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

Proceeding	91169740
Party	Plaintiff Sprint Communications Company L P Sprint Communications Company L P ,
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Date	07/06/2007
Attachments	SPRINT'S - OPPOSER'S MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION.pdf (8 pages)(606367 bytes)

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

**In the Matter Of: Trademark Application No. 78/490750 for the mark MORE BARS
IN MORE PLACES in the United States**

SPRINT COMMUNICATIONS COMPANY L.P.

Opposer,

v.

CINGULAR WIRELESS II, LLC

Applicant.

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Opposition No. 91169740

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

**OPPOSER’S MOTION FOR LEAVE TO FILE
AMENDED NOTICE OF OPPOSITION**

Opposer, Sprint Communications Company LP (“Sprint”) hereby requests leave to amend the Notice of Opposition, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure.

Opposer submits that justice requires that such amendment be permitted because Applicant’s discovery responses have revealed additional grounds for denying registration to the Applicant’s Mark. Based on the discovery responses, Opposer believes that Applicant has in essence admitted its belief that its mark describes a feature of the intended goods and services. Opposer therefore seeks to add an alternative claim to deny

registration of the Applicant's Mark because it is merely descriptive under Section 2(e)(1) of the Trademark Act.

In particular, this amendment is prompted by, *inter alia*, Applicant's response to Opposer's Interrogatory 1(a). The Interrogatory reads as follows:

- (a) Was the alleged trademark created specifically to convey a message to the public?
- (b) If so, explain what the message was and locate and identify any supportive documents.

Applicant responded on June 13, 2007 as follows:

Subject to the general objections, Cingular responds that Opposer is in possession of all documents filed in the NAD Case and refers Opposer to those documents which fully describe the adoption of Applicant's Mark.

On June 22, 2007 Applicant further responded:

. . . please see Cingular's January 25, 2006 response to the Complaint filed in the NAD Case (Bates No. CIN 000014-CIN000034)

Applicant believes that the referenced documents support a determination that if the mark is not misdescriptive, it is descriptive. The referenced document in essence indicates that the response to Interrogatory No. 1(a) is "yes, the mark was adopted to convey a message." Moreover, Cingular uses the phrase "more bars in more places" in these documents in the manner of a merely informational slogan.

Opposer has not attached the referenced documents to this motion because Cingular's attorney has requested that the documents be designated as confidential pursuant to "the confidentiality provisions of the NAD Case and in anticipation of a protective order in this Opposition proceeding. " Opposer forwarded a draft Protective Order to the Applicant's attorney on June 26, 2007 and is awaiting Cingular's comments

on the draft and/or a signed copy of the Stipulation. When the Protective Order is finalized the documents shall be forwarded for the Board's review.

Opposer submits that the Applicant will not be prejudiced by the Amendment to the Notice of Opposition because, if need be, the discovery period may be reopened to allow discovery on the new claim.

Opposer's proposed Amended Notice of Opposition is attached.

Wherefore, Opposer requests that the Board grant this Motion for Leave to Amend, and accept the attached Amended Notice of Opposition to replace the original Notice of Opposition.

Respectfully submitted,


MARIE-ANNE MASTROVITO

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Attorneys for Opposer,
Sprint Communication Company L.P.

Date: July 6, 2007

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

**In the Matter Of: Trademark Application No. 78/490750 for the mark MORE BARS
IN MORE PLACES in the United States**

SPRINT COMMUNICATIONS COMPANY L.P.

Opposer,

v.

CINGULAR WIRELESS II, LLC

Applicant.

