

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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March 26, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Anaheim Manufacturing Company
v.
Jonesca Corporation

Opposition No. 91171906
to application Serial No. 78437646
filed on June 18, 2004

Richard J. McKenna of Foley & Lardner LLP for Anaheim
Manufacturing Company.

Jeromye V. Sartain of Mind Law Firm, P.C. for Jonesca
Corporation.

Before Rogers, Drost and Bergsman, Administrative Trademark
Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Jonesca Corporation ("applicant") filed an intent-to-use
application for the mark WASTEMAID and design, shown below,
for goods ultimately identified as "food waste disposers,
garbage disposers," in Class 7.

The logo for WasteMaid, featuring the word "WasteMaid" in a stylized font. "Waste" is in red and "Maid" is in blue, with a white outline for the letters.

Anaheim Manufacturing Company ("opposer") filed a notice of opposition against the registration of applicant's mark on the ground of priority of use and likelihood of confusion pursuant to Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), as well as on the ground that the application is invalid because applicant lacked the requisite *bona fide* intent to use the mark in commerce when it filed the application. Specifically, opposer alleged that applicant was opposer's exclusive representative authorized to sell opposer's WASTEMAID disposers and that applicant was only authorized to use the WASTEMAID trademark to sell opposer's disposers.

At the time that Applicant filed its application for the Applicant's Mark, it was aware of Opposer's preexisting rights in the WASTEMAID mark in view of its longstanding business dealings with Opposer in purchasing and reselling WASTEMAID branded products for the benefit of Opposer. Consequently, applicant did not have a *bona fide* intention to use the WASTEMAID mark at the time it filed Applicant's Mark.¹

Applicant, in its answer, denied the salient allegations in the notice of opposition.

¹ Notice of opposition, ¶14.

Preliminary Issues

A. Pleadings.

Although fraud was not a pleaded ground for opposition, both parties, in their briefs, identified fraud as an issue before us. Opposer framed the issue as follows:

Has the Applicant committed fraud in filing its application for the WASTEMAID & Design mark pursuant to Section 1(a)(3) of the Trademark Act despite Applicant's knowledge of Opposer's rights in the mark?²

Because both parties argued fraud as an issue before us, we consider the notice of opposition amended to include fraud. Fed.R.Civ.P. 15(b).

B. Applicant.

Edward Chavez is the co-owner and president of applicant, as well as of EEC International, Inc., dba Anaheim Marketing International, Inc. Mr. Chavez effectively controls both companies. Because neither opposer nor applicant has made any distinctions among Mr. Chavez, applicant and EEC International, Inc. and because they have both treated all three of them as one and the same, we shall also treat them as one and the same.³ Thus, evidence regarding EEC International shall be discussed as

² Opposer's Brief, p. 1. Applicant, on the other hand, argued that the opposition should be dismissed because opposer cannot prove that applicant committed fraud in acquiring rights in the mark and filing its application. (Applicant's Brief, p. 2).

³ Opposer's Brief, p. 3; Applicant's Brief, pp. 3-4.

evidence regarding applicant, and testimony from Mr. Chavez, whether referencing applicant or EEC International, shall all be considered testimony regarding applicant.

C. Evidentiary Issues.

The evidence of record, as fully referenced in the parties' briefs, is voluminous, consisting, *inter alia*, of the exhaustive testimony depositions of opposer's president and applicant's president, with accompanying exhibits. The parties have asserted many objections on various grounds and preserved these objections in appendices attached to their briefs. However, none of the testimony and/or exhibits sought to be excluded is outcome determinative. Given this fact, coupled with the number of objections, we see no compelling reason to discuss the objections in detail. Suffice it to say, we have considered all of the testimony and exhibits submitted by the parties. In doing so, we have kept in mind the various objections raised by the parties, and we have accorded the subject testimony and exhibits whatever probative value they merit.

The Record

By rule, the record includes applicant's application file and the pleadings. Trademark Rule 2.122(b), 37 CFR §2.122(b). In addition, the parties introduced the following testimony and evidence:

A. Opposer's evidence.

1. A notice of reliance on applicant's responses to Interrogatory Nos. 1, 4, 7, 12, 13 and 17, and on applicant's responses to opposer's requests for admission Nos. 10, 11, 13, 14, 16, 17, 19 and 20; and,

2. The testimony deposition of Thomas P. Dugan, opposer's president, with attached exhibits.

B. Applicant's evidence.

1. A notice of reliance on opposer's responses to applicant's interrogatory Nos. 8 and 10, and opposer's responses to applicant's requests for admission Nos. 11, 13, 27 and 32;

2. The testimony deposition upon written questions of Stuart Anthony Wynbourne, Chairman and Managing Director of Wilec Limited, with attached exhibits;⁴

3. The testimony deposition of Edward Chavez, applicant's president, with attached exhibits; and,

4. A stipulation authenticating and introducing into evidence specific documents produced by opposer during discovery.

Standing

First, it is necessary to determine whether opposer has standing to bring this opposition proceeding. An opposer

⁴ As more fully discussed *infra*, Wilec Ltd. was for a time a wholesaler of, among other things, waste disposal units, in the United Kingdom and Europe.

must have "a 'real interest' in the outcome of a proceeding in order to have standing." *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). "To establish a reasonable basis for a belief that one is damaged by the registration sought to be cancelled, a petition may assert a likelihood of confusion which is not wholly without merit..." *Lipton Industries v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). The evidence, discussed more fully below, establishes that opposer has a real commercial interest in this proceeding.

Facts

Opposer is a manufacturer and distributor of food waste disposers and hot water dispensers.⁵ Opposer is also an original equipment manufacturer of garbage disposers for other companies.⁶ Applicant assisted opposer in selling four or five different sets of disposer models to private label customers.⁷

Q. Now, for those brands that were not owned by [opposer] . . . how were those original equipment requirements or specifications made known to the factory, to [opposer]?

A. The thing we would do is we would negotiate with the OEM customer what models he wanted to buy. There was (sic) basically four or five different set models.

⁵ Dugan Dep., p. 14

⁶ Dugan Dep., p. 114.

⁷ Chavez Dep., p. 20.

* * *

And once the customer decided, "Okay, I want a PM-2," . . . then we would say, okay, these are all the typical attributes of a typical model. They would agree to that.

And then we would decide on the labeling characteristics. Of course, the customer always had their input into that. But we would design a label for them, for their approval.

