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

In the matter of trademark application Serial No. 78106237
For the mark HIGH STRUNG
Published in the Official Gazette on July 23, 2002



08-21-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #70

CROME, INC.,

Opposer,

vs

Opposition No.

GRAHAM WEBB INTERNATIONAL,
INC.,

Applicant.

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TOLSON, J. EDWARD

NOTICE OF OPPOSITION

CROME, INC. (hereinafter referred to as "Opposer"), a corporation organized and existing under the laws of the States of California, having its principal place of business at P.O. Box 2905, Mission Viejo, CA 92691, believes that it will be damaged by the registration of the mark HIGH STRUNG sought in Application Serial No. 78106237, filed on February 1, 2002, and published in the United States Official Gazette on July 23, 2002, as it relates to goods in International Class 003, namely, "Elastic Styling Gel." Opposer hereby opposes the application for registration of said mark for such goods.

As grounds therefor, it is alleged that:

Likelihood of Confusion

1. Opposer is the owner of the common law trademark HIGH STRUNG and has used said mark to identify its designer hair putty throughout the United States continuously since January 1, 2001. Opposer has filed an application for federal registration of its mark HIGH STRUNG in International Class 003, in connection with its designer hair putty. Said application bears Serial Number 78125393.

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2. By reason of Opposer's continuous use of its mark, Opposer has created valuable goodwill in said mark and has thereby impressed upon consumers, users of Opposer's goods and others in the business community that said mark belongs to and indicates Opposer as the source of such goods.

3. Opposer has expended considerable effort and expense in promoting its aforementioned trademark and the goods offered thereunder and has derived significant revenue therefrom, with the result that the purchasing public, the business community, and others have come to know, rely on, and recognize Opposer's mark HIGH STRUNG as identifying the goods of Opposer.

4. Applicant filed an application on February 1, 2002, to register the mark HIGH STRUNG as it relates to elastic styling hair gel in International Class 003. Said application is based applicant's intention to use said mark in commerce under §1(b).

5. Opposer, therefore, has priority through its earlier use of the mark HIGH STRUNG.

6. The goods specified in Applicant's opposed application, as set forth above, namely, "Elastic Styling Gel," and Opposer's goods, namely, "Designer Hair Putty", are competitive, related and complementary.

7. Opposer is informed and believes, and based upon that information and belief alleges, that the circumstances surrounding the parties' marketing of their respective products to consumers are such that the goods would likely be encountered by the same persons under identical marks, leading to the false suggestion or mistaken belief that Applicant's goods originate from or are in some way associated or connected with Opposer.

8. Based upon the fact that Applicant has chosen a mark identical to Opposer's mark and the competitive nature of Applicant's and Opposer's respective goods, as set forth herein, Applicant's intended mark is likely to cause confusion, to cause mistake and to deceive.

9. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie exclusive right to use its mark in commerce as of the registration date, in connection with the goods specified in the application. Such registration would be a source of damage and injury to Opposer.

10. For the foregoing reasons, Opposer will be damaged by registration of the mark sought in the application at issue.

Fraud

11. At the time Applicant signed the application at issue, Opposer had been continuously using the mark HIGH STRUNG throughout the United States for more than one year.

12. At the time Applicant signed the application at issue, Opposer had superior legal rights in the mark HIGH STRUNG.

13. Opposer is informed and believes, and based upon that information and belief alleges, that at the time Applicant signed the application at issue, Applicant had actual knowledge that Opposer had superior legal rights in said mark and that confusion was likely.

14. As evidence of Applicant's actual knowledge, in 2001, Opposer hired a consultant to develop brand recognition and marketing channels for its designer hair products bearing the mark HIGH STRUNG. At all times relevant hereto, the aforementioned consultant hired by Opposer was married to Applicant's national sales manager.

15. As further evidence of Applicant's actual knowledge, throughout 2001, Opposer advertised its designer hair products bearing the mark HIGH STRUNG in various popular trade magazines.

16. Prior to the publication of Applicant's mark in the Official Gazette, Opposer notified Applicant that its intended use of the mark HIGH STRUNG would infringe upon Opposer's trademark rights and demanded that Applicant withdraw the application at issue and select a different name for its new product. Applicant failed to comply.

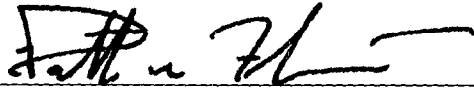
17. By failing to disclose paragraphs 11 through 16 herein to the United States Patent and Trademark Office, applicant intended to obtain a registration to which it was not entitled.

18. For the foregoing reasons, Opposer will be damaged by registration of the mark sought in the application at issue.

WHEREFORE, Opposer prays that said application bearing Serial No. 78106237 be denied registration and that this opposition be sustained in favor of Opposer.

A duplicate Notice of Opposition is being filed herewith, along with the required filing fee for this opposition.

Respectfully submitted on August 10, 2002, by:



Patrick W. Fletcher
Attorney for Opposer
Crome, Inc.

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CERTIFICATE OF MAILING

I hereby certify that the foregoing Notice of Opposition in re HIGH STRUNG is being deposited in duplicate along with a check for the filing fee with Federal Express via Two Day Air, in an envelope addressed to:

BOX TTAB - FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

on August 19, 2002.



Patrick W. Fletcher