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

Proceeding	91180462
Party	Defendant Charles Kenworthy and Terri Kenworthy
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Date	12/10/2007
Attachments	Answer and Counterclaim - As Filed.PDF (9 pages)(777397 bytes)

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

**IN THE MATTER OF APPLICATION SERIAL NO. 76/670,880, 76/670,902
PUBLISHED IN THE OFFICIAL GAZETTE ON JULY 3, 2007**

CALIFORNIA CLOSET COMPANY, INC.)	OPPOSITION NO. 91180462
)	
OPPOSER,)	
vs.)	ANSWER TO NOTICE OF OPPOSITION
)	AND COUNTERCLAIM FOR
CHARLES KENWORTHY and TERRI)	CANCELLATION OF U.S.
KENWORTHY,)	TRADEMARK REGISTRATION NOS.
)	1915339, 2853226 and 3168301
APPLICANTS.)	
)	
)	
)	

Pursuant to 37 C.F.R. 2.106, Applicants, Charles Kenworthy and Terri Kenworthy (“Applicants”), through their counsel, hereby answer Opposer’s Notice of Opposition (“Notice”) as follows:

1. As to the introduction paragraph set forth in the Notice, Applicants admit that they are the owners of Serial Nos. 76/670,880 for THE WELL-ORGANIZED LIFE mark and 76/670,902 for the LIFE SIMPLY ORGANIZED mark. Additionally, Applicants admit that Serial Nos. 76/670,880 and 76/670,902 were both filed with the United States Patent and Trademark Office (“USPTO”) on December 28, 2006 and published in *The Official Gazette* on July 3, 2007. Applicants deny that Opposer California Closet Company, Inc. will be damaged by registration of Serial Nos. 76/670,880 and 76/670,902. Applicants deny any remaining allegations set forth in the introductory paragraph.

2. Applicants lack knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of the Notice and, on that basis, deny each and every allegation set forth therein.

3. Applicants lack knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 2 of the Notice and, on that basis, deny each and every allegation set forth therein.

4. Applicants admit that the USPTO database lists Opposer as the owner of Registration Nos. 1915339, 2853226 and 3168301 (hereinafter "Opposer's Marks"). Applicants lack sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 3 of the Notice and, on that basis, deny each and every remaining allegation set forth therein.

5. Applicants admit that they filed trademark applications with the USPTO on December 28, 2006 for THE WELL-ORGANIZED LIFE and LIFE SIMPLY ORGANIZED marks that were assigned Serial Nos. 76/670,880 and 76/670,902, respectively. Applicants further admit that Serial Nos. 76/670,880 and 76/670,902 were published for opposition in *The Official Gazette* on July 3, 2007. Additionally, Applicants admit that the description of goods for both Serial Nos. 76/670,880 and 76/670,902 is "kit comprising paper containers and file folders for arranging, compiling and storing important personal documents." Applicants lack sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations, and on that basis, deny any remaining allegations set forth in Paragraph 4.

6. Applicants deny each and every allegation set forth in Paragraph 5 of the Notice.

7. Applicants deny each and every allegation set forth in Paragraph 6 of the Notice.
8. Applicants deny each and every allegation set forth in Paragraph 7 of the Notice.
9. Applicants deny each and every allegation set forth in Paragraph 8 of the Notice.

WHEREFORE, Applicants pray that the Opposition against Application Serial Nos. 76/670,902 and 76/670,880 be dismissed in its entirety and that a registration issue to Applicants for their marks.

Any and all allegations and statements made by Opposer other than those expressly admitted above, are hereby denied by Applicants.

AFFIRMATIVE DEFENSES

Applicants hereby assert the following affirmative defenses, reserving the right to modify and expand these affirmative defenses up to and throughout the time of final adjudication.

10. Paragraphs 1-9 of Applicants' Answer are hereby incorporated in their entirety to these affirmative defenses.

11. The Notice fails to state a claim upon which relief can be granted.

12. Opposer will not be damaged by registration of Applicants' marks.

13. The opposition is barred by the doctrine of laches, acquiescence, estoppel, fraud, mistake, prior judgment and/or the doctrine of unclean hands.

14. The instant opposition should be dismissed because Opposer's Marks are not inherently distinctive, have not acquired secondary meaning and/or are generic.

15. The Opposer has filed a Notice of Opposition against Applicants' Application Serial Nos. 76/670,880 and 76/670,902 alleging a likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d). Applicants affirmatively allege that there is no likelihood of confusion, mistake or deception between Applicants' mark that are the subject of the applications and Opposer's Marks because, *inter alia*, Applicants' marks and Opposer's Marks are not confusingly similar.

16. Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception between Applicants' subject marks and Opposer's Marks because, *inter alia*, the goods/services listed in the application, i.e., "kit comprising paper containers and file folders for arranging, compiling and storing important personal documents" are different and unrelated to the goods and services in connection with which Opposer uses Opposer's Marks, are not marketed in the same channels of trade or to the same customers.

17. In view of the foregoing, there is no likelihood of confusion pursuant to Section 2(d) of the Lanham Act, 15 USC §1052(d), between the marks that are the subject of Applicant's Serial Application Nos. 76/670,880 and 76/670,902 and any or all of the marks asserted by Opposer.

**COUNTERCLAIM/PETITION FOR CANCELLATION OF U.S.
REGISTRATION NOS. 1915339, 2853226 and 3168301**

Pursuant to 37 CFR 2.106, Applicant/Petitioner Charles Kenworthy and Terri Kenworthy (hereinafter "Applicant"), believes that they are or will be damaged by continued registration of the marks that are the subject of U.S. Registration Nos. 1915339, 2853226 and 3168301 and hereby petitions to cancel the same.