And once they approved the label for either disposers and/or the packaging, then we would present that program to [opposer] and say, "This is what the customer wants." Or, in the case it is our brand, "This is what we want." Of course, we are always the one buying it, anyway, so it is, "This is what we want. This model with this label."⁸

Prior to 1990, Overseas Operations Inc. was an international sales representative for opposer.⁹ From approximately, 1985 through 2005, applicant was opposer's exclusive international representative for food waste disposers for areas outside of North America, except for the U.K. which was the responsibility of Overseas Operations

⁸ Chavez Dep., pp. 20-21. Mr. Wynbourne confirmed that Wilec Ltd. never bought direct from opposer. "I don't believe Wilec ever purchased directly from [opposer]. It purchased originally through Overseas Operations and more recently through [applicant]" (Wynbourne Dep., p. 26). See also Wynbourne Dep., p. 17.

⁹ Chavez Dep., p. 32.

Inc.¹⁰ After 2005, applicant became a nonexclusive representative for opposer.¹¹ Applicant also sells disposers to "importer distributors or to [applicant's] own operations."¹² In fact, after applicant arranges to sell disposers to a customer as opposer's representative, applicant purchases the disposers from opposer as a distributor and then resells them to the customers.¹³

Q. So you are saying you were acting as a representative for [opposer] and a distributor of [opposer] at the same time?

A. That's correct.¹⁴

From approximately 1978 to 2000, Wilec Ltd. was a wholesaler of waste disposal units in the United Kingdom and Europe.¹⁵ In the mid-1980s, Wilec adopted the trademark WASTEMAID for waste disposer units it ordered for resale.¹⁶ Michael Thresher, the chief designer at Michael Stewart Designs created the WASTEMAID logo for Wilec Ltd.¹⁷ The

¹⁰ Dugan Dep., pp. 16, 18, 19, Opposer's Exhibits 1 and 2. The parties memorialized their relationship in three agreements discussed later in this decision.

¹¹ Dugan Dep., p. 18; Opposer's Exhibit 3.

¹² Chavez Dep., p. 29.

¹³ Chavez Dep., pp. 159-160, 162-163.

¹⁴ Chavez Dep., p. 160.

¹⁵ Wynbourne Dep., pp. 5-6; Chavez Dep., p. 33.

¹⁶ Wynbourne Dep., pp. 11-12, 16, 38. Opposer proffered no testimony regarding the creation or selection of the WASTEMAID mark. Mr. Dugan testified that he had no knowledge regarding the origin of the mark. (Dugan Dep., p. 128).

¹⁷ Wynbourne Dep., p. 11.

WASTEMAID logo designed by Michael Stewart Designs for Wilec Ltd. is the mark at issue in this opposition.¹⁸

After adopting the trademark and having the WASTEMAID logo designed for it, Wilec contracted with opposer for opposer "to produce a range of waste disposal units for [Wilec] to market in the U.K." using the WASTEMAID trademark.¹⁹

After [opposer] agreed in principle to manufacture for Wilec Limited, I and my wife flew to Anaheim in California and met with Tom Dugan²⁰ . . . and showed him all the designs, logos, marketing plans, proposed leaflets, for the WASTE MAID name. He agreed on behalf of [opposer] to produce disposers for Wilec using the Wilec registered trade name WASTEMAID.²¹

Wilec Ltd. started using the WASTEMAID and Design trademark to identify its garbage disposers sold in the United Kingdom and Europe in the middle 1980s.²² Opposer was an original equipment manufacturer for Wilec's WASTEMAID disposers.²³ Until Wilec Ltd. sold the WASTEMAID trademark to applicant, which we discuss in more detail *infra*, Wilec Ltd. claimed ownership of the WASTEMAID trademark.²⁴ Mr. Chavez testified that Wilec Limited "owned the waste name

¹⁸ Wynbourne Dep., Applicant's Exhibit 1.

¹⁹ Wynbourne Dep., p. 12.

²⁰ This is Thomas P. Dugan's father. Tom Dugan preceded Thomas P. Dugan as opposer's president.

²¹ Wynbourne Dep., p. 20. Wilec had registered the WASTEMAID trademark in the United Kingdom

²² Wynbourne Dep., p. 16.

²³ Wynbourne Dep., p. 25.

²⁴ Wynbourne Dep., pp. 21-22

(sic)" and "developed the WasteMaid brand."²⁵ Nevertheless, Overseas Operations registered WASTEMAID and Design, shown below, in the United States for "kitchen waste disposers."²⁶

WasteMaid

Moreover, Overseas Operations also owned WASTEMAID registrations in Canada, Australia, and New Zealand.²⁷

However, Mr. Chavez testified that he had been active in those markets since the 1980's and that he did not recall encountering sales of WASTEMAID branded products by any other company.²⁸

Opposer originally supplied Wilec Ltd. with disposers through opposer's exporter, Overseas Operations.²⁹ Overseas Operations limited the sales of WASTEMAID disposers by Wilec to the U.K.³⁰ From the mid-1980's through 2000, Wilec sold

²⁵ Chavez Dep., pp. 30-31.

²⁶ Registration No. 1772208, issued May 18, 1993; Sections 8 and 15 affidavits accepted and acknowledged; expired. The registration was cited as a Section 2(d) bar to applicant's application. The registration was made of record as part of the application file. Trademark Rule 2.122(b)(1) ("The file of each application . . . against which a notice of opposition is filed . . . forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose").

²⁷ Chavez Dep., Exhibits 5, 6 and 7.

²⁸ Chavez Dep., p. 305.

²⁹ Wynbourne Dep., p. 17; Chavez Dep., p. 31-32.

³⁰ Wynbourne Dep., p. 51 ("When [opposer] originally manufactured disposers for us, for Wilec, sorry, we were only allowed under the agreement to sell these disposers in the UK, this agreement being between Overseas Operations and Wilec. Once we were having our disposers manufactured by Watertown, we started selling in Europe and built up an interesting business"); Chavez Dep., p. 31-32.

waste disposal units in the U.K. bearing the WASTEMAID logo.³¹

Thomas Dugan, opposer's President, testified that it has been opposer's practice for more than 30 years to place a serial number tag label on the bottom of all of opposer's disposer's that display, *inter alia*, the model, date of manufacture, voltage, the name of the manufacturer and "any trademark that we have on the product."³² A representative serial number tag displaying WASTEMAID is shown below.

