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

Proceeding	91170575
Party	Plaintiff Central Mfg. Co. Central Mfg. Co. P.O. Box 35189 Chicago, IL 60707-0189 UNITED STATES
Correspondence Address	Leo Stoller Central Mfg. Co. 7115 W North Avenue #272 Oak Park, IL 60302 UNITED STATES ldms4@hotmail.com
Submission	Opposition/Response to Motion
Filer's Name	Leo Stoller
Filer's e-mail	ldms4@hotmail.com
Signature	/Leo Stoller/
Date	06/09/2006
Attachments	summitt_resmottodismiss.pdf (7 pages)(22830 bytes)

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

CENTRAL MFG. CO.,

Opposer,

v. Opposition No: 911170575

SUMMIT ENVIRONMENTAL CORPORATION INC. Trademark: FIREPOWER

Applicant.

RESPONSE TO MOTION TO DISMISS

NOW COMES the Opposer in response to Applicant's Motion to Dismiss, and states as follows:

The Opposer correctly filed on December 7, 2005 (Pearl Harbor Day), a 90 Day Extension for Good Cause.

"On December 7, 2005, 'Leo Stoller' as 'President' of 'Central Mfg. Co.' filed a First 90 Day Request for Extension of Time to Oppose for Good Cause on behalf of:

Central Mfg. Co. P.O. Box 35189, Chicago, Illinois 60707-0189, UNITED STATES, a corporation organized under the laws of Delaware.

See Exhibit 1. Subsequently, on March 31, 2006, a Notice of Opposition signed by 'Leo Stoller' was filed on behalf of 'CENTRAL MFG. CO., 7115 W. North Avenue #272, Oak Park, Illinois 60602."

The filings by Leo Stoller on December 7, 2005 and on March 31, 2006 are correct for the following reasons:

Applicant argues that Opposer's notice of opposition should be dismissed because it was filed in the name of Central Mfg. Co., which the Applicant alleges is not a legal entity and is not incorporated under the laws of Delaware. The Applicant attempts to support its decision by an interlocutory order in *Central Mfg. Co. v. Pure Fishing, Inc., et al.,* Case No. 05 C725. Judge Lindberg stated that "Central Mfg. Co. does not have the capacity to assert a claim within any Illinois court, state and federal, because Central Mfg. Co. has not registered in the State of Illinois to do business as a foreign corporation as required by 805 IL CS 5/13.70." An interlocutory finding that Central Mfg. Co. does not have the capacity within the Illinois court system to assert a claim, does not have any precedent value for the case at bar before the Trademark Trial and Appeal Board. Further, Judge Lindberg's interlocutory is not a final order.

In arguendo, even if Judge Lindberg's order was a final order, Judge David Coar in *Central Mfg. Co. et. al. v. George Brett Bros. Sports Intl., Inc.,* found otherwise and treated *Central Mfg. Co.* as a valid Delaware corporation. Likewise, Judge Hart in *Columbia Pictures Industries, Inc. v. Leo Stoller, et. al.,* Case No. 05 C 2052, also treated Central Mfg. Co. as a valid Delaware corporation. See attached. *Central Mfg. Co.,* as an assumed name or d/b/a of Central Mfg. Inc. cannot be recognized as a legally separable entity from Central Mfg. Inc. *Pekin Ins. Co. v. Estate of Goben,* 303 Ill. App. 3d 639 (5th Dist. 1999).

The argument before Judge Lindberg was whether or not *Central Mfg. Co.*

was properly registered in Illinois as the assumed name of Central Mfg. Inc. This would not be fatal to the Opposer's case because Illinois allows a party operating under an assumed name to sue and be sued even though it has failed to register that name under the Illinois Assumed Business Name Act. Institutional Management. Inc. *d/b/a* Power Media Group v. Barton Peck, 2002 U.S. Dist. LEXJS *24657* at *12(2002) (citing Thompson v. Cadillac, 187 Ill.App.3d 104, 543, N.E.2d 308, 310 (1st Dist. 1989); see also, Energy Boost LLC. d/b/a/ Dynamic Force v. Dynamic Force Ltd., 1999 U.S. Dist. LEXIS 4117 at * 10 (1999)(holding that plaintiffs' failure to document the basis for its d/b/a prior to that cannot be considered evidence that plaintiff had no rights to that name based on lack of standing.)

At least 100 times, the Board has recognized Central Mfg. Co. as a valid corporate entity, as well as the Federal Circuit. The Applicant' s attempt to allege and seek dismissal on Central Mfg. Co. not being a valid corporate entity is totally without merit. Central Mfg. Co. is a valid d/b/a for Central Mfg. Inc., a Delaware corporation, licensed to do business in the State of Illinois as Central Mfg. Co. of Illinois. The Opposer has also registered Central Mfg. Co. as a d/b/a in Delaware of Central Mfg. Inc.

