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

<b>Proceeding</b>	91125743
<b>Party</b>	Defendant UGI HAVC ENTERPRISES, INC. ,
<b>Correspondence Address</b>	BARBARA L. DELANEY PEPPER HAMILTON LLP 3000 TWO LOGAN SQUARE EIGHTEENTH AND ARCH STREETS PHILADELPHIA, PA 19103-2799
<b>Submission</b>	Motion to Compel Discovery
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<b>Signature</b>	/barbaraldelaney/
<b>Date</b>	11/03/2004
<b>Attachments</b>	Respondent's Motion to Compel.pdf ( 212 pages )

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

THE SERVICEMASTER COMPANY,	:	
	:	
Opposer/Petitioner,	:	Opposition No.: 125,743
	:	Appln. Serial No. 76/237,328
	:	
v.	:	Opposition No.: 152,104
	:	Appln. Serial No. 76/166,568
	:	
	:	Cancellation No. 92/041,147
UGI HVAC ENTERPRISES, INC.	:	Registration No. 2,591,190
	:	
Applicant/Respondent.	:	

**APPLICANT/RESPONDENT’S MOTION TO COMPEL DISCOVERY RESPONSES  
AND TO EXTEND DISCOVERY, TESTIMONY AND TRIAL DATES**

Applicant/Respondent, UGI HVAC Enterprises, Inc. (“Applicant”) pursuant to 37 C.F.R. § 2.120(e), moves the Trademark Trial and Appeal Board (the “Board”) to compel The ServiceMaster Company (“Opposer”) to fully respond to its discovery (listed in Appendix A and attached hereto as Exhibits A-D for the reasons set forth below.

This Motion is necessitated by Opposer’s systematic obstruction of discovery of facts necessary to test Opposer’s allegations of continuous and substantial common law use of Opposer’s Mark<sup>1</sup> for the HVAC<sup>2</sup> and plumbing services at issue in these proceedings. Opposer, has continued to rely on the meritless proposition that discovery of these facts is not relevant or is unduly burdensome, despite its claim that Opposer’s Mark is so strong and “famous” that

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<sup>1</sup> The term “Opposer’s Mark” refers to Registration Nos. 1,220,269 and 1,272,228, and the corresponding common law rights afforded by use thereof as asserted by Opposer in Count I of its Notice of Opposition.

<sup>2</sup> The term “HVAC” refers to heating, ventilation, and/or air conditioning.

registration of Applicant's SERVICEMARK Mark<sup>3</sup> will dilute the "distinctive quality" of its mark. In short, Opposer takes the position that Applicant must merely accept Opposer's pleadings on their face and should be content with whatever meager information Opposer deems "relevant" to the proceedings, thereby depriving Applicant of the ability to fully defend its applications and registration.

In addition, it has become obvious that Opposer has not made a good faith effort to comply with discovery requests that are indisputably relevant. Opposer, a 6.4 billion dollar company has within the last six years embarked on an acquisition campaign of HVAC and plumbing companies with already well-established brands. Applicant's independent investigation has revealed that these companies have continued to offer HVAC and plumbing services, not under Opposer's Mark, but under their historic marks and/or the marks of Opposer's related companies.<sup>4</sup> Despite Applicant's discovery through electronic databases of public pronouncements of market research and analysis in the last few years and claims of a massive rebranding effort, Opposer has not produced one document reflecting any internal or external communications regarding the use of Opposer's Mark or any other mark owned by Opposer in connection with the provision of HVAC and plumbing services. Applicant, through its own independent research and a review of Opposer's limited production, has uncovered a yellow pages advertisement announcing the forthcoming rebranding of ARS as ARS Service

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<sup>3</sup> The term "SERVICEMARK Mark" refers to SERVICEMARK (Serial No. 76/166,568), SERVICEMARK HEATING COOLING PLUMBING and Design (Serial No. 76,237,328), and SERVICEMARK HEATING COOLING PLUMBING and Design (Registration No. 2,591,190).

<sup>4</sup> See Yellow pages advertisements attached hereto collectively as Exhibit E. These yellow pages advertisements (not produced by Opposer) reflect offers of HVAC and plumbing services not under Opposer's Mark, but under historic marks and/or the marks of Opposer's related companies, ARS, ARS Service Express, AMS and Rescue Rooter. For example, Applicant has independently discovered that Opposer offers HVAC services in Washington D.C., Maryland, and Virginia not under Opposer's Mark but, instead, under the historic mark "John C. Dorsey" as well the "ARS" mark. The use of "historic" marks is used here as a short-hand reference to marks employed by local HVAC and plumbing companies prior to their acquisition by Opposer.

Express, Brand Transition Letters illustrating changes to Opposer's HVAC and plumbing brands, as well as the public transcript of "Q1 2003 The ServiceMaster Company Earnings Conference Call—Final"<sup>5</sup> in which the Chairman and CEO of the ServiceMaster Company, Jonathan Ward, said the following to shareholders:

*"We have large, well-known, but very undeveloped brands. This is what we're finding in the consumer research that we just completed... We did the research, and historically in ARS our advertising model [we'll] be there within an hour. It was in our billboards and mostly in our yellow page advertising. We've now changed the brand position to be ARS Service Express, and what we have found is that it's not important whether they are there in important [transcription error], but it is very, very important to be there when we say we're going to be there." (emphasis added)*<sup>6</sup>

It strains credulity to accept that no documents exist responsive to Applicant's requests and that such important studies, analyses, and decisions were not committed to paper.

Attorneys for Applicant, by this written statement, confirm that a good faith effort has been made, by telephone conference and correspondence, to resolve with attorney for Opposer the issues presented in this Motion.

Pursuant to 37 C.F.R. § 2.121, Applicant also moves the Board to extend the discovery, testimony and trial dates set in this action each for sixty (60) days, measured prospectively from the date of the Board's issuance of an Order ruling on the Motion in accordance with the agreement of both parties. The undersigned, attorney for Applicant, avers that he has communicated with counsel for Opposer, described the extension sought herein, and that counsel for Opposer has stated that Opposer joins in the request.

Attorneys for Applicant also confirm that if issues raised in the Motion are subsequently resolved by agreement between the parties, the Board will be promptly informed in

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<sup>5</sup> Retrieved from the Lexis-Nexis™ online database.

<sup>6</sup> See Exhibits E-G attached hereto.

writing, and if issues remain, will also be informed of those issues in the Motion which still require adjudication.

Applicant has further provided the Board with a Proposed Order granting this Motion attached hereto as Exhibit H.

## **MEMORANDUM**

### **I. Introduction:**

Applicant's Federal registration for its SERVICEMARK HEATING COOLING PLUMBING and Design mark (Registration No. 2,591,190) issued on July 9, 2002. Applicant also filed applications for its SERVICEMARK mark (Serial No. 76/166,568) and its SERVICEMARK HEATING COOLING PLUMBING and Design mark (Serial No. 76,237,328) on November 16, 2000 and April 6, 2001, respectively.

Opposer filed a Notice of Opposition, attached hereto as Exhibit I, on June 17, 2002 opposing Applicant's SERVICEMARK mark (Serial No. 76/166,568), assigned Opposition No. 91/152,104, and another Notice of Opposition, attached hereto as Exhibit J, on July 9, 2002 opposing Applicant's SERVICEMARK HEATING COOLING PLUMBING and Design (Serial No. 76,237,328), assigned Opposition No. 91/125,743. Opposer also filed a Petition for Cancellation, attached hereto as Exhibit K, on September 16, 2002 seeking the cancellation of Applicant's SERVICEMARK HEATING COOLING PLUMBING and Design mark (Registration No. 2,591,190), assigned Cancellation No. 92/041,147. The opposition proceeding, assigned Opposition No. 91/152,104, was later consolidated with the related Opposition No.

91/125,743 and Cancellation No. 92/041,147, by Order of July 8, 2003 (“Consolidated Proceeding”).<sup>7</sup>

The Consolidated Proceeding arises out of Opposer’s objections to the registration of the SERVICEMARK Mark for use in connection with the distribution, installation, repair, and maintenance of HVAC and plumbing equipment.

## II. Relevant Claims in Opposer’s Notice of Opposition:

The following claims were among those asserted by Opposer in its Notice of Opposition:

- HVAC and Plumbing Services: “Commencing long prior to Applicant’s filing date, *Opposer or its related companies* have engaged, and are now engaged in the advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.” (emphasis added).
- Opposer’s Mark for HVAC and Plumbing Services: “Commencing long prior to Applicant’s filing date, *Opposer or its related companies* have used, and are now using the SERVICEMASTER name and mark...in connection with advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.” (emphasis added).
- Corresponding Common Law Rights Afforded by Use: “Opposer is the owner of, and will rely herein, upon the following Federal trademark registrations [citing to Opposer’s Mark], *and the corresponding common law rights afforded by use thereof...*” (emphasis added).
- Extensive Use and Promotion of Opposer’s Mark: “Since its initial use of the aforementioned mark, Opposer has made a substantial investment in promoting its services under the SERVICEMASTER name and mark. *Opposer has extensively used, promoted and offered Opposer’s services in connection with the mark to the public* through various channels of trade in commerce, with the result that Opposer’s customers and the *public in*

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<sup>7</sup> As the contents of each of Opposer’s Notices of Opposition (Exhibits I and J) and its Petition for Cancellation (Exhibit K) are, in all material respects, the same, Applicant will use the term “Notice of Opposition” to indicate these pleadings collectively for ease of reference.

*general have come to know and recognize Opposer's mark and associate same with Opposer and/or services rendered by Opposer. Opposer has built extensive goodwill in connection with the rendering of services under its mark.*" (emphasis added).

- Fame: "By virtue of *long use of the name and mark SERVICEMASTER* and the high quality of consumer services rendered under that mark in connection with several well-known brands, the mark has achieved the *status of a famous mark since 1994*, a date preceding the filing of Applicant's application, and a date prior to the earliest date that Applicant can assert for its mark." (emphasis added).
- Dilution: "The registration of SERVICEMARK in the name of the Applicant *would dilute by blurring the distinctive quality of Opposer's SERVICEMASTER mark and would be in derogation of Opposer's right to preserve the SERVICEMASTER mark from dilution*, as expressed in Section 43(c)(1) of the Trademark Act." (emphasis added).
- Substantial Similarity: "Opposer, upon information and belief, avers that it will be damaged by the continued use and registration by Applicant of the alleged SERVICEMARK mark, as set forth in Applicant's Trademark Application Serial No. 76/166,568, in that the *mark is substantially similar to Opposer's trademark and common law rights* and is used with services identical to, or highly similar to, the services offered to the public by Opposer." (emphasis added).

### III. Applicant's Discovery:

Applicant has been consistently stonewalled in its attempts to elicit from Opposer the information and documents it needs, and to which it is entitled, to defend its SERVICEMARK Mark in light of the claims asserted by Opposer in its Notice of Opposition.<sup>8</sup> In particular, Applicant has been denied documents and information directly impacting on the purported use (or lack thereof) of Opposer's Mark and the relative strength of Opposer's Mark in connection with Opposer's provision of HVAC and plumbing services. In addition, Opposer has not produced documents and information related to surveys, investigations, and/or research,

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<sup>8</sup> Applicant served Opposer with two sets of discovery, attached hereto as Exhibits A-D, related to these proceedings, on November 4, 2002 and August 30, 2004, respectively. Opposer's objections and responses and the correspondence between the parties related thereto are attached hereto as Exhibits L-X.

conducted by or on behalf of Opposer related to the strength, market penetration, strategy, or use of Opposer's Mark. Further, Opposer has produced no documents which reflect on the deliberative process which must have taken place 4-5 years ago regarding the branding of its residential and commercial HVAC business units operating under the ARS, ARS Service Express, AMS, and Rescue Rooter marks, among others. Nor has Opposer produced all relevant documents relating to its comprehensive rebranding efforts. It is unclear at this time whether Opposer has given incomplete responses deliberately or as a result of a failure to conduct a diligent search or some combination of the two. What is clear, however, is that Applicant is entitled to complete responses to its discovery and that it simply cannot address Opposer's claims in these proceedings without them.

**A. Objections Based on Opposer's Contention that Applicant's Discovery is Overly Broad, Unduly Burdensome, Time-Consuming and Expensive:**

Applicant served its First Set of discovery on November 4, 2002 including a number of specific requests listed in Appendix A, attached hereto, tailored to test many of the claims in Opposer's Notice of Opposition. The discovery sought to test (1) whether, and, if so, to what extent, Opposer uses or has used Opposer's Mark in connection with the provision of HVAC and plumbing services, (2) whether Opposer has any basis for its claim that Opposer's Mark and the SERVICEMARK Mark are likely to be confused, (3) whether Opposer has any basis for its claim that Opposer's Mark has achieved the status of a famous mark, and, (4) whether Opposer has any basis for its claim that Opposer's Mark has or is likely to become diluted. Opposer objected to these requests contending that they are "overly broad, unduly burdensome, time-consuming and expensive" and indicated that it would only produce a "representative sampling" of responsive documents. Opposer has, therefore, not provided

Applicant with complete information or documents showing the use of Opposer's Mark or others, in connection with its provision of HVAC and/or plumbing services, nor has Opposer provided Applicant with information or documents supportive of any of the remaining claims asserted by Opposer in its Notice of Opposition and detailed above.

In response to Opposer's objections, Applicant, in an effort to facilitate discovery without involving the Board, agreed to accept a narrow subset of documents and information related to Opposer's HVAC and plumbing businesses. Applicant asked that Opposer produce all documents responsive to its discovery, as limited, rather than a "representative sampling." Opposer, responded two months after Applicant's proposal and refused to comply.

Unless Opposer is compelled to respond to Applicant's discovery related to the marks used in connection with Opposer's HVAC and plumbing services, Applicant is in no position to evaluate and defend against Opposer's claims in its Notice of Opposition. Accordingly, Opposer should be compelled to fully respond to Applicant's discovery related to the claims asserted in Opposer's Notice of Opposition including, but not limited to, the specific document requests and interrogatory listed in Appendix A to this Motion.

**B. Objections Based on Opposer's Contention that Applicant's Discovery is Not Relevant Because it Calls for Responses Related to Marks Owned by Opposer that are Not Asserted Against Applicant in these Proceedings:**

Over the course of these proceedings, Applicant has learned that between 1998 and 2000 Opposer acquired Rescue Rooter ("Rescue Rooter"), American Residential Services, Inc. ("ARS"), and American Mechanical Services, Inc. ("AMS"), a subsidiary of ARS. Since that time, Opposer has utilized these formerly independent companies as business units providing HVAC and plumbing services. Based on the sparse information provided to date by Opposer, it appears probable that Opposer has abandoned Opposer's Mark as used (if it ever was

used) in connection with the provision of HVAC and plumbing services and only uses its Rescue Rooter, ARS, ARS Service Express, and AMS brands as service marks in connection with the provision of those services.<sup>9</sup>

Opposer claims that it or its related companies use Opposer's Mark in connection with the provision of HVAC and plumbing services. By refusing to produce information and documents which reflect the use of any and all marks actually used in connection with such services, Opposer blocks any serious inquiry into whether Opposer actually uses Opposer's Mark as opposed to ARS, ARS Service Express, AMS, and Rescue Rooter when it offers such services. By way of example, Applicant has not received documents relating to or reflecting *any* communications from or among individuals in Opposer's marketing department concerning any policies or protocols for the use of marks owned by Opposer in connection with the provision of HVAC and plumbing services including, but not limited to Opposer's Mark and the ARS, ARS Service Express, AMS, and Rescue Rooter marks. This is especially troubling given that ARS, AMS, and Rescue Rooter were well-established brand names in the fields of HVAC and plumbing when Opposer acquired those brands and absorbed the companies as business units. It is simply not plausible that Opposer would purchase two established HVAC brands like ARS and AMS for \$272 million and never discuss whether to use Opposer's Mark on or in connection with the new units, leave them as they are, co-brand the services with Opposer's Mark etc. As such, it seems clear that such documents do, in fact, exist and that Opposer has simply refused to locate or produce them despite their relevance and importance to these proceedings.

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<sup>9</sup> Not only does it appear probable that Opposer has abandoned Opposer's Mark as used (if it ever was used) in connection with the provision of HVAC and plumbing services Applicant has also learned (again, through its own independent investigation) that Opposer's ARS, ARS Service Express, AMS, and Rescue Rooter marks may, themselves, only be used as secondary marks in connection with the provision of HVAC and plumbing services. See e.g., Advertisements attached hereto as Exhibit E.

Unless Opposer is compelled to respond to Applicant's discovery related to the marks used by Opposer in connection with Opposer's HVAC and plumbing services, *including the marks actually used by Opposer's related companies*, Applicant is in no position to evaluate and defend against Opposer's claims in its Notice of Opposition or to determine the validity of a potential counterclaim on its part that Opposer has abandoned Opposer's Mark. Accordingly, Opposer should be compelled to fully respond to Applicant's discovery related to the claims asserted in Opposer's Notice of Opposition including, but not limited to, the specific document requests and interrogatories listed in Appendix A to this Motion.

**C. Opposer's Wholesale Failure to Produce Documents Related to Inquiries, Surveys, Evaluations, Polls and Studies Related to Opposer's Mark Despite the Obvious Existence of Same:**

As mentioned above, Applicant has also discovered through electronic databases that Opposer has, over the last few years, undertaken costly market research and analysis and made numerous claims regarding its massive rebranding efforts.<sup>10</sup> The information and documents relating to Opposer's consumer research initiatives are clearly responsive to Applicant's discovery requests. Opposer has not responded with documents reflecting the content of Opposer's market research and the uses to which Opposer's Mark and other marks it employs were put before or after the rebranding effort commenced. In fact, Opposer has, instead, (and after much prodding,) produced documents like the ones attached hereto as Exhibit F—sample advertisements created in 2004 as part of Opposer's rebranding initiative which clearly do not reveal the uses to which Opposer puts, or has put, Opposer's Mark in commerce. Accordingly, Opposer should be compelled to fully respond by producing documents and

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<sup>10</sup> See "Q4 2002 The ServiceMaster Company Earnings Conference Call—Final" attached hereto as Exhibit Y.

providing information related to research, inquiries, surveys, evaluations, polls, and studies to the extent requested by Applicant's discovery including, but not limited to, the specific interrogatory listed in Appendix A to this Motion.

**IV. Conclusion:**

For the foregoing reasons, it is submitted that good grounds exist for granting the Motion, and such action is requested.

Respectfully submitted,



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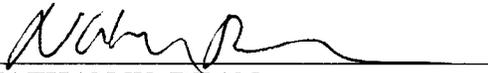
Dated: November 3, 2004

Attorneys for Applicant/Respondent  
UGI HVAC Enterprises, Inc.

**CERTIFICATE OF SERVICE**

I certify that on November 3, 2004, I caused a true and correct copy of the foregoing Applicant/Respondent's Motion to Compel Discovery Responses and to Extend Discovery, Testimony and Trial Dates to be served *via facsimile and first-class mail*, upon the following:

P. Jay Hines, Esquire  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314

  
NATHAN W. DEAN

## APPENDIX A

### DISPUTED DISCOVERY

- A. Objections Based on Opposer's Contention that Applicant's Discovery is Overly Broad, Unduly Burdensome, Time-Consuming and Expensive:**
1. Interrogatory No. 11 (First Set)
  2. Document Request Nos. 4, 7, 8, 14, and 17-19 (First Set)
- B. Objections Based on Opposer's Contention that Applicant's Discovery is Not Relevant Because it Calls for Responses Related to Marks Owned by Opposer that are Not Asserted Against Applicant in these Proceedings:**
1. Interrogatory Nos. 2-5, 7 and 12 (Second Set)
  2. Document Request No. 1 (Second Set)
- C. Opposer's Wholesale Failure to Produce Documents Related to Inquiries, Surveys, Evaluations, Polls and Studies Related to Opposer's Mark Despite the Obvious Existence of Same:**
1. Interrogatory No. 6 (Second Set)

# **EXHIBIT A**

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

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THE SERVICEMASTER COMPANY,

Opposer,

v.

UGI HVAC ENTERPRISES INC.,

Applicant.

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Opposition No. 125,743

Mark: SERVICEMARK HEATING  
COOLING PLUMBING & Design

Serial No. 76/237,328

Commissioner of Trademarks  
Box TTAB -- NO FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

**APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER**

Applicant, UGI HVAC Enterprises, Inc. ("Applicant") or ("UGI"), through counsel, hereby propounds the following written interrogatories to be answered separately and fully in writing under oath in accordance with the Trademark Rules of Practice and the Federal Rules of Civil Procedure, where applicable.

**DEFINITIONS AND INSTRUCTIONS**

A. The term "person" refers both to natural persons, whether or not in the employ of Opposer, and to corporate or other business entities, divisions, departments, units, affiliates, parents, or subsidiaries, and the "acts and knowledge" of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

B. The term "Applicant" refers to UGI HVAC Enterprises, Inc.

C. The term "trademark" or "mark" includes trademarks, service marks,, collective marks, certification marks and trade names as defined in 15 U.S.C. 1127.

D. The term “document” refers to written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, and includes, but is not limited to, letters, telegrams, facsimile transmissions, electronic mail, work papers, handwritten or other notes, memoranda, inter-office communications, notices, books, studies, analyses, evaluations, statements, summaries, opinions, records, minutes or transcriptions or notations of meetings, telephone conversations or other communications of any type, photographs, bills, contracts, invoices, agreements, orders, receipts, drawings or sketches, advertising or promotional literature, operating manuals or instruction bulletins, cables, tape and other recordings, test data, reports, questionnaires, surveys, charts, graphs, pamphlets and catalogs.

E. “Interrogatory” shall refer to the specific Interrogatory contained in Applicant’s Interrogatories Addressed to Opposer - First Set.

F. To “identify” a person means to state the person’s name and business address and, in the case of a natural person, his or her home address and occupation or job title.

G. To “identify” or “describe” a document means to provide a brief description of the document sufficient to support a request for production, including the general nature of the subject matter, the date, identification of the author and recipient, if any, and, if the document embodies an agreement, the parties to such agreement. In answer to those Interrogatories requiring the identification of any document or documents, such document or documents may be produced by Opposer for inspection and copying along with the answers to these Interrogatories in lieu of identification. To “identify” a thing means to provide a brief description of the thing sufficient to support a request for production, including any numbers, markings or other identifying characteristics. To “locate” documents or things means to state the present

whereabouts of each document or thing, and to identify the person having possession, custody or control thereof.

H. Wherever a "date" is requested to be identified it shall mean the exact date, month and year, if ascertainable, or if not, the best approximation (including relationship to other events).

I. The term "Opposer" shall include The ServiceMaster Company, its officers, agents, employees, servants, subsidiaries, affiliates, divisions, or any other related organization.

J. Should Opposer deem to be privileged any documents concerning which information or inspection is requested by any of the following Interrogatories, Opposer shall indicate that it claims privilege therefor, briefly state the grounds on which the claim of privilege rests, indicate the position held by the person who prepared and/or possesses the document, indicate the position held by the addressee, and identify all persons (and their positions) who received copies of such documents, either at the time of initial distribution or at any subsequent time, all in order that Applicant may have the actual basis to determine whether such documents are, in fact, privileged.

Opposer has the duty to supplement its responses to these Interrogatories at such times and to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

### **INTERROGATORIES**

1. Identify the person or persons most familiar with the use by Opposer of the marks **SERVICEMASTER**, Reg. No. 1,220,269 and Reg. No. 1,272,228.

2. With respect to Opposer:

a) state the address of each location at which Opposer as maintained or now maintains an office or other place of business in the U.S. and describe the functions carried out at each such place or other place of business;

b) briefly state the nature of Opposer's principal business and the period in which it has conducted such business.

3. Identify the services rendered, offered for sale, advertised and/or promoted or intended to be rendered, advertised and/or promoted by Opposer in the United States which bears or will bear the SERVICEMASTER marks.

4. Identify the person or persons employed by Opposer who had, or has, primary responsibility for maintenance and protection of the SERVICEMASTER marks.

5. State any policy (written or unwritten) Opposer may have, identifying and locating any documents, concerning the use, display and advertising of the SERVICEMASTER marks.

6. Describe all marketing and distribution systems, identifying and locating any documents used by opposer, or intended to be used by opposer, for products bearing the SERVICEMASTER marks from the date of first use to the present.

7. Describe the geographic market areas, or intended geographic market areas, specifying each state or country, for products bearing the SERVICEMASTER marks since the date of first use to the present.

8. Identify the channels of commerce or distribution in which products bearing the SERVICEMASTER marks are offered.

9. Identify the classes of purchasers to whom products bearing the SERVICEMASTER marks are offered.

10. Has Opposer ever challenged any third party regarding the use of any trademark or other designation which Opposer considered to conflict with either of the SERVICEMASTER marks and, if so:

- a) identify the third party;
- b) describe the designation used and the goods or services in connection with which it is or was used;
- c) describe the nature of the action taken by Opposer;
- d) describe the results, if any, of said action; and
- e) identify and locate all documents relating thereto.

11. Identify and describe any and all packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks or used in connection with the SERVICEMASTER marks.

12. Give the date and describe the circumstances under which Opposer first became aware of Applicant's SERVICEMARK HEATING COOLING PLUMBING & DESIGN trademark.

13. State whether or not opposer has ever received any misdirected mail, telephone calls, orders, inquiries, complaints, or communications which were intended for Applicant, or one of its affiliated companies, and, if so, for each such incident, state or describe:

- a) the date and place it occurred;
- b) the name, address and position of the person(s) who received the misdirected communication;
- c) the name, or other means of identification, and address of the person(s) who sent the communication;
- d) whether any record was made of such misdirected communication and, if so, the address of the persons who has custody of such record; and
- e) identify each and every document referring or relating to such incident.

14. State whether Opposer is aware of any instance in which any person, firm, corporation, association or other entity has been confused or has indicated by correspondence, oral statement, or otherwise that he, she, or it has been confused, deceived, or mistaken as to the source or origin of Opposer's or Applicant's goods and/or services or other activities as a result of the respective, concurrent use or planned use of their respective marks; and

a) describe the circumstances surrounding each such instance, including all persons present;

b) state whether a record was made of any such instances and, if so, identify the records or any other documents relating to each such instance and the persons having knowledge and custody thereof.

15. State the similarities between Applicant's mark **SERVICEMARK HEATING COOLING PLUMBING & DESIGN** and Opposer's **SERVICEMASTER** marks as used with their respective services, forming the basis for Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the marks.

16. Identify all surveys and market studies conducted by Opposer concerning **SERVICEMARK HEATING COOLING PLUMBING & DESIGN** and for each such survey and market study, identify all documents relating to or embodying the results of each such survey.

17. Identify all agreements, including but not limited to, licenses, permissions or consents entered into by Opposer and any other entities relating to the **SERVICEMASTER** marks and identify all documents relating to or referring to such agreement.

18. State the factual basis for Opposer's assertions that the **SERVICEMASTER** mark is a famous mark.

19. State the factual basis for Opposer's assertions that the SERVICEMASTER mark has or is likely to become diluted.

20. Identify all persons who provided information supporting the facts set forth in Opposition No. 125,743.

21. With regard to the response to each Interrogatory herein, state the name of each employee or agent of Opposer to whom the information is a matter of personal knowledge, the name of each employee or agent who furnished information pertaining to such responses and the basis upon which affiant relies in whole or in part for such response.

Respectfully submitted,



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Philadelphia, PA 19103-2799  
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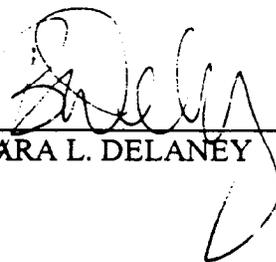
Dated: November 4, 2002

Attorneys for Applicant  
UGI HVAC Enterprises, Inc.