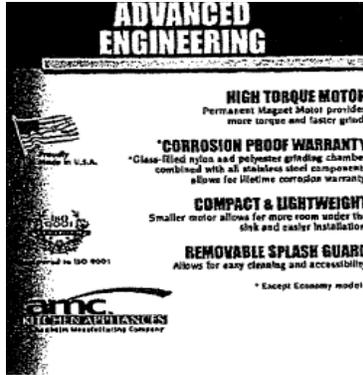


In addition, the packaging in which opposer placed WASTEMAID disposers sold to applicant displayed opposer's company logo (*i.e.*, an AMC logo).³³ Opposer's logo appeared in the lower corner of the packaging as shown below.

³¹ Wynbourne Dep., p. 16.

³² Dugan Dep., pp. 55-58, 62-63, Opposer's Exhibit 27. However, Mr. Dugan has only been with opposer since 1994. (Dugan Dep., pp. 11-12, 56, 58).

³³ Dugan Dep., pp. 60-61, 63; Opposer's Exhibit 29.



However, Stuart Wynbourne testified that the ratings label on the disposer units should have identified Wilec, not opposer. "If any labels were produced with the [opposer's name], it was done without the agreement of Wilec Limited."³⁴ Nevertheless, Mr. Dugan maintained that opposer's name appears on the ratings labels for products sold outside of the United States, even for private label disposers.³⁵

Q. Do you have rating labels that you've prepared and used on General Electric products?

A. Do we have ratings labels we've created on General Electric products?

Q. Uh-huh.

A. Yes.

Q. Did they bear the BEAB certificate,³⁶ if it's a product

³⁴ Wynbourne Dep., p. 24.

³⁵ Dugan Dep., pp. 121-123.

³⁶ "[T]he BEAB is a particular approval that is required for certain countries. [The testing agency] tell us what the test procedure is in order to qualify for BEAB, and we submit our product to that agency for testing in order to acquire the BEAB label." (Dugan Dep., p. 120).

being sold in to (sic) a country requiring that?

A. If we know they are specifically going there, yes, it would.

Q. Would your name, the name Anaheim Manufacturing, in any form be on that rating label - -

A. As far as I know, yes.³⁷

* * *

Q. Do private label disposers bear a rating label that would typically have your name, Anaheim Manufacturing, in some form on that rating label?

A. In the majority of cases, yes.³⁸

* * *

Q. So I was just making clear that we are talking about a product that bears a private label, someone else's brand, and at the same time has your name, Anaheim Manufacturing, on the rating label.

A. Like I said, in most of the cases, to my knowledge, the disposers that are sold outside of the United States have our name on it, the rating label.³⁹

Wilec Ltd.'s name appeared in advertising for the WASTEMAID disposers it sold, but there is nothing in the

³⁷ Dugan Dep., p. 121.

³⁸ Dugan Dep., p. 122.

³⁹ Dugan Dep., p. 123.

record displaying Wilec's name actually appearing on the WASTEMAID branded disposers.⁴⁰

Throughout the 1990's, Wilec purchased WASTEMAID disposers from Watertown Metal Company located in Wisconsin.⁴¹ "This was done with the full knowledge of [opposer] and at no time throughout the ten-year relationship with Watertown Metal did [opposer] ever object to Wilec continuing to use the registered name WASTEMAID."⁴² During this time period, Wilec Ltd. was also selling other WasteMaid products such as commercial disposers and disposer accessories.⁴³ Despite this open and notorious use of the WASTEMAID mark by Wilec Ltd., "[a]t no time did [opposer] ever represent to Wilec that [opposer] had any ownership interest in the WASTE MAID trademark."⁴⁴ When Watertown Metal Company began supplying the WASTEMAID disposers to Wilec, Wilec expanded its sales of WASTEMAID disposers

⁴⁰ Wynbourne Dep., Exhibits 1-3. While Wynbourne Exhibit 2 appears to be a photocopy of a package, it was not identified and it was for a waste disposer tool, not a waste disposer. Applicant originally had the WASTEMAID disposer tool manufactured by a company in Riverside, California, and then by a company in China. (Chavez Dep., p. 35).

⁴¹ Wynbourne Dep., pp. 18, 54; Chavez Dep., pp. 32, 34. When Overseas Operations and Wilec began buying product from Watertown Metal Company, opposer gave applicant the U.K. sales territory. (Chavez Dep., p. 32).

⁴² Wynbourne Dep., pp. 38-39, 54, Opposer's Exhibit 1 (May 12, 2000 fax to opposer from Wilec Ltd. stating that Wilec was interested in having its disposers manufactured by opposer rather than Watertown Metal Company); Dugan Dep., Opposer's Exhibit 6.

⁴³ Chavez Dep., p. 33.

⁴⁴ Wynbourne Dep., p. 21. As note above, Overseas Operations, not opposer, owned a federal registration for the WASTEMAID and Design trademark.

throughout Europe.⁴⁵ From the 1990's through 2000, Wilec sold waste disposal units throughout Europe bearing the WASTEMAID logo.⁴⁶ Even though Wilec Ltd. was purchasing continuous feed WASTEMAID disposers from Watertown Metal Company, it also purchased WASTEMAID batch feed disposers from applicant.⁴⁷

Despite the fact that applicant knew that Wilec Ltd. had developed the WASTEMAID brand in Europe, Mr. Chavez assisted opposer in registering the WASTEMAID trademark in countries where Wilec Ltd. had not registered the mark.⁴⁸ In fact, in 1992, Mr. Chavez advised opposer that Wastemaid [Wilec Limited] was expanding internationally and advised opposer to register the WASTEMAID mark in Australia, New Zealand, Japan, and Korea.⁴⁹ Subsequently, in 1996, Mr. Chavez inquired of opposer regarding the status of the WASTEMAID trademark registration in Turkey.⁵⁰ Finally, in 2003, Chavez, as President of applicant, submitted a declaration supporting the renewal of opposer's Portuguese registration stating that "we represent and sell in Portugal the products covered by Portuguese Trademark No. 277.784 'Wastemaid'."⁵¹ As a result of these efforts in which

⁴⁵ Wynbourne Dep., p. 51.

⁴⁶ Wynbourne Dep., p. 51.

⁴⁷ Wynbourne Dep., p. 17; Chavez Dep., pp. 32-33.

⁴⁸ Dugan Dep., p. 53.

