

COMMONWEALTH OF AUSTRALIA
TRADE MARKS ACT 1995

IN THE MATTER OF Australian Trade
Mark Application No. 904209 in the
name of Lockheed Martin Corporation

DECLARATION OF BRUCE A RITZER


I, Bruce A Ritzer, of Lockheed Martin Missiles & Fire Control - Orlando, 5600 Sand Lake Road, MP-40, Orlando FL 32819-8907, USA, do solemnly and sincerely declare as follows:

1. I am the Program Manager, BLU-109 Programs of Lockheed Martin Missiles & Fire Control – Orlando, 5600 Sand Lake Road, MP-40, Orlando, FL 23819-8907, USA, being a division of Lockheed Martin Corporation of 6801 Rockledge Drive, Bethesda, MD 20817 (“the Company”).
2. I have been a Lockheed Martin employee since 6 September 1983, and have held the position of Program Manager, BLU-109 Programs for 9 years. I am entitled to make this Statutory Declaration by virtue of my position and do so from my own knowledge and from relevant Company records to which I have free and unrestricted access.
3. I have been involved in the armaments trade for 35 years.
4. The Company is the applicant of Trade Mark Application No. 904209 for the word BLU-109 in class 13 for “firearms; ammunition and projectiles; explosives; aerial bomb product” (“the present application”), and was the applicant of Trade Mark Application No. 799283 (“the parent application”), now lapsed, of which Application No. 904209 is a divisional application.
5. Internet evidence was cited by an Australian Trade Mark Examiner in support of an objection in a first report on the parent application dated 29 May 2000 showing use of the word PBXN-109 in relation to an explosive filler for the Company’s BLU-109 product. In the report, the Examiner alleged that the number 109 refers to the quantity, stated in kilograms, of PBXN explosive carried by the bomb. Now produced, shown to me and marked **Exhibit BR-1** is a copy of the Internet evidence cited in that report.

6. Further Internet evidence was cited by an Australian Trade Mark Examiner in support of an objection in a first report on the present application dated 23 July 2002 showing use of the word PBXN-109 in relation to an explosive filler for the Company's BLU-109 product. In the report, the examiner alleged that 109 refers to the type of explosive carried by the bomb. Now produced, shown to me and marked **Exhibit BR-2** is a copy of the Internet evidence cited in that report.
7. The designation 109 in the word BLU-109 is arbitrary, and does not refer in any way to the quantity or kind of explosive carried by the BLU-109 bomb.
8. The BLU-109 bomb in fact carries 525 pounds (236 kilograms) of explosive.
9. Initially, the explosive known as Tritonal was used with the BLU-109 bomb, and Tritonal and other explosives may be used with the BLU-109 bomb.
10. The BLU-109 bomb was created and designated BLU-109 several years prior to the introduction of PBXN-109 and before that explosive was ever used with the BLU-109 bomb.
11. Internet evidence was cited by an Australian Trade Mark Examiner in support of an objection in a second report on the parent application dated 17 August 2001 showing used of the word BLU-109 by other manufacturers of aerial armaments, in particular Boeing and McDonnell Douglas, and by the US Department of Defense. In the report, the examiner alleged that this use evidences the lack of distinctiveness of the term BLU-109 and the need by other traders to use this term to describe their own similar goods. Now produced, shown to me and marked **Exhibit BR-3** is a copy of the Internet evidence cited in that report.
12. The purpose of McDonnell Douglas' Joint Direct Attack Mission (JDAM) program, referred to in the documents included in **Exhibit BR-3**, was to develop a guidance system for use in conjunction with a number of weapons, including the BLU-109 bomb. In particular, JDAM is an add-on to the BLU-109 weapon to provide higher precision delivery. Therefore the references to BLU-109 in the Boeing/McDonnell Douglas and Department of Defense documents are references to the Company's BLU-109 bomb product.

13. It is therefore my belief that the references to the BLU-109 product by other traders, and by the US Department of Defense, recognise the strength and acceptance of the mark BLU-109 as distinguishing the Company's bomb product from the similar products of other traders.
14. Furthermore, it is common practice in the armaments trade for manufacturers to use combinations of letters and numerals to designate their products. Traders and purchasers of the products are familiar with this practice, and accordingly such designations are understood as signs used to distinguish goods provided by particular manufacturers in the course of trade from the goods of other manufacturers.
15. In particular, designations such as BLU-109 are not understood in the trade merely as product codes, model or catalogue numbers. It is therefore my belief that traders acting without improper motive would not adopt as a designation for their similar goods a term that is identical with or similar to BLU-109.
16. It is therefore my belief that in the particular circumstances of the armaments trade the mark BLU-109 is capable of distinguishing the Company's goods from the similar goods of other traders.

AND I MAKE this solemn declaration conscientiously believing the statements contained therein to be true in every particular.



BRUCE A RITZER

Declared at : ORLANDO, FL

Dated : 21 AUGUST 2003

Before me :



Watermark Patent and Trademark Attorneys
Locked Bag 5
HAWTHORN VIC 3122

RE: Trade Mark No(s) 904209 in the name of LOCKHEED MARTIN
CORPORATION

.

The above trade mark is now registered. In order to reduce holdings of material at this office, we are now returning the evidence of use filed in support of the trade mark application.

The evidence consists of Company material .

Nicole Malmberg
Examination Services
(02) 6283 2445

27 May 2004