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Paper No.

GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Tiger Press, L.L.C.

v.

Dorothy J. Patterson, d.b.a. True Promise Productions

Opposition No. 109,207 to application Serial No. 74/666,277
filed on April 23, 1995

Richard L. Fortner of Miller Nash L.L.C. for Tiger Press,
L.L.C.

Dorothy J. Patterson, d.b.a. True Promise Productions, pro se.

Before Hohein, Wendel and Bottorff, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Dorothy J. Patterson, d.b.a. True Promise
Productions, has filed an application to register the mark
"GOD CAN," in the stylized form shown below,

for a "plastic prayer can to be used for inserting prayer requests".¹

Tiger Press, L.L.C. has opposed registration on the ground that it is the owner of an application to register the mark "GOD CAN" in connection with "slotted and metal containers used for depositing written personal thoughts";² that opposer's "common law rights to the GOD CAN trademark are prior in time to the filing date and date of first use alleged" in the application involved in this proceeding; and that "[b]ased on the identical appearance, sound, and meaning of the two marks for use with goods having the identical function, Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, deception, and/or mistake."

Applicant, in her answer, has denied the salient allegations of the notice of opposition and has asserted, as an affirmative defense, that because "the Opposer's claim is based on an assignment from John D. McCracken, a person already adjudicated to have no rights in the alleged mark,"

¹ Ser. No. 74/666,277, filed on April 23, 1995, which alleges a date of first use anywhere of January 20, 1991 and a date of first use in commerce of March 20, 1995.

² Ser. No. 75/314,935, filed on June 25, 1997, which alleges a date of first use anywhere and in commerce of January 1, 1984. The word "CAN" is disclaimed.

opposer's "application and opposition are null and void due to ... unclean hands and/or fraud."³

The record includes the pleadings; the file of the opposed application; and, as part of opposer's case-in-chief, the affidavit, with exhibits, of its manager, Mary M. Morrissey, which was submitted pursuant to a stipulation by the parties. Opposer, as the rest of its case-in-chief, has submitted a notice of reliance upon (i) applicant's responses to opposer's first set of discovery requests⁴ and (ii) certain official records of the United States Patent and Trademark Office, including copies of its pleaded application, the initial Office action issued in connection therewith and assignment documents pertaining to such application.

Applicant, as part of her case-in-chief, has filed a declaration, with exhibits, of herself, which was submitted pursuant to a stipulation by the parties. As the remainder of her case-in-chief, applicant has submitted a notice of

³ Although, as additional affirmative defenses, the answer also alleges that opposer "is guilty of laches," "is estopped from bringing this opposition" and "has abandoned its alleged mark," such allegations will not be given further consideration inasmuch as they were neither pursued at trial nor argued in the parties' briefs.

⁴ Unlike answers to interrogatories and requests for admission, it is pointed out as a general proposition that documents produced in response to requests for production thereof are not proper subject matter for a notice of reliance unless they otherwise meet the requirements of Trademark Rule 2.122(e). See Trademark Rule 2.120(j)(3)(ii) and TBMP §711. However, since applicant in her brief has treated such evidence as forming part of the record, it has been so considered.

Opposition No. 109,207

reliance upon (i) opposer's responses to her first set of discovery requests;⁵ (ii) certain official records of the United States Patent and Trademark Office pertaining to her involved application; and (iii) various sales receipts and advertising for her "GOD CAN" products.⁶

In rebuttal, opposer has submitted, in accordance with a stipulation by the parties, the affidavit, with exhibits, of one of its attorneys, Michael E. Arthur. Briefs have been filed, but an oral hearing was not requested. Because, as conceded by the parties, the use of the mark "GOD CAN" in connection with essentially identical goods is likely to cause confusion, mistake or deception as to the source or sponsorship of such products, and because applicant has offered only conclusory assertions rather than factual proof with respect to her affirmative defense of unclean hands and/or fraud,⁷ the sole real issue to be determined is which

⁵ While, as noted previously, documents produced in response to requests for production thereof generally are not proper subject matter for a notice of reliance unless they otherwise meet the requirements of Trademark Rule 2.122(e), inasmuch as opposer has treated such evidence in its briefs as forming part of the record, it has been so considered.

⁶ Although, under Trademark Rule 2.122(e), such receipts and an advertising sheet or flyer are not proper subject matter for a notice of reliance, the evidence nevertheless has been considered in view of opposer's having treated it as being of record in its briefs.