⁴⁹ Dugan Dep., Opposer's Exhibit 24.

⁵⁰ Dugan Dep., Opposer's Exhibit 25.

⁵¹ Dugan Dep., Opposer's Exhibit 53; Chavez Dep., p. 285.

applicant assisted, opposer registered WASTE MAID (without the design) in Ireland, Denmark, Italy, Norway, Finland, Greece, Germany, Portugal, Turkey and Sweden and also obtained European Union and Benelux registrations.⁵² However, prior to the November 2000 acquisition of the WASTEMAID trademark by applicant, neither opposer, nor applicant, sold any WASTEMAID branded disposers except through Wilec Ltd.⁵³

In 1997, Wilec Ltd. wrote to applicant regarding Wilec's application to register the WASTEMAID mark in Turkey. Wilec's application was blocked by opposer's registration. Wilec Ltd. asked Mr. Chavez to intervene on behalf of Wilec Ltd.⁵⁴ Mr. Chavez suggested to opposer that it assign its WASTE MAID registration in Turkey to Wilec Ltd. as a business development effort.⁵⁵ In response, opposer inquired of applicant whether there was anything else that could be gained from its other WASTEMAID registrations.⁵⁶

In May 2000, Wilec Ltd. contacted opposer to discuss whether opposer would renew its original equipment manufacturing relationship with Wilec.⁵⁷ Opposer sent a

⁵² Dugan Dep., pp. 14-52; Opposer's Exhibits 14-23.

⁵³ Chavez Dep., pp. 338-341.

⁵⁴ Chavez Dep., Opposer's Exhibit 40.

⁵⁵ Chavez Dep., p. 279, Applicant's Exhibit 38.

⁵⁶ Dugan Dep., Opposer's Exhibit 49.

⁵⁷ Wynbourne Dep., pp. 42-47; Opposer's Exhibit 1 (a fax from Stuart Wynbourne to Thomas A. Dugan).

copy of Wilec's communication to Mr. Chavez, applicant's President.⁵⁸ After Wilec's initial contact, Mr. Chavez began negotiating with Wilec on behalf of opposer.⁵⁹ "Whenever [opposer] would receive an inquiry from a potential customer located outside of the U.S., that inquiry was directed to [applicant] as its international representative."⁶⁰

After an agreement could not be reached, Wilec Ltd. "chose to approach Ed Chavez of [applicant] to see if he was interested in purchasing, besides other things, the registered trade name. This he did, and the registered trademark [WASTEMAID] then passed to [applicant]."⁶¹ In November 2000, Wilec Ltd. assigned "the ownership of the rights to and use of the name WasteMaid in Europe" . . .

⁵⁸ Dugan Dep., Opposer's Exhibit 45.

⁵⁹ Wynbourne Dep., pp. 48-53; Opposer's Exhibit 2.

⁶⁰ Opposer's response to Interrogatory No. 10; Dugan Dep., p. 168. Applicant was opposer's exclusive representative for products sold under the WASTEMAID mark outside of the U.S. *Id.* In fact, applicant attended trade shows with opposer in order to field questions regarding international sales. (Dugan Dep., pp. 37, 40-41; Opposer's Exhibit 7).

⁶¹ Wynbourne Dep., p. 54. On the other hand, opposer contends that this was a breach of applicant's contractual obligation to "diligently and actively pursue the business interests of [opposer]." (1993 and 2002 agreements, ¶6). However, the facts developed on this record establish that Wilec Ltd. approached Mr. Chavez regarding the purchase of the WASTEMAID product line only after Wilec could not reach an agreement with opposer. There is no testimony or evidence that Mr. Chavez approached Wilec, Ltd. or that applicant undermined the negotiations with Wilec Ltd. in order to buy the mark for itself. Accordingly, there is no basis to conclude that applicant breached any duty to opposer.

"and the shares and the ownership of the company WasteMaid U.K. to [applicant]." ⁶²

Mr. Chavez testified that he notified opposer that applicant acquired the WASTEMAID trademark, after completing the WASTEMAID acquisition. ⁶³

I informed them that we had bought the WasteMaid program from Wilec, that we were taking over the WasteMaid brand name and all - - the entire program for the European Market. ⁶⁴

However, Mr. Chavez subsequently explained that he did not expressly discuss the ownership of the WASTEMAID trademark with opposer.

Q. Any other conversations since, with the representatives of [opposer], regarding your ownership of the WasteMaid trademark?

A. Regarding ownership of the WasteMaid trademark?

Q. Yes.

A. Not specific conversation regarding ownership of the WasteMaid trademark, no. ⁶⁵

After acquiring the WASTEMAID trademark, applicant sent a communication to opposer reporting that "we have signed an agreement with Mr. Wynbourne that secures all the UK and

⁶² Wynbourne Dep., pp. 16 and 32, Applicant's Exhibit 4; Chavez Dep., pp. 36-38, Applicant's Exhibit 2.

⁶³ Chavez Dep., pp. 61-62.

⁶⁴ Chavez Dep., pp. 61-62.

⁶⁵ Chavez Dep., p. 88.

Continental European business for the WasteMaid line (sic) will be supplied by [applicant]."⁶⁶

In a subsequent communication, applicant reiterated that "we were successful in reaching an agreement with Tony Wynbourne that will allow [applicant] to be the sole supplier of the WasteMaid Brand disposers." In addition, applicant selected six of opposer's models for the WASTEMAID line and switched the color from red to blue, and assumed responsibility for designing the disposer and carton labels.⁶⁷ Applicant intended to have opposer manufacture the WASTEMAID disposers as a private label brand for applicant. Finally, applicant asked opposer to review a website promoting the "Anaheim Disposer version of WasteMaid."⁶⁸

Prior to November 2000, opposer's only customer for the WASTEMAID disposers was Wilec Ltd.⁶⁹ Applicant is the only distributor to whom Opposer has ever sold a WASTEMAID disposer.⁷⁰ In fact, opposer "has sold virtually all of its

⁶⁶ Dugan Dep., Opposer's Exhibit 47 (November 13, 2000 communication).

⁶⁷ Dugan Dep., Opposer's Exhibit 48 (November 27, 2000 communication); Chavez Dep., pp. 62-63, Applicant's Exhibit 19.

⁶⁸ Dugan Dep., Opposer's Exhibit 50 (a second November 27, 2000 communication); Chavez Dep., pp. 62-63, Applicant's Exhibit 19. Applicant used Anaheim Marketing International, Inc. as a "dba," so the above-noted reference could refer to applicant, opposer or both.

