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

Proceeding	91169664
Party	Defendant Coleman Natural Products, Inc. Coleman Natural Products, Inc. Suite 200 1767 Denver West Marriott Road Golden, CO 80401
Correspondence Address	Jan N Steiert Holme Roberts & Owen LLP 1700 Lincoln Street, Suite 4100 Denver, CO 80203
Submission	Answer and Counterclaim
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Date	04/19/2006
Attachments	Answer and Counterclaim.pdf (11 pages)(398958 bytes)

Registration Subject to Cancellation

Registration No	2522997	Registration date	12/25/2001
Registrant	Coleman Company, Inc., The 3600 North Hydraulic Avenue Wichita, KS 67219 UNITED STATES		
Goods/Services Subject to Cancellation	Class 029. First Use: 2000/10/00 , First Use In Commerce: 2000/10/00 Goods/Services: Pre-packaged food combinations consisting primarily of meat, cheese and/or processed fruit, for use in camping		

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

THE COLEMAN COMPANY, INC.,	:	
	:	
Opposer,	:	Opposition No. 91169664
	:	
v.	:	
	:	
COLEMAN NATURAL PRODUCTS, INC.	:	Mark: COLEMAN and Design
	:	(International Class 29)
	:	
Applicant.	:	

U.S. Trademark App. Ser. No. 78/429,021

ANSWER TO NOTICE OF OPPOSITION

AND COUNTERCLAIM OF COLEMAN NATURAL PRODUCTS, INC.

Applicant, Coleman Natural Products, Inc., respectfully submits this Answer to the Notice of Opposition and its Counterclaim.

ANSWER

Applicant denies all allegations that are not expressly admitted, and further states as follows:

As to the preliminary paragraph, Applicant admits that it is the applicant for the mark COLEMAN and design, U.S. Trademark Application Serial No. 78/429,021, for use in connection with "Fresh, frozen and processed meats," filed June 2, 2004, and published for opposition in the *Official Gazette* of September 20, 2005. Applicant is without sufficient information to admit or deny the remaining allegations of the preliminary paragraph, and therefore denies the same.

1. Applicant admits the allegations of paragraph 1.

2. Applicant is without sufficient knowledge or information to admit or deny the allegations of paragraph 2, and therefore denies the same.

3. Applicant is without sufficient knowledge or information to admit or deny the allegations of paragraph 3, and therefore denies the same.

4. Applicant is without sufficient knowledge or information to admit or deny the allegations of paragraph 4, and therefore denies the same.

5. Applicant is without sufficient knowledge or information to admit or deny the allegations of paragraph 5, and therefore denies the same.

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

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

10. Applicant denies the allegations of paragraph 10.

11. Applicant denies the allegations of paragraph 11.

12. Applicant is without sufficient knowledge or information to admit or deny the allegations of paragraph 12, and therefore denies the same.

13. Applicant is without sufficient knowledge or information to admit or deny the allegations of paragraph 13, and therefore denies the same.

14. Applicant denies the allegations of paragraph 14.

15. Applicant denies the allegations of paragraph 15.
16. Applicant denies the allegations of paragraph 16.
17. Applicant denies the allegations of paragraph 17.

AFFIRMATIVE DEFENSES

1. Opposer's Notice fails to state a claim upon which relief can be granted.
2. Opposer's claims are or may be barred due to estoppel, waiver, laches, acquiescence and/or unclean hands.
3. Opposer's claims are or may be barred, in whole or in part, due to abandonment.

Applicant reserves the right (a) to rely upon such other affirmative defenses as may be supported by the facts to be determined through full and complete discovery, and (b) to voluntarily withdraw any affirmative defense that may not be supported by the facts determined through discovery.

WHEREFORE, Applicant prays that this notice of opposition be dismissed and that U.S. Trademark Application Serial No. 78/429,021 be allowed to register.

COUNTERCLAIM

Applicant, a Delaware corporation, having a place of business at 1767 Denver West Marriott Road, Suite 200, Golden, Colorado 80401, believes that it is or will be damaged by the registration of U.S. Trademark Registration No. 2,522,997 and respectfully submits this counterclaim for cancellation of the same. As grounds for cancellation, Applicant alleges the following:

1. Opposer's mark should be cancelled for two principal reasons. First, Applicant has continuously and exclusively been using the Coleman name in connection with fresh, frozen and processed meats for the last 26 years pursuant to a fully registered mark for the mark

COLEMAN. That use predates the use by Opposer in connection with any potentially related goods by over 20 years. Second, Opposer has abandoned its use of the name COLEMAN in connection with products sold in Class 29.