⁷ There is no proof, on this record, as to whether John D. McCracken, who was applicant's husband prior to their divorce in or about 1995,

party has priority of use of the "GOD CAN" mark, an issue which necessarily includes whether opposer has proven its standing to bring and maintain this proceeding.

According to the record, opposer is an Oregon limited liability company which, among other things, "distributes spiritual and inspirational materials, including books, tapes, and, from June 26, 1995, to September 1, 1999, cans with labels containing the GOD CAN mark (the 'GOD CAN product')." (Morrissey aff. ¶2.) Such goods, in particular, consist of "slotted containers into which one may deposit personal thoughts." (Id. ¶5.) According to Ms. Morrissey, who is the senior minister at a nonprofit religious organization known as the Living Enrichment Center in addition to being the manager of opposer, while she was a co-director and employee of the Living Enrichment Center in 1982, it began producing and selling the "GOD CAN product," which she "had created." (Id. ¶4.) However, during the time that such product was sold through the Living Enrichment Center, "it was understood that the GOD CAN product, its trademark rights, and the goodwill associated therewith were owned by the Living

had any valid rights in the mark "GOD CAN" for prayer request containers or the like goods which were assigned to opposer, nor is there any proof that opposer in fact bases its claim of priority of use of such mark on any assignment thereof to it from John D. McCracken. Applicant's affirmative defense of fraud and/or unclean hands accordingly fails for lack of proof.

Opposition No. 109,207

Enrichment Center" and that neither Ms. Morrissey nor her ex-husband, Haven Boggs, "ever used the GOD CAN mark." (Id.)

Opposer was formed on June 12, 1995 "to carry on certain activity, including the production and distribution of the "GOD CAN product," thereby "allowing the Living Enrichment Center to better focus on its core mission." (Id. ¶6.) In particular, "[o]n June 26, 1995, the Living Enrichment Center transferred and assigned certain properties, including all of its interests in the works created by" Ms. Morrissey, to opposer. (Id.) According to Ms. Morrissey, it was her understanding that "this transfer and assignment included all trademark rights to the mark GOD CAN and the goodwill associated therewith." (Id.) Subsequently, on September 1, 1999, opposer "sold certain properties, including all of its interests in certain trademarks . . . , to Arvus.com, LLC." (Id. ¶7.) Such sale, as evidenced by an assignment (Opposer's Exhibit 3) which is dated September 21, 1999, specifically "included an assignment of all trademark rights to the mark GOD CAN and the goodwill associated therewith." (Id.) The assignment, in this regard, refers to opposer as the assignor and "Arvus.com LLC" as the assignee and recites, in relevant part, that: "This Trademark Assignment is executed pursuant to the Purchase Agreement between Assignor and Assignee, dated as of May 1, 1999, whereby Arvus.com has succeeded to the

Opposition No. 109,207

business, assets, and appurtenant goodwill associated with the trademarks listed on Schedule A," which includes the "GOD CAN" mark which is the subject of application Ser. No. 75/314,935, filed on June 25, 1997. (Opposer's Exhibit 3.)

According to Ms. Morrissey, Arvus.com, LLC, "through [opposer as] its predecessor in interest," and opposer, "through its predecessor in interest, Living Enrichment Center, began using the mark GOD CAN in connection with their slotted containers as early as January 1, 1984" and such use "has been continuous." (Morrissey aff. ¶8.) Likewise, in its responses to requests for admission, made of record by applicant, opposer reiterated that its "predecessor in interest, Living Enrichment Center, produced and sold products bearing the GOD CAN mark from at least as early as January 1, 1984." (Response to Applicant's Req. for Adm. Nos. 1, 2 & 3.) Such goods, which retail "from approximately \$4.00 for the can by itself to \$9.95 for the can bundled with an audiotape," are typically "sold through Christian bookstores and other specialty wholesale and retail distribution channels in the United States." (Morrissey aff. ¶9.) An advertisement (Opposer's Exhibit 7) for "GOD CANS," placed by Living Enrichment Center, appeared as early as "the Winter 1984 issue of *New Thought* magazine," while an order form (Opposer's Exhibit 8) by that firm for such goods, stated to be

Opposition No. 109,207

"effective June 1985," recites among other things that: "The God Can® was born in the minds of the Reverends Mary and Haven Boggs in 1981." (Morrissey aff. ¶14 and Opposer's Exhibits 7 & 8.) Similarly, another order form (part of Applicant's Exhibit 20) by Living Enrichment Center names "Mary and Haven Boggs, Directors" and lists "God Can Price Information (effective May 1990)," while a credit card receipt and order form (also part of Applicant's Exhibit 20) evidence a sale by Living Enrichment Center of "6 God Cans" on July 19, 1993 to a third party, Living Book Ends, for \$24.00. (Applicant's Exhibit 20.)