**CERTIFICATE OF SERVICE**

I certify that on November 4, 2002, I caused a true and correct copy of the foregoing Answer to Notice of Opposition to be served via United States Postal Service Express Mail mailing label no. EL568551773US, postage prepaid, upon the following:

P. Jay Hines, Esquire  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1755 Jefferson Davis Highway, Fourth Floor  
Arlington, Virginia 22202

  
\_\_\_\_\_  
BARBARA L. DELANEY

# **EXHIBIT B**

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

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THE SERVICEMASTER COMPANY,

Opposer,

v.

UGI HVAC ENTERPRISES INC.,

Applicant.

---

Opposition No. 125,743

Mark: SERVICEMARK HEATING  
COOLING PLUMBING & Design

Serial No. 76/237,328

Commissioner of Trademarks  
Box TTAB -- NO FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

**APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Applicant, UGI HVAC Enterprises, Inc. ("Applicant") or ("UGI"), pursuant to Trademark Rule 2.120 and Rule 34 of the Federal Rules of Civil Procedure, through counsel, hereby requests that opposer produce for inspection and copying the following documents at the offices of Pepper Hamilton LLP, 3000 Two Logan Square, Philadelphia, PA 19103, or, in the alternative, that Opposer photocopy and forward copies of the following documents to Applicant's attorney, within thirty (30) days of service hereof.

**DEFINITIONS AND INSTRUCTIONS**

A. The definitions and instructions contained in Applicant's First Set of Interrogatories to Opposer (the "interrogatories") are incorporated herein by reference.

B. Should Opposer deem to be privileged any documents concerning which information or inspection is requested by any of the following Requests, Opposer shall indicate that it claims privilege therefor, briefly state the grounds on which the claim of privilege rests, indicate the position held by the person who prepared and/or possesses the document, indicate

the position held by the addressee, and identify all persons (and their positions) who received copies of such documents, either at the time of initial distribution or at any subsequent time, all in order that Applicant may have the actual basis to determine whether such documents are, in fact, privileged.

Opposer has the duty to produce supplemental documents and things as additional information becomes known to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

### **REQUESTS**

1. Produce all documents and things identified in Opposer's responses to the Interrogatories.
2. Produce all documents and things which record, reflect, relate or refer to, or contain information used in preparation of the responses to the Interrogatories.
3. Produce all documents and things that concern Opposer's past, present, or future marketing plans for offering or selling goods or services under the SERVICEMASTER marks.
4. Produce all documents and things concerning any plans, schedules, or program for marketing, advertising, or promoting any goods or services offered for sale or sold, or intended to be offered for sale or sold, under the SERVICEMASTER marks.
5. Produce documents and things sufficient to disclose the territorial or geographic areas where Opposer offers or intends to offer goods or services under the SERVICEMASTER marks and the length of time during which each product or service has been marketed in each territory or geographical area.
6. Produce documents that disclose the channels of trade through which Opposer offers or intends to offer any goods or services under the SERVICEMASTER marks.

7. Produce all documents and things that identify the persons who purchase, or to whom are offered for purchase, any goods or services under the SERVICEMASTER marks.

8. Produce all documents concerning any communications that Opposer had (whether orally or in writing) with any other person or persons regarding the SERVICEMASTER marks or another party's right to use these marks, or any mark the Opposer considered as or alleged to be confusingly similar thereto.

9. Produce all documents or things concerning any litigation, cancellation proceeding, opposition proceeding, or other claim or demand involving Opposer and any other party concerning the use of the SERVICEMASTER marks or any mark alleged to be confusingly similar hereto.

10. Produce samples of all forms of packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks or used in connection with the SERVICEMASTER marks.

11. Produce all documents evidencing the circumstances under which Opposer first became aware of Applicant's SERVICEMARK HEATING COOLING PLUMBING & DESIGN trademark.

12. Produce all documents relating to any misdirected mail, telephone calls, orders, inquiries, complaints, or communications which were intended for Applicant, or one of its affiliated companies.

13. Produce all documents evidencing or relating to any third party confusion, deceit, or mistake as to the source or origin of Opposer's or Applicant's goods and/or services or other activities as a result of the respective, concurrent use or planned use of their respective marks.

14. Produce all documents and things which support Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the Applicant's marks and Opposer's marks.

15. Produce all documents related to surveys conducted by Opposer concerning SERVICEMARK HEATING COOLING PLUMBING & DESIGN.

16. Produce all documents concerning any assignment, license, or other transfer to or from Opposer of any right in the SERVICEMASTER marks.

17. Produce all documents which support Opposer's assertions that the SERVICEMASTER mark has achieved the status of a famous mark.

18. Produce all documents and things which support Opposer's assertions that the SERVICEMASTER mark has or is likely to become diluted.

19. Produce all other documents and things which Opposer contends supports any element of its Notice of Opposition.

20. Produce all other documents and things which Opposer intends to use in depositions or otherwise intends to submit as evidence.

Respectfully submitted,



---

VINCENT V. CARISSIMI  
BARBARA L. DELANEY  
KATHLEEN A. JOHNSON  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, PA 19103-2799  
(215) 981-4000

Dated: November 4, 2002

Attorneys for Applicant  
UGI HVAC Enterprises, Inc

**CERTIFICATE OF SERVICE**

I certify that on November 4, 2002, I caused a true and correct copy of the foregoing Answer to Notice of Opposition to be served via United States Postal Service Express Mail mailing label no. EL568551773US, postage prepaid, upon the following:

P. Jay Hines, Esquire  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1755 Jefferson Davis Highway, Fourth Floor  
Arlington, Virginia 22202

  
BARBARA L. DELANEY

# **EXHIBIT C**

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

THE SERVICEMASTER COMPANY,	:	
	:	
Opposer/Petitioner,	:	Opposition No.: 91/125,743
	:	Appln. Serial No. 76/237,328
	:	
v.	:	Opposition No.: 91/152,104
	:	Appln. Serial No. 76/166,568
	:	
	:	Cancellation No. 92/041,147
UGI HVAC ENTERPRISES, INC.	:	Registration No. 2,591,190
	:	
Applicant/Respondent.	:	

**APPLICANT/RESPONDENT'S SECOND SET OF INTERROGATORIES TO  
OPPOSER/PETITIONER**

Applicant/Respondent, UGI HVAC Enterprises, Inc. ("Applicant") or ("UGI"), through counsel, hereby propounds the following written interrogatories addressed to Opposer/Petitioner, The ServiceMaster Company ("Opposer"), to be answered separately and fully in writing under oath in accordance with the Trademark Rules of Practice and the Federal Rules of Civil Procedure, where applicable.

**DEFINITIONS AND INSTRUCTIONS**

A. The term "Person" refers to natural persons, whether or not in the employ of Opposer, and to corporate or other business entities, divisions, departments, units, partnerships, joint ventures, trusts or unincorporated organizations.

B. The term "Applicant" refers to UGI HVAC Enterprises, Inc.

C. The term "Opposer" shall include The ServiceMaster Company, its Affiliates, and each of its and their officers, directors, representatives, agents, employees,

servants, subsidiaries, divisions, or any other related organizations, and any other Person who has express or implied rights to use Opposer's Mark.

D. The term "Affiliate" means any individual or entity directly or indirectly controlling, controlled by or under common control with, The ServiceMaster Company. For the purposes of Applicant/Respondent's Second Set of Interrogatories to Opposer/Petitioner, the direct or indirect ownership of over fifty percent (50%) of the outstanding voting securities of any entity, or the right to receive over fifty (50%) of the profits or earnings of an entity will be deemed to constitute control. Such other relationship as in fact results in actual control over the management, business and affairs of an entity will also be deemed to constitute control.

E. The term "Mark" includes all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, service marks, certification marks, collective marks, logos, domain names, or other indicia of source, whether currently in use or not, and whether registered with a government entity or not.

F. The term "Opposer's Mark" refers to Registration Nos. 1,220,269 and 1,272,228, and the corresponding common law rights afforded by use thereof as asserted by Opposer in Count I of its Notice of Opposition.

G. The term "SERVICEMARK Mark" includes all of Applicant's marks at issue in this proceeding—SERVICEMARK (Application Serial No. 76/166,568), SERVICEMARK HEATING COOLING PLUMBING & Design (Color) (Application Serial No. 76/237,328), and SERVICEMARK HEATING COOLING PLUMBING & Design (B & W) (Application Serial No. 76/237,455).

H. The term "Related Party" includes any Person (other than Opposer) who provides HVAC and/or plumbing services and/or related products for, on behalf of, or at the direction of, The ServiceMaster Company and/or any of its Affiliates.

I. The term "HVAC" refers to heating, ventilation, and/or air conditioning.

J. The term "Document" refers to written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, and includes, but is not limited to, letters, telegrams, facsimile transmissions, electronic mail, work papers, handwritten or other notes, memoranda, inter-office communications, notices, books, studies, analyses, evaluations, statements, summaries, opinions, records, minutes or transcriptions or notations of meetings, telephone conversations or other communications of any type, photographs, bills, contracts, invoices, agreements, orders, receipts, drawings or sketches, advertising or promotional literature, operating manuals or instruction bulletins, cables, tape and other recordings, test data, reports, questionnaires, surveys, charts, graphs, pamphlets and catalogs.

K. "Interrogatory" or "Interrogatories" shall refer to the specific Interrogatory or Interrogatories contained in Applicant/Respondent's Second Set of Interrogatories to Opposer/Petitioner.

L. To "identify" a person means to state the person's name and business address and, in the case of a natural person, his or her home address and occupation or job title.

M. To "identify" or "describe" a document means to provide a brief description of the document sufficient to support a request for production, including the general nature of the subject matter, the date, identification of the author and recipient, if any, and, if the document embodies an agreement, the parties to such agreement. To "identify" a thing means to provide a brief description of the thing sufficient to support a request for production, including

any numbers, markings or other identifying characteristics. To "locate" documents or things means to state the present whereabouts of each document or thing, and to identify the person having possession, custody or control thereof.

N. Wherever a "date" is requested to be identified it shall mean the exact date, month and year, if ascertainable, or if not, the best approximation (including relationship to other events).

O. Wherever the term "period of time" or "periods of time" is requested to be identified, it shall mean the exact date, month, and year commencing such period or periods of time, and the exact date, month, and year concluding such period or periods of time.

P. The singular includes the plural and vice-a-versa. The masculine includes the feminine and neutral genders. The term "between" means "among" and vice-a-versa. The past tense includes the present tense, and vice-a-versa, when the clear meaning is not distorted by changing tense.

Q. As used herein, "and", "or", "and/or", "any" and "each" all have interchangeable meanings, and their terms are to be read and responded to in the most inclusive and expansive fashion possible.

R. "Relating to," "referring to," "reflecting," "evidencing," or any of their forms mean constituting, representing, supporting, contradicting, referring to, relevant to, containing information about, stating, describing, analyzing, noting, embodying, containing, mentioning, studying, recording, discussing, or evaluating, or any other manner relevant thereto.

S. Should Opposer deem to be privileged any documents concerning which information or inspection is requested by any of the following Interrogatories, Opposer shall indicate that it claims privilege therefor, briefly state the grounds on which the claim of privilege

rests, indicate the position held by the person who prepared and/or possesses the document, indicate the position held by the addressee, and identify all persons (and their positions) who received copies of such documents, either at the time of initial distribution or at any subsequent time, all in order that Applicant may have the actual basis to determine whether such documents are, in fact, privileged.

Opposer has the duty to supplement its responses to these Interrogatories at such times and to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

### **INTERROGATORIES**

1. State with particularity all facts and evidence that support Opposer's claim to the "corresponding common law rights" asserted in paragraph 4 of Opposer's Notice of Opposition and paragraph 4 of its Petition for Cancellation.

2. State the full address of each location in the U.S. at which Opposer has maintained, or now maintains, an office or other place of business with respect to the provision of any residential HVAC and/or plumbing services and/or related goods, and for each location state:

a. the date(s) on which business commenced and, if applicable, terminated, as to each service and/or offer for sale of goods;

b. the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;

c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Opposer has used such color(s) in connection with Opposer's Mark;

d. the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

3. State the full address of each location in the U.S. at which Opposer has maintained, or now maintains, an office or other place of business with respect to the provision of any commercial HVAC and/or plumbing services and/or related goods, and for each location state:

- a. the date on which business commenced as to each service and/or offer for sale of goods and, if applicable, terminated;
- b. the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;
- c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Opposer has used such color(s) in connection with Opposer's Mark;
- d. the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

4. State the full address of each location in the U.S. at which any Related Party has maintained, or now maintains, an office or other place of business with respect to the provision of any residential HVAC and/or plumbing services and/or related goods, and for each location state:

- a. the date(s) on which business commenced and, if applicable, terminated, as to each service and/or offer for sale of goods;
- b. the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;
- c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Related Party has used such color(s) in connection with Opposer's Mark;
- d. the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

5. State the full address of each location in the U.S. at which any Related Party has maintained, or now maintains, an office or other place of business with respect to the provision of any commercial HVAC and/or plumbing services and/or related goods, and for each location state:

a. the date on which business commenced as to each service and/or offer for sale of goods and, if applicable, terminated;

b. the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;

c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Related Party has used such color(s) in connection with Opposer's Mark;

d. the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

6. Identify all inquiries, investigations, surveys, evaluations, polls and/or studies conducted by Opposer or by anyone acting for or on its behalf that refer or relate in any manner to Opposer's Mark, indicating as to each the date conducted, the name, address and title of each Person who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all documents which record, refer to, or relate to such inquiry, investigation, survey, evaluation, poll, or study.

7. State any policy (written or unwritten) and identify and locate any documents, concerning any and all uses of each of the Marks (other than Opposer's Marks) used on or in connection with the provision of any HVAC and/or plumbing services and/or related products by, for, or on behalf of, Opposer and any Related Party.

8. State with particularity all facts and evidence that support your claim that "Opposer has also used Opposer's Mark for other and various related services including, but not

limited to electrical, drain rooting and cleaning services to residential and commercial customers and extended warranties for major home systems and appliances to residential customers” in Count I of its Notice of Opposition.

9. Identify all persons who were involved in, or participated in any way with, the decision by Opposer to adopt and/or use Opposer’s Mark, and for each such person state his/her title and/or position, and the role he/she played in the decision to adopt and/or use Opposer’s Mark.

10. Identify all documents and set forth with specificity all facts regarding the selection, adoption, and derivation of Opposer’s Mark, including circumstances surrounding and reasons behind its selection.

11. Describe the meaning/intended meaning and connotation/intended connotation of Opposer’s Mark.

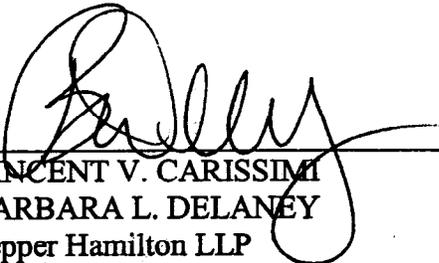
12. Identify with specificity the marketing methods used and/or intended to be used in advertising associated with the provision of HVAC and/or plumbing services and/or related goods by or for Opposer under Opposer’s Mark, or any other mark owned or used by Opposer, including, without limitation, the names of newspapers, magazines, trade journals or periodicals in which Opposer has advertised and/or intends to advertise Opposer’s Mark, or any other mark owned or used by Opposer.

13. Identify and describe in detail the ordinary purchaser or expected ordinary purchaser of the goods and/or services sold or to be sold under Registration Nos. 1,220,269 and 1,272,228 including, without limitation, the expected level of care exercised by such an ordinary purchaser.

14. State the name of any Person Opposer is aware of who is currently or has utilized the words "Service" or "Master," alone or in combination with other words and/or design elements, on or in connection with the provision of HVAC and/or plumbing services and/or related products, prior to or coexistent with Opposer's or any Related Party's provision of HVAC and/or plumbing services and/or related goods.

15. Identify each person who participated in or supplied information used in answering any of the above Interrogatories; beside the name of each person, state the number of the Interrogatory answer(s) with respect to which that person participated in or supplied information.

16. Identify all documents that Opposer relied upon in answering the above Interrogatories.



---

VINCENT V. CARISSIMI  
BARBARA L. DELANEY  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, PA 19103-2799  
(215) 981-4000

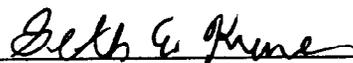
Dated: August 30, 2004

Attorneys for Applicant/Respondent  
UGI HVAC Enterprises, Inc.

**CERTIFICATE OF SERVICE**

I certify that on August 30, 2004, I caused a true and correct copy of the foregoing Applicant/Respondent's Second Set of Interrogatories to Opposer/Petitioner to be served via overnight mail, upon the following:

P. Jay Hines, Esquire  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314

  
\_\_\_\_\_  
SETH E. KRAMER

# **EXHIBIT D**

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

THE SERVICEMASTER COMPANY,	:	
	:	
Opposer/Petitioner,	:	Opposition No.: 125,743
	:	Appln. Serial No. 76/237,328
	:	
v.	:	Opposition No.: 152,104
	:	Appln. Serial No. 76/166,568
	:	
	:	Cancellation No. 92/041,147
UGI HVAC ENTERPRISES, INC.	:	Registration No. 2,591,190
	:	
Applicant/Respondent.	:	

**APPLICANT/RESPONDENT’S SECOND REQUEST FOR PRODUCTION OF  
DOCUMENTS AND THINGS**

Applicant/Respondent, UGI HVAC Enterprises, Inc. (“Applicant”) or (“UGI”), pursuant to Trademark Rule 2.120 and Rule 34 of the Federal Rules of Civil Procedure, through counsel, hereby requests that Opposer/Petitioner, The ServiceMaster Company (“Opposer”), produce for inspection and copying the following documents at the offices of Pepper Hamilton LLP, 3000 Two Logan Square, Philadelphia, PA 19103, or, in the alternative, that Opposer photocopy and forward copies of the following documents to Applicant’s attorney, within thirty (30) days of service hereof.

**DEFINITIONS AND INSTRUCTIONS**

A. The term “Person” refers to natural persons, whether or not in the employ of Opposer, and to corporate or other business entities, divisions, departments, units, partnerships, joint ventures, trusts or unincorporated organizations.

B. The term “Applicant” refers to UGI HVAC Enterprises, Inc.

C. The term “Opposer” shall include The ServiceMaster Company, its Affiliates, and each of its and their officers, directors, representatives, agents, employees, servants, subsidiaries, divisions, or any other related organizations, and any other Person who has express or implied rights to use Opposer’s Mark.

D. The term “Affiliate” means any individual or entity directly or indirectly controlling, controlled by or under common control with, The ServiceMaster Company. For the purposes of Applicant/Respondent’s Second Request for Production of Documents and Things, the direct or indirect ownership of over fifty percent (50%) of the outstanding voting securities of any entity, or the right to receive over fifty (50%) of the profits or earnings of an entity will be deemed to constitute control. Such other relationship as in fact results in actual control over the management, business and affairs of an entity will also be deemed to constitute control.

E. The term “Mark” includes all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, service marks, certification marks, collective marks, logos, domain names, or other indicia of source, whether currently in use or not, and whether registered with a government entity or not.

F. The term “Opposer’s Mark” refers to Registration Nos. 1,220,269 and 1,272,228, and the corresponding common law rights afforded by use thereof as asserted by Opposer in Count I of its Notice of Opposition.

G. The term “SERVICEMARK Mark” includes all of Applicant’s marks at issue in this proceeding—SERVICEMARK (Application Serial No. 76/166,568), SERVICEMARK HEATING COOLING PLUMBING & Design (Color) (Application Serial No. 76/237,328), and SERVICEMARK HEATING COOLING PLUMBING & Design (B & W) (Application Serial No. 76/237,455).

H. The term “Related Party” includes any Person (other than Opposer) who provides HVAC and/or plumbing services and/or related products for, on behalf of, or at the direction of, The ServiceMaster Company and/or any of its Affiliates.

I. The term “HVAC” refers to heating, ventilation, and/or air conditioning.

J. The term “Document” refers to written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, and includes, but is not limited to, letters, telegrams, facsimile transmissions, electronic mail, work papers, handwritten or other notes, memoranda, inter-office communications, notices, books, studies, analyses, evaluations, statements, summaries, opinions, records, minutes or transcriptions or notations of meetings, telephone conversations or other communications of any type, photographs, bills, contracts, invoices, agreements, orders, receipts, drawings or sketches, advertising or promotional literature, operating manuals or instruction bulletins, cables, tape and other recordings, test data, reports, questionnaires, surveys, charts, graphs, pamphlets and catalogs.

K. “Request” or “Requests” shall refer to the specific Request or Requests contained in Applicant/Respondent’s Second Request for Production of Documents and Things.

L. The singular includes the plural and vice-a-versa. The masculine includes the feminine and neutral genders. The term “between” means “among” and vice-a-versa. The past tense includes the present tense, and vice-a-versa, when the clear meaning is not distorted by changing tense.

M. As used herein, “and”, “or”, “and/or”, “any” and “each” all have interchangeable meanings, and their terms are to be read and responded to in the most inclusive and expansive fashion possible.

N. “Relating to,” “referring to,” “reflecting,” “evidencing,” or any of their forms mean constituting, representing, supporting, contradicting, referring to, relevant to, containing information about, stating, describing, analyzing, noting, embodying, containing, mentioning, studying, recording, discussing, or evaluating, or any other manner relevant thereto.

O. Should Opposer deem to be privileged any documents concerning which information or inspection is requested by any of the following Requests, Opposer shall indicate that it claims privilege therefor, briefly state the grounds on which the claim of privilege rests, indicate the position held by the person who prepared and/or possesses the document, indicate the position held by the addressee, and identify all persons (and their positions) who received copies of such documents, either at the time of initial distribution or at any subsequent time, all in order that Applicant may have the actual basis to determine whether such documents are, in fact, privileged.

Opposer has the duty to produce supplemental documents and things as additional information becomes known to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

### **REQUESTS FOR PRODUCTION**

1. Produce samples of all forms of packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing Mark(s) (other than Opposer’s Mark) used by Opposer on or in connection with the provision of any HVAC and/or plumbing services and/or related goods.

2. Produce all documents and things which relate to, refer to, reflect, or evidence the selection, adoption, and derivation of Opposer’s Mark, including the circumstances surrounding and reasons behind the selection of Opposer’s Mark.

3. Produce all documents and things which relate to, refer to, reflect, or evidence the meaning/intended meaning and connotation/intended connotation of Opposer's Mark.

4. Produce corporate organizational charts sufficient to identify Opposer's corporate organization and structure, including, without limitation, the relationship between Opposer and the entities identified in SVM0239, SVM0243, and SVM0395.

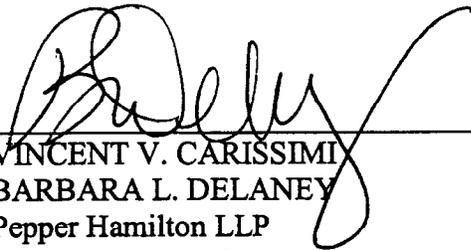
5. Produce all documents that support or refute any of the allegations in the Notice of Opposition and Petition for Cancellation filed by Opposer in this action.

6. Produce all documents which relate to, refer to, reflect, or evidence any inquiry, investigation, evaluation, analysis, or survey conducted by Opposer or any person acting for or on behalf of Opposer regarding any issues involved in the pending TTAB proceeding involving The ServiceMaster Company and UGI HVAC Enterprises, Inc.

7. Produce all documents which relate to, refer to, reflect, or evidence the target audience and intended market for HVAC and/or plumbing services and/or related goods marketed under Opposer's Mark.

8. Produce all documents that were identified, used, consulted, referred to or that in any way provided a basis for Opposer's responses to Applicant's First Set of Interrogatories to Opposer, not produced in response to the above Requests or Applicant's First Request for Production of Documents and Things.

9. Produce all documents that were identified, used, consulted, referred to or that in any way provided a basis for Opposer's responses to Applicant/Respondent's Second Set of Interrogatories to Opposer/Petitioner, not produced in response to the above Requests.



---

VINCENT V. CARISSIMI  
BARBARA L. DELANEY  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, PA 19103-2799  
(215) 981-4000

Dated: August 30, 2004

Attorneys for Applicant/Respondent  
UGI HVAC Enterprises, Inc.

**CERTIFICATE OF SERVICE**

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# **EXHIBIT E**

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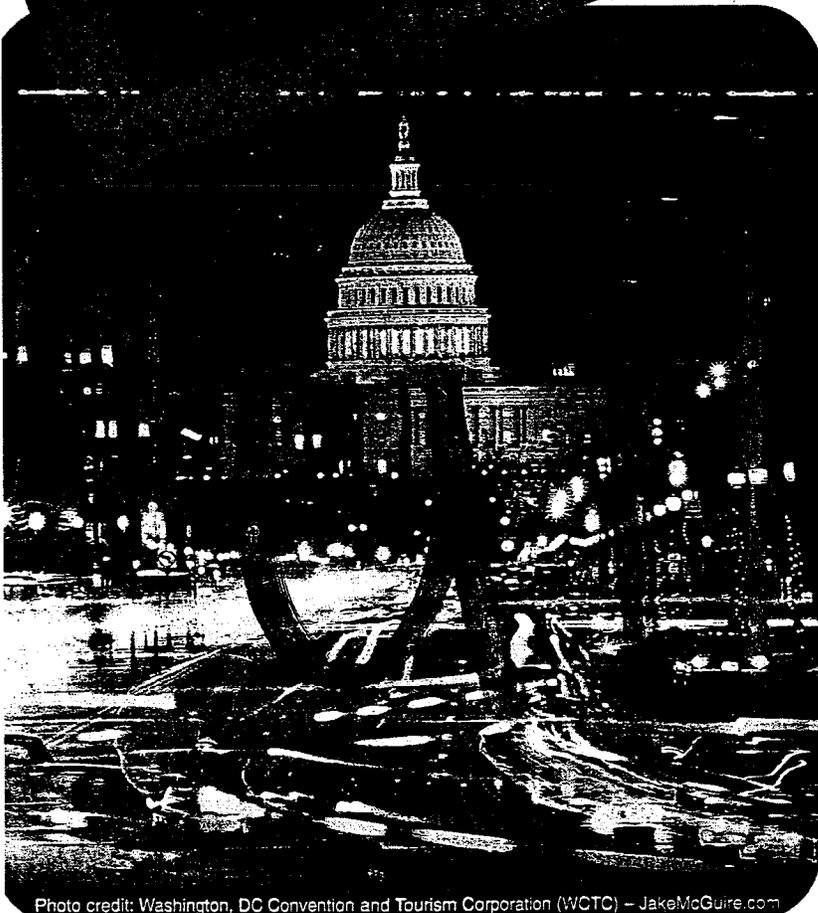


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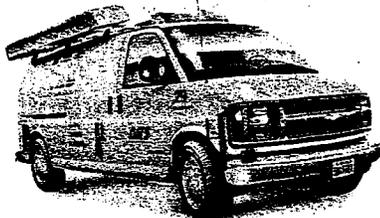
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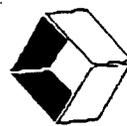


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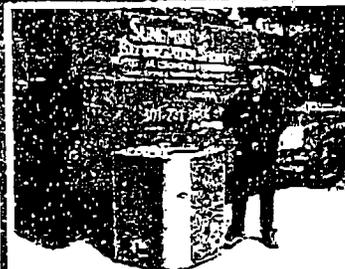
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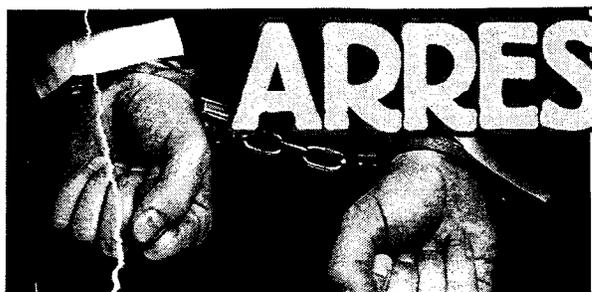
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# **EXHIBIT F**

# RESCUE ROOTER

September '04 Sewer Cam DM  
Rescue Rooter - 8116  
Sample A, Sample  
123 Any Street  
Anytown, US 12345-6789



Dear Sample A. Sample:

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It's simple. Just schedule one of our trained plumbing technicians to visit your home. Once there, they'll check out every nook and cranny of your sewer line with a state-of-the-art in-line video camera. Free! Upon completion, our technicians will diagnose any potential or existing problems and provide you with a complete written report. Free! Did we mention this offer is free?