2. On information and belief, Opposer, a Delaware corporation, having a place of business at 3600 North Hydraulic, Wichita, Kansas 67219, filed an application (U.S. Trademark Serial No. 75/526,282) for registration of the trademark COLEMAN on July 27, 1998 for use in connection with “sauces, condiments; and prepackaged foods for camping” in International Class 30. Upon examination, the description of goods and services contained in this application were required to be amended and Opposer amended the description to read “Pre-packaged food combinations consisting primarily of meat, cheese and/or processed fruit, for use in camping” in International Class 29, and “Pre-packaged food combinations consisting primarily of bread, crackers and/or cookies, sauces and condiments, namely, ketchup and hot sauces, sandwich spreads, namely mayonnaise and relish, nuts, spices, all for use in camping” in International Class 30 (the “Opposer’s Registration”).

3. In the application for Opposer’s Registration, Opposer claimed dates of first use of this mark as October, 2000.

4. On information and belief, Opposer’s Registration issued on December 25, 2001 on the Principal Register (U.S. Trademark Registration No. 2,522,997).

5. Opposer is a company that describes itself as “a leading manufacturer of outdoor equipment and camping gear.”

6. Applicant is in the business of selling meats and meat products.

7. In August, 1980, Applicant commenced use of the mark COLEMAN for meats and since that time has continuously used this mark in connection with its meats and meat products.

8. In addition, since August, 1980, Applicant has established a family of COLEMAN registered marks for its meats and meat products including COLEMAN, COLEMAN CLEAN, COLEMAN NATURAL ANGUS, COLEMAN NATURAL ANGUS BEEF and design, COLEMAN NATURAL BEEF, COLEMAN NATURAL BEEF and design, COLEMAN NATURAL MEATS, INC., COLEMAN NATURAL LAMB, COLEMAN RESERVE NATURAL ANGUS, and COLEMAN NATURAL.

9. Applicant owns the following registrations and pending applications for its COLEMAN marks (collectively, the “COLEMAN Marks”):

Mark	Registration No. and Date	Goods
COLEMAN	1,484,448 April 12, 1988	IC 29: Meats
COLEMAN CLEAN	2,292,309 November 16, 1999	IC 29: Meats and processed meats
COLEMAN NATURAL ANGUS	2,181,390 August 11, 1998	IC 29: Meats and processed meats
COLEMAN NATURAL ANGUS BEEF and Design	2,463,451 June 26, 2001	IC 29: Meats and processed meats
COLEMAN NATURAL BEEF	1,725,986 October 20, 1992	IC 29: Beef and processed beef
COLEMAN NATURAL BEEF and Design	2,341,380 April 11, 2000	IC 29: Meats and processed meats
COLEMAN NATURAL MEATS, INC.	1,740,025 December 15, 1992	IC 29: Meats and processed meats
COLEMAN NATURAL LAMB	2,930,449 March 8, 2005	IC 29: Fresh, processed, cooked and frozen lamb
COLEMAN RESERVE NATURAL ANGUS	2,945,088 April 26, 2005	IC 29: Meat and processed meats, namely beef

Mark	Registration No. and Date	Goods
COLEMAN NATURAL	78/544,128	<p>IC 29: Fresh, processed, cooked and frozen poultry, beef, pork, lamb and seafood; prepackaged cooked and uncooked meals consisting of poultry, beef, pork, lamb and seafood products</p> <p>IC 30: sauces, marinades, meat tenderizers; seasonings for use in the preparation of meat; condiments, namely ketchup, mustard, relish, flavored mayonnaise, spice blends, spice rubs and salsas</p> <p>IC 35: Retail kiosk services, namely a section within a retail supermarket or store which features fresh, processed, cooked and frozen poultry, beef, pork, lamb and seafood; prepackaged cooked and uncooked meals consisting primarily of poultry, beef, pork, lamb and seafood products; and sauces, marinades, meat tenderizers, seasonings for use in the preparation of meat; condiments, namely ketchup, mustard, relish, flavored mayonnaise, spice blends, spice rubs and salsas</p>
COLEMAN NATURAL	78/428,998	IC 29: Fresh, frozen and processed meats

Mark	Registration No. and Date	Goods
COLEMAN NATIVE NATURALS	78/469,255	IC 29: Fresh, processed, cooked and frozen poultry, beef, pork, lamb and seafood; prepackaged cooked and uncooked meals consisting primarily of poultry, beef, pork, and lamb and seafood IC 30: sauces, marinades, meat tenderizers; seasonings for use in the preparation of meat; condiments, namely ketchup, mustard, relish, flavored mayonnaise, spice blends, spice rubs and salsas IC 35: retail kiosk services, namely a section within a retail supermarket or store which features fresh, processed, cooked and frozen poultry, beef, pork, lamb and seafood and poultry, beef, pork, lamb and seafood products, namely prepackaged cooked and uncooked meals, sauces, marinades, meat tenderizers, seasonings for use in the preparation of meat, condiments, namely ketchup, mustard, relish, flavored mayonnaise, spice blends, spice rubs and salsas

10. U.S. Trademark Registration Nos. 1,484,448; 2,181,390; 1,725,986 and 1,740,025 are valid, subsisting and incontestable, uncancelled and unrevoked and are prima facie evidence of Applicant's rights to use said marks on the goods listed in the respective registrations.