An application to register the "GOD CAN" mark for slotted cardboard and metal containers used for depositing written personal thoughts was filed by opposer on June 25, 1995. The application, Ser. No. 75/314,935, alleges January 1, 1984 as a date of first use anywhere and in commerce and was verified by opposer's manager, Ms. Morrissey. Subsequently, in an Office Action dated November 10, 1997, opposer was advised in light of applicant's prior pending application, Ser. No. 74/666,277, for the mark "GOD CAN" for a plastic prayer can to be used for inserting prayer requests that, "if the referenced application matures into [a] registration, the examining attorney may refuse registration in this case" because, inasmuch as the respective marks "are

Opposition No. 109,207

legally identical and the goods are closely related," "[t]here may be a likelihood of confusion between the marks."

(Opposer's Exhibit 11.) A nunc pro tunc assignment of, inter alia, application Ser. No. 75/314,935 from opposer to Arvus.com LLC and which is dated September 21, 1999, was recorded in the United States Patent and Trademark Office at reel 1967, frame 0101, on September 25, 1999.

According to Mr. Arthur, "Arvus.com, LLC was formed as an Oregon limited liability company on April 15, 1999" with opposer as "the sole member" thereof. (Arthur aff. ¶3.) "On January 25, 2000, Arvus.com LLC changed its company name to Arvus.com of Oregon LLC." (Arthur aff. ¶4.) On January 31, 2000, another company, incorporated under the name "arvus.com, inc." as shown by Opposer's Exhibit 15⁸ but referred to in Mr. Arthur's affidavit as "Arvus.com, Inc.[,] was formed as an Oregon corporation ... to accommodate a private stock offering." (Arthur aff. ¶5.) "On or about February 1, 2000, Arvus.com, Inc. authorized the issuance to [opposer,] Tiger Press LLC [sic,] of 5,950,000 shares of common stock in consideration for its contribution to the corporation of all outstanding units of membership interest in Arvus.com LLC," which as indicated above was then known as Arvus.com of Oregon

⁸ Such exhibit, Mr. Arthur avers, "is a true and correct copy of the Articles of Incorporation for Arvus.com, Inc." (Arthur aff. ¶5.)

Opposition No. 109,207

LLC. (Arthur aff. ¶6.) Thereafter, "[o]n March 16, 2000, Arvus.com, Inc. filed Restated Articles of Incorporation changing its name to PersonPlanet, Inc. [sic]." (Arthur aff. ¶7.) The name "PersonPlanet, Inc.," as recited in Mr. Arthur's affidavit, appears, however, to be a typographical error inasmuch Opposer's Exhibit 17, which Mr. Arthur states "is a true and accurate copy of the Restated Articles of Incorporation documenting this change," shows that "arvus.com, inc." changed its name to "PersonPlanet.com, Inc." as of "3-16-00" by a vote of all "10 million" shares outstanding. (Arthur aff. ¶7 and Opposer's Exhibit 17.)

Furthermore, according to Mr. Arthur, opposer "has had a continuous ownership interest in each of the above entities, first as the sole member of the Arvus.com LLC (which was renamed Arvus.com of Oregon LLC), and currently as the majority shareholder of Arvus.com, Inc. (which has since been renamed PersonPlanet.com, Inc[.])." (Arthur aff. ¶8.) In addition, Mr. Arthur states that "[t]he mark GOD CAN remains the property of Arvus.com of Oregon, LLC, which is a wholly owned subsidiary of PersonPlanet.com, Inc., of which the majority shareholder is [opposer,] Tiger Press, L.L.C." (Arthur aff. ¶9.)