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Sincerely,

*Jon Swartz*  
General Manager

SVM00956

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**OFFER EXPIRES OCTOBER 15, 2004.**

\*Free sewer camera inspection is good through October 15, 2004. Excludes new construction or commercial establishments. Sewer line to be inspected must have proper lot size (minimum access to equity for this offer). Not valid with any other offer, an offer dated in creating service. Void where prohibited or restricted by law. See invoice for additional terms and conditions. © 2004 American Residential Services L.L.C. All rights reserved.





April '04 Sewer Cam DM  
SE 8251CAM4B  
Sample A. Sample  
123 Any Street  
Anytown, US 12345-6789

'OH NO!  
Not the sewer!'



Dear Sample A. Sample:

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It's simple. Just schedule one of our trained plumbing technicians to visit your home. Once there, they'll check out every nook and cranny of your sewer line with a state-of-the-art in-line video camera. Free! Upon completion, our technicians will diagnose any potential or existing problems and provide you with a complete written report. Free! Did we mention this offer is free?

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Sincerely,

*Pete Miller*

General Manager

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Sample A. Sample  
123 Any Street  
Anytown, US 12345-6789



Dear Sample A. Sample:

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There's no obligation and nothing to buy. Apparently, whoever said nothing in life is free never called ARS Service Express. Best of all, with ARS Service Express, not only do you have the advantage of our sewer and drain cleaning know-how, you can trust your free inspection to happen on time or we'll give you \$50.\*\*

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**LENGTH:** 9083 words**HEADLINE:** Q1 2003 The ServiceMaster Company Earnings Conference Call - Final**BODY:**

OPERATOR: Ladies and gentleman, thank you for standing by. Welcome to the Service Master First Quarter 2003 Earnings Conference Call. During the presentation all participants will be in the listen-only mode. Afterwards, we will conduct a question and answer session. At that time, if you have a question, please press the 1 followed by the 4 on your telephone. As a reminder, this conference is pre-recorded Thursday, April 24th, 2003. I would now like to turn the conference over to Mr. Jon Ward, Chairman and Chief Executive Officer of ServiceMaster.

Please go ahead, Sir.

JONATHAN WARD, CHAIRMAN AND CEO, SERVICEMASTER: Thank you, Kim, I'm here this morning with Bruce Byots, Investor Relations, and Steve Preston, Executive Vice President and Chief Financial Officer. Obviously, you've seen our press release this morning and I'd characterize the quarter as a tough one. We were a little disappointed in that we also think there are significant underlying strengths in both the business model and the opportunity to create value as we go forward. It was just about 30 days ago we talked to you about 2002. As you know, it was later than usual due to our re-audit, our restatement.

In our last call, we said that year-to-date, particularly March and April, were going to be very important, would give us more visibility into the year and it has. We've been tracking a lot of factors and we talked a month ago, a lot of these were right in the middle of becoming visible to us both with the positive and in some instances, negatively.

What are these things that we're tracking? We're tracking news on growth of "Do Not Call Us" on both the national and state level. And I want to emphasize here that the recent restrictions that polo isn't (ph) put in place by the FCC do not really impact our TruGreen business because they cover interstate calls, while we are really an intra-state call. So the interstate restriction do not effect our business, but obviously there's still a significant growth in "Do Not Call Us" nationwide.

But still, today, 100s of thousands of our customers today prefer telemarketing as their avenue of choice to be solicited by. But we've made additional pro-active choices in our marketing choice, adding much more direct mail pro-active quotes and inquiries. And we're doubling the number of customers this year versus last year. Close to 20 percent of our new customers come from the non-telemarketing channel. And I think that's a remarkable change, projecting the move from telemarketing to where we are today, and the continued ability in this business to attract and grow our customer base. New sales methods are initially a bit more expensive, but we know these customers stay with us longer. So it may cost us a few more dollars in customer acquisition, but at least extend the lifetime value or reduce cancellates because we have a more secure customer, in the end, our customer acquisition costs, we believe will be as cheap if not cheaper.

And as I said earlier, we are projecting customer growth of 2 to 3 percent organically this year in our TruGreen business despite this seachange in the channel. We talked about the sustainability of the housing as the underlying strength of our business. It has been a refuge for the consumer over the last couple of years. We did see a two month stall in January and February in new housing listings — excuse me, housing listings for sale. Real estate listings were

down and sales of existing homes were down. They rebounded nicely in March, and we believe we're on track for another strong year with housing sales in excess of five million units. It came back in March and we think we're back on track for double-digit growth in this business throughout the year.

We've seen mortgage rates at a 30 year low. Refinancing has been at a record pace, yet in the Journal today they said this refinancing phenomenon is flattening. People forget about renewing their Home Shield contract as they refinance their homes. So this flattening of renewals actually will allow us in the consumer channel to keep customers longer as the refinancing stops the loss of customers that are going through that transaction. Retention rate is up despite this refinancing and we know that we have a strong consumer desired product that will continue to grow in double digits in 2003 and beyond.

We've had impact by weather. We went into the year very optimistic around termites. There was great moisture content in the ground. But the lack of hot days, particularly in the South, Texas and Florida have hurt our termite sales over the last two and three months. There are two types of termite sales. The first: preventative sales. Those customers who make a regular investment and buy termite because they feel their home needs protection. It's no different from basic homeowners insurance. A lot of our sales, however, particularly in February, March and April come from what we call "swarm sales." These are customers who call when they see very active termite activities in their homes. They see a swarm of termites in their home or outside their home and they call and say "Get over here today!" This is the sale that we are not getting in 2003. The moisture is there but the heat has not been. We've been tracking approximately a half a million dollars a day less in sales this period than we did a year ago. We anticipate that this will cause a lack of sales, approximately 25-30 million dollars in 2003. These are attractive sales, high unit price sales and ones that will probably not be recovered during the rest of the year.

We also had snow in the Northeast and Mid-Atlantic. On the LawnCare side, that cost us 12-13 million dollars in revenue in March alone. The good news? We believe that we will recover most if not all of it in the second and third quarter. We'll be quicker on our applications, we'll make sure to work Saturdays, but despite our customer counts being up 3 percent in March, our revenue is down 12 million dollars over the prior year. This is a temporary situation, as I said, earnings and revenue just pushed (ph) in the second/third quarter.

The snow also helped LandCare. We had about 8 million dollars more in snow removal than we had anticipated. So the additional snow removal and snow did help our LandCare business. That kind of gives you an overview of the temporary conditions that we've been tracking that we want to talk about with you today in our call.

The economic environment is still tough. It's a weak consumer out there. We need to go in (ph) and we've planned for a soft economy. We're in it, and we anticipate it will stay this way, at least for the next couple of quarters. Now, if you'll remember, our two big sales seasons, our two big units for sales season is the first and second quarter. We weren't planning for any improvements during the year, and we don't expect the next to go up. (ph)

The War in Iraq broke out in the middle of our [Inaudible] sales season. It had some impact, impossible to tell how much, but consumers were definitely distracted. We entered the year with consumer sentiment at a ten year low, and though we've just seen a slight tick-up, it's still awful pessimistic, and we've done some more work and in one of the indicators we talk about today you'll see a slight reduction in pest renewal. As you go back and look at pest renewals as a comparative with consumer confidence, it tracks very closely over the last several years, and going forward, consumer confidence is an emerging indicator of what our pest renewals are likely to be.

So, despite the slight downtick, we don't attribute it to the quality of our service, we attribute it that there is a discretionary fun out there where some people are choosing on pest renewals not to invest money.

Our own situation in 2003 creates what we call some natural blowovers. We're going to have an unfavorable (ph) tax rate of 3 to 4 cents, remember, Steve'll talk about this, and the very low tax rate we had in 2002. Our prolitisk (ph) compliance is up, like many companies, with 404 sarbanes oxrate (ph) in the new audit, we have tightened our focus on both compliance, internal controls, and reinvesting some money to insure that with both (ph) our investors and related (ph) industries we are a fully compliant company.

We all did the right thing by starting to expense options. There was more news on it today, it is inevitable for all companies we are in front, but it is costing us close to a penny a year as we go forward. It's in our numbers for 2003 and creates a natural blowover. We are continuing to make the right investments for value creation for the mid and long term in marketing and technology. These investments are necessary to transform not only our company, but to

transform this industry, and I'll talk more about that together (ph) .

Taking that together, we believe that our best estimate for the year of earnings is likely to be flat compared to last year. Despite that flat EPS, earnings from operations and revenue will grow, and Steve will talk a little more on that in his comments. But I'm encouraged and optimistic about what lays ahead for us as a company. We're making progress, the business units are generating revenue and earnings growth, and with the exception of the unusual setback in Terminix, will continue to grow customers and retention rates throughout the year.

Now, putting these things together and more attention into organic growth as we go forward. That begins with the hard work and determination of our entire team in the field. 47,000 employees walk into 45 million homes and businesses throughout the year, making a difference. They represent our brands, and we're dedicated to keeping our brands at the current high level of performance and enhancing it in the quarters ahead. The highest priority of our people is to satisfy the customer.

Teams in our branches are making hundreds of optional improvements guided by local and customer data that we've extracted over the last year. Those changes are giving us a lift now and will accelerate our growth when economic conditions improve. We're going to build organic growth and market expansion by transforming our customers' experience.

We have large, well-known, but very undeveloped brands. This is what we're finding in the consumer research that we just completed. It's the first set of comprehensive consumer research across all our brands in several years. We talked to you earlier about the customer satisfaction work we're doing, and now we're going after understand what the non-users and those that use our competitors want and desire from the verticals (ph) brand. It's going to lead us to much different and sharpened value propositions across our brands, such as leading brands, well-recognized, but not differentiated as well as we are today.

And it's going to be backed up by advertising and marketing by challenging our entire business units to be their brand, and I'll give you an example of that from ARS in a few minutes. It's not just the advertising that's going to change, but it's fundamentally changing the value delivery and service delivery for every one of our branches to align with what the customers want in various businesses. Now let me give you an example in ARS in how this is coming together. We did the research, and historically in ARS our advertising model will be there within an hour. It was in our billboards and mostly in our yellow page advertising. We've now changed the brand position to be ARS Service Express, and what we have found is that it's not important whether they are there in important, but it is very, very important to be there when we say we're going to be there. So we're launching a guaranteed on-time across both Rescue Rooter and ARS as we go forward.

And you know what? The challenge is not in developing the opera (ph) , the challenge is in operationalizing the offer. This takes time and dedication. It takes our branches understanding how we can over time tighten the windows of arrival in what is currently today a half a day or four hour window, and our eventual goal is to tighten it to a two or maybe even one hour window with a guaranteed discount if we can't get there on time. That's not just advertising, that's fundamentally changing the value delivery across our businesses, and it requires systemic change down to the branch and technician level. That's where we're going, we're going there over time, and that's the transformation of both ARS and our company.

The simple vision for ServiceMaster? Transform the service experience for homeowners and business owners by being predictably on time, getting it right the first time, and resolving problems quickly. We are more convinced than ever that the opportunity is large. We also know it is going to take a lot of hard work, patience and tenacity to make it happen.

Before I turn it over to Steve, I'd like to add one more comment. We are moving to put a lot more of our energy right now into revenue growth. Our hard work over the past couple years has us now in the position where 80 percent of our business revenue is earning in excess of its cost to capital on a CFROI (ph) basis. It's kind of the whole methodology that we worked with with PCG. That means revenue growth can and will create significant shareholder value, something we have been struggling with because our internal focus, number 1, and the external economic and weather conditions. Over the last 18 months we've talked to you a lot about six sigma, procurement, risk, or, in our terms, safety. They're becoming more and more of our DNA every day, and we can now turn our attention to what's going on in our markets and how to take advantage of it. So revenue growth is becoming our mantra. Revenue growth that is smart, profitable, and built off a differentiated value platform.

You'll see us be much more aggressive in differentiating in our advertising and marketing and what we call "being the brand": It's not just the advertising, it's how we operationalize it. We'll make significant investment in the U.S. geography growth over the next year or two. Look for more of this over the next couple of quarters, particularly as it relates to TruGreen, Terminix and possibly Rescue Rooter. We're going to be much more focused and prudent in price-management as a value creator as you differentiate brand, you'll be able to command a value differentiation through price. Undifferentiated brands cannot create value by differentiated pricing.

We've talked about it before but we are fully fine-tuning and developing a strong B2B sales capability inside our company that did not exist before. We've got back into talking acquisition in a more disciplined but stronger way, and look for TruGreen and Terminix to continue their investments in tuck-in (ph) acquisitions throughout this year and 2004. And yes, there is a possibility that further developed regional brands that exist within our company, particularly within ARS, Rescue Rooter into national rollouts, particularly along the plumbing line. And, with Mitch Engel's help and his team, the development of new channel development for crop sale and third party customer growth that is not apparent inside our company today. Simply put, with sulcomp (ph) we are still very confident in our ability to generate significant growth in earnings where earnings will be growing quicker than sales in the years ahead. With that, I'll turn it over to Steve for more details on the first quarter and we'll both be in a position to take questions in a few minutes. Steve?

STEVEN P. PRESTON, EVP AND CFO, SERVICEMASTER: Alright thanks a lot Jon, good morning everybody, before I start I'd like to remind you about one accounting change that we've discussed with you and that we reported in our 10-K, but your seeing it in action for the first time this quarter. The company amended its policy of accounting for seasonal costs at TruGreen and ChemLawn which had the effect of reducing the first quarter earnings and increasing later quarter earnings. These changes are reflected in both 2003 and 2002 results, and the policy only effects the quarterly timing of expense recognition, it doesn't have any effect on annual results.

Also, tomorrow we file an 8K (ph) with the quarterly segment and inter-statement data that reflects this adjustment, and then additionally, over the next few weeks, we'll be restating the full 10-Qs for the second and third quarter to give you much more fullsome (ph) MD&A and the other statements for those periods. Following John's comments, I'd like to give you a more detailed perspective on how we're entering the year compared with our earlier expectations and how that effects our views going forward. We talked with you, we had talked with you over time about a number of trends and initiatives. We want to make sure that you get a better sense now for how they're effecting the financial results much more specifically.

As we entered the year we anticipated a number of trends that continue coming out of last year. On the positive side, we expected to see continued positive momentum in both retention rates and overall customer counts resulting from the programs we've instituted. That favorable trend has continued attributing ChemLawn and American Homes showed much the same way we saw last year, though we clearly did have a setback in terms of Terminix, which will have a full impact in the full year.

We have also expected to see continuing improvement in certain aspects of the cost structure, from the strategic sourcing initiative from the six sigma initiative. We continue to have conviction that these programs will have value, in fact, we think they could add as much as four or five cents per share in net benefit in 2003, once again, just from those two programs. And finally, our debt reduction program should result in lower interest expense this year of about a penny a share. Now, on the other hand, there are a number of factors that are weighing us in the opposite direction. Most of which we anticipated, some of which we didn't. First there are a number of offsetting cost factors which we will absorb this year, we had a one-time benefit last (ph) from the tax rate of about 4 cents a share based on our ability to utilize the net operating cost carried forward at the ServiceMaster Home Service Center. We talked to you about that in the past. In addition, we continue to anticipate further increases in health care, insurance, and to a lesser extent, fuel costs. We discussed this in our last call, we're getting at the insurance side very aggressively through risk management programs focused specifically on loss claims management, safety, healthcare — we're taking a hard look at potentially revising our healthcare, probably one that's more difficult to effect, and then also, our fuel costs, we have an active hedging program in place and we're actually hoping now with the war in Iraq behind us we will begin to see some pressure taken off of those — of that particular cost line.

But if you add up all those three costs together, those three cost items represent over 250 million dollars in our cost structure, so they're very significant. Based on the trends we've seen, we anticipate that the increases in these costs will have about a five cent a share negative impact in 2003. Finally, higher current investments to support a stronger

company in the future are a continuing reality for us. Investments in marketing, technology and process improvement are necessary to meet the desires of the customer to develop a clear strategic advantage and to meet the demands of an increasingly intense regulatory environment. These investments in 2003 are expected to grow 3 or 4 cents a share. Nonetheless, we do need to continually assess these programs and then spend aggressively to be sure that we're getting the kinds of returns that we want out of them.

The surprises in the first quarter dealt with something we primarily try not to talk about, but frankly, it's weather. We believe that we lost more than 20 million dollars in new termite sales volume at Terminix just in the first four months, which we think will be very difficult to recover. The swarm, the March through May period of the year is when the termite sales is driven by visible sales. And swarm activity was heavily diminished. In addition, weather delays probably 10-15 million of production at the TruGreen ChemLawn unit. We will work very hard to pick up that production in subsequent quarters.

Jon (ph) also mentioned that our 2003 estimate at this time is in line with the 2002 level. I'd like to emphasize that it is early in the year and our selling programs are later than usual. Our migration away from telemarketing, along with the cold weather and war in Iraq have resulted in a portion of our marketing programs being delayed until later in the season to insure that we get a higher buy rate. So we're very focused on the ongoing sales effort, and it is increasingly important to us this year compared to historical periods.

Let me turn now to a more detailed financial result from the first quarter. Revenue in the first quarter was 735 million, was flat as compared to the prior year. Revenue growth was led again by our home warranty business, American Home Shield. Also during the quarter, Terminix, TruGreen LandCare and our franchise businesses experienced growth in earned revenues. Offsetting the growth were declines at the ARS/AMS segment, including ChemLawn. Operating income for the quarter was 25 million, compared with 40 million last year. The TruGreen segment was the largest contributor to this decline, reflecting a difficult in beginning service on contracts that they already sold and which they normally begin servicing in the first quarter.

Along the operating income line net interest expense for the quarter improved by about 4 million due to lower debt levels, and as we discussed, our tax rate has returned to a more normalized rate of 40 percent compared to the 36 percent tax provision last year. Turning to cash flow the company used 37 million in cash from operations in the first quarter, whereas we generated 2 million last year. Now, as many of you know, the first quarter has historically been a time of investment for our various business units as they gear up for the summer production season. Therefore, our first quarter cash flows due to higher working capital needs are lower than in any other quarter, and we are often negative. In fact, last year was somewhat of an anomaly in that we had the lowest level of first quarter working capital usage in recent memory. I think we looked back to 99 for that statistic, or actually 98, and it was the only first quarter in the last five years that we had a positive cash flow after adjusting for unusual items.

So while the 2003 working capital use of 61 million looks poor in comparison, it is not out of line with historical levels, and our businesses typically do use cash in the first quarter. Let me give you a little bit more visibility to discuss major components that contributed to cash flow variance. The largest component was about 25 million dollars in lower deferred revenue. Debt reduction was primarily driven by a change in our pre-paid renewal program in TruGreen ChemLawn. Now TruGreen picked up the renewal program in 2003 earlier than last year and it pulled the pre-payments into the fourth quarter.

But many of those same pre-payments would have occurred in the first quarter in '02, so 2002 had a little bit of a double dose of pre-payments. That was about two thirds of the amount. The remainder related to lower sales of Terminix and reduced pre-payment discount at TruGreen, which led to fewer customers pre-paying. We made a very conscious choice to reduce the pre-payment discount after we had tested various discounting levels last year, because our tests show that the margin benefit of higher pricings clearly outweighed the working capital benefit of marginal additional prepayments. And I think that's a very important point to understand in understanding the TruGreen pre-payment strategy. Now, whereas many of our business units continued to show improvements in receivables management this year, we didn't see nearly the same level of incremental improvement that we saw last year, when both LandCare and ARS were making very big strides in bringing their receivables on line.

In addition, we received a large payment last year following our work at the Pentagon in ServiceMaster Clean. So as a result, the first quarter of last year had about 16 million more in cash flow from receivables management just from those three businesses that we saw in this year.



And then finally, there were a number of payments the company made in the quarter relating to insurance, bonuses and vendors, which had an effect on the quarter. So when all is said and done, although the operating challenges we had in the quarter certainly did make the rated cash flow statement, the nature of the first-quarter cash flow has been very much in line with historical experience if you exclude 2002.

For the full year, we do continue to expect strong cash flows, and we expect to see continuing improvement in our working capital.

Turning to the balance sheet, our total debt at the end of the quarter was 830 million, down slightly from the year end level of 835 million. The cash and marketable security and quarter end was about 197 million.

Although we intend to keep our share repurchases to be in line with last year's level of about 50 million, we have had a prolonged quiet period that began really January 1 and ends tomorrow. So the program has not kicked in. We do plan now to continue our share repurchase program. This level is fairly moderate. We have the capacity to go much higher, considering our annual cash flow. But I do want to reiterate that our repurchase policy will remain consistent with our stated objective and our commitment to remain investment grade.

Tuck-in acquisitions in the first quarter were 13 million. That compared to 4 million last year. The tuck-ins primarily occurred at TruGreen ChemLawn. Looking now at the business units, revenue in the TruGreen segment declined one percent, while the segment had an operating loss of 8.8 million, compared with income of 6.5 last year.

This decline was entirely due to a delay in TruGreen's ability to begin servicing residential contracts that it had already sold. The business was delayed based on late season snowfall experienced throughout the central, mid-Atlantic and eastern regions of the country. Now, while revenue at TruGreen ChemLawn declined two percent, customer accounts were up over — I'm sorry. While revenue declined eight percent, customer counts were up over two percent, and the contracts we sold included slightly higher pricing and more services, which brings the annual value of those contracts up approximately four percent.

So this increase was supported by both a higher renewal rate, which we reported in our key performance indicators, and a moderate level of acquisitions. As a result, TruGreen ChemLawn will be heavily focused on taking measures to capture all of their revenue associated with the contracts that it's already sold. Management is taking measures to ensure that the labor force is in place to meet that production demand. If we've sold it, we want to realize it. So hitting our production targets will be absolutely necessarily for TruGreen ChemLawn to meet its expectations.

Revenue in the LandCare business increased five percent due to an increase in the snow removal business. Although snow removal is a relatively small portion of that business, generally in the \$15 to \$20 million range in revenues, it made the unit this year because of the significant snowfall in areas where we do provide that service.

We're also hitting the ground running with new maintenance contract sales this year. Investments we've made in our sales programs are beginning to show promise. Our primary concern in this unit is the difficulty in selling higher priced discretionary services. We refer to those as enhancements, in a time when many companies are looking to save pennies. The loss in this segment was entirely due to the delay in production at TruGreen ChemLawn. We did see lower profitability in the LandCare business resulting from pricing pressures in the utility line clearing business, known as Trees, Inc.

Now, as we continued the year, the new contract sales in TruGreen ChemLawn will continue to be an important factor in the results, as we've shifted more of our emphasis away from telemarketing, other forms of selling, as I mentioned earlier, due to tend to be later season efforts, especially in a year like this when the winter lingers on.

For example, while customers will respond to phonecalls in the winter to sign up for our services, direct mail gets a lot less attention until the snow is gone and the smell of spring is in the air. So we expect to see important things from these programs in the second quarter. Capital employed in that segment decreased one percent.

In Terminix, many of the same patterns affected results, however in Terminix's case, much of the first-quarter impact will be difficult to make up. Revenue increased by three percent due to higher customer renewals and growth in the commercial customer base. Revenue from new termite contracts actually declined four percent, while pest control revenue was flat.

The cold weather significantly impeded the termite swarm and other pest activity, which led to a significant reduction in both termite and pest control leads, especially in certain important southern regions, leads were down



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very significantly.

At this point in the year, termite leads are driven by the prevalence of a visible termite swarm, and that effectively didn't occur to any significant degree in many regions. While pest activity could recover in these regions, a portion of the year will nevertheless have been lost. At this point, we're hopeful that the swarm will take place in the northern regions of the country. Although we have not yet seen evidence of this taking place, overall higher moisture levels in the country bode well for pest activity, however, we do need a solid step into the warm weather season for it to materialize. Not surprisingly, these conditions also led to a reduction in the renewal rates in that business, and we also do believe that the weak economy contributed somewhat to softer renewal rates in this business line.

Now, later in the year, our new sales are driven by creative marketing programs and summer pest activity. Termite customers are more focused on preventative measures than fending off a visible invasion. And last year, we did see positive occasions from increasing our emphasis on direct mail programs later in the year. So we do believe that will continue to provide revenue growth in 2003.

Operating income of 34 million at Terminix was 12 percent below 2002. Revenue growth was offset by higher sales, marketing and overhead costs. In addition, Terminix will incur about \$8 million in incremental expense this year, relating to the implementation of a new operating system which we have discussed with you in the past.

Capital employed in this segment was in line with last year. Revenue increased 10 percent in the American Home Shield segment, reflecting growth in contracts throughout last year and in the first quarter. We continue to see solid growth in new warranty contracts sold in the first quarter, driven primarily by strong renewals. We did see slightly lower sales through the real estate channel. And much of the first-quarter marketing activity in our third party channel — specifically with our third-party partners was deferred into the second quarter because of concerns that consumers would be less receptive during the war. That activity has already begun to tick up again.

One exciting development in the third-party channel has been the successful introduction of our first major insurance company relationship with Farmers' Insurance. We've been working on breaking into this channel for quite some time now. It does appear that the Farmers' relationship could become one of our strongest partners really in a very short period of time. So we're very excited about that opportunity there.

Although renewal rates continue to show improvement year over year in American Home Shield, we have seen higher cancellations in our mortgage channel. Many of our customers in that channel participate in a program where the warranty payment is right on the mortgage statement. So if a customer refinances, our contract is effectively terminated. And because we have no clear mechanism at this point to migrate them to a new contract quickly, those cancellation rates have been increased.

So we are working on ways to bridge those transitions more effectively.

Operating income in the segment increased from 3 million to 8 million on the strength of higher sales, lower claims costs and favorable trending from prior year claims. Capital employed in the segment increased 15 percent. That reflected the volume growth in the business, which resulted in a higher level of required regulatory investments.

Revenue in the ARS/AMS segment was 151 million, which is eight percent below the prior year, driven primarily by lower construction revenue in the residential sector. We saw residential HVAC replacement increase for the second quarter, based on a strong increase in our air conditioner and heater replacements. That's when we also did see it in the fourth quarter of last year. This is a very welcome shift in that sector of the business, because it's very important to the segment's profitability.

The operating loss in the segment was reduced from 3 million to 1 million, even with the lower revenue. Higher gross margins and profits in both HVAC and plumbing service lines were more than offset in lower earnings in the construction business. Capital deployed in that segment decreased six percent, reflecting a reduced receivables level.

The other operations segment had revenues increasing seven percent, reflecting higher earned revenue at ServiceMaster Clean and Merry Maids. This segment reported a first-quarter operating loss of 7 million, compared with a loss of 5 million the prior year, reflecting continued growth in the profit of its franchise businesses, but offset by higher costs related to the aforementioned technology, marketing and compliance initiatives.

As we look at the full year, a good portion of the three to four cents a share I mentioned earlier relating to those initiatives will show up in the other operations segment. That's because most of the coordination from the enterprise



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initiatives will be driven from the center to ensure we work together on an affiliated basis where it makes the most sense and can support the business units with expertise.

Capital employed in other operations was reduced by 261 million. Over 200 million of that relates to us having less cash on the balance sheet following our debt reduction program. There was also about 30 million from shutting discontinued operations and another 56 million in deferred taxes. So there are a number of items that supported that significant shift.