⁶⁹ Chavez Dep., pp. 112-113, 339-341.

⁷⁰ Opposer's response to Request to Admit No. 13; Dugan Dep., pp. 141-142.

products under [the WASTEMAID mark] to Applicant."⁷¹

Opposer did not identify any customer other than applicant who bought WASTEMAID branded disposers. All of the WASTEMAID disposers sold to applicant were exported and sold outside of the United States.⁷² There is no evidence that opposer ever advertised or promoted the WASTEMAID brand.⁷³

Applicant began promoting the WASTEMAID disposer in the United States in 2004.⁷⁴ Applicant promotes the WASTEMAID disposer in the United States through trade shows, websites, consumer and trade magazines, brochures and promotional products such as refrigerator magnets, pocket knives, and air fresheners.⁷⁵ Applicant made its first shipment of WASTEMAID disposers in the United States on October 6, 2005 and dated the invoice as of October 12, 2005.⁷⁶ From Spring 2004 through January 2006, applicant purchased WASTEMAID disposers from opposer, as well as manufacturers other than opposer.⁷⁷ According to Mr. Chavez, opposer was aware that applicant was purchasing disposers from other manufacturers.⁷⁸

⁷¹ Opposer's response to Interrogatory No. 8.

⁷² Dugan Dep., p. 164.

⁷³ Thomas Dugan was unaware of any advertising. (Dugan Dep., p. 140).

⁷⁴ Chavez Dep., pp. 89-90, 99, 107-108, 127.

⁷⁵ Chavez Dep., pp. 89-90, 92, 98-99, Applicant's Exhibits 26 and 31.

⁷⁶ Chavez Dep., p. 129, Applicant's Exhibit 39, Doc. No. 1971.

⁷⁷ Chavez Dep., p. 111.

⁷⁸ Chavez Dep., p. 111.

Fraud

Fraud in the procurement of a trademark registration occurs when an applicant knowingly makes a false representation of a material fact in an attempt to obtain a registration to which it is not otherwise entitled. See *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ2d 1483, 1484 (Fed. Cir. 1986); *Medinol Ltd. v. Neuro Vasx Inc.*, 67 USPQ2d 1205 (TTAB 2003). See also, *Mister Leonard Inc. v. Jacques Leonard Couture Inc.*, 23 USPQ2d 1064, 1065 (TTAB 1992) ("[T]o constitute fraud on the PTO, the statement must be (1) false, (2) a material representation and (3) made knowingly.") Fraud must be proven with clear and convincing evidence ("to the hilt"), and any doubt must be resolved against a finding of fraud. See *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 USPQ 955, 962 (TTAB 1986); *Smith International, Inc. v. Olin Corporation*, 209 USPQ 1033 (TTAB 1981). Fraud will not lie if it can be proven that the statement, though false, was made with a reasonable and honest belief that it was true. See *Woodstock's Enterprises Inc. (California) v. Woodstock's Enterprises Inc. (Oregon)*, 43 USPQ2d 1440, 1443-1444 (TTAB 1997).

Opposer contends that applicant committed fraud on the Patent and Trademark Office by claiming ownership of the WASATEMAID and Design mark when applicant knew that opposer

was the owner of the mark. The essence of opposer's fraud claim is that applicant knew that any use of the mark by applicant inured to the benefit of opposer.

We conclude, however, that applicant did not commit fraud when it filed its application because applicant believed that it was the owner of the mark. Based on applicant's experience as opposer's sales representative and a distributor, applicant viewed opposer as a private label supplier of the WASTEMAID and Design garbage disposers for Wilec Ltd. The fact that Watertown Metal Company sold WASTEMAID branded garbage disposers to Wilec Ltd. throughout the 1990's supports applicant's belief that that opposer was one of at least two private label suppliers of garbage disposers. Moreover, opposer only sold WASTEMAID branded disposers to Wilec Ltd. through Overseas Operations and applicant. There were no other customers for that brand. When Wilec Ltd. assigned its rights to the mark in Europe to applicant, applicant believed that it had lawfully acquired Wilec's trademark rights in Europe, and that opposer had become applicant's private label supplier of WASTEMAID and Design garbage disposers. Accordingly, applicant was never aware that opposer asserted ownership of the WASTEMAID and Design mark.

Applicant also believed that the WASTEMAID and Design mark was available for use and registration in the United

States. Applicant and opposer had raced to register the WASTEMAID mark in foreign countries where they anticipated that Wilec Ltd. would try to sell the brand to gain a commercial advantage over Wilec (e.g., Turkey) even though opposer and applicant never sold WASTEMAID disposers to any company other than Wilec. There is no explanation why opposer, with applicant's assistance, registered the mark in other countries when opposer did not have any apparent intent to use the mark in those countries other than to sell to Wilec. Because opposer and applicant were knowledgeable and sophisticated enough to try and register the trademark in countries where they anticipated that Wilec might do business, we find it inconceivable that they did not know that Overseas Operations had registered the mark in the United States, as well as Canada, Australia, and New Zealand. Subsequently, in 2003, when Overseas Operations did not file a declaration of continued use under Section 8 of the Trademark Act and a renewal application under Section 9 of the Trademark Act, applicant could have believed that it could claim ownership of the mark in the United States, and, on June 18, 2004, it filed the intent-to-use application at issue.

We find that applicant believed that Overseas Operations had the prior rights to use the WASTEMAID and Design mark in the United States by virtue of its federal

registration, that opposer did not have ownership rights to the WASTEMAID and Design mark because opposer was the private label supplier of those products to Wilec Ltd., and that as the successor-in-interest to Wilec Ltd., applicant could rightfully assert its belief that it was the owner of the mark and that it was entitled to register it. In view of the foregoing, applicant did not knowingly make a false statement when it filed its application.

Applicant's Bona Fide Intent To Use The Mark

At the time applicant filed its application, it had approximately 20 years in the garbage disposer business as a sales representative for opposer and a distributor of disposers. As indicated above, applicant had a reasonable belief that it was entitled to register the mark when the Overseas Operations' registration expired because applicant believed that it had acquired the rights to use and register the WASTEMAID and Design trademark from Wilec Ltd.

