

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK OPERATIONS

In re Registration of)
) Post Registration
Woodguard, Inc.)
)
Reg. No. 2,777,504)
)
Registration Date: October 28, 2003)
)
Serial No. 76/423,975)
)
Filed: June 18, 2002)
)
Mark: CONGO)

Request For Correction Of Registration Pursuant To 15 U.S.C. 7(h)

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Sir:

Pursuant to Section 7 of the Trademark Act, Abode Lumber Corporation respectfully requests the United States Patent and Trademark Office ("USPTO") amend the referenced United States Trademark Reg. No. 2,777,504 ("the '504 Registration") to state the registrant's correct legal name. The USPTO may make a correction to a registration in appropriate cases, upon written request by the owner of the registration. TMEP 1609.10(b).

This Request is made concurrently with the filing of a Combined Declaration Under Section 8 and 15 for the '504 Registration.

The requester also concurrently files a Declaration by Don Kain in support of the Request for correction of the '504 Registration. Mr. Kain is president of Abode Lumber Corporation, a California corporation, having a principal place of business located at 1375 East Baseline, Unit B, San Bernardino, California 92410 ("the Company"). Kain Decl. ¶ 2. Mr. Kain is of legal age and is competent to make the Declaration. Kain Decl. ¶ 1.

The Company operated and operates under a trade name "Woodguard" which is not a legal entity. Kain Decl. ¶ 2. The Company engages in the business of manufacturing and selling outdoor play structures, furniture and accessories. The outdoor play structures include playground equipment, namely, play structures comprised of climbing units, platforms, sand boxes, swing sets, jungle gyms, playhouses, gymnastics apparatus and slides ("the Products"). Kain Decl. ¶ 3.

On or about June 2002, Mr. Kain directed an attorney to prepare and file an application for Federal registration of a brand name CONGO that the Company had been using in association with sales of the Products. Kain Decl. ¶ 3.

On June 18, 2002, the attorney filed application S/N 76/423,975 with the USPTO to register the mark CONGO for the Company. Subsequently, the application matured into the '504 Registration. Kain Decl. ¶ 4.

Mr. Kain later learned that the application was filed in the name of Woodguard, Inc. and that the '504 Registration issued in the name of Woodguard, Inc. The trade name "Woodguard"

was inadvertently and mistakenly substituted for the corporate name Abode Lumber Corporation in the application. Kain Decl. ¶ 5.

Accordingly, the registrant Abode Lumber Company now requests the USPTO to amend the '504 Registration to state the registrant's correct legal name.

Correction of a registration is permitted under Section 7(h) of the Trademark Act:

Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Director is authorized to issue a certificate of correction or, in his discretion, a new certificate upon payment of the prescribed fee: *Provided*, That the correction does not involve such changes in the registration as to require republication of the mark.

The Trademark Manual of Examining Procedure § 1201.02(c) explains correcting by amendment an error in how the applicant is identified. "If the party applying to register the mark is, in fact, the owner of the mark, but there is a mistake in the manner in which the name of the applicant is set out in the application, the mistake may be corrected by amendment."

A correctable error includes a trade name set forth in an application as the applicant. In a situation analogous to instances where applications are filed in which the name of the applicant is incorrectly set out using its alternative name under which it does business, rather than its legal corporate name, it was held error in refusing to allow amendment of a combined Section 8 and 15 Declaration to show the registrant's legal corporate name rather than the trade name

inadvertently and mistakenly placed on the Declaration. *In re Atlanta Blue Print Co.*, 19 USPQ2d 1078 (Comm'r Pats 1990); see TMEP § 1201.02(c).

In the present Registration, the requested change is proper, (1) in that the mistake in the applicant's name occurred in good faith as shown by the Declaration of Don Kain made in support of this Request and (2) the change would not require republication of the mark.

A payment in the amount of \$100 is concurrently paid for the government fee for correction of the '504 Registration. If the payment is missing, or incorrect, please charge or credit deposit account 11-0553.

For the foregoing reasons, the Director should exercise his authority and issue a certificate of correction, or in his discretion, a new certificate, in the name of the Registrant Abode Lumber Corporation.

Respectfully submitted,

/carl m davis ii/

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