



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

ASTRAZENECA AB,)
)
OPPOSER,)
)
PARADIGM, INC.,)
)
APPLICANT.)

OPPOSITION NO.

91178696

77/006,953

APPLICANT'S RESPONSE TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT

Applicant, Paradigm, Inc., respectfully submits its response to Opposer's Motion for Summary Judgment, pursuant to Rule 2.116 of the Trademark Rules of Practice, 37 C.F.R. § 2.127(e) and Rule 56 of the Federal Rules of Procedure. This response is supported by the accompanying Memorandum and the attached exhibits.

Respectfully submitted,

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Date: November 12, 2008



11-12-2008

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**MEMORANDUM IN SUPPORT OF APPLICANT'S RESPONSE TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

Applicant, Paradigm, Inc, respectfully submits its Memorandum in Support of its Response to Opposer's Motion for Summary Judgment, pursuant to Rule 2.116 of the Trademark Rules of Practice, 37 C.F.R. § 2.127(e) and Rule 56 of the Federal Rules of Procedure.

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I. INTRODUCTION

Summary judgment is a “salutory method of disposition ‘designed to secure [the] just, speedy and inexpensive determination of every action.’” Sweats Fashions, Inc. v. Pannill Knitting Co., Inc., 4 USPQ 2d 1793, 1795 (Fed. Cir. 1987) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)). Summary judgment is appropriate where the moving party establishes that there are no genuine issues of material fact which require resolution at trial and that it is entitled to judgment as a matter of law. FED. R. CIV. PRO. 56 (c). A fact is genuinely in dispute if the evidence is such that a reasonable factfinder could find in favor of the non-moving party. Salacuse v. Ginger Spirits, Inc., 44 U.S.P.Q.2d 1415, 1418 (TTAB 1997) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). “The non-moving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party.” Salacuse, 44 U.S.P.Q.2d at 1418.

In this case, there is a genuine issue of material fact with respect to the degree of similarity between AstraZeneca and Paradigm's marks. There is also a genuine issue of material fact regarding whether the fame of AstraZeneca's mark will serve to increase or decrease the likelihood of confusion. Paradigm asserts that these facts present sufficient evidence to raise genuine issues of material fact such that summary judgment in favor of the AstraZeneca is not warranted.

II. STATEMENT OF DISPUTED FACTS

1. AstraZeneca's mark is not similar in sight, sound, and connotation to Paradigm's mark.
2. The parties' goods and channels of trade are not identical.
3. The fame of AstraZeneca's mark serves to eliminate any likelihood of confusion.

III. ARGUMENT

Summary judgment is appropriate where the moving party establishes that there are no genuine issues of material fact which require resolution at trial and that it is entitled to judgment as a matter of law. FED. R. CIV. PRO. 56 (c). A fact is genuinely in dispute if the evidence is such that a reasonable factfinder could find in favor of the non-moving party. See Salacuse v. Ginger Spirits, Inc., 44 U.S.P.Q.2d 1415, 1418 (TTAB 1997) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

The moving party bears the burden of showing that no material fact exists. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986). The burden then shifts to the non-moving party to show that a triable issue of facts still exists. See id. "The non-moving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party." Salacuse, 44 U.S.P.Q.2d at 1418.

A. **There Is No Likelihood of Confusion Between AstraZeneca and Paradigm's Marks**

When determining if there is a likelihood of confusion between marks, the Trademark Trial and Appeal Board (hereafter "the Board") considers the factors

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