11. As detailed in the application for Opposer's Registration, Opposer first began using its COLEMAN mark in connection with the prepackaged food combinations described in U.S. Trademark Registration No. 2,522,997 in October, 2000.

12. Applicant first commenced use of its COLEMAN Marks in 1980, almost twenty years prior to Opposer's date of first use of its COLEMAN mark in connection with prepackaged food combinations.

13. Further, upon information and belief, Opposer has made no use of its COLEMAN mark in commerce in connection with any goods described in U.S. Trademark Registration No. 2,522,997 for at least three consecutive years preceding the filing of this counterclaim for cancellation and Opposer has no good faith intent to resume such use.

14. Applicant's COLEMAN Marks were famous prior to any date upon which Opposer can demonstrate use of the mark shown by U.S. Trademark Registration No. 2,522, 997.

15. Opposer's Registration is identical to Applicant's mark COLEMAN as described in U.S. Trademark Registration No. 1,484,448 and when used in association with the goods claimed by said registration, so resembles this mark as to be likely to cause confusion, or to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C § 1052(d).

16. Opposer's Registration consists of the distinctive and dominant portion of all of Applicant's COLEMAN Marks and when Opposer's Registration is used in association with the goods claimed by said registration, so resembles Applicant's COLEMAN Marks as to be likely to cause confusion, or to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C § 1052(d).

17. Applicant's COLEMAN Marks have been in long-term, substantial, and widespread use, are famous, and is thus a valuable symbol that serves to identify Applicant as the source of all goods and services.

18. Over the course of more than a quarter of a century, Applicant's COLEMAN Marks have developed an outstanding reputation for quality among members of the retail supermarket, grocery store, specialty food store, health food stores and restaurant industries, as well as among the general public. Because of the COLEMAN Marks, the COLEMAN brand has become a nationally recognized seller of meats, meat products and related goods and services.

19. Applicant's COLEMAN Marks were famous prior to any date upon which Opposer can demonstrate use of the mark shown by U.S. Trademark Registration No. 2,522,997 in connection with prepackaged food combinations.

20. Opposer's mark shown by U.S. Trademark Registration No. 2,522,997 is confusingly similar to Applicant's famous COLEMAN Marks.

21. The mark depicted in U.S. Trademark Registration No. 2,522,997 so resembles Applicant's famous COLEMAN Marks as to falsely suggest a connection between Applicant and Opposer in violation of Section 2(a) of the Lanham Act, 15, U.S.C. § 1052(a).

22. The mark depicted in U.S. Trademark Registration No. 2,522,997 so resembles Applicant's famous COLEMAN Marks as to cause dilution of the distinctive quality of Applicant's Mark in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(c)

23. Based on the foregoing, the registration of the mark depicted in U.S. Trademark Registration No. 2,522,997 is likely to cause injury and damage to Applicant who will be irreparably harmed by the continued registration of such mark on the Principal Register of the United States Patent and Trademark Office for the goods recited in U.S. Trademark Registration No. 2,522,997.

24. In addition, by failing to use Opponent's Registration in connection with the goods recited in U.S. Trademark Registration No. 2,522,997 and with no good faith intent to

resume such use, Opposer has abandoned this mark, and Applicant respectfully requests that the Opponent's Registration be cancelled.

WHEREFORE, Applicant prays that its counterclaim be sustained and that U.S. Trademark Registration No. 2,522,997 be cancelled and that this Counterclaim be sustained in favor of Applicant.

The requisite filing fee of \$600.00 is hereby submitted with this Answer and Counterclaim.

Respectfully submitted this 19th day of April, 2006.

HOLME ROBERTS & OWEN^{LLP}



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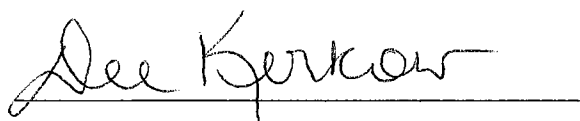
(719) 473-3800

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM OF COLEMAN NATURAL PRODUCTS, INC.** has been served on Opposer The Coleman Company., by mailing said copy on April 19, 2006, via First Class mail, postage prepaid, to:

Cindy L. Caditz
KLARQUIST SPARKMAN, LLP
999 Third Avenue, Suite 4200
Seattle, WA 98104
Tel: 206-264-2960

A handwritten signature in cursive script, reading "Dee Kerkow", is written over a horizontal line.