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

Proceeding	91161747
Party	Defendant SnoWizard Holdings, Inc. SnoWizard Holdings, Inc. 101 River Road Jefferson, LA 70121
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

P.C. Richard & Son Long Island Corp

v

SnoWizard Holdings, Inc.

Opposition No. 91161747

Serial No. 78/279177

Opposition No. 91163495

Serial No. 78279192

Atty. Docket No. I04113US (98876.16)

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APPLICANT'S RESPONSE to OPPOSER'S
MOTION TO COMPEL and MOTION TO SUSPEND

Applicant, SnoWizard Holdings, Inc., through its attorneys, hereby makes its response to OPPOSER'S MOTION TO COMPEL and MOTION TO SUSPEND filed 10 August 2006 as follows:

SnoWizard moves to strike the 23-page memo filed 10 August 2006 as it does not comply with 37 CFR Section 2.126(a), which requires that paper submissions "be printed in at least 11-point type." It appears that Opposer simply took the 33-page memo filed 25 July 2006 and converted it to 10-point type. It does not appear that anything was omitted to shorten the memo (as it appears would have been necessary had the memo been "printed in at least 11-point type"). Thus, the memo filed 10 August 2006 is as burdensome as the 33-page memo filed 25 July 2006. Applicant respectfully submits that the case of Ron Cauldwell Jewelry Inc. v. Clothetime Clothes Inc., 63 USPQ2d 2009, 2010 (TTAB 2002) would still apply and that this memo should be stricken. This opposition proceeding is already burdensome on Applicant without Applicant being required to respond to lengthy memos which do not comply with TTAB rules.

SnoWizard respectfully requests that OPPOSER'S MOTION TO COMPEL and MOTION TO SUSPEND filed 10 August 2006 both be denied.

In the event that SnoWizard's motion to strike is not granted, and SnoWizard is not otherwise granted time to respond to the Motions filed 10 August 2006, SnoWizard makes a preliminary response as follows.

SnoWizard properly answered the interrogatories and document requests which were properly propounded. SnoWizard properly objected to many interrogatories as being unduly burdensome and not likely to lead to relevant discoverable matter. Also, SnoWizard properly objected to many interrogatories as calling for information protected by the attorney/client privilege and the attorney work-product doctrine. SnoWizard properly objected to many requests as being unduly burdensome and not likely to lead to relevant discoverable matter. Also, SnoWizard properly objected to many requests as calling for information protected by the attorney/client privilege and the attorney work-product doctrine.

Applicant is in the business of selling snowball-related machines and supplies. It is believed that Opposer sells consumer electronics online. There is no likelihood of confusion by Applicant's use of the mark sought to be registered with its goods and services. It is believed that Opposer still had a few home electronics stores in New York and New Jersey at the beginning of this opposition proceeding, but Opposer's answer to an interrogatory indicates that it only operates online now (see below:

"Interrogatory No. 6:

Identify the cities and states of Opposer's current places of business at which it uses the designation "Nobody Beats the Wiz".

PCRICHARD promotes its goods/services in all 50 states, and has sold goods/services in most, if not all 50 states."). Applicant and Opposer are not competitors, and the information and things sought by Opposer but not provided by Applicant are not relevant to this proceeding, would be unduly burdensome to provide, and are not likely to lead to relevant discoverable matter. Also, some of the information and things sought by Opposer but not provided by Applicant are protected by the attorney/client privilege and the attorney work-product doctrine. It appears that Opposer is trying to wear down Applicant with excessive discovery and unreasonable demands for additional discovery. Opposer's mark is simply not famous, and through this proceeding Opposer is simply trying to garner more protection for its mark than the law provides. Applicant would like for the proceedings not to be suspended. Rather, Applicant would like for the proceedings to conclude as soon as possible.

Applicant respectfully requests that OPPOSER'S MOTION TO COMPEL and MOTION TO SUSPEND filed 10 August 2006 be denied.

Respectfully submitted,

/smn/

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/smn/
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