Applicant did not believe that opposer had any ownership rights in the mark because opposer was the private label supplier, and it had never independently sold WASTEMAID and Design garbage disposers in the United States or elsewhere. Because the market appeared to be open, introducing the WASTEMAID brand in the United States made business sense.

Opposer argues, to the contrary, that applicant could not have had a *bona fide* intent to use the WASTEMAID mark

when it filed its application (June 2004) because pursuant to the 1993 and 2002 representation agreements, applicant was obligated to act on behalf of opposer. According to opposer, applicant's acquisition of the WASTEMAID and Design mark from Wilec Ltd. was a breach of applicant's duty to diligently and actively pursue the business interest of opposer pursuant to Paragraph No. 6 of the agreements. As evidence of applicant's bad faith, opposer argues that applicant concealed the true nature of applicant's acquisition from opposer (*i.e.*, opposer was unaware of applicant's attempt to acquire the WASTEMAID trademark on its own behalf until applicant's mark was published for opposition). Finally, opposer argues that the 1993 and 2002 representation agreements "constitute a contractual bar" to applicant's application because the agreements required applicant to act for the benefit of opposer. According to opposer, applicant acted on its own behalf, not opposer's behalf, when it acquired the WASTEMAID mark from Wilec Ltd. and then filed its application in the United States.⁷⁹

There are several problems with opposer's argument. First, it is based on the false premise that opposer was the first party to use the WASTEMAID trademark.⁸⁰ As indicated above, we found that opposer was an original equipment

⁷⁹ Opposer's Brief, pp. 18-22.

⁸⁰ Priority of use is discussed in the next section of the decision.

manufacturer for Wilec Ltd., and that opposer placed the WASTEMAID trademark on the garbage disposers for Wilec Ltd. at Wilec's direction. This private label relationship with Wilec Ltd. began in the mid-1980's and continued until applicant acquired Wilec's trademark rights in November 2000. Thus, opposer's status as a private label supplier for Wilec Ltd. preceded the 1993 and 2002 agreements. Any obligation of applicant to act on opposer's behalf necessarily required applicant to represent opposer in selling opposer's brands or in selling opposer's disposer models as private label supplier, not as the owner of the WASTEMAID and Design trademark.

Second, even if applicant's acquisition of the WASTEMAID and Design mark from Wilec and its sales of disposers on its own behalf constitute a breach of 1993 and 2002 representative agreements, we do not find that applicant did not have a *bona fide* intent to use the WASTEMAID and Design trademark. Paragraph No. 3 of the agreements provides that applicant will "refrain from representing equipment and material that might be in conflict with products manufactured by [opposer]." Although applicant's purchase of disposers from Chinese manufacturers from Spring 2004 through April 1, 2005 (the effective date of the third agreement) could constitute a breach of the 2002 agreement, it is not apparent how establishes that

applicant's intent to use the mark was not a *bona fide* intent.

Paragraph No. 6 of the agreements provides that applicant will "diligently and actively pursue the business interests of [opposer] . . . including, but not limited to calling on distributors, retailers, direct sales companies, construction companies, plumbing wholesalers and merchants. [Applicant] also agrees to make dealer calls at the direction of [opposer]." While applicant's acquisition of the WASTEMAID and Design trademark could make applicant and opposer competitors and thereby hinder applicant's ability to pursue the business interests of opposer, we do not find that a violation of that provision means that applicant did not have a *bona fide* intent to use the mark on its own. It simply means that when applicant sold WASTEMAID and Design garbage disposers on its own behalf, it may have violated the terms of the agreement with opposer.⁸¹

Finally, the way that applicant reported to opposer its transaction with Wilec, Ltd. is troublesome, but it does not invalidate its position as the successor-in-interest of Wilec Ltd. Applicant was less than candid in explaining

⁸¹ In fact, after applicant acquired the WASTEMAID trademark, it continued to buy garbage disposers from opposer. (Chavez Dep., p. 331). The record shows that applicant intended to revive the WASTEMAID brand throughout Europe, and opposer was going to be the manufacturer of the disposers. Instead of reselling the disposers to Wilec Ltd. for subsequent distribution, applicant was simply buying the disposers to distribute itself.

that it had secured the exclusive rights to sell WASTEMAID garbage disposers in Europe from Wilec Ltd. because applicant did not add that it had acquired ownership of the trademark. On the other hand, opposer never inquired about the status of the trademark. This is very odd considering that opposer had registered the trademark in a number of foreign countries. Moreover, when Wilec Ltd. found that it could not register the mark in Turkey because of opposer's registration, applicant advised opposer to transfer the Turkish registration to Wilec as a business development effort. Opposer then inquired whether they could somehow leverage opposer's other registrations to opposer's advantage. Under these circumstances, opposer's contention that it has somehow been duped by applicant is just not credible. Even if that contention were credible, it does not undercut applicant's *bona fide* intent to use the WASTEMAID and Design mark.

Upon careful consideration of the record, we find that applicant had a *bona fide* intent to use the mark in the United States.

Priority of Use and Likelihood of Confusion

A. Applicant's priority date.

On June 18, 2004, applicant filed the intent-to-use application at issue. Pursuant to Section 7(c) of the Trademark Act of 1946, 15 U.S.C. §1057(c), contingent on the

registration of applicant's mark, the filing date of its application (June 18, 2004) constitutes constructive use conferring a right of priority except against one who has used the mark prior to the filing date of the application. Accordingly, applicant's priority date is June 18, 2004.

B. Opposer's priority date.

Having alleged priority of use and likelihood of confusion, "opposer must prove that he has proprietary rights in the term he relies upon to demonstrate likelihood of confusion as to source, whether by ownership of a registration, prior use of a technical 'trademark,' . . . or whatever other type of use may have developed a trade identity." *Otto Roth & Co., Inc. v. Universal Corp.*, 640 F.2d 1317, 209 USPQ 40, 43 (CCPA 1981).

The record shows that Overseas Operations filed an application to register WASTEMAID and Design on August 12, 1991. The registration issued on May 18, 1993, but expired because Overseas Operations did not file a Section 8 declaration of continued use and a Section 9 renewal application. This opened the door for applicant to file the application at issue. Opposer's failure to explain why it did not register the WASTEMAID and Design mark in the United States and why Overseas Operations had registered the mark instead of opposer undercuts opposer's claim that its early use of the mark was anything other than a private placement

application of a trademark owned by Wilec Ltd. (or perhaps Overseas Operations, the owner of the registration). Under these circumstances, opposer's private placement application of the mark on products sold to Wilec did not develop a trade identity for opposer.