As grounds for cancellation it is alleged that:

1. Applicant hereby petitions to cancel U.S. Reg. Nos. 1915339, 2853226 and 3168301 (hereinafter the "Subject Registrations") for Opposer/Registrant's pleaded SIMPLIFY YOUR LIFE, SIMPLIFYING HOME AND LIFE and WHEN YOU ORGANIZE YOUR HOME YOU SIMPLIFY YOUR LIFE marks (hereinafter the "Subject Marks").

2. On or about October 31, 2007, California Closet Company, Inc., upon information and belief a California corporation having principal offices at 1000 Fourth Street, Suite 800, San Rafael, California 94901, Edgewood, (hereinafter "California Closet Company" or "Registrant") filed a Notice of Opposition against Applicant's pending applications for THE WELL ORGANIZED mark, (Serial No. 76/670,880), and for the LIFE SIMPLY PRGANIZED mark (Serial No. 76/670,902) on the basis of U.S. Registration Nos. 1915339, 2853226 and 3168301.

3. The description of services for U.S. Registration No. 1915339 for the SIMPLIFY YOUR LIFE mark recites, "Custom construction and installation of closets and storage space facilities" in International Class 037 and "Design services in the field of customized closets and storage space and retail store services in the field of closet, storage, space, household and travel accessories, in International Class 042.

4. The description of services for U.S. Registration No. 2853226 for the SIMPLIFYING YOUR HOME AND LIFE mark recites, “Franchising services, namely, rendering technical assistance in the establishment and operation of business directed to the custom design, construction, repair and installation of closets and storage space,” in International Class 035, “Custom construction and installation of closets and storage space facilities” in International Class 037 and “Design services in the field of customized closets and storage space,” in International Class 042.

5. The description of services for U.S. Registration No. 3168301 for the WHEN YOU ORGANIZE YOUR HOME YOU SIMPLIFY YOUR LIFE mark recites, “Custom construction and installation of closets, utility and pantry shelving, garage interiors, cabinets, media units, and shelving, home offices, wall systems, and storage space systems” in International Class 037 and “Design services in the field of customized closets, utility and pantry shelving, garage interiors, cabinets, media units and shelving, home offices, wall systems, and storage space; space management design,” in International Class 042.

6. Registrant has not adequately policed its marks and/or has abandoned its marks due to a course of conduct that has caused the Subject Marks to lose all significance as an indicator of source.

7. Applicant further alleges that the Subject Marks, whether by Registrant’s acts or omissions, have lost their significance as marks in connection with the services specified in the Subject Registrations, such that the Subject Marks have become generic for the services specified in the Subject Registrations.

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8. Applicant further alleges that the Subject Marks, whether by Registrant's acts or omissions, have lost their significance as marks in connection with the services specified in the Subject Registrations, such that the Subject Marks have become generic or so highly descriptive for the services specified in the Subject Registrations.

9. Applicant is informed and believes and thereon alleges that Registrant made no bona fide use of the Marks in commerce prior to filing their use-based applications leading to the Subject Registrations.

10. Upon information and belief, Registrant represented to the United States Trademark Office that it was using the SIMPLIFY YOUR LIFE mark in U.S. commerce at the time it filed its renewal for U.S. Registration No. 1915339, on or about August 29, 2005.

11. Upon information and belief, Registrant was not using the Subject Marks for the services specified in the Subject Registration as of its claimed dates of first use and first use in commerce and/or at the time it filed the applications leading to the Subject Registrations and/or at the time it filed its renewal for U.S. Registration No. 1915339.

12. Upon information and belief, Registrant was aware, or reasonably should have been aware, at the time it filed its applications and/or renewal that it was not using the Subject Marks for the services specified in the Subject Registrations.

13. Registrant's continued registration of the Subject Marks should also be refused because Registrant has committed fraud upon the Trademark Office and/or has unclean hands.

WHEREFORE, Applicant/Petitioner prays that its petition to cancel U.S. Registration Nos. 1915339, 2853226 and 3168301 be sustained in its entirety and granted in favor of Applicant/Petitioner and that U.S. Registration Nos. 1915339, 2853226 and 3168301 be cancelled. Applicant additionally asks that this opposition proceeding be dismissed and that its registrations issue forthwith.

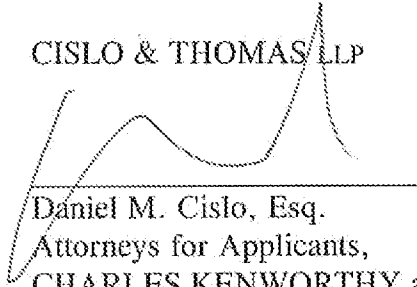
Any and all other allegations and statements made by Opposer, other than those expressly admitted above, are hereby denied by Applicants.

A duplicate copy of this Answer to the Notice of Opposition and Counterclaim, along with a \$900 filing fee to cover the counterclaim for cancellation, are enclosed. It is not believed that any charges are due, however, please charge any additional charges that may be due to Applicant's representative's deposit account No. 03-2030.

Dated: December 10, 2007

Respectfully submitted,

CISLO & THOMAS LLP



Daniel M. Cislo, Esq.
Attorneys for Applicants,
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TERRI KENWORTHY

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ELECTRONIC MAILING CERTIFICATE

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board ("ESTTA") on the date shown below.

on _____ 12-10-07
_____ 12-10-07
Daniel M. Cislo, Reg. No. 32,973 _____ Date

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Marsha G. Gentner
Jacobson Holman PLLC
400 - 7th Street, N.W.
Washington, DC 20004

Dated: _____ 12-10-07 _____

By: _____
Daniel M. Cislo, Reg. No. 32,973

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