Opposition No. 91169740

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

AMENDED NOTICE OF OPPOSITION

Sprint Communications Company LP , a Delaware limited partnership, whose sole general partner is US Telecom, Inc., a Kansas corporation, located at 6200 Sprint Parkway, Overland Park, Kansas will be damaged by registration by the mark MORE BARS IN MORE PLACES, as shown in Serial No. 78/490750 for:

“Telephones, telephone accessories, and equipment, namely wireless telephones; batteries; chargers; telephone carrying cases, hands-free devices, and carrying clips for wireless telephones sold as a unit in combination with wireless telephones; microphones; audio receivers; speakers; transceivers; communications devices in the nature of wireless application protocol (WAP) receivers and transmitters; communications devices in the nature of GPRS protocol receivers and transmitters; data transceivers; telecommunications transmission equipment, components, switching, and network systems comprised of radio transmitters and receivers; antennas; switches; signal transfer point servers; signal control point servers; service resource platform servers; call routing servers and software for

the foregoing; computers and computer software for the activation and operation of wireless telecommunications services; machine readable magnetically encoded calling cards, caller identification cards, debit and credit cards; pagers; caller identification equipment; wireless handheld communication devices to transmit, receive, or otherwise access communications networks; and electronic equipment for entertainment namely computer game programs and computer game devices” in Class 9, and “telecommunications services, namely wireless transmission, uploading and downloading of voice, data, images, audio, video, signals, software, information, games, ring tones and messages; wireless telephone services; providing wireless calling plans; wireless voice messaging services; call forwarding services; wireless text and numeric digital messaging services; electronic mail services; paging services; facsimile transmission services; providing multiple user access to a global computer information network, the Internet, wide area networks, local area networks and private computer information networks; wireless roaming services; telematics services; telemetry services; telecommunications gateway services providing on-line electronic bulletin boards for transmission of messages among computer users concerning various topics; video conferencing services; television broadcasting and narrow-casting services” in Class 38.

As grounds for this Opposition, Opposer states that:

1. For the reasons recited below, Cingular’s mark MORE BARS IN MORE PLACES as applied to the goods and services in Applicant’s application is deceptive under 15 U.S.C. § 1052(a) and deceptively misdescriptive under 15 U.S.C. § 1052(e)(1).

2. In the alternative, if Applicant’s mark is not found to be deceptive or deceptively misdescriptive, it should be characterized as merely descriptive and denied registration under Section 2(e)(1) of the Trademark Act.

3. The mark MORE BARS IN MORE PLACES misdescribes and misrepresents the quality and other characteristics of Cingular’s goods and services, or in the alternative, is laudatory and merely descriptive of the quality and other characteristics of Cingular’s goods and services because:

(a) The word BARS in Cingular’s mark refers to the standard industry practice of using visual bars on the displays of wireless devices to

indicate wireless signal strength. Sprint, Cingular and others in the telecommunications industry use graphics identical or highly similar to the following for this purpose:



- (b) The more bars appearing on the display, the stronger the signal. Fewer bars indicate a weaker signal.
- (c) As a result, the phrase MORE BARS IN MORE PLACES mark implies that, in more markets or locations than not, Cingular's network and signal strength are superior.

4. On information and belief, documented facts concerning Cingular's goods and services show its claim of MORE BARS IN MORE PLACES to be false.

5. Even assuming that MORE BARS IN MORE PLACES accurately reflects that Cingular's network and signal strength are superior to its competitors, the mark would then be merely descriptive.

6. Prospective purchasers encountering the mark MORE BARS IN MORE PLACES are highly likely to believe that the mark is a laudatory reference to Cingular's alleged superior network and signal strength.

7. Network and signal strength are key factors in consumer's decisions to purchase telecommunications goods and services, and the claim of MORE BARS IN

MORE PLACES is therefore likely to materially affect purchasing decisions in the marketplace.

This Amended Notice of Opposition is submitted electronically. The filing fee has previously been paid.

Sprint requests that the Board sustain this opposition in Sprint's favor and refuse to register Application Serial No. 78/490750.

Respectfully submitted,



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*Attorneys for Opposer,
Sprint Communication Company L.P.*

Date: July 6, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION** was served by first class mail, postage prepaid, this 6th day of July, 2007, upon counsel for the Applicant:

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