Nevertheless, priority is a function of prior use of a mark in connection with particular goods. Thus, in any case involving the ownership of a particular mark or priority thereto, the right to the exclusive use of the mark accrues to the party who first used the mark in trade. "However, the use of a mark necessary to bestow a proprietary right in and to a trademark must be an 'open and notorious' use, reaching to purchasers or prospective purchasers of the goods in which the mark is claimed for use." *La Maur Inc. v. International Pharmaceutical Corp.*, 199 USPQ 612, 616 (TTAB 1978).

Opposer argues that since at least as early as 1994, it acquired rights in the WASTEMAID trademark by manufacturing garbage disposers with a serial number tag "which expressly included the WASTEMAID mark⁸² and identified [opposer] as the manufacturer of the product."⁸³ Opposer also placed the WASTEMAID and Design mark on product packaging and that the

⁸² The serial number tag featured WASTEMAID as a word mark, not in the logo format at issue in this proceeding.

⁸³ Opposer's Brief, p. 13.

packaging identified opposer as the manufacturer.⁸⁴ No other names appeared on the products or the packaging. Accordingly, opposer contends that it has manufactured, promoted and transported WASTEMAID branded garbage disposers in the United States prior to the filing date of applicant's application.⁸⁵

Opposer further explains that applicant cannot claim rights in the WASTEMAID and Design mark because applicant's sales of those products were governed by the 1993 and 2002 representation agreements, and therefore any trademark rights that applicant claims inure to the benefit of opposer.⁸⁶ To support this contention, opposer relies on the contractual provisions of the representation agreements providing that applicant earns commissions on non-OEM (original equipment manufacturer) and that because opposer paid applicant commissions for sales of WASTEMAID branded products, the WASTEMAID trademark must have been owned by opposer.⁸⁷

When we look at the evidence as a whole, we find that applicant was a private label supplier of WASTEMAID and Design garbage disposers, who placed the WASTEMAID and Design mark on the products at the direction of its

⁸⁴ Opposer's Brief, p. 13.

⁸⁵ Opposer's Brief, pp. 14-15.

⁸⁶ Opposer's Brief, pp. 15-18.

⁸⁷ Opposer's Brief, pp. 16-18.

customers. The evidence does not support opposer's contention that the WASTEMAID and Design mark identifies opposer as the source of the garbage disposers. We base our findings on the facts set forth below:

1. Wilec Ltd. was the first company to adopt the WASTEMAID mark, and Wilec had the WASTEMAID logo designed for it. Opposer presented no testimony regarding its selection and adoption the WASTEMAID word or design mark.

2. Wilec Ltd. contracted with opposer to place Wilec's WASTEMAID and Design mark on specified garbage disposer models manufactured by opposer. In other words, opposer was a private label supplier. The testimony regarding opposer's use of the WASTEMAID and Design mark establishes that opposer was an original equipment manufacturer for Wilec Ltd. and, after the transaction between Wilec and applicant, for applicant.

3. In the 1990's Wilec Ltd. openly purchased WASTEMAID branded products from Watertown Metal Company located in Wisconsin. Applicant was aware that Watertown Metal Company was a private label supplier of WASTEMAID and Design garbage disposers for Wilec Ltd. because applicant was competing with Watertown Metal Company, on behalf of opposer, to sell Wilec WASTEMAID and Design branded products. Opposer lodged no objection to Watertown Metal Company acting as a private label supplier of WASTEMAID

branded garbage disposers. Opposer offered no testimony regarding the actions of Watertown Metal Company in selling WASTEMAID branded products. Opposer's competition with Watertown Metal Company to sell garbage disposers to Wilec Ltd. indicates that opposer was acting as a private label supplier who applied the WASTEMAID and Design mark at the direction of Wilec Ltd., and to identify Wilec Ltd. as the source of the products.

4. Opposer did not register WASTEMAID as a word mark or logo in the United States even though it had registered five other marks in the United States. In fact, Overseas Operations, opposer's exporter, had registered WASTEMAID and Design for "kitchen waste disposers" in 1993. Because opposer was knowledgeable and sophisticated enough to have registered five other trademarks in the United States, in addition to its aggressive foreign registration practice, it is inconceivable that it would not have tried to register the mark in the United States and/or that it was unaware of the Overseas Operations registration. Opposer offered no testimony to explain how and why Overseas Operations registered the WASTEMAID and Design mark despite opposer's relationship with Overseas Operations and opposer's current claim to own the mark.

5. Opposer sold all of the WASTEMAID branded products to Wilec Ltd. through Overseas Operations or applicant.

After applicant acquired the WASTEMAID product line from Wilec Ltd., opposer continued to sell the products to applicant. Because opposer sold WASTEMAID garbage disposers only to applicant, and because the WASTEMAID brand was a private label for Wilec Ltd. and then applicant, the mark does not identify opposer as the source of the products. In other words, there is no association between the WASTEMAID and Design mark and opposer as the source of the products in the mind of the relevant consumers.

The representation agreements do not support opposer's argument that the paid commissions demonstrate opposer's ownership of the WASTEMAID and Design trademark. The representation relationship between the parties was memorialized in three representative agreements in 1993, 2002 and 2005.⁸⁸ Paragraph No. 8 of the 1993 and 2002 representation agreements reads as follows:

[Opposer] may sell disposers to other Original Equipment Manufacturers (OEM) and private label users under their own label for resale by said OEM's and private label users. OEM and private label sales are not commissionable to the [applicant].

Paragraph No. 10 of the 1993 and 2002 representation agreements provides that applicant "will be paid a

⁸⁸ Dugan Dep., Opposer's Exhibit 1-3; Chavez Dep., Applicant's Exhibit 1 and Opposer's Exhibit 1.

commission for all orders shipped for [opposer] into [applicant's] territory" for specified models.

According to the agreements, opposer may sell products to other original equipment manufacturers and private label customers in applicant's territory without having to pay a commission to applicant. (Paragraph No. 8). However, if applicant sells any models specified in the agreement within its sales territory, applicant is entitled to sales commissions. (Paragraph No. 10). The fact that opposer paid applicant a sales commission on WASTEMAID branded garbage disposers establishes that the WASTEMAID disposers were models specified in Paragraph No. 10, and that the sales were made by applicant, not opposer. In this regard, Mr. Dugan testified that applicant was to receive commissions for the sale of models identified in Paragraph No. 10 regardless of the brand.⁸⁹

Moreover, there is nothing in the representation agreements regarding the ownership of any marks, including the WASTEMAID and Design mark at issue in this proceeding. The 1993 agreement provides, in relevant part, as follows:⁹⁰

2. [Applicant] . . . is appointed the Representative . . . for [opposer] . . . for the following products in

⁸⁹ Dugan Dep., p. 154.