Now, before we take your questions, I would like to make a couple of administrative comments. First, as many of you know, we have been planning our 2003 investor day conference for June 19 in New York City. As the calendar shaped up, it turns out that we will be at four investor conferences in June already, Lehman Brothers and Bear Stearns in New York City in early June, Tom Weisel in Santa Barbara in mid-June and then William Blair in Chicago in late June. In addition, we will be out on the road with investors in both May and June.

So as a result, it makes a lot more sense to hold this event later in the year, when we have fewer other venues to share investors and it would add a lot more value. We do not have a date finalized. We are targeting mid-September at this point, but when we get more details we will get back to you.

I should also mention that our annual shareholders' meeting is in Chicago on May 21st. I'm sure many of you saw that in our proxy. So, also I'd like to remind you, as we always do, that our comments have included statements which are forward-looking in nature.

Our actual results may differ materially from those stated. Additional information concerning factors that could cause actual results to differ materially from those in our forward-looking statements is contained in the company's press release, 10-K annual report and other SEC filings. In addition, I would invite you to read the forward-looking statement in our press release for a broader discussion of risks.

So, at this point, we would be happy to take your questions.

OPERATOR: Thank you, sir.

Ladies and gentlemen, if you would like to register a question, please press the one, followed by the four, on your telephone. You will hear a three-tone prompt to acknowledge your request. If your question has been answered and you would like to withdraw your registration, please press the one, followed by the three. If you are using a speakerphone, please lift your handset before entering your request.

One moment please for the first question.

The first question is from the like of Chris Gutek with Morgan Stanley.

Please go ahead.

SHARAT SHROFF, ANALYST, MORGAN STANLEY: Good morning, Jon and Steve. It's Sherlitz Roth (ph) , filling in for Chris.

STEVEN P. PRESTON: Hi, Sherlitz (ph) .

JONATHAN WARD: Morning.

SHARAT SHROFF: Morning. A couple of questions, if I may. You mentioned that you expect some pick up in the second and the third quarter in TruGreen. If you go back a couple of seasons, I guess there were similar weather conditions, and the pickup didn't really come through as you had expected in the second half. So I'm wondering, how is it different this time, and what gives you the confidence that it will happen.

JONATHAN WARD: Two things. We learned some lessons from that experience. First, when we sat down with Don and Dave and saw this delayed revenue situation, typically what we do is we take that additional revenue and spread it out through the second, third and well into the fourth quarter, including November. And a lot of time what happens is that fourth quarter revenue gets truncated by adverse weather on the back end. So we saw this occurring in March.

We went to Don and Dave and we said we want all of this revenue recaptured by no later than mid-October. So what it's had us do is think about our staffing in the branches differently, the work weeks differently, and instead of

both retiring some trucks, we found a way to put more trucks on the road and beef up our workforce. So we can't go out and spray our customers' lawns every week. There is a certain number of weeks and days between applications, so we have taken the number of work days between let's say the first week in April and what I call mid-October and spread it out and have figured out how many technicians we need, how many trucks, how to staff the trucks. Some of our trucks are going to two technicians instead of one to ensure that we can get the revenue done.

So we've plotted it out, we think we've got a good plan, and as you saw, we want to make sure we learn from what happened a couple years ago.

SHARAT SHROFF: Great. Switching to AHS, you mentioned that mortgage refinancings are sort of restraining revenue growth, and you expect that to improve going forward. Just curious, what percentage of revenues for AHS do you derive from that particular channel.

JONATHAN WARD: Well, listen, we don't think it's restraining it. What's happened is that we used to sell through a real estate channel and we've started to develop new channels through insurance. Exact answer to your question — Bruce will have to get back to you. Well, the last couple of years we've started to sell a lot of our consumer-direct through the insurance and mortgage channel. So it's a mortgage channel, someone comes up, three years ago they bought a home and today they're refinancing it. It's not significant. I also want to emphasize that the business unit still grew 10 percent in the first quarter. Consumer sales were still strong. You saw retention rates still moving up, and the only weakness below this mid-double-digit growth, the high mid-teens was really in the real estate channel because home listings were down significant. Particularly where if you're on the west coast, home listings were down 15 to 20 percent in January and February.

And that's still by and far the biggest regeneration channel that we have. Bruce will get back with an exact number.

STEVEN P. PRESTON: And Sherlatz (ph) , just to make sure you understood my comment on that, the issue that I mentioned was the fact that often when we sell the mortgage channel, the customer likes to put their American Home Shield payment right on their mortgage statement. Well, if you go refinance with another mortgage provider, that billing mechanism is no longer there and our contract is effectively terminated, so we had to chase that customer down to resell them on a new contract. And there's not a simple mechanism to do that right now.

So it's a little bit different issue than having our sales impacted by refinancings.

SHARAT SHROFF: OK, fair enough. And my final question would be on your guidance. You mentioned flat EPS growth year over year. Can you maybe just aggregate that a little and talk about what kind of revenue growth you're expecting, pricing growth, and then any expectations of a margin expansion.

STEVEN P. PRESTON: Yes, I think we would expect low to mid single digit top line growth. Margin growth really is difficult to sort of dis-aggregate, because it occurs in a specific business unit and it's offset by items that I enumerated.

So what I would say is if you kind of looked at the items I mentioned, for example, three to four cents a share impact from the other operations line, the four cents a share hitting the tax line, and the penny a share hitting the interest expense — benefiting the interest expense line. If you sort of net those items out, that's the amount of growth we're going to have to get from the full primary operating units, and that will give you a sense of the margin expansion collectively in the four primary units.

But the margin trends is different in each one of those units, but that's basically how they aggregate.

SHARAT SHROFF: OK. And ...

JONATHAN WARD: One thing, I want to make sure that we let others on the phone, so if you can cycle back through and get back in. I just want to make sure we give everybody an opportunity to get in questions, if that's OK. So try to limit ourselves to two questions, then we can cycle back through.

SHARAT SHROFF: OK, thanks.

OPERATOR: The next question is from the line of Jim Barrett with C.L. King & Associates.

JIM BARRETT, ANALYST, C.L. KING & ASSOCIATES: Hi, everyone.

JONATHAN WARD: Good morning, Jim.



JIM BARRETT: Jon, could you talk about — and I got on the call a few minutes late, but could you talk about the do not call law that apparently is going into effect, and to what degree do you see that changing the business, and not only TruGreen but possibly other businesses as well?

JONATHAN WARD: Yes. The business that would naturally be affected the most by a do not call list would be our TruGreen business, although Terminix does have some call sellers, but Terminix is all lead-generated caller sellers, so we'd be a permissive call, someone sending a coupon and calling and saying, "Hey, I want to get a termite inspection." So let's come back to TruGreen.

The current federal legislation has minimal impact on us, because it oversees interstate calls. There are certainly, and I think in some 30-some-odd states today regulations that have emerged on intrastate calls, when all of our calls take place from the local branches. So the vast majority of our calls are intrastate.

Clearly, there are a significant number of consumers that are saying, "We don't want to be called at home." We started two years ago to test and move away from telemarketing as our primary customer acquisition vehicle. I think it's safe to say that we'll move from over five percent to close to 20 percent of our customers this year will come from non-telemarketing channels.

We see — we're doing a lot of testing this year. We see the continued move toward inquired or direct mail sales, and we're also starting to look at, and I think we'll be announcing some significant programs for the next couple of quarters, what we call community-based marketing activities. I can't go into detail about these, because they're still in negotiation, but really what we're going to do is move to a direct person-to-person community to community sales organization in the years ahead, along with direct mail.

Now, having said that, there are still a significant number of people who want to and like telemarketing. So we absolutely will abide by the laws, but — and basically, we're making an assumption that 30 to 40, maybe as high as 50 percent of the households that we currently call will not be available to call over the next three years.

Now, that being the reality of the environment we're in today, and I want to come back and point it out to you that despite that environment and not having fully developed the alternative marketing programs, we are still growing customer counts in TruGreen in this environment for the last two years. It's the first time that's happened since 1998. So I'm proud of the team. I wish we were growing five or six percent, but to think about rebuilding the airplane as we're flying it in a very, very tough marketing environment to be getting this type of customer growth I think is a great accomplishment and talks to the strength of the brand.

One step further. We just completed the brand research. So we've been doing this with what I would say — with this brand that has high recognition. But the data is coming back that it's not truly differentiated the way we'd like it to. So in the quarters ahead, we'll be building out a value proposition that we think will be very concise and target what consumers are looking for. And that will both be in our advertising, our marketing, but equally important how the technician and the branch interacts with the customer and the prospect, what we call being the brand.

And that's why I sit here and say, "Boy, this is hard work." Quite honestly a little harder than I thought when I got here two years ago, but we're absolutely dedicated to making these value propositions differentiable, and then driving the brand strength to the consumer.

JIM BARRETT: OK, I didn't quite understand if the federal law is for interstate calls and most of your calls are intrastate. Why would 30 to 50 percent of the households not be available to you?

JONATHAN WARD: Because each state can pass legislation, and 30 some-odd states have today that create their own do not call list.

JIM BARRETT: OK, and finally I did not quite understand your comment. You're saying you're switching to some sort of direct sales force.

JONATHAN WARD: Well, what we do now is what we call our ex leads. So instead of calling your home and asking if you'd like a quote, if we have a neighborhood where we have a series of customers, we will go out and leave a quote on your door that says we'll do your lawn for \$45 an application. Please call us if you're interested in. So we call it our ex lead. We canvass — we literally canvass neighborhoods where we think there's a high and the demographics of that neighborhood match very well with our current customer set.



JIM BARRETT: OK, thank you very much.

OPERATOR: The next question is from the line of Kevin Monroe for Thomas Weisel Partners.

KEVIN MONROE, ANALYST, THOMAS WEISEL PARTNERS: Good morning.

I was wondering, in the Terminix business, some of it was due to the cold weather that you kind of talked about in your prepared remarks, but it seems like the growth in customer contracts and retention rates has kind of been trending down for the past two quarters. And so what are you guys kind of putting in place to reverse this trend.

JONATHAN WARD: Kevin, maybe a couple of things. What sort of leads — and I'll give you some stats, but I think I mentioned briefly a month ago. Leads for both pest and termite have been running double digits, close to 20 percent, below last year, on the same marketing program. No, I can't go any in between. There's no weather to help, or economy or law (ph) , but clearly this is the business that has the best developed integrating market program across all of our businesses, and to see a lead falloff of 20 percent in one year when no competition is really coming towards us, you have to say there's some external short-term factors going on in there.

Now, you also heard me say that on pest we've gone back and done some work and it looks remarkably consistent over the last several years how pest renewals have tracked with consumer confidence. So we're starting to think here, the one statement that pest is a little bit discretionary based on consumer confidence. We're going to go back and do some more work, and I think we'll be talking about it on our road shows and investor conference to fully understand what we're controlling about pest renewals, and what's controlling us, i.e. economy.

Termites, it's off a percent from last year. This is not a business where we think we're going to push renewals past 89, 88, 90 percent. It's going to fluctuate. It's just, as we would call it, it's a process in control, a six sigma process. It doesn't stay static. It can go from 87 to 90, and that's just going to be the normal variation of both season and short-term anomalies, so we don't see anything going on in termite that is significant. And what I was talking about the termite leads, the lead fill particularly being down 20 percent is where we're not getting any level of swarm that we would expect to be weather-related.

KEVIN MONROE: OK, and on the AHS business, this refinancing boom of mortgages has been going on for quite a while. So I'd imagine, why such the impact in the first quarter where your growth in warranty contracts has kind of fallen off relative to kind of the historical growth.

JONATHAN WARD: Yes, I think I'm giving you a little bit of misinformation here. We're not attributing much of any of the falloff of contracts in the first quarter to the mortgage refinancing. That is in the short term affecting some renewal rates, but renewal rates are still up.

What we saw in the first quarter, new sales are down in the real estate channel, because new listings are down. Our real estate channel gives a listing on a sale when the people put the homes on the market the first times to sell.

The National Real Estate Board is still anticipating about 5.4 million units to be sold this year, kind of consistent with last year. It was significantly down. I think it was down 15 to 20 percent in our major markets, in the first two months. So we saw listings down and therefore real estate sales down in the first two months. Refinancing had nothing to do with the new sale falloff in the first quarter. It was all due to real estate, and we are not convinced it was a short term phenomenon. It bounced back in March and is looking good going forward.

KEVIN MONROE: OK, thank you.

OPERATOR: Ladies and gentlemen, if there are any additional questions, please press the one, followed by the four, on your telephone.

Once again, if you do have a question, please press the one, followed by the four.

I'm showing no further questions at this time. Please continue with your presentation or closing remarks.

JONATHAN WARD: Thank you for turning it back over to me. We appreciate you all being with us today. Steve, Bruce and I are available this afternoon and tomorrow, and we're going to be out on the west coast next week, and then making some trips to the east coast. So we're more than happy to spend some time with you to understand what your thoughts and questions are and have further dialogue with you. And thank you for being with us this morning.

Bye.

FD (Fair Disclosure) Wire April 24, 2003 Thursday

OPERATOR: Ladies and gentlemen, that does conclude your conference call for today. We thank you for your participation and ask that you please disconnect your lines.

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LOAD-DATE: April 26, 2003



# **EXHIBIT H**

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

THE SERVICEMASTER COMPANY,	:	
	:	
Opposer/Petitioner,	:	Opposition No.: 125,743
	:	Appln. Serial No. 76/237,328
	:	
v.	:	Opposition No.: 152,104
	:	Appln. Serial No. 76/166,568
	:	
	:	Cancellation No. 92/041,147
UGI HVAC ENTERPRISES, INC.	:	Registration No. 2,591,190
	:	
Applicant/Respondent.	:	

**ORDER GRANTING APPLICANT/RESPONDENT’S MOTION TO  
COMPEL DISCOVERY RESPONSES AND TO EXTEND DISCOVERY, TESTIMONY  
AND TRIAL DATES**

This \_\_\_ day of \_\_\_\_\_, 2004, Applicant/Respondent UGI HVAC Enterprises, Inc., having moved to compel discovery from Opposer/Petitioner The ServiceMaster Company (“Opposer”), and the Trademark Trial and Appeal Board (the “Board”), after considering the positions of the parties, having concluded that good grounds exist for the requested relief; now, therefore

**IT IS HEREBY ORDERED** that Applicant's motion is granted and that:

- 1) Opposer shall produce the following categories of documents no later than ten (10) calendar days from the date of this Order:
  - a. Samples of all forms of packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing Mark(s) (other than Opposer's Mark) used by Opposer on or in connection with the provision of any HVAC and/or plumbing services and/or related goods;
  - b. All documents and things concerning any plans, schedules, or program for marketing, advertising, or promoting any goods or services offered for sale or sold, or intended to be offered for sale or sold, under the SERVICEMASTER marks;
  - c. All documents and things that identify the persons who purchase, or to whom are offered for purchase, any goods or services under the SERVICEMASTER marks;
  - d. All documents concerning any communications that Opposer had (whether orally or in writing) with any other person or persons regarding the SERVICEMASTER marks or another party's right to use these marks, or any mark the Opposer considered as or alleged to be confusingly similar thereto;
  - e. All documents and things which support Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the Applicant's marks and Opposer's marks;
  - f. All documents which support Opposer's assertions that the SERVICEMASTER mark has achieved the status of a famous mark;
  - g. All documents and things which support Opposer's assertions that the SERVICEMASTER mark has or is likely to become diluted; and
  - h. All other documents and things which Opposer contends supports any element of its Notice of Opposition
- 2) Opposer shall provide complete and substantive responses to Applicant's Interrogatory No. 11 (First Set) and Interrogatory Nos. 2-5, 7 and 12 (Second Set) including, but not limited to, documents and information relating to or reflecting Opposer's internal and external deliberations and/or communications concerning the branding of its HVAC and

plumbing acquisitions ARS, AMS, and Resecue Rooter as well as Opposer's recent rebranding initiatives, no later than ten (10) calendar days from the date of this Order.

3) Opposer shall provide complete and substantive responses to Applicant's Interrogatory No. 6 (Second Set) including, but not limited to, documents and information relating to or reflecting Opposer's market research and analysis of its HVAC and plumbing brands, no later than ten (10) calendar days from the date of this Order.

4) The discovery, testimony and trial dates set in this action are hereby extended for sixty (60) days, measured prospectively from the Board's issuance of this Order.

BY THE BOARD:

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# **EXHIBIT I**

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

_____	)
THE SERVICEMASTER COMPANY,	)
Opposer,	)
	)
v.	)
	)
UGI HVAC ENTERPRISES, INC.	)
Applicant.	)
_____	)

Opposition No. \_\_\_\_\_  
Appln. Serial No. 76/166,568  
Mark: SERVICEMARK

**NOTICE OF OPPOSITION**

Honorable Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Commissioner:

The ServiceMaster Company, a corporation duly organized and existing under the laws of Delaware, located and doing business at One ServiceMaster Way, Downers Grove, Illinois 60515 (hereinafter Opposer), believing that it will be damaged by registration, hereby opposes Application Serial No. 76/166,568, filed November 16, 2000 under the Trademark Act of 1946, in the name of UGI HVAC Enterprises, Inc., published for opposition in the Official Gazette of December 25, 2001, Vol. 1253, No. 4, at Page TM 159, for the mark SERVICEMARK.

The grounds of Opposition are as follows:

**Count I - Confusion**

1. The Opposer, The ServiceMaster Company, is a corporation duly organized and existing under the laws of Delaware, having its principal place of business at One ServiceMaster Way, Downers Grove, Illinois 60515.

2. Commencing long prior to Applicant's filing date, Opposer or its related companies have engaged, and are now engaged in the advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.

3. Commencing long prior to Applicant's filing date, Opposer or its related companies have used, and are now using the SERVICEMASTER name and mark (hereinafter sometimes referred to as "Opposer's Mark") in connection with advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.

4. Opposer is the owner of, and will rely herein, upon the following Federal trademark registrations, and the corresponding common law rights afforded by use thereof:

<b><u>MARK</u></b>	<b><u>REGISTRATION NO.</u></b>	<b><u>ISSUED</u></b>
SERVICEMASTER	1,220,269	December 14, 1982
SERVICEMASTER	1,272,228	March 27, 1984

Opposer's Registration No. 1,220,269 identifies the services as "Hospital and pharmacy management services with respect to purchasing and stock control; and repair and maintenance of buildings and equipment such as electrical, plumbing, heating and air conditioning" and "repair and maintenance of buildings and equipment such as electrical, plumbing, heating and air conditioning." Opposer's Registration No. 1,220,269 is incontestible by virtue of Opposer having filed a Section

15 Affidavit for the registration on March 28, 1990. The registration has been renewed. A copy of Registration No. 1,220,269 is attached hereto, as Opposer's Exhibit 1.

Opposer's Registration No. 1,272,228 identifies the services as "Energy conservation management services provided to institutional facilities ." Opposer's Registration No. 1,272,228 is incontestible by virtue of Opposer having filed a Section 15 Affidavit for the registration on March 30, 1990. The registration has been renewed. A copy of Registration No. 1,272,228 is attached hereto, as Opposer's Exhibit 2.

5. In addition to the services specified in the above-identified registrations, Opposer has also used Opposer's Mark for other and various related services including but not limited to electrical, drain rooting and cleaning services to residential and commercial customers and extended warranties for major home systems and appliances to residential customers. Use of Opposer's mark for these services is a natural extension of Opposer's use of its mark in connection with the services in the registrations above-identified.

6. Since its initial use of the aforementioned mark, Opposer has made a substantial investment in promoting its services under the SERVICEMASTER name and mark. Opposer has extensively used, promoted and offered Opposer's services in connection with the mark to the public through various channels of trade in commerce, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's mark and associate same with Opposer and/or services rendered by Opposer. Opposer has built extensive goodwill in connection with the rendering of services under its mark.

7. Upon information and belief, notwithstanding Opposer's rights in and to its mark, on November 16, 2000, Applicant filed an application for registration of the alleged SERVICEMARK

mark for "installation, repair, maintenance and sales of heating, ventilation and cooling equipment and appliances, and installation, maintenance, repair and sales of plumbing and related equipment."

Said application was assigned Serial No. 76/166,568, and was published for Opposition in the Official Gazette of December 25, 2001 at Page TM 159 in connection with "distributorship featuring heating, ventilation, cooling and appliances, and plumbing and related equipment," in International Class 35; and "installation, repair and maintenance of heating, ventilation and cooling equipment and appliances; installation, repair, and maintenance of plumbing and related equipment," in International Class 37.

8. Applicant's SERVICEMARK mark is a simulation and colorable imitation of, and so resembles Opposer's aforesaid mark as to be likely, when applied to the services of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation.

9. Upon information and belief, Opposer and Applicant are both engaged in the rendering and promotion of their respective services through the same channels of trade, and to the same general class of purchasers.

10. Upon information and belief, the bona fides of Applicant's intent-to-use is not apparent from materials of record in the subject application, and Opposer therefore challenges same and leaves the Applicant to its proofs with regard to the nature and sufficiency of its intent to use at the time of filing Application Serial No. 76/166,568.

11. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's services marketed under Applicant's alleged SERVICEMARK mark and misled into

believing that such services are produced by, emanate from, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

### **Count II - Dilution**

Opposer herein repeats and realleges paragraphs 1 through 11 above.

12. By virtue of the long use of the name and mark SERVICEMASTER and the high quality of consumer services rendered under the mark in connection with several well-known brands, the mark has achieved the status of a famous mark since 1994, a date preceding the filing of Applicant's application, and a date prior to the earliest date that Applicant can assert for its mark.

13. On the actual filing date of its application, Applicant had constructive notice of Opposer's ownership of the SERVICEMASTER mark and had knowledge, or upon reasonable inquiry would have had knowledge and therefore had constructive knowledge, of the fame of the SERVICEMASTER mark in connection with consumer services including heating, ventilating and air conditioning (HVAC) and plumbing services.

14. The use and registration of the SERVICEMARK mark by Applicant is likely to cause confusion, mistake or deception among members of the purchasing public concerning the origin, affiliation, association or authorization for the advertising, offering for sale, or sale of the services identified in the application.

15. The registration of SERVICEMARK in the name of the Applicant would dilute by blurring the distinctive quality of Opposer's SERVICEMASTER mark and would be in derogation of Opposer's right to preserve the SERVICEMASTER mark from dilution, as expressed in Section 43(c)(1) of the Trademark Act.

16. Opposer, upon information and belief, avers that it will be damaged by the continued use and registration by Applicant of the alleged SERVICEMARK mark, as set forth in Applicant's Trademark Application Serial No. 76/166,568, in that the mark is substantially similar to Opposer's trademark and common law rights and is used in connection with services identical to, or highly similar to, the services offered to the public by Opposer.

WHEREFORE, this Opposer, The ServiceMaster Company, believes and avers that it is being and will continue to be damaged by registration of the SERVICEMARK mark as aforesaid, and prays that said Application Serial No. 76/166,568 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

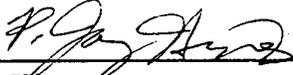
Opposer has appointed P. Jay Hines, a member of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C., a member of the Bar of the Commonwealth of Virginia, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

P. Jay Hines  
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.  
Fourth Floor  
1755 Jefferson Davis Highway  
Arlington, Virginia 22202

The filing fee for this opposition in the amount of \$600 is enclosed herewith. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 50-2014.

Respectfully submitted,

THE SERVICEMASTER COMPANY

By:   
P. Jay Hines  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1755 Jefferson Davis Highway  
Fourth Floor  
Arlington, Virginia 22202  
(703) 413-3000  
fax (703) 413-2220

June 17, 2002

STBCds (I:\atty\PJH\3165-218039US-NOP.wpd)

# **EXHIBIT J**



07-09-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #26

Attorney Docket No.: 224979US-36

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

_____ )	
THE SERVICEMASTER COMPANY, )	
) Opposer,	
) v. )	Opposition No. _____
) UGI HVAC ENTERPRISES, INC. )	Appln. Serial No. 76/237,328
) Applicant. )	Mark: SERVICEMARK HEATING
_____ )	COOLING PLUMBING & Design

**NOTICE OF OPPOSITION**

7/2

Honorable Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Commissioner:

The ServiceMaster Company, a corporation duly organized and existing under the laws of Delaware, located and doing business at One ServiceMaster Way, Downers Grove, Illinois 60515 (hereinafter Opposer), believing that it will be damaged by registration, hereby opposes Application Serial No. 76/237,328, filed April 6, 2001 under the Trademark Act of 1946, in the name of UGI HVAC Enterprises, Inc., published for opposition in the Official Gazette of July 2, 2002, Vol. 1260, No. 1, at Page TM 224, for the mark SERVICEMARK HEATING COOLING PLUMBING & Design.

The grounds of Opposition are as follows:

**Count I - Confusion**

1. The Opposer, The ServiceMaster Company, is a corporation duly organized and existing under the laws of Delaware, having its principal place of business at One ServiceMaster Way, Downers Grove, Illinois 60515.

2. Commencing long prior to Applicant's claimed date of first use, Opposer or its related companies have engaged, and are now engaged in the advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.

3. Commencing long prior to Applicant's claimed date of first use, Opposer or its related companies have used, and are now using the SERVICEMASTER name and mark (hereinafter sometimes referred to as "Opposer's Mark") in connection with advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.

4. Opposer is the owner of, and will rely herein, upon the following Federal trademark registrations, and the corresponding common law rights afforded by use thereof:

<b><u>MARK</u></b>	<b><u>REGISTRATION NO.</u></b>	<b><u>ISSUED</u></b>
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15 Affidavit for the registration on March 28, 1990. The registration has been renewed. A copy of Registration No. 1,220,269 is attached hereto, as Opposer's Exhibit 1.

Opposer's Registration No. 1,272,228 identifies the services as "Energy conservation management services provided to institutional facilities ." Opposer's Registration No. 1,272,228 is incontestible by virtue of Opposer having filed a Section 15 Affidavit for the registration on March 30, 1990. The registration has been renewed. A copy of Registration No. 1,272,228 is attached hereto, as Opposer's Exhibit 2.

5. In addition to the services specified in the above-identified registrations, Opposer has also used Opposer's Mark for other and various related services including but not limited to electrical, drain rooting and cleaning services to residential and commercial customers and extended warranties for major home systems and appliances to residential customers. Use of Opposer's mark for these services is a natural extension of Opposer's use of its mark in connection with the services in the registrations above-identified.

6. Since its initial use of the aforementioned mark, Opposer has made a substantial investment in promoting its services under the SERVICEMASTER name and mark. Opposer has extensively used, promoted and offered Opposer's services in connection with the mark to the public through various channels of trade in commerce, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's mark and associate same with Opposer and/or services rendered by Opposer. Opposer has built extensive goodwill in connection with the rendering of services under its mark.

7. Upon information and belief, notwithstanding Opposer's rights in and to its mark, on April 6, 2001, Applicant filed an application for registration of the alleged SERVICEMARK

HEATING COOLING PLUMBING & Design mark for "installation, repair, maintenance and sales of heating, ventilation and cooling equipment and appliances; and installation, repair, maintenance and sales of plumbing and related equipment." Said application was assigned Serial No. 76/237,328, and was published for Opposition in the Official Gazette of July 2, 2002 at Page TM 224 in connection with "retail services featuring heating, ventilation, cooling and appliances, and plumbing and related equipment," in International Class 35, and "installation, repair and maintenance of heating, ventilation and cooling equipment and appliances; installation, repair and maintenance of plumbing and related equipment," in International Class 37.

8. Applicant's **SERVICEMARK HEATING COOLING PLUMBING & Design** mark is a simulation and colorable imitation of, and so resembles Opposer's aforesaid mark as to be likely, when applied to the services of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation.

9. Upon information and belief, Opposer and Applicant are both engaged in the rendering and promotion of their respective services through the same channels of trade, and to the same general class of purchasers.

10. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's services marketed under Applicant's alleged **SERVICEMARK HEATING COOLING PLUMBING & Design** mark and misled into believing that such services are produced by, emanate from, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

## Count II - Dilution

Opposer herein repeats and realleges paragraphs 1 through 10 above.

11. By virtue of the long use of the name and mark SERVICEMASTER and the high quality of consumer services rendered under the mark in connection with several well-known brands, the mark has achieved the status of a famous mark since 1994, a date preceding the filing of Applicant's application, and a date prior to the earliest date that Applicant can assert for its mark.

12. On the actual filing date of its application, Applicant had constructive notice of Opposer's ownership of the SERVICEMASTER mark and had knowledge, or upon reasonably inquiry would have had knowledge and therefore had constructive knowledge, of the fame of the SERVICEMASTER mark in connection with consumer services including heating, ventilating and air conditioning (HVAC) and plumbing services.

13. The use and registration of the SERVICEMARK HEATING COOLING PLUMBING & Design mark by Applicant is likely to cause confusion, mistake or deception among members of the purchasing public concerning the origin, affiliation, association or authorization for the advertising, offering for sale, or sale of the services identified in the application.

14. The registration of SERVICEMARK HEATING COOLING PLUMBING & Design in the name of the Applicant would dilute by blurring the distinctive quality of Opposer's SERVICEMASTER mark and would be in derogation of Opposer's right to preserve the SERVICEMASTER mark from dilution, as expressed in Section 43(c)(1) of the Trademark Act.

15. Opposer, upon information and belief, avers that it will be damaged by the continued use and registration by Applicant of the alleged SERVICEMARK HEATING COOLING PLUMBING & Design mark, as set forth in Applicant's Trademark Application Serial No.

76/237,328, in that the mark is substantially similar to Opposer's trademark and common law rights and is used in connection with services identical to, or highly similar to, the services offered to the public by Opposer.

WHEREFORE, this Opposer, The ServiceMaster Company, believes and avers that it is being and will continue to be damaged by registration of the SERVICEMARK HEATING COOLING PLUMBING & Design mark as aforesaid, and prays that said Application Serial No. 76/237,328 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed P. Jay Hines, a member of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C., a member of the Bar of the Commonwealth of Virginia, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

P. Jay Hines  
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.  
Fourth Floor  
1755 Jefferson Davis Highway  
Arlington, Virginia 22202

The filing fee for this opposition in the amount of \$600 is enclosed herewith. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 50-2014.

Respectfully submitted,

THE SERVICEMASTER COMPANY

By: 

P. Jay Hines  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1755 Jefferson Davis Highway  
Fourth Floor  
Arlington, Virginia 22202  
(703) 413-3000  
fax (703) 413-2220

Date: July 9, 2002  
PJH/cds (I:\attys\PJH\3165-224797US-opp.wpd)

# **EXHIBIT K**

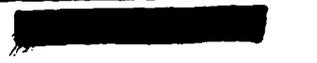
TTAB



Attorney Docket No.: 228274US-36

BOX TTAB FEE

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



\_\_\_\_\_)  
The ServiceMaster Company, )  
Petitioner )  
 )  
v. )  
 )  
UGI HVAC Enterprises, Inc., )  
Respondent. )  
\_\_\_\_\_)

09-16-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

Cancellation No. \_\_\_\_\_  
Registration No. 2,591,190  
Mark: SERVICEMARK HEATING  
COOLING PLUMBING & Design

02 SEP 23 11 12 36  
TRADEMARK TRIAL AND  
APPEAL BOARD

**PETITION FOR CANCELLATION**

The ServiceMaster Company, a corporation under the laws of the State of Delaware, located at One ServiceMaster Way, Downers Grove, Illinois 60515, believes that it is or will be damaged by the registration of the mark identified above and hereby petitions to cancel the registration.

As grounds for this petition, The ServiceMaster Company alleges:

**Count I - Confusion**

1. The Petitioner, The ServiceMaster Company, is a corporation duly organized and existing under the laws of Delaware, having its principal place of business at One ServiceMaster Way, Downers Grove, Illinois 60515.

2. Commencing long prior to Respondent's filing date, Petitioner or its related companies have engaged, and are now engaged in the advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.

JA

3. Commencing long prior to Respondent's filing date, Petitioner or its related companies have used, and are now using the SERVICEMASTER name and mark (hereinafter sometimes referred to as "Petitioner's Mark") in connection with advertising, promotion and rendering of heating, ventilating and air conditioning (HVAC) and plumbing services in interstate commerce.

4. Petitioner is the owner of, and will rely herein, upon the following Federal trademark registrations, and the corresponding common law rights afforded by use thereof:

<u>MARK</u>	<u>REGISTRATION NO.</u>	<u>ISSUED</u>
SERVICEMASTER	1,220,269	December 14, 1982
SERVICEMASTER	1,272,228	March 27, 1984

Petitioner's Registration No. 1,220,269 identifies the services as "Hospital and pharmacy management services with respect to purchasing and stock control; and repair and maintenance of buildings and equipment such as electrical, plumbing, heating and air conditioning" and "repair and maintenance of buildings and equipment such as electrical, plumbing, heating and air conditioning." Petitioner's Registration No. 1,220,269 is incontestible by virtue of Petitioner having filed a Section 15 Affidavit for the registration on March 28, 1990. The registration has been renewed. A copy of Registration No. 1,220,269 is attached hereto, as Petitioner's Exhibit 1.

Petitioner's Registration No. 1,272,228 identifies the services as "Energy conservation management services provided to institutional facilities ." Petitioner's Registration No. 1,272,228 is incontestible by virtue of Petitioner having filed a Section 15 Affidavit for the registration on March 30, 1990. The registration has been renewed. A copy of Registration No. 1,272,228 is attached hereto, as Petitioner's Exhibit 2.

5. In addition to the services specified in the above-identified registrations, Petitioner has also used Petitioner's Mark for other and various related services including but not limited to electrical, drain rooting and cleaning services to residential and commercial customers and extended warranties for major home systems and appliances to residential customers. Use of Petitioner's mark for these services is a natural extension of Petitioner's use of its mark in connection with the services recited in the registrations above-identified.

6. Since its initial use of the aforementioned mark, Petitioner has made a substantial investment in promoting its services under the SERVICEMASTER name and mark. Petitioner has extensively used, promoted and offered Petitioner's services in connection with the mark to the public through various channels of trade in commerce, with the result that Petitioner's customers and the public in general have come to know and recognize Petitioner's mark and associate same with Petitioner and/or services rendered by Petitioner. Petitioner has built extensive goodwill in connection with the rendering of services under its mark.

7. Upon information and belief, notwithstanding Petitioner's rights in and to its mark, on April 6, 2001, Respondent filed an application for registration of the alleged SERVICEMARK HEATING COOLING PLUMBING & Design mark for "installation, repair, maintenance and sales of heating, ventilation and cooling equipment and appliances, and installation, maintenance, repair and sales of plumbing and related equipment." Said application was assigned Serial No. 76/237,455, and was published for Opposition in the Official Gazette of April 16, 2002 at Page TM 202 in connection with "retail services featuring heating, ventilating, cooling and appliances, and plumbing and related equipment," in International Class 35; and "installation, repair and maintenance of heating, ventilation and cooling equipment and appliances; installation, repair, and maintenance of

plumbing and related equipment," in International Class 37. Application Serial No. 76/237,455 matured to Registration No. 2,591,190, issued July 9, 2002.

8. Respondent's SERVICEMARK HEATING COOLING PLUMBING & Design mark is a simulation and colorable imitation of, and so resembles Petitioner's aforesaid mark as to be likely, when applied to the services of Respondent, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Petitioner and its reputation.

9. Upon information and belief, Petitioner and Respondent are both engaged in the rendering and promotion of their respective services through the same channels of trade, and to the same general class of purchasers.

10. Petitioner, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Respondent's services marketed under Respondent's alleged SERVICEMARK HEATING COOLING PLUMBING & Design mark and misled into believing that such services are produced by, emanate from, or are in some way directly or indirectly associated with Petitioner, to the damage and detriment of Petitioner and its reputation.

### **Count II - Dilution**

Petitioner herein repeats and realleges paragraphs 1 through 10 above.

11. By virtue of the long use of the name and mark SERVICEMASTER and the high quality of consumer services rendered under the mark in connection with several well-known brands, the mark has achieved the status of a famous mark since 1994, a date preceding the filing of Respondent's application, and a date prior to the earliest date that Respondent can assert for its mark.

12. On the actual filing date of its application, Respondent had constructive notice of Petitioner's ownership of the SERVICEMASTER mark and had knowledge, or upon reasonably inquiry would have had knowledge and therefore had constructive knowledge, of the fame of the SERVICEMASTER mark in connection with consumer services including heating, ventilating and air conditioning (HVAC) and plumbing services.

13. The use and registration of the SERVICEMARK HEATING COOLING PLUMBING & Design mark by Respondent is likely to cause confusion, mistake or deception among members of the purchasing public concerning the origin, affiliation, association or authorization for the advertising, offering for sale, or sale of the services identified in the application.

14. The registration of SERVICEMARK HEATING COOLING PLUMBING & Design in the name of the Respondent would dilute by blurring the distinctive quality of Petitioner's SERVICEMASTER mark and would be in derogation of Petitioner's right to preserve the SERVICEMASTER mark from dilution, as expressed in Section 43(c)(1) of the Trademark Act.

15. Petitioner, upon information and belief, avers that it will be damaged by the continued use and registration by Respondent of the alleged SERVICEMARK HEATING COOLING PLUMBING & Design mark, as set forth in Respondent's Trademark Registration No.2,591,190, in that the mark is substantially similar to Petitioner's trademark and common law rights and is used in connection with services identical to, or highly similar to, the services offered to the public by Petitioner.

WHEREFORE, Petitioner prays that this Petition for Cancellation be granted and that Registration No. 2,591,190 be cancelled.

The filing fee for this Petition to Cancel in the amount of \$600.00 is enclosed herewith. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 50-2014.

Respectfully submitted,

THE SERVICEMASTER COMPANY

By: \_\_\_\_\_

  
P. Jay Hines  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1755 Jefferson Davis Highway  
Fourth Floor  
Arlington, Virginia 22202  
(703) 413-3000  
fax (703) 413-2220

Date: September 16, 2002  
PJH/cds {I:\att\PIH\0165-228274US-pet.wpd}

Int. Cls.: 35 and 37

Prior U.S. Cls.: 101 and 103

United States Patent and Trademark Office

Reg. No. 1,220,269  
Registered Dec. 14, 1982

**SERVICE MARK**  
Principal Register

**SERVICEMASTER**

Servicemaster Industries Inc. (Delaware corporation)  
2300 Warrensville Rd.  
Downers Grove, Ill. 60515

For: HOSPITAL AND PHARMACY MAN-  
AGEMENT SERVICES WITH RESPECT TO  
PURCHASING AND STOCK CONTROL, in  
CLASS 35 (U.S. Cl. 101).

First use Dec. 1978; in commerce Dec. 1978.

For: REPAIR AND MAINTENANCE OF  
BUILDINGS AND EQUIPMENT SUCH AS

ELECTRICAL, PLUMBING, HEATING AND  
AIR CONDITIONING, in CLASS 37 (U.S. Cl. 103).

First use Oct. 11, 1971; in commerce Oct. 11, 1971.

Owner of U.S. Reg. Nos. 704,772, 782,584, 922,566  
and others.

Ser. No. 227,839, filed Aug. 17, 1979.

R. KOLAKOSKI, Examining Attorney

Int. Cl.: 42

Prior U.S. Cl.: 100

**United States Patent and Trademark Office**

**Reg. No. 1,272,228**

**Registered Mar. 27, 1984**

**SERVICE MARK**

**Principal Register**

**SERVICEMASTER**

ServiceMaster Industries, Inc. (Delaware corporation)  
2300 Warrenville Rd.  
Downers Grove, Ill. 60515

For: ENERGY CONSERVATION MANAGEMENT SERVICES PROVIDED TO INSTITUTIONAL FACILITIES, in CLASS 42 (U.S. Cl. 100).

First use Nov. 1979; in commerce Nov. 1979.

Owner of U.S. Reg. Nos. 704,772, 782,584, 922,566 and others.

Ser. No. 393,984, filed Sep. 29, 1982.

EDWARD NELSON, Examining Attorney

# **EXHIBIT L**



## INTERROGATORIES

1. Identify the person or persons most familiar with the use by Opposer of the marks **SERVICEMASTER**, Reg. No. 1,220,269 and Reg. No. 1,272,228.

### ANSWER

Douglas W. Colber, Esq., Vice President, Assistant Secretary and Legal Counsel; Sherry Campbell, Trademark Manager, Legal Department.

2. With respect to Opposer:

a) state the address of each location at which Opposer as (sic) maintained or now maintains an office or other place of business in the U.S. and describe the functions carried out at each such place or other place of business;

b) briefly state the nature of Opposer's principal business and the period in which it has conducted such business.

### ANSWER

2a) Opposer objects to Interrogatory No. 2(a) on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks the address of each location at which Opposer "has maintained or now maintains an office or other place of business in the U.S." Opposer also objects to Interrogatory No 2(a) on the grounds that the matter purportedly sought is neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to said objections and without waiver thereof, Opposer states that it has a network of over 5,400 company-owned and franchise service centers and business units. Further, the services provided by Opposer and its subsidiaries include home warranties, home inspection, termite and pest control, plumbing, cleaning, and furniture maintenance, heating and air conditioning installation, maintenance and repair, appliance maintenance and repair, and lawn care services.

2b) Opposer and its subsidiaries provide the services outlined in response to Interrogatory No. 2(a) to over 10 million residential customers each year. Opposer and its subsidiaries also provide services to the commercial and international markets. Use of the SERVICEMASTER names dates from the early 1950s in connection with commercial and residential maintenance and cleaning services. Opposer refers to the dates of use in the two registrations relied upon in this proceeding with respect to HVAC maintenance and repair services.

3. Identify the services rendered, offered for sale, advertised and/or promoted or intended to be rendered, advertised and/or promoted by Opposer in the United States which bears (sic) or will bear the SERVICEMASTER marks.

**ANSWER**

Opposer objects to Interrogatory No. 3 on the ground that, since the subject mark is Opposer's house mark, it is redundant and repetitive of Interrogatory No. 2.

4. Identify the person or persons employed by Opposer who had, or has, primary responsibility for maintenance and protection of the SERVICEMASTER marks.

**ANSWER**

Douglas W. Colber, Esq.  
Vice President, Assistant Secretary and Legal Counsel.

5. State any policy (written or unwritten) Opposer may have, identifying and locating any documents, concerning the use, display and advertising of the SERVICEMASTER marks.

**ANSWER**

Opposer does have a written stylization manual concerning use of the house mark.

6. Describe all marketing and distribution systems, identifying and locating any documents used by opposer, or intended to be used by opposer, for products bearing the SERVICEMASTER marks from the date of first use to the present.

**ANSWER**

Opposer objects to Interrogatory No. 6 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it requests a description of "all marketing and distribution systems... for products bearing the SERVICEMASTER marks from the date of first use to the present." Subject to said objection and without waiver thereof, Opposer will produce a representative sampling of pertinent documents and indicates that it has maintained a call center uniting all business units since 1988 under the mark 1-800-WE SERVE, has conducted online marketing since 1995 under the domain name *www.servicemaster.com*, and in 2000 established a comprehensive online site for home services, now presented as "ServiceMaster Home Service Center."

7. Describe the geographic market areas, or intended geographic market areas, specifying each state or country, for products bearing the SERVICEMASTER marks since the date of first use to the present.

**ANSWER**

Opposer objects to Interrogatory No. 7 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks a description of geographic market areas bearing the SERVICEMASTER mark since the date of first use to the present. Subject to said objections and without waiver thereof, Opposer states that it has provided services under the house mark in all 50 states of the United States for many years and began international operations in the 1950s, with services provided now in over 10 countries throughout the world.

8. Identify the channels of commerce or distribution in which products bearing the SERVICEMASTER marks are offered.

**ANSWER**

All channels of commerce and distribution are utilized including, but not limited to, direct mail, telephone directory listings, print, radio and television advertising, and the Internet.

9. Identify the classes of purchasers to whom products bearing the SERVICEMASTER marks are offered.

**ANSWER**

Products and services bearing the SERVICEMASTER marks are offered to residential and commercial purchasers throughout the United States and abroad.

10. Has Opposer ever challenged any third party regarding the use of any trademark or other designation which Opposer considered to conflict with either of the SERVICEMASTER marks and, if so:

- a) identify the third party;
- b) describe the designation used and the goods or services in connection with which it is or was used;
- c) describe the nature of the action taken by Opposer;
- d) describe the results, if any, of said action; and
- e) identify and locate all documents relating thereto.

**ANSWER**

Opposer objects to Interrogatory No. 10 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks the identity and location of all documents relating to challenges to conflicting marks of third parties, and to the extent that materials and information requested are as available to the Applicant as to the Opposer. In particular, Opposer would have to obtain the requested information from sources equally accessible to the Applicant, namely, the U.S. Patent and Trademark Office. Subject to said objections and without waiver thereof, Opposer identifies the following inter partes proceedings: *ServiceMaster Industries Inc. v. Collman Industries, Incorporated*, 173 USPQ 508 (TTAB 1972) (STEAMASTER for carpet and

upholstery cleaning services found confusingly similar to SERVICEMASTER for cleaning services; Cancellation No. 9605 granted).

<u>Opp. No.</u>	<u>Third Party</u>	<u>Mark</u>	<u>Goods/ Services</u>	<u>Result</u>
50,658	Servpro Industries Inc.	SERVPRO & Design	Cleaning, painting and repairing services in homes, offices and other building	Dismissed
54,175	The Tappan Company	SERVICEMASTER		Sustained
107,929	ServiceCare, Inc.	SERVICECARE & DESIGN	Arranging repair of home utility systems and household appliances pursuant to contracts with homeowners	Settled
152,762	Toenges Enterprises	CLEANMASTERS	Cleaning services, namely, cleaning of computers, electronic equipment and office interiors	Notice of Default 12-4-02

11. Identify and describe any and all packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks or used in connection with the SERVICEMASTER marks.

**ANSWER**

Opposer objects to Interrogatory No. 11 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks “any and all packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks...” Subject to said objection and without waiver thereof,

Opposer will produce a representative sampling of such documents as are not immune, privileged or otherwise protected from discovery.

12. Give the date and describe the circumstances under which Opposer first became aware of Applicant's SERVICEMARK trademark.

**ANSWER**

Opposer first became aware of Applicant's service mark upon publication of Application Serial No. 76/166,568 in the Trademark Official Gazette of December 25, 2001.

13. State whether or not opposer has ever received any misdirected mail, telephone calls, orders, inquiries, complaints, or communications which were intended for Applicant, or one of its affiliated companies, and, if so, for each such incident, state or describe:

- a) the date and place it occurred;
- b) the name, address and position of the person(s) who received the misdirected communication;
- c) the name, or other means of identification, and address of the person(s) who sent the communication;
- d) whether any record was made of such misdirected communication and, if so, the address of the persons who has custody of such record; and
- e) identify each and every document referring or relating to such incident.

**ANSWER**

In light of the relatively short amount of time Applicant has been using the mark SERVICEMARK and the relatively narrow geographic area of use, Opposer has not discovered any misdirected mail, telephone calls, orders, inquiries, complaints, or communications which were intended for Applicant or one of its affiliate companies. However, in the event that instances of misdirected communication or confusion occur, Opposer reserves its right to supplement its response to this interrogatory.

14. State whether Opposer is aware of any instance in which any person, firm, corporation, association or other entity has been confused or has indicated by correspondence, oral statement, or

otherwise that he, she, or it has been confused, deceived, or mistaken as to the source or origin of Opposer's or Applicant's goods and/or services or other activities as a result of the respective, concurrent use or planned use of their respective marks; and

a) describe the circumstances surrounding each such instance, including all persons present;

b) state whether a record was made of any such instances and, if so, identify the records or any other documents relating to each such instance and the persons having knowledge and custody thereof.

### ANSWER

In light of the relatively short amount of time Applicant has been using the mark SERVICEMARK and the relatively narrow geographic area of use, Opposer has not discovered any instances of actual confusion or mistake. However, in the event that instances of misdirected communication or confusion occur, Opposer reserves its right to supplement its response to this interrogatory.

15. State the similarities between Applicant's mark SERVICEMARK and Opposer's SERVICEMASTER marks as used with their respective services, forming the basis for Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the marks.

### ANSWER

The first nine letters (out of 11) of Applicant's mark are identical to the first nine letters (out of 13) of Opposer's mark. The initial English word component of Applicant's mark, "SERVICE," is identical to the initial English word component of Opposer's mark. Both marks are compound, two word marks. A capital "S" introduces the first component of each mark; a capital "M" introduces the second component of each mark. It is axiomatic that the formative components of marks are more important in creating a commercial impression. *In re BASF A.G.*, 189 USPQ 242 (TTAB 1975) (LUTEXAL for resonance chemicals used in dyeing textiles held likely to be confused

with LUTEX for non-resonance chemicals used in the textile industry.) Further, when the Applicant's mark is compared to Opposer's mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 108 USPQ 161 (D.C. Cir., *Cert. denied* 109 USPQ 517 (1956)). The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of average purchaser who normally retains a general rather than specific impression of trademarks. *Chemitron Corp. v. Morris Coupling and Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP Section 1207.01(b). Moreover, where the goods (services) are identical, "the degree of similarity [between the marks] necessary to support a conclusion of likelihood of confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992) *cert. denied*, 506 U.S. 1034 (1992); *ECI Division of E-Systems, Inc. v. Environmental Communications, Inc.*, 207 USPQ 443 (TTAB 1980).

16. Identify all surveys and market studies conducted by Opposer concerning SERVICEMARK and for each such survey and market study, identify all documents relating to or embodying the results of each such survey.

#### **ANSWER**

Opposer has not, at this time, conducted any surveys concerning Applicant's mark. Opposer reserves its right to supplement its response to this interrogatory.

17. Identify all agreements, including but not limited to, licenses, permissions or consents entered into by Opposer and any other entities relating to the SERVICEMASTER marks and identify all documents relating to or referring to such agreement.

**ANSWER**

Opposer objects to Interrogatory No. 17 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it requests the identity of "all agreements, including but not limited to, licenses, permission or consents entered into by Opposer and any other entities relating to the SERVICEMASTER marks and ...all documents relating to or referring to such agreement." Subject to said objection and without waiver thereof, Opposer states that it has entered into hundreds of such agreements and will provide a representative sample of the requested information as is not immune, privileged or otherwise protected from discovery. Opposer further states that its house mark is currently licensed to an Aramark Corporation related company with respect to facilities management services including HVAC services.

18. State the factual basis for Opposer's assertions that the SERVICEMASTER mark is a famous mark.

**ANSWER**

Opposer provides services to over 10 million residential customers each year. Opposer also provides services to the commercial and international market through its network of over 5,400 company-owned and franchise service centers and business units. The SERVICEMARK mark has been used since at least as early as 1952. ServiceMaster and its subsidiaries provide various services, including home warranties, home inspection, termite and pest control, plumbing, cleaning and furniture maintenance, heating and air conditioning installation, maintenance and repair, appliance maintenance and repair, and lawn care services.

ServiceMaster is the owner of approximately 30 U.S. trademark and service mark registrations for the house mark SERVICEMASTER and marks that incorporate the term

SERVICEMASTER. Most of these registrations have achieved incontestible status. Use of the SERVICEMASTER marks has expanded over time to include franchising services, moving services, personnel relocation services, home health care services, disaster restoration and energy conservation services, among others. Millions of dollars each year have been expended to maintain the professional high quality of the services provided under the SERVICEMASTER mark. As a result, the sales and services have grown tremendously. The marks have acquired substantial goodwill in connection with a skilled, well qualified and professional image. Opposer, its subsidiaries and its franchisees have expended and continue to expend over \$11.2 million annually to advertise, publicize and promote services under Opposer's house mark throughout the United States and internationally, not including all independent advertising expenditures of franchisees and some subsidiaries. Opposer's mark has been regularly and extensively advertised on radio, in publications, direct mail promotions, newspapers, and in color inserts to newspapers distributed across the United States. Opposer registered the domain name *servicemaster.com* in March 1997 and has operated a web site at that address since at least as early as February 1998. The web site is actively promoted to encourage potential customers to visit the site and take advantage of its services and informational offerings. The web site averages more than 297,500 visitors per month. Opposer now renders, and for many years has rendered, hundreds of millions of dollars in services under its house mark throughout the United States and internationally. Annual customer-level revenue of Opposer in the United States was in excess of \$5.2 billion for the fiscal year ending 2001. By reason of extensive advertising, promotion and sales of products and services under Opposer's SERVICEMASTER house mark over several decades, the mark has acquired and enjoys distinctiveness, fame and substantial secondary meaning.

19. State the factual basis for Opposer's assertions that the SERVICEMASTER mark has or is likely to become diluted.

**ANSWER**

Given the identity of the respective services and the near identity of the respective marks, both confusion and dilution are likely. It stands to reason that the distinctive character of Opposer's house mark will diminish in the face of use of the SERVICEMARK mark for identical services in the same channels of trade.

20. Identify all persons who provided information supporting the facts set forth in Opposition No. 125,743.

**ANSWER**

Sherry Campbell, Trademark Manager, Legal Department.

21. With regard to the response to each Interrogatory herein, state the name of each employee or agent of Opposer to whom the information is a matter of personal knowledge, the name of each employee or agent who furnished information pertaining to such responses and the basis upon which affiant relies in whole or in part for such response.

**ANSWER**

Opposer objects to Interrogatory No. 21 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks, with respect to each Interrogatory, the name of each employee or agent of Opposer to whom the information is a matter of personal knowledge, the name of each employee or agent who furnished information pertaining to such responses, and the basis upon which affiant relies in whole or in part for such response. Given Opposer's size, it is virtually impossible for Opposer to respond to the first component of the interrogatory. For the same reasons, full and complete responses to the other components of the Interrogatory are likewise totally impracticable or redundant.

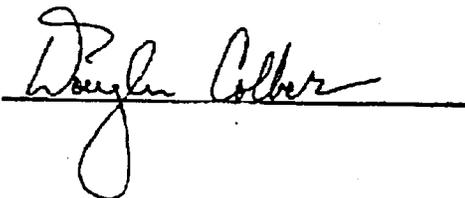
Respectfully submitted,

THE SERVICEMASTER COMPANY

As to Interrogatories:

I declare under penalty of perjury under the laws of the United States that the foregoing is true to the best of my knowledge, information and belief.

Date: 6 February 2003

By: 

As to objections:

By: 

P. Jay Hines  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 413-3000  
fax (703) 413-2220

Date: February 7, 2003  
PJH/cds (H:\WTTV\JMS\155-216039\J3-RSP.doc)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** was served on counsel for Applicant, this 7<sup>th</sup> day of February, 2003, by sending same, via first class mail, postage prepaid to:

VINCENT V. CARISSIMI, ESQ.  
BARBARA L. DELANEY, ESQ.  
KATHLEEN A. JOHNSON, ESQ.  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, PA 19103-2799

Caitrin Summerell

# **EXHIBIT M**

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

<hr/>		
THE SERVICEMASTER COMPANY	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 152,104
	)	U.S. Appln. Serial No. 76/166,568
UGI HVAC ENTERPRISES INC.	)	Mark: SERVICEMARK
	)	
Applicant.	)	
<hr/>		

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST**  
**REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34, Fed. R. Civ. P. and Rules 2.116 and 2.120, Trademark Rules of Practice, Opposer, The ServiceMaster Company, provides the following responses to Applicant's requests for production. These responses are based upon the best information presently available to Opposer, and best belief of his counsel, and are made without prejudice to the right of Opposer to make additional or modified answers should better or further information or belief subsequently become available to Opposer. Moreover, these answers are made without any prejudice to any right of Opposer to offer evidence on its behalf or to object to the relevance or competence or admissibility on any ground of any evidence or witness offered by Applicant; and these answers do not constitute an admission of competence or admissibility of evidence or waiver of objection on any grounds.