Applicant, on the other hand, is a sole proprietor who does business under the trade name of True Promise

Opposition No. 109,207

Productions. Applicant claims a variety of dates of first use of the "GOD CAN" mark for her prayer request cans. As shown by her responses to the requests for admission served and made of record by opposer, applicant admits that her date of first use of such mark was no earlier than the March 20, 1995 date of first use stated in her application, but qualifies such admission by noting that she and her former husband "produced GOD CANS together before that date for True Promise Prod. until ... [she] was granted control of the GOD CAN bsns [sic] in divorce court on 6-6-95 in Modesto, Ca." (Response to Opposer's Req. for Adm. No. 2.) Applicant denies, moreover, that her first sale of goods bearing the "GOD CAN" mark was no earlier than March 20, 1995, claiming instead that she "started producing her first GOD CANS in 1990." (Responses to Opposer's Reqs. for Adm. Nos. 3 & 4.) However, in answer to an interrogatory, which opposer also made of record, applicant asserts that she "officially" first used the "GOD CAN" mark on January 20, 1991 by having such mark "printed on the plastic lids" for her goods. (Response to Opposer's Interog. No. 2.) Moreover, the earliest documented sale by applicant is a receipt (part of Applicant's Exhibit 25) dated March 20, 1995 which evidences that applicant sold "1 'GOD CAN'" to Vivian Green for \$2.00. (Applicant's Exhibit 25.)

In her affidavit, applicant, besides stating that she is the "creator of the original 'GOD CAN,'" likewise indicates that she first used the "GOD CAN" mark for her plastic prayer request cans in January 1991, but notes that she "began producing [such goods] with my husband for True Promise Productions in October 1994." (Patterson aff. ¶1.) Applicant filed her involved application on April 23, 1995, following her separation from her husband on March 4, 1995.⁹

Like the goods sold by opposer and its predecessors in interest under the "GOD CAN" mark, applicant "sell[s] 'GOD CANS' [at both] retail and wholesale," with prices "vary[ing] from [\$]3.00 ea. to [\$]6.95 ea." (Response to Opposer's Interog. No. 4.) Sales of such goods are made to stores and "to private individuals at retail prices." (Response to Opposer's Interog. No. 5.)

Turning to the issue of priority of use, including whether opposer has proven its standing to bring and maintain

⁹ According to applicant, after their separation her "husband (John D. McCracken) filled out his Trademark Application under the name of GODCAN Co." (Patterson aff. ¶1.) Such application, which was filed on April 3, 1995 as Ser. No. 74/659,474, was for registration of the mark "GODCAN" for cylindrical paper cardboard containers with metal tops having slots in the top for depositing written prayer petitions. That application, however, contains no mention of John D. McCracken and, instead, refers to the applicant therein, GODCAN Co., as a partnership composed of three other individuals, including Arnold J. Capitanelli, Jr., who verified the application. In any event, the application was subsequently abandoned during the course of an opposition thereto brought by Ms. Patterson.

Opposition No. 109,207

this proceeding, we find that opposer has priority and has established its standing. As to the latter, the record demonstrates that opposer had a reasonable belief that it is likely to be damaged by the registration which applicant seeks¹⁰ inasmuch as, at the time it commenced this proceeding on January 8, 1998, it was the owner of an application to register the mark "GOD CAN" in connection with goods which are essentially identical to those for which applicant seeks registration of her stylized "GOD CAN" mark and had been advised that, if applicant's application were to mature into a registration, such registration would possibly be cited as bar to opposer's application on the ground of likelihood of confusion. See, e.g., *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). Although opposer, on September 21, 1999, assigned its application to Arvus.com LLC, which later changed its name to Arvus.com of Oregon LLC, opposer has maintained its standing to bring this proceeding by virtue of the fact that, even though the mark "GOD CAN" remains the property of Arvus.com of Oregon LLC, such entity is a wholly owned subsidiary of PersonPlanet.com, Inc., of which the majority shareholder is

¹⁰ Section 13(a) of the Trademark Act, 15 U.S.C. §1063(a), provides in relevant part that "[a]ny person who believes that he would be damaged by the registration of a mark upon the principal register ... may, upon payment of the prescribed fee, file an opposition ... stating the grounds therefor"

Opposition No. 109,207

opposer. Thus, damage to Arvus.com of Oregon LLC, by failure to secure registration of the "GOD CAN" mark in light of applicant's application for the same mark in a stylized format, would in turn damage its sole owner, PersonPlanet.com, Inc., and hence opposer, as holder of a majority interest in PersonPlanet.com, Inc.