Opposer's extension of time and notice of opposition were thus filed in the name of a valid, legal entity. Central Mfg. Co.

In Judge Lindberg's decision dated September 27, 2005, which dismissed without prejudice, the opposer's amended complaint, Judge Lindberg also stated that "there is no question that Central Mfg. Co. has retained exclusive ownership

of the Stealth mark." There can be no question that the Opposer is a valid corporate entity and holds rights to the STEALTH mark, giving it standing to pursue the said notice of opposition.

As an assumed name or d/b/a of Central Mfg. Inc., Central Mfg. Co. cannot be recognized as a legally separate entity. *See*, e.g., *Pekin Ins. Co. v. Estate of Goben, 303 Ill.App.3d 639, 646, 707 N.E.2d 1259 (Ill. App. 1999)(citing* Duval v. Midwest Auto City, Inc.,425 F.Supp. 1381, 1387 (D. Neb. 1977), aff'd 578 F.2d 721 (8th Cir. 1978)). Central Mfg. Is considered to be descriptive of Central Mfg. Inc. doing business under another name, and they are considered to be one and the same under the law. *Id.; see also, Bankcard America, Inc. v. Universal Bankcard Systems,* 904 F. Supp. 753, 758 (N.D. Ill. 1995).

Further, there can be no dispute but that the designations of Central Mfg. Inc. and Central Mfg. Co. are essentially the equivalent of the "Central Mfg. Co., a Delaware corporation" designation specified by the TTAB. The operative words are "Central Mfg.", which designate the proper name of the party, while the additional terms "Inc.", "Co." and "corporation" of course designate its status as an artificial or corporate entity. This is fundamental hornbook law since quite early in our nation's. *See, e.g., Goodyear's India Rubber Glove Manufacturing Co. v. Goodyear Rubber Co.,* 128 U.S. 598, 602-03 (1888)(holding the addition of the word "company" indicates that parties that parties have formed an association or partnership to operate in commerce and is not descriptive of a specific entity); *John Legnard v. Crane Co.,* 54 Ill. App. 149, 150 (Ill. App. Ct. 1894)(holding that the designation of "The Crane Co., a corporation, plaintiff",

contains surplusage – the words "a corporation" being unnecessary); *Agnello v. Chiaka,* 149 N.Y.S.2d 119, 119-20 1955 (N.Y. Misc. LEXIS (N.Y. 1955)(holding that addition of the words "a domestic corporation" to the designation "Niagra building Co." held to be mere surplusage that did not prejudice anyone and therefore insufficient grounds to dismiss the complaint); *Illinois v. Middleton,* 43 Ill.App.3d 1030, 1036-37, 357 N.E.2d 1238 (Ill.App.Ct. 1976)(holding that abbreviation of the word company adequately averred the corporate status of "Checker Cab Co.", inasmuch as the words "corporation", "company", "incorporated", or "limited', or an abbreviation of one of these words were sufficient under the Business Corporation Act). To prove the point that there could be confusion as to the identity of the Opposer, one need only search the designation "Central Mfg." In the Delaware corporate record database identified by the Applicant in its motion; the only entity of record that will be identified is Central Mfg. Co., thus belying the idea that there could be confusion as to the entity properly before this Court.

The case and the arguments regarding Central Mfg. Co. not being a valid Delaware corporation in front of Judge Lindberg were absolutely without merit. In addition, Leo Stoller has filed over 100 cases before this Board under his Delaware corporation, Central Mfg. Co.

Applicant's motion to dismiss for lack of standing is absolutely frivolous and represents in the opinion of the Opposer, a violation of 37 C.F.R. § 10.85(a)(1).

For the foregoing reasons, the Opposer respectfully asserts that the Board should not dismiss the Notice of Opposition because it was filed under the correct corporate entity, as well as the Request for An Extension of Time to Oppose.

WHEREFORE, the Opposer prays that the Board deny Applicant's Motion to Dismiss.

RESPECTFULLY SUBMITTED,

_____

/Leo Stoller/
Leo Stoller, President
CENTRAL MFG. CO., INC., Opposer
7115 W. North Avenue #272
Oak Park, Illinois 60302
(773) 589-0340

Date: June 9, 2006

Certificate of On-Line Filing

I hereby certify that on June 9, 2006 this paper is being filed online in this case with the Trademark Trial and Appeal Board.

_____

/Leo Stoller/

Certificate of Service

I hereby certify that on June 9, 2006 a copy of the foregoing was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Terry L. Clark
David R. Haarz
Harness, Dickey & Pierce, P.L.C.
11730 Plaza America Drive
Suite 600
Reston, Virginia 20190

_____

Leo Stoller
Date: June 9, 2006