**REQUESTS**

1. Produce all documents and things identified in Opposer's responses to the Interrogatories.

**RESPONSE**

Opposer objects to Document Request No. 1 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things identified in Opposer's responses to the Interrogatories." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

2. Produce all documents and things which record, reflect, relate or refer to, or contain information used in preparation of the responses to the Interrogatories.

**RESPONSE**

Opposer objects to Document Request No. 2 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things which record, reflect, relate or refer to, or contain information used in preparation of the responses to the Interrogatories." Opposer also objects to Document Request No. 2 on the grounds and to the extent that it seeks information which is protected under the attorney-client and attorney-work product privileges. Subject to said objections and without waiver thereof, Opposer produces a representative sampling of such documents.

3. Produce all documents and things that concern Opposer's past, present, or future marketing plans for offering or selling goods or services under the SERVICEMASTER marks.

**RESPONSE**

Opposer objects to Document Request No. 3 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things that concern Opposer's past, present or future marketing plans for offering or selling goods or services under the SERVICEMASTER marks." Opposer also objects to Document Request No. 3 on the grounds and to the extent that it seeks confidential business information. However, upon entry of the stipulated

protective order, Opposer will provide a representative sampling of such requested information as is not immune, privileged or otherwise protected from discovery.

4. Produce all documents and things concerning any plans, schedules, or program for marketing, advertising, or promoting any goods or services offered for sale or sold, or intended to be offered for sale or sold, under the SERVICEMASTER marks.

**RESPONSE**

Opposer objects to Document Request No. 4 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks “all documents and things concerning any plans, schedules, or program for marketing, advertising, or promoting any goods or services offered for sale or sold, or intended to be offered for sale or sold, under the SERVICEMASTER marks.” Opposer also objects to Document Request No. 4 on the grounds and to the extent that it seeks confidential business information. However, upon entry of the stipulated protective order, Opposer will provide a representative sampling of such requested information as is not immune, privileged or otherwise protected from discovery.

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5. Produce documents and things sufficient to disclose the territorial or geographic areas where Opposer offers or intends to offer goods or services under the SERVICEMASTER marks and the length of time during which each product or service has been marketed in each territory or geographical area.

**RESPONSE**

Opposer objects to Document Request No. 5 on the grounds that records are not maintained in such a way, in the ordinary course of business, that would allow it to determine the length of time during which each product or services has been marketed in each territory or geographical area. Subject to said objection and without waiver thereof, Opposer states that its services are provided nationwide and have been provided nationwide for decades.

6. Produce documents that disclose the channels of trade through which Opposer offers or intends to offer any goods or services under the SERVICEMASTER marks.

**RESPONSE**

Opposer produces a representative sampling of documents that disclose channels of trade.

7. Produce all documents and things that identify the persons who purchase, or to whom are offered for purchase, any goods or services under the SERVICEMASTER marks.

**RESPONSE**

Opposer objects to Document Request No. 7 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks “all documents and things that identify the persons who purchase, or to who are offered for purchase, any goods or services under the SERVICEMASTER marks.” Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

8. Produce all documents concerning any communications that Opposer had (whether orally or in writing) with any other person or persons regarding the SERVICEMASTER marks or another party's right to use these marks, or any mark the Opposer considered as or alleged to be confusingly similar thereto.

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**RESPONSE**

Opposer objects to Document Request No. 8 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks “all documents concerning any communications that Opposer had (whether orally or in writing) with any other person or persons regarding the SERVICEMASTER marks or another party's right to use these marks, or any mark the Opposer considered as or alleged to be confusingly similar thereto.” Subject to said objection and without waiver thereof, Opposer produces a representative sampling of enforcement communications.

9. Produce all documents or things concerning any litigation, cancellation proceeding, opposition proceeding, or other claim or demand involving Opposer and any other party concerning the use of the SERVICEMASTER marks or any mark alleged to be confusingly similar hereto.

**RESPONSE**

Opposer objects to Document Request No. 9 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents or things concerning any litigation, cancellation proceeding, opposition proceeding, or other claim or demand involving Opposer and any other party concerning the use of the SERVICEMASTER marks or any mark alleged to be confusingly similar hereto." Opposer further objects to Document Request No. 9 on the grounds that some of the materials requested are as available to the Applicant as to the Opposer. In particular, the records of many of the proceedings identified in response to Interrogatory No. 10 are equally accessible to the Applicant from the U.S. Patent and Trademark Office.

10. Produce samples of all forms of packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks or used in connection with the SERVICEMASTER marks.

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**RESPONSE**

Opposer produces a representative sampling of such documents.

11. Produce all documents evidencing the circumstances under which Opposer first became aware of Applicant's SERVICEMARK trademark.

**RESPONSE**

Opposer objects to Document Request No. 11 on the ground, and to the extent that it seeks information which is protected under the attorney-client and attorney work product privileges. Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

12. Produce all documents relating to any misdirected mail, telephone calls, orders, inquiries, complaints, or communications which were intended for Applicant, or one of its affiliated companies.

**RESPONSE**

In light of the relatively short amount of time Applicant has been allegedly using the mark SERVICEMARK, Opposer has not yet discovered any instances of actual confusion or misdirected mail, telephone call, orders, inquiries or complaints. However, in the event that instances of misdirected communication or confusion occur, Opposer reserves its right to supplement its responses to this Document Request.

13. Produce all documents evidencing or relating to any third party confusion, deceit, or mistake as to the source or origin of Opposer's or Applicant's goods and/or services or other activities as a result of the respective, concurrent use or planned use of their respective marks.

**RESPONSE**

In light of the relatively short amount of time Applicant has been allegedly using the mark SERVICEMARK, Opposer has not yet discovered any instances of third party confusion, deceit, or mistake as to the source or origin of Opposer's or Applicant's goods and/or services or other activities as a result of the respective, concurrent use or planned use of their respective marks. However, in the event that instances of confusion occur, Opposer reserves its right to supplement its responses to this Document Request.

14. Produce all documents and things which support Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the Applicant's marks and Opposer's marks.

**RESPONSE**

Opposer objects to Document Request No. 14 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things which

support Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the Applicant's marks and Opposer's marks." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

15. Produce all documents related to surveys conducted by Opposer concerning **SERVICEMARK**.

**RESPONSE**

Opposer is not in possession of any such documents.

16. Produce all documents concerning any assignment, license, or other transfer to or from Opposer of any right in the **SERVICEMASTER** marks.

**RESPONSE**

Opposer objects to Document Request No. 16 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents concerning any assignment, license, or other transfer to or from Opposer of any right in the **SERVICEMASTER** marks." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

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17. Produce all documents which support Opposer's assertions that the **SERVICEMASTER** mark has achieved the status of a famous mark.

**RESPONSE**

Opposer objects to Document Request No. 17 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents which support Opposer's assertions that the **SERVICEMASTER** mark has achieved the status of a famous mark." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

18. Produce all documents and things which support Opposer's assertions that the SERVICEMASTER mark has or is likely to become diluted.

**RESPONSE**

Opposer objects to Document Request No. 18 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things which support Opposer's assertions that the SERVICEMASTER mark has or is likely to become diluted.." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

19. Produce all other documents and things which Opposer contends supports any element of it's Notice of Opposition.

**RESPONSE**

Opposer objects to Document Request No. 19 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all other documents and things which Opposer contends supports any element of it's Notice of Opposition." Opposer further objects

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to Document Request No. 19 on the ground and to the extent it seeks material which is protected by the attorney-client and attorney work product privileges. Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

20. Produce all other documents and things which Opposer intends to use in depositions or otherwise intends to submit as evidence.

**RESPONSE**

Opposer objects to Document Request No. 20 on the ground that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all other documents and things which Opposer intends to use in depositions or otherwise intends to submit as evidence." Opposer

also objects to Document Request No. 20 on the grounds that it improperly seeks to use pre-trial discovery to obtain premature disclosure of Opposer's witnesses, that it seeks to require speculation about Opposer's future decisions, and that it seeks information which is protected under the attorney-client and attorney work product privileges.

Respectfully submitted,

THE SERVICEMASTER COMPANY

By:

  
P. Jay Hines  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 413-3000  
fax (703) 413-2220

Date: February 7, 2003  
PJH/cds {I:\atty\PJH\3165-218039US-ANS.wpd}

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for Opposer, this 7<sup>th</sup> day of February, 2003, by sending same, via first class mail, postage prepaid to:

VINCENT V. CARISSIMI  
BARBARA L. DELANEY  
KATHLEEN A. JOHNSON  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, PA 19103-2799

*Attn: Sumrell*

---

# **EXHIBIT N**

3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799  
215.981.4000  
Fax 215.981.4750

Barbara L. Delaney  
215-981-4632  
delaneyb@pepperlaw.com

August 22, 2004

**VIA FACSIMILE AND FIRST CLASS MAIL**

P. Jay Hines, Esquire  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314

Re: *The ServiceMaster Company v. UGI HVAC Enterprises, Inc.*  
Opposition Nos. 152,104 & 125,743; Cancellation No. 41,147

Dear Jay:

Outlined below are deficiencies in Opposer's Responses to Applicant's First Request for Production of Documents and Things and Responses to Applicant's First Set of Interrogatories. We reserve the right to continue the recently noticed depositions of Jonathan P. Ward and Mitchell T. Engel (scheduled for September 23<sup>rd</sup> and 24<sup>th</sup>, respectively,) in the event that those depositions take place before we have received the omitted information and documents detailed below.

**A. Document Request No. 9, Interrogatory No. 10:**

Applicant has been informed by the United States Patent and Trademark Office ("PTO") that it has destroyed all documents relating to the SERVPRO & Design Opposition identified in Opposer's response to Interrogatory No. 10. In light of the foregoing, we trust that you will produce these and any other non-public documents responsive to this Request.

**B. Interrogatory No. 21:**

No justification exists for refusing to "identify the name of each employee who furnished information pertaining to [Opposer's] responses..." in response to this Interrogatory. Identification of these individuals surely will not unduly burden Opposer given the fact that Opposer has already solicited and received information from these individuals.

P. Jay Hines, Esquire  
Page 2  
August 22, 2004

**C. Document Request Nos. 2, 11, 19, and 20:**

If you continue to stand by your objections to these requests based on the attorney-client privilege, please provide a privilege log identifying information as required by Fed. R. of Civ. P. 26(b)(5) and TBMP § 414(1) for the documents withheld.

**D. Document Request Nos. 3 and 4:**

Your client may no longer stand on confidentiality as a basis for objections now that the May 22, 2003 Stipulated Protective Order has been entered in this matter. Please satisfy the ongoing duty to supplement your client's responses by producing the relevant documents and information sought in these document requests, subject to the Stipulated Protective Order.

**E. Document Request No. 6:**

Opposer has no justification for limiting its production of documents responsive to this Request to a "representative sampling." Compliance with a discovery request through the production of a "representative sampling" of documents is only justified where a particular request would be unduly burdensome. See Kegan v. Lane, 1998 TTAB LEXIS 276, at \*5 (TTAB April 15, 1998). In light of the foregoing, we trust that you will produce all documents responsive to this Request.

**F. Document Request No. 2:**

Without waiver of Applicant's rights to compel the production of documents responsive to Document Request No. 2, Applicant, in response to your objections regarding the breadth of this request, only seeks documents "which record, reflect, relate or refer to, or contain information used in preparation of the response to the Interrogatories" to the extent that they reveal non-privileged information related to the marks asserted by Opposer against Applicant in the current proceedings.

In light of the limitation detailed above, Opposer has no basis for its objection to Document Request No. 2 "on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive..." As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a "representative sampling" of such documents.

**G. Document Request No. 4:**

Without waiver of Applicant's rights to compel the production of documents responsive to Document Request No. 4, Applicant, in response to your objections regarding the

P. Jay Hines, Esquire

Page 3

August 22, 2004

breadth of this request, only seeks documents and things "concerning any plans, schedules, or programs for marketing, advertising, or promoting any goods or services offered for sale or sold, or intended to be offered for sale or sold, under the SERVICEMASTER marks" to the extent that they reveal non-privileged information related to Opposer's HVAC and plumbing business(es).

**H. Document Request No. 5:**

Without waiver of Applicant's rights to compel the production of documents responsive to Document Request No. 5, Applicant, in response to your objections regarding the breadth of this request, only seeks documents and things "sufficient to disclose the territorial or geographic areas where Opposer offers or intends to offer goods or services under the SERVICEMASTER marks and the length of time during which each product or service has been marketed in each territory or geographical area" to the extent that they reveal non-privileged information related to Opposer's HVAC and plumbing business(es).

**I. Document Request No. 7:**

Without waiver of Applicant's rights to compel the production of documents responsive to Document Request No. 7, Applicant, in response to your objections regarding the breadth of this request, only seeks documents and things "that identify the persons who purchase, or to whom are offered for purchase, any goods or services under the SERVICEMASTER marks" to the extent that they reveal non-privileged information related to Opposer's HVAC and plumbing business(es).

In light of the limitation detailed above, Opposer has no basis for its objection to Document Request No. 7 "on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive..." As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a "representative sampling" of such documents.

**J. Document Request No. 8:**

Without waiver of Applicant's rights to compel the production of documents responsive to Document Request No. 8, Applicant, in response to your objections regarding the breadth of this request, only seeks documents "concerning any communications that Opposer had (whether orally or in writing) with any other person or persons regarding the SERVICEMASTER marks or another party's right to use these marks, or any mark the Opposer considered as or alleged to be confusingly similar thereto" to the extent that they reveal non-privileged information related to Opposer's HVAC and plumbing business(es).

P. Jay Hines, Esquire  
Page 4  
August 22, 2004

In light of the limitation detailed above, Opposer has no basis for its objection to Document Request No. 8 "on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive..." As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a "representative sampling" of such documents.

**K. Document Request No. 10:**

Please confirm that the "representative sampling" of documents you have produced includes advertisements demonstrating the use of the marks asserted by Opposer against Applicant in the current proceedings in connection with Opposer's HVAC and plumbing business(es) in all geographic regions where such business is conducted.

**L. Document Request No. 11:**

Opposer has no justification for limiting its production of documents responsive to this Request to a "representative sampling." Compliance with a discovery request through the production of a "representative sampling" of documents is only justified where a particular request would be unduly burdensome. See Kegan, 1998 TTAB LEXIS 276, at \*5. In light of the foregoing, we trust that you will produce all documents responsive to this Request.

**M. Document Request No. 14:**

Without waiver of Applicant's rights to compel the production of documents responsive to Document Request No. 14, Applicant, in response to your objections regarding the breadth of this request, only seeks documents and things "which support Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the Applicant's marks and Opposer's marks" to the extent that they reveal non-privileged information related to Opposer's HVAC and plumbing business(es).

In light of the limitation detailed above, Opposer has no basis for its objection to Document Request No. 14 "on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive..." As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a "representative sampling" of such documents.

**N. Document Request No. 16:**

Without waiver of Applicant's rights to compel the production of documents responsive to Document Request No. 16, Applicant, in response to your objections regarding the breadth of this request, only seeks documents "concerning any assignment, license, or other

P. Jay Hines, Esquire  
Page 5  
August 22, 2004

transfer to or from Opposer of any right in the SERVICEMASTER marks” to the extent that they reveal non-privileged information related to Opposer’s HVAC and plumbing business(es).

In light of the limitation detailed above, Opposer has no basis for its objection to Document Request No. 16 “on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive...” As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a “representative sampling” of such documents.

**O. Document Request No. 17:**

Without waiver of Applicant’s rights to compel the production of documents responsive to Document Request No. 17, Applicant, in response to your objections regarding the breadth of this request, only seeks documents which Opposer relied upon for the assertion that the mark SERVICEMASTER “has achieved the status of a famous mark” in Count II of its Notice of Opposition.

In light of the limitation detailed above, Opposer has no basis for its objection to Document Request No. 17 “on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive...” As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a “representative sampling” of such documents.

**P. Document Request No. 18:**

Without waiver of Applicant’s rights to compel the production of documents responsive to Document Request No. 18, Applicant, in response to your objections regarding the breadth of this request, only seeks documents which Opposer relied upon for the assertion that “the registration of SERVICEMARK in the name of the Applicant would dilute by blurring the distinctive quality of Opposer’s SERVICEMASTER mark” in Count II of its Notice of Opposition.

In light of the limitation outlined above, Opposer has no basis for its objection to Document Request No. 18 “on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive...” As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a “representative sampling” of such documents.

**Q. Document Request No. 19:**

Without waiver of Applicant’s rights to compel the production of documents responsive to Document Request No. 19, Applicant, in response to your objections regarding the breadth of this request, only seeks documents which Opposer relied upon for the assertion that

P. Jay Hines, Esquire  
Page 6  
August 22, 2004

“Applicant’s SERVICEMARK mark is a simulation and colorable imitation of, and so resembles Opposer’s aforesaid marks as to be likely, when applied to the services of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation” in Count I of its Notice of Opposition.

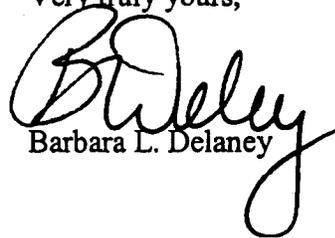
In light of the limitation outlined above, Opposer has no basis for its objection to Document Request No. 19 “on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive...” As such, we trust that you will produce all documents responsive to the limitation of this Request rather than a “representative sampling” of such documents.

**R. Interrogatory No. 5:**

Please confirm that the “Servicemaster Identification Manual” bearing the Bates Range SVM001-SVM180 is the “written stylization manual concerning the use of the house mark” identified in your response to this Interrogatory. If so, please also confirm that this manual is the only “policy (written or otherwise) Opposer [has]...concerning the use, display and advertising of the SERVICEMASTER marks” asserted by Opposer against Applicant in the current proceedings.

If you have any questions regarding Applicant’s responses to Opposer’s responses and objections, please do not hesitate to contact me.

Very truly yours,

  
Barbara L. Delaney

BLD:kh

# **EXHIBIT O**

3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799  
215.981.4000  
Fax 215.981.4750

Barbara L. Delaney  
215-981-4632  
delaneyb@pepperlaw.com

August 30, 2004

**VIA FEDERAL EXPRESS**

P. Jay Hines, Esquire  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314

Re: *The ServiceMaster Company v. UGI HVAC Enterprises, Inc.*  
Opposition Nos. 152,104 & 125,743; Cancellation No. 41,147

Dear Jay:

On behalf of UGI HVAC Enterprises Inc., we are serving the following enclosed discovery papers:

- 1) Applicant/Respondent's Second Set of Interrogatories to Opposer/Petitioner;
- 2) Applicant/Respondent's Second Request for Production of Documents and Things; and
- 3) Applicant/Respondent's First Set of Requests for Admissions Addressed to Opposer/Petitioner.

Furthermore, as a follow up to our August 22, 2004 letter, we wish to clarify one issue raised previously and outline several additional deficiencies in Opposer's Responses to Applicant's First Set of Interrogatories and Opposer's Responses to Applicant's First Request for Production of Documents and Things.<sup>1</sup>

**A. Document Request No. 9, Interrogatory No. 10:**

In our August 22 letter, we stated that UGI expects that The ServiceMaster Company will produce all documents relating to the SERVPRO & Design Opposition and all

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<sup>1</sup> We again reserve the right to continue the recently noticed depositions of Jonathan P. Ward and Mitchell T. Engel (scheduled for September 23<sup>rd</sup> and 24<sup>th</sup>, respectively,) in the event that those depositions take place before we have received the omitted information and documents detailed below.

P. Jay Hines, Esquire  
Page 2  
August 30, 2004

other non-public documents responsive to this Request. By way of further clarification, UGI expects that, in response to this request, you will also identify and produce all documents relating to any common law proceeding or other communication (i.e. cease and desist letters) involving Opposer and any third party whom Opposer has or has had reason to believe, is/was infringing, misappropriating, or diluting the SERVICEMASTER marks.

**B. Interrogatory No. 11:**

Without waiver of Applicant's rights to compel a response to Interrogatory No. 11, Applicant, in response to your objections regarding the breadth of this Interrogatory, only seeks the identification and description of "any and all packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks or used in connection with the SERVICEMASTER marks" to the extent that they disclose non-privileged information related to Opposer's provision of HVAC and/or plumbing services and/or related goods.

In light of the limitation detailed above, Opposer has no basis for its objection to Interrogatory No. 11 "on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive..." As such, we trust that you will identify and produce all documents responsive to the limitation of this Interrogatory rather than a "representative sampling" of such documents. See Kegan v. Lane, 1998 TTAB LEXIS 276, at \*5 (TTAB April 15, 1998) (compliance with a discovery request through the production of a "representative sampling" of documents is only justified where a particular request would be unduly burdensome).

**C. Interrogatory No. 17:**

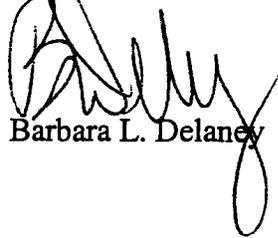
Without waiver of Applicant's rights to compel a response to Interrogatory No. 17, Applicant, in response to your objections regarding the breadth of this Interrogatory, only seeks the identification of "all agreements, including but not limited to, licenses, permissions or consents entered into by Opposer and any other entities relating to the SERVICEMASTER marks and identify all documents relating to or referring to such agreement" to the extent that they disclose non-privileged information related to Opposer's provision of HVAC and/or plumbing services and/or related goods.

In light of the limitation detailed above, Opposer has no basis for its objection to Interrogatory No. 17 "on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive..." As such, we trust that you will identify and produce all documents responsive to the limitation of this Interrogatory rather than a "representative sampling" of such documents. See Kegan, 1998 TTAB LEXIS 276, at \*5.

P. Jay Hines, Esquire  
Page 3  
August 30, 2004

If you have any questions regarding Applicant's enclosed discovery papers or its responses to Opposer's responses and objections, please do not hesitate to contact me.

Sincerely,



Barbara L. Delaney

BLD:kh  
Enclosures

# **EXHIBIT P**

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

THE SERVICEMASTER COMPANY,	)	Opposition No.: 125,743
	)	Appln. Serial No. 76/237,328
Opposer,	)	
	)	Opposition No.: 152,104
v.	)	Appln. Serial No. 76/166,568
	)	
UGI HVAC ENTERPRISES, INC.,	)	Cancellation No. 92/041,147
	)	Registration No. 2,591,190
Applicant.	)	
	)	

**OPPOSER'S RESPONSES TO RESPONDENT/APPLICANT'S SECOND SET OF  
INTERROGATORIES TO OPPOSER WITH EXECUTED VERIFICATION PAGE**

Opposer/Petitioner, The ServiceMaster Company, Inc. ("Opposer"), serves herewith as Exhibit A, Opposer's verified Responses to Applicant/Respondent's Second Set of Interrogatories to Opposer with substituted verification page.

Opposer's Vice-President and Corporate Secretary executed the substituted verification page on October 4, 2004, but because of an error in the facsimile transmission of the page, Opposer's counsel did not receive it until October 5, 2004. Opposer's counsel then signed the substituted verification page as of the date the responses originally were served.

**RECEIVED OCT 11 2004**

Respectfully submitted,

THE SERVICEMASTER COMPANY

By:



\_\_\_\_\_  
P. Jay Hines  
Amy Sullivan Cahill  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
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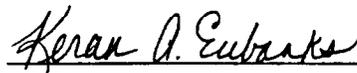
Date: October 7, 2004

PJH/ASC/kae I:\ATTY\PJH\SERVICEMASTER\244183-224797US-VERINT.DOC

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSER'S RESPONSES TO APPLICANT/RESPONDENT'S SECOND SET OF INTERROGATORIES WITH EXECUTED VERIFICATION PAGE** was served on counsel for Applicant, this 17<sup>th</sup> day of October, 2004, by sending same via First Class mail, postage prepaid, to:

Barbara L. Delaney, Esquire  
Vincent V. Carissimi, Esquire  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, Pennsylvania 19103-2799

  
\_\_\_\_\_

# **EXHIBIT A**



## ANSWERS TO INTERROGATORIES

### INTERROGATORY NO. 1:

State with particularity all facts and evidence that support Opposer's claim to the "corresponding common law rights" asserted in paragraph 4 of Opposer's Notice of Opposition and paragraph 4 of its Petition for Cancellation.

### ANSWER

Opposer objects to this interrogatory as Opposer is not required to disclose the entirety of its proposed evidence in support of its case during discovery.

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing.

Subject to the forgoing objections, Opposer will rely on the facts contained in paragraphs 2, 3, 5, and 6 of the Petition for Cancellation filed in Cancellation No. 92/041,147, and paragraphs 2, 3, 5, and 6 of the Notices of Opposition filed in Opposition Nos. 91/125,743 and 91/152,104 to support its common law rights in its SERVICEMASTER marks.

Opposer further refers to its Answer to Interrogatory No. 18 (First Set) and the documents produced to date.

### INTERROGATORY NO. 2:

State the full address of each location in the U.S. at which Opposer has maintained, or now maintains, an office or other place of business with respect to the provision of any residential HVAC and/or plumbing services and/or related goods, and for each location state:

a. the date(s) on which business commenced and, if applicable, terminated, as to each service and/or offer for sale of goods;

b. the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;

c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Opposer has used such color(s) in connection with Opposer's Mark;

d. the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular services and/or good.

**ANSWER**

Opposer objects to this interrogatory, including all of its sub-parts, to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, Opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its Answer to Interrogatory 2(a), (b) (First Set) and to the following SERVICEMASTER plumbing services locations:

ServiceMaster Plumbing Services  
3051 Ash Park Loop  
Winter Park, Florida 32792

ServiceMaster Plumbing Services  
3500 Aloma Avenue, Suite D-24  
Orlando, Florida 32792

**INTERROGATORY NO. 3:**

State the full address of each location in the U.S. at which Opposer has maintained, or now maintains, an office or other place of business with respect to the provision of any commercial HVAC and/or plumbing services and/or related goods, and for each location state:

a. the date on which business commenced as to each service and/or offer for sale of goods and, if applicable, terminated;

b. the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;

c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Opposer has used such color(s) in connection with Opposer's Mark;

d. the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

### ANSWER

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, Opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its Answer to Interrogatory 2(a), (b) (First Set).

### INTERROGATORY NO. 4:

State the full address of each location in the U.S. at which any Related Party has maintained, or now maintains, an office or other place of business with respect to the provision of any residential HVAC and/or plumbing services and/or related goods, and for each location state:

a. the date(s) on which business commenced and, if applicable, terminated, as to each service and/or offer for sale of goods;

b. the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark has used on or in connection with each particular service and/or good;

c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Related Party has used such color(s) in connection with Opposer's Mark;

d. the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

**ANSWER**

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Opposer objects to this interrogatory, including all of its sub-parts, to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this interrogatory, including all of its sub-parts, as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, Opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its answer to Interrogatory No. 2(a),

(b) (First Set).

INTERROGATORY NO. 5:

State the full address of each location in the U.S. at which any Related Party has maintained, or now maintains, an office or other place of business with respect to the provision of any commercial HVAC and/or plumbing services and/or related goods, and for each location state:

a. the date on which business commenced as to each service and/or offer for sale of goods and, if applicable, terminated;

b. the particular services(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;

c. the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Related Party has used such color(s) in connection with Opposer's Mark;

d. the Mark(s) other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

ANSWER

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Opposer objects to this interrogatory, including all of its sub-parts, to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this interrogatory, including all of its sub-parts, as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, Opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its Answer to Interrogatory 2(a), (b) (First Set) and to [www.amsosfusa.com/locations](http://www.amsosfusa.com/locations).