Moreover, and in any event, opposer has standing by virtue of the fact that it has demonstrated that it is the prior user of the "GOD CAN" mark by virtue of the prior use thereof by its predecessor in interest to such mark, Living Enrichment Center. In terms of which party has the earliest documented sale under such mark, the record shows that Living Enrichment Center, which transferred and assigned its trademark rights therein to opposer on June 26, 1995, sold six "GOD CAN" prayer request containers on July 19, 1993, while the earliest documented sale by applicant involves a sale of one "GOD CAN" prayer request can twenty months later on March 20, 1995. Although applicant admitted such date to be her date of first use of her mark, as set forth in her involved application, with respect to sales of her goods,¹¹ she claims not only that she and her former husband "produced GOD CANS together before that date," but that she "started producing

¹¹ Applicant sets forth in her application, as the date of first use of her mark, the following: "3/25/95 first sold, first used 1/20/91."

Opposition No. 109,207

her first GOD CANS in 1990," with her first use "officially" of the "GOD CAN" mark on January 20, 1991 consisting of having such mark "printed on the plastic lids" for her goods. However, as to technical trademark use, there is no documentary evidence that applicant actually sold or transported any prayer request cans under her "GOD CAN" mark in 1990 or 1991, and the mere printing of the "GOD CAN" mark on plastic lids for such goods does not qualify, for priority purposes, as use analogous to technical trademark use since it has not been shown to have been of a sufficient nature and extent so as to have created a public identification of the mark with applicant's goods. See, e.g., T.A.B. Systems v. PacTel Teletrac, 77 F.3d 1372, 37 USPQ2d 1879, 1881 (Fed. Cir. 1996).

Nevertheless, opposer concedes in its briefs that, for priority purposes, applicant may indeed rely upon January 20, 1991 as her earliest date of use of the "GOD CAN" mark. Opposer maintains, however, that it still has priority based upon the uncontroverted testimony of its witness, Ms. Morrissey, that opposer's predecessor in interest, Living Enrichment Center, first used the "GOD CAN" mark for prayer request containers as early as January 1, 1984 and that such use has been continuous. Applicant, on the other hand,

asserts in her brief (at 4) that opposer, "Tiger Press[,] has never had any ... legal right to have the GOD CAN Trademark ... because Tiger Press never obtained an assignment from the alleged predecessor ... and Tiger Press began producing their products long after the [applicant's] True Promise [Productions'] GOD CAN was created and sold."

In particular, applicant argues in her brief (at 5) that, not only is it "against the law for a non[-]profit organization's product to be used for anyones [sic] personal gain," but that opposer "never received a legal assignment or permission to use" the "GOD CAN" mark from Living Enrichment Center. However, as opposer points out in its reply brief (at 3), "Oregon law recognizes the right of a non-profit organization to sell its own property,"¹² and there is nothing in the record to show that sales by Living Enrichment Center of its "GOD CAN" product, which Ms. Morrissey stated she

¹² Opposer, in support thereof, cites *Foundation of Human Understanding v. Department of Revenue*, 722 P.2d 1, 301 Or. 254, 259 at n. 5 (1986), *citing* Ginsburg, *The Real Property Tax Exemption of Nonprofit Organizations: A Perspective*, 53 Temp. L.Q. 291, 316-17 (1980) (footnotes omitted):

The primary test of nonprofit status in most states are that no individual connected with the entity may receive any personal pecuniary benefit except for reasonable compensation for services rendered, and that any excess of income over expense derived from the operation of the property and all proceeds from the sale of property owned by the organization must be devoted to the furthering of the exempt purposes.

Opposition No. 109,207

created for that nonprofit organization's use, were misused for personal gain of any individual associated therewith. Thus, there is no evidence that use of the "GOD CAN" mark by Living Enrichment Center, which was continuous from January 1, 1984 until it transferred and assigned such mark to opposer on June 26, 1995, was illegal.