⁹⁰ The 2002 agreement is substantially the same. The difference is in the description of products and channels of distribution in paragraph No. 2. The differences are not relevant for our purposes. The 2005 agreement is similar except that it is a nonexclusive relationship.

the indicated channels of
distribution:

Garbage disposers, instant hot
water dispensers in all
channels of distribution.

3. No other brands or products now
manufactured by [opposer] or that
may be manufactured in the future,
are included in this agreement. . .

* * *

6. [Applicant] herewith agrees to
diligently and actively pursue the
business interest of [opposer],
covering those products and lines
previously described, including,
but not limited to, calling on
distributors, retailers, direct
sales companies, construction
companies, plumbing wholesalers and
merchants. . . .

No brands were identified in any of the agreements.

With respect to the 1993 agreement, Mr. Dugan could not
explain the meaning of paragraph No. 3.

Q. Do you understand the
representation agreement in
Opposer's Exhibit Number 1 [the
1993 agreement] to cover
[opposer's]-owned brands only?

A. Owned brands?

Q. Brands that belong to [opposer]
only.

A. I don't know.⁹¹

⁹¹ Dugan Dep., pp. 149-150.

We were unable to glean any information from the testimony regarding what marks were covered by the representation agreements.⁹²

Mr. Dugan testified that at trade shows opposer "would be presenting either the SinkMaster line or the Waste King line or the Whirlaway line or a combination."⁹³ In addition, Mr. Dugan provided the following testimony:

Q. Can you identify for me all of the marks that [opposer] would have promoted - - or would have promoted, I'm sorry - - at [opposer's] booth at these various trade shows?

A. For our own product, product sold in the United States, it would be Waste King, Whirlaway, SinkMaster.

And if we were - - if Mr. Chavez was not in the booth, he would normally leave us with brochures. And I am aware of us giving brochures to individuals under the WasteMaid mark, under the Commander mark.⁹⁴

Finally, Mr. Dugan testified regarding opposer's ownership of federal registrations for WASTE KING, COMMANDER, SINKMATE, CLEAN-MASTER and SHRED-ALL for garbage disposers.⁹⁵ As referenced above, Overseas Operations was the first to have registered the WASTEMAID and Design mark in the United States. Thus, there is nothing in the

⁹² Dugan Dep., pp. 151-158.

⁹³ Dugan Dep., p. 35.

⁹⁴ Dugan Dep., p. 38.

⁹⁵ Dugan Dep., pp. 42-45, Opposer's Exhibits 8-13.

representative agreements or opposer's conduct that would lead applicant (or us) to believe that opposer claimed that it owned the WASTEMAID and Design trademark.

In none of the agreements between the parties were there any express terms or implied understandings regarding the ownership of the WASTEMAID trademark. In fact, an examination of the agreements and a review of the testimony regarding the agreements fail to shed any light on what trademarks were supposed to be covered by them.

Finally, the fact that opposer's trade name appears on the product and its packaging is not the *sine qua non* of trademark use.

[T]he fact that the name of the manufacturer appears on labels for a particular product does not conclusively establish that the manufacturer rather than the one for whom the goods are produced is the owner of the mark applied thereto.

Fort Howard Paper Co. v. Federated Foods, Inc., 189 USPQ 310, 314 (TTAB 1976), *aff'd in part and rev'd in part on other grounds*, 544 F.2d 1098 (CCPA 1976). *See also*, *Morehouse Manufacturing Corporation v. J. Strickland & Co.*, 150 USPQ 688, 692-693 (TTAB 1966), *aff'd*, 407 F.2d 881 (CCPA 1969) ("a trademark need not be used in association with the trade name of its owner whether the owner personally produces and sells the goods or they are produced and/or

marketed to his benefit by a person or persons in privity with him under a contractual agreement").

The issue to be decided is what the mark conveys to consumers, namely whether it indicates the source to be the manufacturer (*i.e.*, opposer) or the distributor (*i.e.*, Wilec Ltd. and applicant). See *Amica Mutual Insurance Co. v. R. H. Cosmetics Corp.*, 204 USPQ 155, 161 (TTAB 1979). In this case, the record establishes that opposer is a private label supplier for WASTEMAID and Design garbage disposers, that opposer placed the mark on products at the direction of others, and that opposer never used the mark to identify itself as the source of the products (*e.g.*, opposer only sold the products to Wilec Ltd. through Overseas Operations and applicant, both of whom understood that opposer applied the mark as a private label supplier).

We find that opposer placed the mark on garbage disposers as a private label supplier, not to identify itself as the source of the products. Accordingly, opposer's private placement activities did not create an association between the mark and opposer as the source of the products. Therefore opposer's affixation of the mark at the direction of Wilec, and later applicant, did not constitute trademark use on behalf of opposer. In view of the foregoing, opposer has failed to prove that it has a proprietary interest in the WASTEMAID and Design mark prior

to applicant, and therefore opposer's Section 2(d) claim of likelihood of confusion fails.

Conclusion

Based on our review of all the evidence of record and all the arguments made by the parties in their briefs, including any evidence and arguments not specifically discussed in the opinion, we conclude that, contingent upon applicant's registration of the mark, applicant has proven that it has priority, that applicant had a *bona fide* intent to use the mark in commerce when it filed the application, and that applicant did not commit fraud on the U.S. Patent and Trademark Office in filing and prosecuting its application for registration. We have carefully considered all of opposer's arguments to the contrary, but we were not persuaded thereby.

Decision: The opposition is dismissed, subject to the Patent and Trademark Office issuing a notice of allowance, applicant filing a statement of use, and the U.S. Patent and Trademark office issuing applicant a certificate of registration. The time for filing an appeal or for commencing a civil action will run from date of this decision. Trademark Rules 2.129(d) and 2.145. When applicant's mark has been registered or the application becomes abandoned, the interested party should inform the

Opposition No. 91171906

Board so that appropriate action may be taken to terminate this proceeding.