INTERROGATORY NO. 6:

Identify all inquiries, investigations, surveys, evaluations, polls and/or studies conducted by Opposer or by anyone acting for or on its behalf that refer or relate in any manner to Opposer's Mark, indicating as to each the date conducted, the name, address and title of each Person who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all documents which record, refer to, or relate to such inquiry, investigation, survey, evaluation, poll, or study.

ANSWER

Opposer objects to this interrogatory to the extent that it calls for the production of attorney-client communications or materials subject to attorney work-product doctrine. Such information will not be provided.

Subject to the forgoing objection, Opposer states that is aware of no such studies conducted by Opposer.

INTERROGATORY NO. 7:

State any policy (written or unwritten) and identify and locate any documents, concerning any and all uses of each of the Marks (other than Opposer's Marks) used on or in connection with the provision of any HVAC and/or plumbing services and/or related products by, for, or on behalf of, Opposer and any Related Party.

**ANSWER**

Opposer objects to this interrogatory on the basis that it is unclear in that it seeks documents relating to “any and all uses of each of the Marks (other than Opposer’s Marks) used on or in connection with [services] . . . by, or on behalf of, Opposer and any related Party.”

Opposer objects to this interrogatory as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its Answer to Interrogatory No. 5 (First Set) and to Opposer’s documents previously produced and identified as SVM0001-SVM0181.

**INTERROGATORY NO. 8:**

State with particularity all facts and evidence that support your claim that “Opposer has also used Opposer’s Mark for other and various related services including, but not limited to electrical, drain rooting and cleaning and cleaning services to residential and commercial customers and extended warranties for major home systems and appliances to residential customers” in Count I of its Notice of Opposition.

**ANSWER**

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Opposer objects to this interrogatory to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this interrogatory as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer states that it has used its SERVICEMASTER mark for various services related to HVAC services and plumbing services, including, but not limited to, electrical, drain rooting and cleaning services for residential and commercial customers and offering extended warranties for major home systems and appliances to residential customers. Opposer refers Applicant to the *www.servicemaster.com* web site for a description of its various services offered under the SERVICEMASTER mark, and to its documents previously produced and identified as SVM0216-SVM0229, and to its various U.S. registrations for SERVICEMASTER for use in connection with its services referred to in its answer to Interrogatory No. 18 (First Set). Opposer further refers to the information contained in the web page print outs from [www.servicemaster.com](http://www.servicemaster.com), [www.ars.com](http://www.ars.com), [www.amsofusa.com](http://www.amsofusa.com), and in Annual Reports for 2001, 2002, and 2003 produced herewith.

**INTERROGATORY NO. 9:**

Identify all persons who were involved in, or participated in any way with, the decision by Opposer to adopt and/or use Opposer's Mark, and for each such person state his/her title and/or position, and the role he/she played in the decision to adopt and/or use Opposer's Mark.

**ANSWER**

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing in that the selection and adoption of Opposer's Mark occurred more than fifty years ago.

**INTERROGATORY NO. 10:**

Identify all documents and set forth with specificity all facts regarding the selection, adoption, and derivation of Opposer's Mark, including circumstances surrounding and reasons behind its selection.

**ANSWER**

Opposer objects to this interrogatory to the extent that it calls for the production of attorney-client communications or materials subject to attorney work-product doctrine. Such

information will not be provided.

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing in that the selection and adoption of Opposer's Mark occurred more than fifty years ago.

INTERROGATORY NO. 11:

Describe the meaning/intended meaning and connotation/intended connotation of Opposer's Mark.

ANSWER

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing in that the selection and adoption of Opposer's Mark occurred more than fifty years ago.

Subject to the forgoing objection, Opposer states that SERVICEMASTER brand franchises that began operating in the early 1950s originally conceived of the meaning as "ServiceMaster – masters of service, serving the Master." The historical meaning given SERVICEMASTER to suggest "serving God" or "serving the Master" was consistent with Opposer's founders' religious beliefs. Over time, the meaning of Opposer's SERVICEMASTER mark has evolved to include the more secular notion of "masters of service", emphasizing the quality of services rendered.

INTERROGATORY NO. 12:

Identify with specificity the marketing methods used and/or intended to be used in advertising associated with the provision of HVAC and/or plumbing services and/or related goods by or for Opposer under Opposer's Mark, or any other mark owned or used by Opposer, including, without limitation, the names of newspapers, magazines, trade journals or periodicals in which Opposer has advertised and/or intends to advertise Opposer's Mark, or any other mark owned or used by Opposer.

**ANSWER**

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Opposer objects to this interrogatory as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objection, Opposer refers to its Answer to Interrogatory Nos. 8 and 18 (First Set).

**INTERROGATORY NO. 13:**

Identify and describe in detail the ordinary purchaser or expected ordinary purchaser of the goods and/or services sold or to be sold under Registration Nos. 1,220,269 and 1,272,228 including, without limitation, the expected level of care exercised by such an ordinary purchaser.

**ANSWER**

Opposer states that its intended consumers are all residential and commercial entities.

The level of care exercised by the intended consumers is that exercised by ordinary residential and commercial entities in the purchase of goods and/or services identified in U.S. Registration Nos. 1,220,269 and 1,272,228 and in the Notices of Opposition and Petition for Cancellation.

**INTERROGATORY NO. 14:**

State the name of any Person Opposer is aware of who is currently or has utilized the words "Service" or "Master," alone or in combination with other words and/or design elements, on or in connection with the provision of HVAC and/or plumbing services and/or related products, prior to or coexistent with Opposer's or any Related Party's provision of HVAC and/or plumbing services and/or related goods.

**ANSWER**

Opposer objects to this interrogatory as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objection, Opposer refers to its Answer to Interrogatory No. 10 (First Set).

Opposer identifies Service Experts, Inc., which has objected to Opposer's use of the mark ARS SERVICE EXPERTS and Design, and Maeser Service Masters LLC, which has applied to register MAESER MASTER SERVICES and MAESER MASTER SERVICES and Design.

**INTERROGATORY NO. 15:**

Identify each person who participated in or supplied information used in answering any of the above Interrogatories; beside the name of each person, state the number of the Interrogatory answer(s) with respect to which that person participated in or supplied information.

**ANSWER**

Opposer states that the following persons contributed generally to the preparation of the answers to Applicant/Respondent's Second Set of Interrogatories:

Sherry Campbell  
Cristen Kogl, Esq.

It is impossible and unduly burdensome to identify with the requested specificity all of those who contributed to gathering information in the preparation of these answers.

**INTERROGATORY NO. 16:**

Identify all documents that Opposer relied upon in answering the above Interrogatories.

**ANSWER**

Opposer objects to this interrogatory to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not

reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Subject to the forgoing objections, Opposer refers to the documents produced in response to Applicant's First Request for Production of Documents and Applicant's Second Set of Requests for Production of Documents.

Respectfully submitted,

THE SERVICEMASTER COMPANY

As to Interrogatories:

I declare under penalty of perjury under the laws of the United States that the foregoing is true to the best of my knowledge, information and belief.

Date: 10/04/04

By: [Signature]

Title: V.P. & Corporate Secretary

As to objections:

By: [Signature]

P. Jay Hines  
Amy Sullivan Cahill  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
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Alexandria, Virginia 22314  
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Date: October 4, 2004

PJH/ASC/kae/cds E:\ATTY\PJH\SERVICEMASTER\244183-224797US-INT2RES.DOC

# **EXHIBIT Q**



## RESPONSES

### REQUEST NO. 1

Produce samples of all forms of packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing Mark(s) (other than Opposer's Mark) used by Opposer on or in connection with the provision of any HVAC and/or plumbing services and/or related goods.

### RESPONSE

Opposer objects to this request as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

The Request seeks samples of packaging and other materials bearing marks other than Opposer's marks. In support of its objection on the ground of relevance, Opposer states that this request is beyond the scope of the pleadings as it is not limited to the marks at issue therein. To the extent that this request is directed to materials bearing Opposer's Marks, Opposer refers to its previously produced print-outs from the *www.servicemaster.com* web site (SVM0216-SVM0229) and various sample brochures used by Opposer in connection with the provision of Opposer's services (SVM0230-SVM0237; SVM0380-SVM0385; SVM0386-SVM0387; SVM0388-SVM0389; SVM0390-SVM0393; SVM0394-SVM0397; SVM0398-SVM0399; SVM0400-SVM0523).

### REQUEST NO. 2

Produce all documents and things which relate to, refer to, reflect, or evidence the selection, adoption, and derivation of Opposer's Mark, including the circumstances surrounding and reason behind the selection of Opposer's Mark.

**RESPONSE**

Opposer objects to this request to the extent that it calls for the production of attorney-client communications and materials subject to attorney work-product doctrine. Such items will not be produced.

Opposer objects to this request as overly broad, unduly burdensome and harassing in that Opposer's mark was selected and adopted over fifty years ago.

**REQUEST NO. 3**

Produce all documents and things which relate to, refer to, reflect, or evidence the meaning/intended meaning and connotation/intended connotation of Opposer's Mark.

**RESPONSE**

Opposer objects to this request to the extent that it calls for the production of attorney-client communications and materials subject to attorney work-product doctrine. Such items will not be produced.

Subject to the foregoing objection, Opposer refers to its previously produced brochure entitled "*The Servicemaster Consumer Services Chronicle*," particularly at SVM0237.

**REQUEST NO. 4**

Produce corporate organizational charts sufficient to identify Opposer's corporate organization and structure, including, without limitation, the relationship between Opposer and the entities identified in SVM0239, SVM0243, and SVM0395.

**RESPONSE**

Opposer objects to this request as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objection, Opposer refers to its previously produced Annual Reports (SVM0238-SVM0330). Opposer also produces herewith Annual Reports for 2001, 2002 and 2003.

#### REQUEST NO. 5

Produce all documents that support or refute any of the allegations in the Notice of Opposition and Petition for Cancellation filed by Opposer in this action.

#### RESPONSE

Opposer objects to this request as Opposer is not required to disclose the entirety of its proposed evidence in support of its case during discovery.

Opposer objects to this request as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only those documents in its possession which are sufficient to meet the needs of the Request.

Opposer refers to the pleadings filed in consolidated proceedings Opposition Nos. 125,743 and 152,104, and Cancellation No. 41,147 and to its answers to Applicant/Respondent's Interrogatories and Requests for Production of Documents and Things. Opposer refers further to previously produced copies of pages from the *Official Gazette* (SVM0342-SVM0343) and copies from the USPTO's TESS and TARR database (SVM0344-SVM0346) showing the publication and status of Applicant's U.S. trademark applications for SERVICEMARK.

#### REQUEST NO. 6

Produce all documents which relate to, refer to, reflect, or evidence any inquiry, investigation, evaluation, analysis, or survey conducted by Opposer or any person acting for or on behalf of Opposer regarding any issues involved in the pending TTAB proceeding involving The ServiceMaster Company and UGI HVAC Enterprises, Inc.

**RESPONSE**

Opposer objects to this request to the extent that it calls for the production of attorney-client communications and materials subject to attorney work-product doctrine. Such items will not be produced.

Opposer is aware of no documents responsive to this request. Opposer states that it has not concluded its investigation as to any instances of actual confusion, and reserves the right to supplement this response.

**REQUEST NO. 7**

Produce all documents which relate to, refer to, reflect, or evidence the target audience and intended market for HVAC and/or plumbing services and/or related goods marketed under Opposer's Mark.

**RESPONSE**

Opposer refers to the brochures previously produced and referred to in Response to Request No. 1, and to the prints outs from the web sites [www.servicemaster.com](http://www.servicemaster.com); [www.ars.com](http://www.ars.com); and [www.amsofusa.com](http://www.amsofusa.com) and copies of sample direct mail advertisements produced herewith.

**REQUEST NO. 8**

Produce all documents that were identified, used, consulted, referred to or that in any way provided a basis for Opposer's responses to Applicant's First Set of Interrogatories to Opposer, not produced in response to the above Requests or Applicant's First Request for Production of Documents and Things.

**RESPONSE**

Opposer objects to this request as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this request as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only those documents in its possession which are sufficient to meet the needs of the Request.

Opposer objects to this request to the extent that it calls for the production of attorney-client communications and materials subject to attorney work-product doctrine. Such items will not be produced.

Subject to the foregoing objections, Opposer will produce additional relevant responsive documents.

REQUEST NO. 9

Produce all documents that were identified, used, consulted, referred to or that in any way provided a basis for Opposer's responses to Applicant/Respondent's Second Set of Interrogatories to Opposer/Petitioner, not produced in response to the above Requests.

RESPONSE

See Response to Request No. 8.

Respectfully submitted,

THE SERVICEMASTER COMPANY

By:

  
\_\_\_\_\_  
P. Jay Hines  
Amy Sullivan Cahill  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 413-3000  
fax (703) 413-2220  
e-mail: [tmocket@oblon.com](mailto:tmocket@oblon.com)

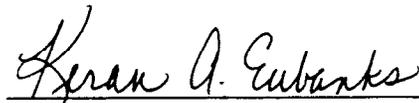
Date: October 4, 2004

PJH/ASC/kae/cds I:\ATTY\PJH\SERVICEMASTER\244183-224797US-RFP2RES.DOC

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSER'S RESPONSES TO APPLICANT/RESPONDENT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for Applicant, this 4th day of October, 2004, by sending same via First Class mail, postage prepaid, to:

Barbara L. Delaney, Esquire  
Vincent V. Carissimi, Esquire  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, Pennsylvania 19103-2799

  
\_\_\_\_\_

# **EXHIBIT R**



October 4, 2004

Via UPS Courier

ATTORNEYS AT LAW

P. JAY HINES  
(703) 412-7028  
JHINES@OBLON.COM

Vincent V. Carissimi, Esquire  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, Pennsylvania 19103-2799

Re: *The ServiceMaster Company v. UGI HVAC Enterprises, Inc.*  
Opposition Nos. 125,743 & 152,104; Cancellation No. 41,147  
Marks: **SERVICEMARK HEATING COOLING PLUMBING  
& DESIGN and SERVICEMARK**  
Our Ref: 224797US-244183-36

Dear Mr. Carissimi:

Enclosed please find the following:

- (1) Opposer's Responses to Applicant/Respondent's Second Set of Interrogatories to Opposer;
- (2) Opposer's Responses to Applicant/Respondent's Second Request for Production of Documents and Things;
- (3) Opposer's Responses to Applicant/Respondent's First Set of Requests for Admissions; and
- (4) Documents produced in response to Applicant/Respondent's Second Request for Production of Documents and Things (SVM0697-SVM00954).

With best regards,

Sincerely yours,

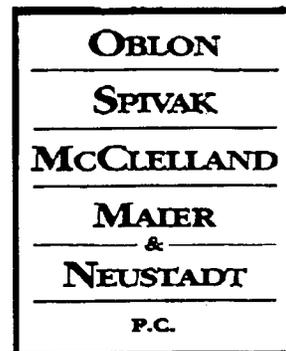
OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

P. Jay Hines

PJH/ASC/kae {I:\atty\PJH\244183-224797US-LT4.doc}

Enclosure(s): As stated

# **EXHIBIT S**



October 6, 2004  
VIA FACSIMILE

Vincent V. Carissimi, Esquire  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, Pennsylvania 19103-2799

ATTORNEYS AT LAW

P. JAY HINES  
(703) 412-7028  
JHINES@OBLON.COM

Re: *The ServiceMaster Company v. UGI HVAC Enterprises, Inc.*  
Opposition Nos. 125,743 & 152,104; Cancellation No. 41,147  
Marks: SERVICEMARK HEATING COOLING PLUMBING  
& DESIGN and SERVICEMARK  
Our Ref: 224797US-244183-36

Dear Mr. Carissimi:

This is to record our objections to the manipulative nature of the conduct of discovery in this matter by UGI HVAC Enterprises, Inc.

On August 16, 2004, you noticed the deposition of Mitchell T. Engel, the Chief Marketing Officer of The ServiceMaster Company, to be held in Chicago on September 24, 2004. Since he was just returning from out of the country at that time, we went to great lengths to make him available at next earliest opportunity, which was October 7, 2004.

You served a second set of written discovery requests on August 30, 2004. We timely responded to those requests on October 4, 2004, even to the extent of serving responses by next day air so that you would have the responses and documents two days before the scheduled deposition (which was one day earlier than we received a larger production package from you prior to the Pistor deposition).

On October 5, 2004, you called to confirm that our witness would be available for the full seven hours allowed by the Federal Rules, even though the deposition was to commence at 1:00pm. On the morning of October 6, 2004, we confirmed that the witness was willing to stay for the full seven hours if necessary. Within a half hour, you called to indicate that you would not be proceeding with the deposition of our client's senior executive because you wanted to file a motion to compel on the vague notion that we had not produced requested documents, a motion that would not be entertained by the Trademark Trial and Appeal Board with respect to the most recent responses for failure to comply with the good faith effort requirement of Trademark Rule 2.120(e).

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TELEPHONE: 703-413-3000 ■ FACSIMILE: 703-413-2220 ■ WWW.OBLON.COM

Vincent V. Carrisimi, Esq.  
224797US-244183-36  
Page 2



Making arrangements for a witness at this level, only to have them cancelled at the last moment, is not without true costs in coordination, time and forfeited travel expenses. Under the circumstances, we do not agree to postponement of the deposition and upon re-notice will consider seeking a protective order.

Sincerely yours,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



P. Jay Hines

PJH/cds (KATTYPJH244183-224797US-LT2.DOC)

# **EXHIBIT T**

**Pepper Hamilton LLP.**  
Attorneys at Law

3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799  
215.981.4000  
Fax 215.981.4750

Vincent V. Carissimi  
direct dial: 215.981.4351  
direct fax: 215.689.4625  
carissimiv@pepperlaw.com

October 8, 2004

**Via Facsimile & First Class Mail**

P. Jay Hines, Esquire  
Oblon Spivak McClelland Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, VA 22314

**Re: The ServiceMaster Company v. UGI HVAC Enterprises, Inc.**

Dear Mr. Hines:

This is written in response to your letter of October 6, 2004 which reached me late in the afternoon on that day.

Let me begin by remarking that the letter you sent is very disappointing in that it bears no resemblance to the telephone conversation we had earlier that morning regarding the postponement of Mr. Engel's deposition. At no time during that call did you raise any objection to the postponement and, although, you disagreed with my assessment of your client's discovery responses, you did not voice any objection to my statement that we would renote Mr. Engel's deposition after we resolved our discovery issues. You did raise with me that you believed the rules required us to consult with you before we filed a Motion to Compel with the Board. I responded by telling you that we would provide you with a list of our issues with your client's responses. I have done so today, as promised, by separate letter. The position you are now taking is inconsistent with your conversation with me and will not be accepted by us. Nevertheless, because you have chosen to take this course, I have noticed additional depositions prior to the end of the discovery period, in the event that we are unable to agree to extend discovery and/or obtain a meaningful resolution from the Board prior to its expiration.

Although the timing of the postponement was unfortunate, it was not occasioned by any fault of UGI but, instead, by your client's continued stonewalling of discovery which might challenge the assertions it has made in its Notices of Opposition and Cancellation Pleadings.

Philadelphia

Washington, D.C.

Detroit

New York

Pittsburgh

Berwyn

Harrisburg

Princeton

Wilmington

P. Jay Hines, Esquire  
October 8, 2004  
Page 2

Your spin on the events relating to Mr. Engel's deposition belie the fact that his deposition was noticed almost two months ago and it was not until recently that he was allegedly available for his deposition. In the interim, your client had ample time to respond to UGI's written discovery requests in the forthright manner dictated by the rules of procedure. After the first round of discovery, two letters were written regarding the deficiencies in ServiceMaster's responses. You did not respond to either letter. In addition, your client's most recent response to discovery was wholly unresponsive. It seems that your client has taken the position that it can make claims and allegations in its pleadings but that UGI is not entitled to challenge their bona fides.

As you know, I have recently had to assume primary responsibility for this matter due to my colleague's unfortunate medical issues. Nevertheless, I planned to proceed with the scheduled deposition under the assumption that I would be able to appropriately question Mr. Engel based on interrogatory responses and the documents needed to conduct a thorough and complete interrogation of the witness. When I had the opportunity to look at your responses on October 6, 2004 in preparation for the deposition, I immediately called you because I was not willing to proceed without substantive interrogatory answers and a meaningful and complete document production.

I thought that our relationship up to this point was cordial and professional although we each were zealously representing our clients. Your last letter crossed way over the line into *ad hominem* attacks. I trust that will not occur again.

Sincerely,



Vincent V. Carissimi

VVC/kfv

# **EXHIBIT U**

3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799  
215.981.4000  
Fax 215.981.4750

Vincent V. Carissimi  
215-981-4351  
carrisiv@pepperlaw.com

October 8, 2004

**VIA FACSIMILE AND FIRST CLASS MAIL**

P. Jay Hines, Esquire  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314

Re: *The ServiceMaster Company v. UGI HVAC Enterprises, Inc.*  
Opposition Nos. 152,104 & 125,743; Cancellation No. 41,147

Dear Jay:

On behalf of UGI HVAC Enterprises, Inc., we are serving the following enclosed discovery papers:

- 1) Applicant/Respondent's Notice of Deposition of Ed Dumm;
- 2) Applicant/Respondent's Notice of Deposition of Mark Burel; and
- 3) Applicant/Respondent's Notice of Deposition Pursuant to Rule 30(b)(6) of Opposer/Petitioner the ServiceMaster Company

If you have an issue with any of these notices, please contact me.

Also, outlined below are deficiencies in Opposer's Responses to Applicant/Respondent's Second Request for Production of Documents and Things and Opposer's Responses to Applicant/Respondent's Second Set of Interrogatories. As I mentioned during our telephone conversation on Wednesday, we reserve the right to file a motion to compel if we do not promptly receive the omitted information and documents detailed below and detailed in our previous correspondence (attached for your convenience) to which you have never responded.

Furthermore, as a follow up to our August 22 and August 30, 2004 letters, we wish to specifically add that Applicant has been informed by the United States Patent and Trademark Office ("PTO") that it has destroyed all documents relating to the STEAMASTER Opposition identified by Opposer in its response to Interrogatory No. 10 of Applicant's First Set

P. Jay Hines, Esquire  
Page 2  
October 8, 2004

of Interrogatories. In light of the foregoing, we trust that you will produce these documents and (as mentioned in past correspondence) any other non-public documents responsive to Interrogatory No. 10. Please note that Applicant expects that Opposer's search for responsive documents will extend to all documents within the possession, custody, or control of Opposer including, but not limited to, any documents maintained by counsel for Opposer. You informed me during our telephone conversation on Wednesday that you had not inquired of counsel regarding those documents. Please do so immediately.

**I. Interrogatories:**

**A. Interrogatory Nos. 2, 3, 4, 5, 12, and 14:**

Opposer has failed to adequately answer the above-listed interrogatories. These interrogatories are reasonably calculated to lead to the discovery of admissible evidence including, but not limited to, evidence related to the issue of actual confusion between Opposer's Mark and SERVICEMARK and the use (or lack of use) and the relative strength of Opposer's Mark within the fields of residential HVAC, commercial HVAC, and other relevant service areas. Opposer claims in its Notice of Opposition that Opposer's Mark is a famous mark in connection with consumer services including HVAC and plumbing services. This claim on the part of Opposer clearly entitles Applicant to propound interrogatories probative of the nature and extent of the uses to which Opposer puts its marks including, but not limited to, Opposer's Mark, the ARS mark, and the AMS mark, in connection with residential HVAC, commercial HVAC, and other relevant service areas. Therefore, Applicant expects that Opposer will answer these interrogatories and identify all documents relied upon for its answers.

**B. Interrogatory No. 7:**

Opposer has failed to adequately answer the above-listed interrogatory. This interrogatory is, in fact, reasonably calculated to lead to the discovery of admissible evidence including, but not limited to, evidence related to the use (or lack of use) and the relative strength of Opposer's Mark within the fields of residential HVAC, commercial HVAC, and other relevant service areas. Opposer claims in its Notice of Opposition that Opposer's Mark is a famous mark in connection with consumer services including HVAC and plumbing services. This claim on the part of Opposer clearly entitles Applicant to propound interrogatories probative of the nature and extent of the uses to which Opposer puts its marks including, but not limited to, Opposer's Mark, the ARS mark, and the AMS mark, in connection with residential HVAC, commercial HVAC, and other relevant service areas. Therefore, Applicant expects that Opposer will answer this interrogatory and identify all documents relied upon for its answers.

P. Jay Hines, Esquire

Page 3

October 8, 2004

C. Interrogatory Nos. 9 and 10:

Opposer has failed to provide information sufficient to answer these interrogatories or to adequately state the reasons for objection as required by Fed. R. of Civ. P. 33(b). The statement that "the selection and adoption of Opposer's Mark occurred more than fifty years ago" fails to indicate whether Opposer does, or does not, have information responsive to these interrogatories within its possession, custody, or control. Therefore, Applicant expects that Opposer will answer these interrogatories and identify all documents relied upon for its answers.

II. **Document Requests:**

A. Document Request No. 1:

Opposer has no justification for failing to produce documents responsive to this request. The request is reasonably calculated to lead to the discovery of admissible evidence including, but not limited to, evidence related to the use (or lack of use) and the relative strength of Opposer's Mark within the fields of residential HVAC, commercial HVAC, and other relevant service areas. Opposer claims in its Notice of Opposition that Opposer's Mark is a famous mark in connection with consumer services including HVAC and plumbing services. This claim on the part of Opposer clearly entitles Applicant to request documents related to the nature and extent of the uses to which Opposer puts its marks including, but not limited to, Opposer's Mark, the ARS mark, and the AMS mark, in connection with residential HVAC, commercial HVAC, and other relevant service areas. Therefore, Applicant expects that Opposer will produce all non-privileged documents responsive to this request within its possession, custody, or control.

B. Document Request No. 2:

Opposer has failed to adequately state the reasons for its objections as required by Fed. R. of Civ. P. 34(b). The statement that "the selection and adoption of Opposer's Mark occurred more than fifty years ago" fails to indicate whether Opposer does, or does not, in fact have non-privileged responsive documents within its possession, custody or control. Therefore, Applicant expects that Opposer will produce all non-privileged documents responsive to this Request within the possession, custody, or control of Opposer.

P. Jay Hines, Esquire

Page 4

October 8, 2004

C. Document Request Nos. 2, 3, and 6:

If you continue to stand by your objections to these requests based on the attorney-client privilege and/or work-product doctrine, please provide a privilege log identifying information as required by Fed. R. of Civ. P. 26(b)(6) and TBMP § 414(1) for the documents withheld.

D. Document Request No. 4:

Opposer has no justification for failing to produce documents responsive to this request. The request is reasonably calculated to lead to the discovery of admissible evidence including, but not limited to, evidence related to Opposer's claim in its Notice of Opposition that it has used its mark "for other related services including but not limited to electrical, drain rooting and cleaning services to residential and commercial customers and extended warranties for major home systems and appliances to residential customers." Therefore, Applicant expects that Opposer will produce all non-privileged documents responsive to this request within its possession, custody, or control.

If you have any questions regarding Applicant's responses to Opposer's responses and objections, please do not hesitate to contact me. If we do not receive supplemental responses, a supplemental production, and a comprehensive privilege log from you by the close of business on October 18, 2004 we will have no choice but to bring these discovery issues to the Board for resolution.

Very truly yours,



Vincent V. Carissimi

VVC:kh  
Enclosures

# **EXHIBIT V**



October 19, 2004  
VIA FACSIMILE

Vincent V. Carissimi, Esquire  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, Pennsylvania 19103-2799

ATTORNEYS AT LAW

P. JAY HINES  
(703) 412-7028  
JHINES@OBLON.COM

Re: *The ServiceMaster Company v. UGI HVAC Enterprises, Inc.*  
Opposition Nos. 125,743 & 152,104; Cancellation No. 41,147  
Marks: SERVICEMARK HEATING COOLING PLUMBING  
& DESIGN and SERVICEMARK  
Our Ref: 224797US-244183-36

Dear Vinny:

We are in receipt of your October 8, 2004 letter and enclosed notices to take the depositions of Ed Dunn, Mark Burel, and a Rule 30(b)(6) representative of The ServiceMaster Company. We are awaiting instructions from the client regarding the depositions.

