saramar's application, the PTO approved and published ArcticShield's applications Serial Nos. 76/509,381 and 76/509,382, on August 3, 2004, and July 27, 2004, respectively.

12. ArcticShield's first use of the mark "X SCENT" and the mark "X SCENT and design" occurred in August 2003, and ArcticShield has continuously used the mark "X SCENT" and the mark "X SCENT and design" since the date of first use.

13. ArcticShield was and is damaged by Registration No. 2,913,784 in that ArcticShield has expended large sums of money in furtherance of its marks and has created considerable, valuable goodwill related to its own marks subsequent to Saramar's abandonment

of its application.

14. Furthermore, Registration No. 2,913,784 should never have issued due to the abandonment of Saramar's application and the USPTO's allowance of ArcticShield's applications Serial Nos. 76/509,381 and 76/509,382, subsequent to Saramar's abandonment of its application.

WHEREFORE, ArcticShield, Inc. prays that Registration No. 2,913,784 be cancelled and this Petition for Cancellation be sustained in favor of ArcticShield, Inc.

RELIEF REQUESTED

ArcticShield asks that this opposition proceeding be dismissed, that Saramar's Registration No. 2,913,784 be cancelled, and that ArcticShield's registrations be issued forthwith.

Respectfully submitted,



Frank J. Catalano, Reg. #25836

iplaw@gablelaw.com

GABLE & GOTWALS

1100 ONEOK Plaza

100 West Fifth Street

Tulsa, OK 74103-4217

(918) 595-4800

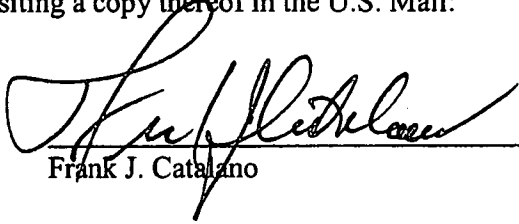
(918) 595-4990 (fax)

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2006, was served via first class mail, postage prepaid, upon the following by depositing a copy thereof in the U.S. Mail:

Nicholas J. Valenziano, Jr.
1000 East Hanes Mill Road
Winston-Salem, NC 27105



Frank J. Catalano