Instead, the principal thrust of applicant's arguments appears to be that the transfer and assignment of the "GOD CAN" mark from Living Enrichment Center to opposer was ineffective because the bill of sale and assignment document does not specifically mention the mark. Such document (Opposer's Exhibit 2 and Applicant's Exhibit 19.) is dated June 26, 1995 and provides, in pertinent part, that:

LIVING ENRICHMENT CENTER ("Seller") does hereby bargain, sell, transfer, convey, and assign to TIGER PRESS, L.L.C. ("Purchaser"), all of Seller's right, title, and interest (including copyrights, rights to copyright, and other intangible rights of any nature whatsoever) to and in connection with the following described personal property (collectively, the "Purchased Assets") for the purchase price of \$200,000, receipt of which is hereby acknowledged:

1. Sermons and speeches given by the Reverend Mary Manin Morrissey ("Morrissey"), including all transcripts, tapes, and videotapes thereof;

2. Meditation tapes created by Morrissey;

3. Morrissey's "Pocket Principles" manuscripts;

4. Morrissey's developmental manuscripts known as "Lifeworks" or "Breakthrough"; and

5. Similar works that Morrissey may have created in the past or may create in the future while employed by Seller or Purchaser.

(Opposer's Exhibit 2 and Applicant's Exhibit 19.) Applicant also argues in her brief (at 7) that, in any event, such document "has no bearing at all" because she "was granted the True Promise [Productions'] GOD CAN in divorce court on June 6, 1995" and opposer not only did not come into existence until six days later on June 12, 1995, but the bill of sale and assignment were not executed until two weeks later on June 26, 1995.

The fact, however, that neither opposer's formation nor the signing of the bill of sale and assignment occurred until after applicant's rights in her "GOD CAN" mark were decreed by the divorce court in California on June 6, 1995 does not mean that opposer lacks priority since it bases its claim to rights in its "GOD CAN" mark through its predecessor in interest, Living Enrichment Center, rather than any activities by applicant or her ex-husband. While the bill of sale and assignment document plainly does not list the "GOD CAN" mark, the document does refer, although ambiguously, to

Opposition No. 109,207

"[s]imilar works that Morrissey may have created in the past ... while employed by Seller," namely, the Living Enrichment Center, and the prayer request containers sold and advertised by such organization under that mark are, on their face, arguably "similar" in purpose to such "works" by Ms. Morrissey as "meditation tapes." Moreover, the uncontroverted testimony of Ms. Morrissey explained the ambiguity in the bill of sale and assignment document by stating that it was her understanding that the transfer and assignment reflected thereby included all trademark rights to the "GOD CAN" mark, which she had created for the Living Enrichment Center while a co-director and employee thereof, as well as the goodwill associated therewith, and that neither she nor her former husband, Haven Boggs, ever used such mark themselves.

Thus, as opposer correctly points out in its reply brief (at 4), the legal effect of the June 26, 1995 assignment from the Living Enrichment Center ("LEC") to opposer ("Tiger Press") was that (*italics in original*):

LEC assigned its rights to the materials produced or created by Morrisey [sic] (which included the GOD CAN mark and product) to Tiger Press. Accordingly, Tiger Press received the rights that LEC had at that time the assignment was made. At the time of the assignment, LEC had already been producing the GOD CAN product for a number of years, and Tiger Press therefore received LEC's rights to the *priority* of the mark.

Opposition No. 109,207

Because Tiger Press, as an assignee, stepped into the shoes of its assignor, LEC's date of first use becomes Tiger Press' date of first use. Because the assignment is valid, the only relevant factor is LEC's date of first use, which has been established as the early 1980s [and, in particular, January 1, 1984,] from the evidence. This date is earlier than True Promises' ... date of first use and, therefore, Tiger Press' priority is established.

Finally, as previously noted, the subsequent assignment by opposer of its rights in the "GOD CAN" mark, following its own period of use thereof from June 26, 1995 to September 1, 1999 in connection with its slotted containers for depositing prayers or other personal thoughts, did not divest opposer of its priority to such mark vis-à-vis applicant. This is because despite opposer's nunc pro tunc assignment on September 21, 1999 of its application to register the "GOD CAN" mark for slotted containers for depositing personal thoughts (such as prayers) to Arvus.com LLC, which subsequently changed its name to Arvus.com of Oregon LLC, opposer has maintained its standing to bring this proceeding, and hence its priority, by virtue of the fact that, even though the mark "GOD CAN" remains the property of Arvus.com of Oregon LLC, such entity is a wholly owned subsidiary of PersonPlanet.com, Inc., of which the majority shareholder is opposer. Consequently, the priority with respect to the "GOD CAN" mark which lies with Arvus.com of

Opposition No. 109,207

Oregon LLC inures in turn to opposer by virtue of its holding of a majority interest in PersonPlanet.com, Inc., which is the sole owner of Arvus.com of Oregon L.L.C.

Decision: The opposition is sustained and registration to applicant is refused.