We are currently working to respond to the deficiencies raised in your October 8, 2004 letter, as well as those raised in your letters of August 22 and August 30 and hope to respond shortly, and no later than by the end of the week.

We also would ask that you provide, if possible, at tomorrow's deposition of Mark C. Morrow, Esq., actual color specimens of marketing materials that represent the colors used by UGI. In the past, your colleague Ms. Delaney has objected to my use of color copies when questioning witnesses, on the basis that these copies (which UGI produced) do not accurately reflect the colors used by UGI. Your cooperation on this point would be appreciated.

Sincerely yours,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

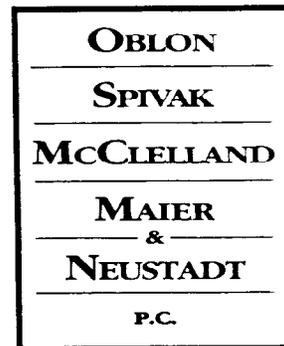


P. Jay Hines

PJH/cds (\\ATTY\PJH\SERVICEMASTER\244183-224797US-LTR10.DOC)

1940 DUKE STREET ■ ALEXANDRIA, VIRGINIA 22314 ■ U.S.A.  
TELEPHONE: 703-413-3000 ■ FACSIMILE: 703-413-2220 ■ WWW.OBLON.COM

# **EXHIBIT W**



October 26, 2004  
VIA COURIER

Vincent V. Carissimi, Esquire  
PEPPER HAMILTON LLP  
Eighteenth and Arch Streets  
3000 Two Logan Square  
Philadelphia, PA 19103-2779

ATTORNEYS AT LAW

P. JAY HINES  
(703) 412-7028  
JHINES@OBLON.COM

Re: *The Servicemaster Company v. UGI HVAC Enterprises, Inc.*  
Opposition No.: 125,743 & 152,104; Cancellation No. 41,147  
Mark: SERVICEMARK HEATING COOLING PLUMBING  
& DESIGN and SERVICEMARK  
Our Ref: 224797US-244183-3165-36

Dear Vinny:

Opposer's documents, identified as SVM00963-SVM00966, which were mailed from our office on Friday, October 22, 2004, should properly be designated "Attorneys Eyes Only" pursuant to the parties' Stipulated Protective Order and addendum thereto. These four pages comprise an internally compiled list of ARS and AMS locations that our client considers competitive proprietary information.

We enclose duplicates of SVM00963-SVM00966 properly marked "Attorneys Eyes Only". Please destroy the original documents that are not properly marked, or return them to us at your earliest opportunity. We apologize for any inconvenience.

Vincent V. Carissimi, Esquire  
224797US-244183-3165-36  
Page 2



We are also enclosing Opposer's supplemental document production identified as SVM00967-SVM01018 (licensing agreements) and SVM01019 (corporate organizational chart). All of these documents should be limited to "Attorneys Eyes Only" and have been so marked.

With best regards,

Sincerely yours,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

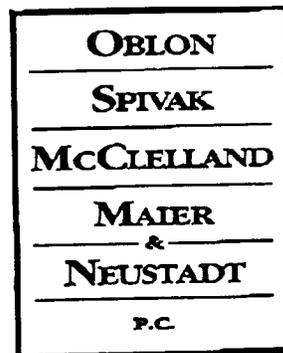


P. Jay Hines

PJH/ASC/kae {I:\atty\PJHServiceMaster\244183-224797US-ltr12.doc}

Enclosure(s): Documents SVM00963-SVM00966

# **EXHIBIT X**



October 21, 2004

Via Facsimile and UPS Courier

Vincent V. Carissimi, Esquire  
 PEPPER HAMILTON LLP  
 3000 Two Logan Square  
 Eighteenth and Arch Streets  
 Philadelphia, Pennsylvania 19103-2799

ATTORNEYS AT LAW

P. JAY HINES  
 (703) 412-7028  
 JHINES@OBLON.COM

Re: *The ServiceMaster Company v. UGI HVAC Enterprises, Inc.*  
 Opposition Nos. 125,743 & 152,104; Cancellation No. 41,147  
 Marks: SERVICEMARK HEATING COOLING PLUMBING  
 & DESIGN and SERVICEMARK  
 Our Ref: 224797US-244183-36

Dear Vinny:

We are in receipt of your October 8, 2004 letter and enclosed notices to take the depositions of Ed Dunn and Mark Burel.

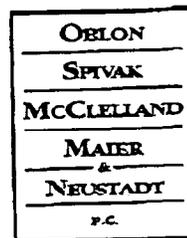
Messrs. Dunn and Burel are the Presidents of American Mechanical Services ("AMS") and American Residential Services ("ARS") respectively. Mr. Dunn and Mr. Burel, as senior executives, do not have unique knowledge of the facts at dispute in this proceeding. It is our client's position that the noticed depositions will serve merely to embarrass and harass Opposer, and that the discovery sought is available to UGI through less intrusive methods.

As we discussed earlier today, Opposer will offer as a substitute witness, Mitchell T. Engel, Chief Marketing Officer of The ServiceMaster Company, both in his individual capacity and in his capacity as a Rule 30(b)(6) representative. Our client is working to confirm Mr. Engel's availability for deposition on October 27, 2004 and we will pass this information along to you as soon as we receive it.

You repeat your client's request for documents relating to the *ServiceMaster Industries, Inc. v. Collman Industries, Inc.* case decided in the early 1970s. We have informed you that The ServiceMaster Company does not maintain copies of documents, publicly available or otherwise, that were generated in connection with this thirty year-old proceeding.

You have instructed us to "inquire of [ServiceMaster's previous] counsel immediately" whether these documents are available. The only means we have of identifying counsel for The ServiceMaster Company's predecessor, ServiceMaster Industries, Inc., in the *Collman Industries* case is the published opinion that lists George B. Newitt, Molinare, Allegretti, Newitt & Witcoff,

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 TELEPHONE: 703-413-3000 ■ FACSIMILE: 703-413-2220 ■ WWW.OBLON.COM



Vincent V. Carissimi, Esquire  
 224797US-244183-36  
 Page 2

and Edward W. Remus of Chicago, Illinois. We no longer find an active listing for this firm, which later became Banner & Witcoff, Ltd., nor for George B. Newitt, who we believe is retired. We believe that Mr. Remus may be practicing with the firm of McAndrews, Held & Malloy, Ltd. in Chicago.

Although we do not concede that the Board would agree that The ServiceMaster Company has control over documents generated over thirty years ago and once maintained by a law firm no longer in existence, we agree to make an inquiry of Mr. Remus and of Banner & Witcoff, Ltd. no later than October 27, 2004, and will advise you of the responses as soon as we receive them.

We now address the alleged deficiencies raised in your October 8, 2004 letter. These deficiencies generally are directed to Opposer's responses to Applicant's Second Set of Interrogatories and Second Requests for Production of Documents and Things.

### APPLICANT'S SECOND SET OF INTERROGATORIES

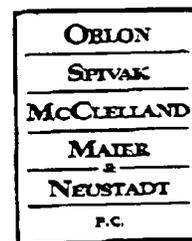
#### INTERROGATORY NOS. 2, 3, 4, 5, 12, and 14 (SECOND SET)

You state that Opposer failed to answer adequately Interrogatory Nos. 2, 3, 4, 5, 12, and 14 (Second Set), and that the interrogatories seek relevant evidence relating to (1) actual confusion; (2) the use or lack of use of Opposer's marks with the relevant services; and (3) the nature and extent of use of Opposer's marks, including the SERVICEMASTER mark, and the ARS mark and the AMS mark with the relevant services.

Although the issue of actual confusion is not the subject of any of the identified interrogatories, Opposer has directly responded to Applicant's inquiries regarding actual confusion evidence. See Responses to Applicant's Requests for Admission Nos. 1 and 2 and Answers to Applicant's Interrogatory Nos. 13 and 14 (First Set). There is no additional information to provide at this time.

Opposer also has responded adequately to Applicant's questions regarding the manner and extent of use of Opposer's SERVICEMASTER mark, including the renown of Opposer's SERVICEMASTER mark, and has produced numerous documents in response thereto. See Answers to Applicant's Second Set of Interrogatories No. 1, 2, 3, 4, 5, 8, and 12, and Answers to Applicant's First Set of Interrogatories 2(a),(b), 6, 7, 8, 11, and 18 and Opposer's documents identified as SVM0216-SVM0229 and SVM00701-SVM00762 (web site print outs); SVM0230-SVM0237 and SVM380-SVM0696 (brochures); and SVM00697-SVM00700 (advertisements). Opposer is producing herewith a listing of ARS and AMS and Rescue Rooter locations, and additional marketing materials recently located by Opposer to supplement the current production.

Vincent V. Carissimi, Esquire  
224797US-244183-36  
Page 3



We maintain our objection that the ARS and AMS marks are not at issue in this proceeding. Therefore, inquiries regarding the extent of use, or non-use, of the ARS or the AMS mark, are beyond the scope of the pleadings and are irrelevant to claims or defenses of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. We refer to the Definitions and Instructions included in Opposer's discovery requests defining "Opposer's Mark" as "Registration Nos. 1,220,269 and 1,272,228, and the corresponding common law rights afforded by use thereof as asserted by Opposer in Count I of its Notice of Opposition." If you are relying on a case, treatise, or other authority to support your position that evidence of use of Opposer's ARS and AMS marks is relevant to this proceeding, please provide it.

#### INTERROGATORY NO. 7 (SECOND SET)

You repeat your general objections to our answers to the interrogatories listed above, but state that we did not adequately answer Interrogatory No. 7 regarding Opposer's (1) use or lack of use and relative strength of Opposer's mark and (2) the nature and extent of use to which Opposer puts its marks, including the SERVICEMASTER mark, the ARS mark, and the AMS mark, in connection with the relevant services.

Again, we refer you to the specific answers provided in response to Applicant's first and second sets of written discovery. See Answers to Applicant's Second Set of Interrogatories No. 1, 2, 3, 4, 5, 8, and 12, and Answers to Applicant's First Set of Interrogatories 2(a),(b), 6, 7, 8, 11, and 18 and documents identified as SVM0216-SVM0229 and SVM00701-SVM00762 (web site print outs); SVM0230-SVM0237 and SVM380-SVM0696 (brochures); and SVM00697-SVM00700 (advertisements) for evidence of the nature and extent of use of Opposer's SERVICEMASTER mark.

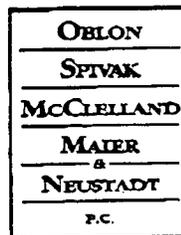
Opposer produces herewith a list of ARS and AMS locations and additional marketing materials recently located by Opposer to supplement current production. We repeat our objection with respect to the ARS mark and the AMS mark, which are not at issue in this litigation.

Finally, we direct you specifically to the Answer to Applicant's Interrogatory No. 5 (First Set) and to documents identified as SVM0001-SVM0181 for information directly responsive to this interrogatory.

#### INTERROGATORY NOS. 9 and 10 (SECOND SET)

Upon information and belief, there is no information or document in Opposer's possession custody or control that relates to the original decision to adopt and/or use Opposer's

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SERVICEMASTER mark, which decision was made more than fifty years ago. To the extent that documents or information may have existed at one time, such items can no longer be located. Opposer refers to its brochure entitled "*The Servicemaster Consumer Chronicle*" previously produced and identified as SVM0237 for information relating to the original meaning or connotation Opposer's SERVICEMARK mark.

### OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION

#### REQUEST NO. 1 (SECOND SET)

You state that Opposer has failed to produce responsive documents that are reasonably calculated to lead to the discovery of admissible evidence showing: (1) Opposer's use or lack of use of its mark; (2) the relative strength of Opposer's marks within the fields of residential HVAC, commercial HVAC and other areas; and (3) documents relating to the nature and extent to which Opposer uses its marks, including the SERVICEMASTER mark, the ARS mark, and the AMS mark.

Opposer has produced documents relevant to its use of the SERVICEMASTER mark and to the relative strength of its mark in connection with the relevant services. It also previously produced documents responsive to your requests directed to the nature and extent of the use of Opposer's SERVICEMASTER mark. These documents include information relating to the use of the SERVICEMASTER mark within the fields of residential HVAC services, commercial HVAC services, and other areas. See SVM0216-SVM0229 and SVM00701-SVM00762 (web site print outs); SVM0230-SVM0237 and SVM380-SVM0696 (brochures); and SVM00697-SVM00700 (advertisements). Opposer will produce additional marketing materials recently located by Opposer to supplement current production in the near future. Opposer repeats its objection with respect to the ARS and AMS marks, which are not at issue in this proceeding.

#### REQUEST NO. 2 (SECOND SET)

Opposer is aware of no document responsive to this request. To the extent that responsive documents existed at one time, they no longer can be located.

#### REQUEST NO. 3 (SECOND SET)

Opposer refers again to its brochure entitled "*The Servicemaster Consumer Chronicle*" previously produced and identified as SVM0237 for information relating to the meaning and connotation Opposer's SERVICEMARK mark.

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#### REQUEST NO. 4 (SECOND SET)

Opposer refers to its previously produced annual reports for the years 1998-2003 (SVM0238-SVM0330 and SVM00763A-SVM00954) for information relating to Opposer's corporate organization and structure. We also will produce internal corporate organizational charts subject to the restriction that they be limited to "attorneys' eyes only".

#### REQUEST NO. 6 (SECOND SET) and PRIVILEGE LOG

We produce herewith Opposer's Privilege Log of documents withheld from production on the basis of attorney-client privilege and work product doctrine. This log includes privileged correspondence and attorney work product materials relating to the current TTAB consolidated proceeding.

We now turn to the alleged deficiencies raised in your letter of August 22, 2004 that refers to Applicant's First Set of Interrogatories and First Request for Production of Documents propounded on Opposer.

#### DOCUMENT REQUEST NO. 9, INTERROGATORY NO. 10 (FIRST SET)

Our client does not maintain documents, publicly available or otherwise, relevant to the opposition against Servpro Industries, Inc., Opp. No. 59,658. Neither does The ServiceMaster Company maintain records that would inform it of who served as outside counsel in this opposition proceeding initiated before the Trademark Trial and Appeal Board in 1970. Accordingly, Opposer has no information or documents in its possession, custody or control that are responsive to Applicant's Request No. 9 (First Set) or Applicant's Interrogatory No. 10 (First Set).

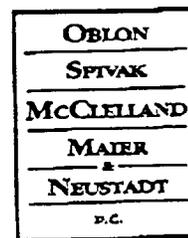
#### INTERROGATORY NO. 21 (FIRST SET)

Opposer has identified, within reason, all persons who provided information supporting the facts set forth in this Opposition. These persons are Sherry Campbell, Trademark Manager, Legal Department and Cristen Kogl, Esquire, Vice President and Deputy General Counsel - Corporate. See Answer to Applicant's Interrogatory No. 15 (Second Set) and Answer to Applicant's Interrogatory No. 21 (First Set). In addition, Mitchell T. Engel, Chief Marketing Officer, provided information supporting the facts set forth in this Opposition.

#### DOCUMENT REQUEST NOS. 2, 3, 4, 11, 19, 20 (FIRST SET)

Opposer is not withholding from production any otherwise responsive, non-privileged documents on the basis of confidentiality.

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Opposer produces herewith a Privilege Log identifying responsive documents withheld from production on the basis of attorney-client privilege or attorney work-product doctrine.

#### DOCUMENT REQUEST NO. 6 (FIRST SET)

Your request seeks "documents that disclose the channels of trade through which Opposer offers or intends to offer any goods or services under the SERVICEMASTER marks." Opposer has produced a representative sampling of documents that reflect the channels of trade through which Opposer offers its goods and services under the SERVICEMASTER MARK including, for example, Internet web pages. The production of a representative sampling is appropriate because compliance with a request to produce all such documents (which Applicant's request does not specify) would be unduly burdensome given the number of consumer services Opposer has offered during its business history that spans a period of over fifty years.

#### DOCUMENT REQUEST NOS. 2, 4, 5, 7, 8, 14, 16 - 19 (FIRST SET)

You seek to amend Applicant's Document Requests Nos. 2, 4, 5, 7, 8, 14, and 16-19 in your August 22, 2004 letter. Your attempt to re-draft these requests to identify particular documents by means of informal correspondence is not proper. Please re-serve the amended discovery requests if you wish for Opposer to respond formally to the amended requests.

#### DOCUMENT REQUEST NO. 10 (FIRST SET)

Applicant's Document Request No. 10 seeks "samples of all forms of packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks or used in connection with the SERVICEMASTER marks." Your subsequent request that Opposer now additionally confirm that the samples produced include sample advertisements demonstrating use of Opposer's marks "in connection with Opposer's HVAC and plumbing business(es) in all geographic regions where such business is conducted" exceeds the scope of the original request and constitutes an additional interrogatory. Please serve you request for information as a separate interrogatory if you wish for us to respond formally. Opposer reserves its right to object to future interrogatories on the basis that they exceed seventy-five in number.

#### DOCUMENT REQUEST NO. 11 (FIRST SET)

Opposer has produced all non-privileged documents evidencing the circumstances under which Opposer first became aware of Applicant's SERVICEMARK HEATING COOLING PLUMBING & DESIGN trademark, namely Opposer's documents identified as SVM0342-

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SVM0343 (pages from the December 25, 2001 *Official Gazette* showing publication of federal trademark applications.) Opposer produces herewith a Privilege Log reflecting otherwise responsive privileged correspondence withheld from production.

INTERROGATORY NO. 5 (FIRST SET)

We confirm that The ServiceMaster Residential/Commercial Services Identification Manual bearing production numbers SVM0001-SVM0181 is the only written stylization manual concerning the use of the SERVICEMARK marks.

We turn now to your letter dated August 30, 2004, that supplements objections raised by letter of August 22, 2004.

DOCUMENT REQUEST NO. 9, INTERROGATORY NO. 10 (FIRST SET)

See the above discussion relating to documents relating the SERVPRO & Design opposition. No such documents are in the possession, custody, or control of Opposer.

INTERROGATORY NOS. 11, 18 (FIRST SET)

To the extent you attempt to redraft Applicant's original Interrogatory Nos. 11 and 17, we ask that you serve corrected interrogatories in accordance with procedures afforded by the TBMP and Trademark Rules of Practice. Opposer reserves the right to objection to additional interrogatories on the basis that they exceed seventy-five in number.

I hope that the forgoing resolves the issues you have raised with respect to our client's discovery responses in this matter. We believe that our client has proceeded in good faith and has produced available responsive information and documents in an organized and timely manner. I trust that you will contact me should you have further questions.

Sincerely yours,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

P. Jay Hines

PJH/ASC/kac/cds (E:\my\PJH\ServiceMaster\244183-224797US-ltr8.doc)

Enclosure(s): Opposer The ServiceMaster Company's Privilege Log  
Document Nos. SVM00955-SVM00966

# **EXHIBIT Y**

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FD (Fair Disclosure) Wire

March 17, 2003 Monday

Transcript 031703an.770

**LENGTH:** 10876 words**HEADLINE:** Q4 2002 The ServiceMaster Company Earnings Conference Call - Final**BODY:**

**OPERATOR:** Ladies and gentlemen, thank you for standing by. Welcome to the ServiceMaster Company fourth quarter earnings conference call. During the presentation, all participants will be in a listen-only mode. Afterwards, we will conduct a question and answer session. At that time, if you have a question please press the 1 followed by the 4 on your telephone. As a reminder, this conference call is being recorded Monday, March 17 of 2003.

I would now like to turn the conference call over to Steven Preston, executive vice president and CFO. Please go ahead, sir.

**STEVEN PRESTON, EVP AND CFO, SERVICEMASTER COMPANY:** Great. Thank you very much. Good morning. Thanks for joining us.

We've all been waiting a long time to get to this point, so we thank you for your patience.

I'm here with Jon Ward, our chairman and chief executive officer, as well as Bruce Byats, our VP for investor relations, Dema Conar, our controller, and Eric Zarnaco, our treasurer.

I'd like to kick off the call by giving you an overview of the 2002 results for the enterprise overall, then I'm going to spend some time going through the restatements and then Jon will provide you more flavor on 2002 by giving you a recap of the business by segment and discussing how those trends look early for 2003, and then getting you a discussion of our early outlook for the year.

2002 was a year when we saw a number of factors affect the outcome, some of which were in our control like the initiatives we've been discussing and some we are working to control. We are through the first full year of Phase II of the company's operating strategy, and we believe we've made very big steps forward. We ended our first full year of Six Sigma with it being a slight cost to 2002, but with the entire program to date becoming accretive in the first quarter. The 2002 cost was offset by benefits we received from our strategic sourcing initiative, where we focus on becoming a much more effective acquirer of goods and services.

As we look at 2003, we think both of these initiatives will be significantly accretive, and they will be important sources of earnings to fund initiatives elsewhere in the company and to offset cost pressures we are seeing in the marketplace. At the same time, we're getting smarter about purchasing goods and services. We are seeing prices trend higher in health care, insurance, and, of course, to a lesser extent in fuel.

While we have initiatives in place to manage all these costs, insurance and health care costs alone increased \$33 million in 2002. While we don't think the increases in 2003 will be quite to that degree, we do believe they could be substantial. In 2002, we also reported throughout the year that we began to see a number of benefits coming out of the company's marketing and retention initiatives. We have new sales or marketing leadership at the ServiceMaster level and in most of our larger businesses. This group is working to increase the sophistication of how we market our services through much better customer research insights and more effective selling programs.

We did see customer account growth in lawn care, American Home Shield and in pest control. As you can see from

our KPI statistics. lawn care and American Home Shield have had improving retention rates as well. The retention in Terminix did take a step back for the full year because of attrition that we have been discussing in this year's pest control business. We also believe that the decline in consumer confidence could be playing a role here.

Now, while marketing is on the top of the list of areas we're investing in which we believe will add long term value, we're also investing in technology, legal and people initiatives. As we've discussed, Terminix is rolling out a field level system designed to improve branch efficiencies and improve our ability to understand and serve the customers. We're also at the front end of driving the enterprise to a common financial platform, which is targeted for completion in 2002. This system will not only give us better and more consistent data to run our businesses better, but IT will be a background in driving process efficiency and in supporting our commitment to strong compliance and controls.

Let me remind you that there are a number of items which have made it difficult to compare reported results in 2001 and 2002. Those items include our adoption of FAS142, which eliminated the need to amortize goodwill, charges we took to restructure the business and a significant debt reduction with the proceeds from 2001 divestitures.

In the past, we provided you with a table to give you a better understanding of how adjusting for these items would have affected the results of the company in an effort to give you more perspective on comparability. Because of restrictions on our ability to provide investors with non-GAAP financial measures, we are unable to provide you with that table anymore. We can provide you with the components, but we just can't add them up for you.

Now let's turn to the financial results. Revenue in 2002 finished up 1% to 3.6 billion. During the year we experienced strong growth in Terminix and American Home Shield, which is offset by lower revenue in our HVAC and plumbing businesses. Operating income for the first year was 339 million, that compared with a loss of 72 million in 2001.

2002 operating income was affected by a number of strong trending issues, including the rise in health care and insurance costs I just mentioned as well as the decline of 31 million in the ARSAMS segment and an increase of 22 million in the American Home Shield segment.

Now in considering 2001 on a comparable basis, I would mention three items. First, it included charges for impaired assets and other items of \$394 million. Second, it included goodwill amortization of \$61 million, which went away with the adoption of FAS 142 in 2002. And then finally, it included the benefit of a \$15 million license fee, which we have discussed with you in the past.

Below the operating income line, the company reported a \$51 million reduction in interest expense. The company continued to reduce debt in 2002 as it further applied the proceeds from the divestitures in 2001 as well as from operating cash flows that were very strong this year. Interest income was 5 million lower than last year because of higher security gains in 2001.

We were able to reduce our tax provision in 2002 by about \$11 million. That was primarily as a result of consolidation of the Home Service Center. That's 11 million off of what we would have otherwise reported not off of last year. This benefit reduced our tax rate to about 35%. Without that benefit, the tax rate would have been approximately 40%, which is much more representative of the run rate of the company.

Cash flow continues to be strong. Cash from operations for 2002 was 380 million. That's more than double our net income. It's 17 million over the 363 million we reported last year. Last year had about 50 million in prior-year tax refunds so if you adjust for that, it's \$67 million increase. Once again, a significant component of that improvement was an \$86 million reduction in the use of working capital. That comes from better working capital management throughout the company, especially in the TruGreen, ChemLawn and ARS businesses.

In addition, we had a \$67 million deferred tax benefit. As many of you know, over \$50 million from this number, about 17 cents a share, is a cash tax benefit we receive from the deductibility of intangible assets, which will continue for another 10 years, but it is not reflected on the income statement.

This year, we've reduced our debt by about 320 million to 835 million. It's our lowest level in almost six years. That represents a reduction in debt outstanding by about a billion dollars over the last two years. Cash and marketable securities on the balance sheet was 302 million. About half of that was discretionary cash.

So once again, very strong cash flow and a strong balance sheet continue to define our business and support our strategy going forward.

Let's turn now to the use of that cash flow. Share repurchases in 2002 equaled 52 million, and during 2003, we would expect to continue to repurchase shares. The amount will be a function of the trends in our business, our share price and the alternative uses we have for our capital. At this point, we do believe we'll be roughly at the same level or possibly even higher in 2003.

We also continue to be committed to paying a strong dividend. We just completed our 33rd year of consecutive dividend growth and on Friday we announced a second quarter dividend of 10.5 cents. Acquisitions were less than 20 million in 2002. We've announced a greater focus on tuck-ins in 2003. We are seeing attractive transactions in the marketplace, and we are focusing entirely on the TruGreen and the Terminix market, actually I should say to a lesser extent on Merry Maids as well. At this point, we would expect acquisitions this year to be in the 40 to 50 million range, but it is obviously too early to get a firm handle on that number.

Now I'd like to comment on the restatements. As a reminder, the preliminary restated financial information is the result of two processes that the company has been conducting. First, Deloitte & Touche has been re-auditing the company's financials from the year-end '99 balance sheet through 2001. And although the process is largely complete, there's always the possibility that until the 10-K is filed, there could be unexpected adjustments. So out of conservatism, we are calling this information preliminary.

In addition, as part of the SEC's previously announced review of all Fortune 500 companies, they did review our most recent 10-K and the first and second quarter 10-Q filings. And once again, although that outcome could change, it looks like we're down to one issue with the SEC which will not affect annual results but it could affect the quarterly information. That issue relates to the seasonal recognition of costs attributing. We would expect to have a conclusion to the issue when we file the 10-K, so we will expect to file all the updated quarterly information at that time. We do apologize for not being able to give you the quarterly comparisons until we file the 10-K.

We can tell you generally that the fourth quarter results were in line with our expectations, otherwise we would not have been able to report the 56 cents a share for the full year, but the quarterly comparisons, we'll need to wait until we make that filing. So once again, the restatement reflects the initial results from both the re-audit and the discussions with the SEC.

So here are the headlines. Overall, the initial results from the re-audit and restatement do not have a material impact on 2002 earnings or on future earnings. They have no impact on the historical or future cash flows of the business. In addition, most of the items you see on the list in the press release, we've already discussed with you and disclosed publicly in one fashion or another.

Before I get into that more detailed discussion, let me just make a couple of other comments by way of background. When our new auditors came in, we talked to a number of people out there. We specifically asked for a very deep audit company. This was the most important factor to us and particularly to me as the chief financial officer. Even though a number of Andersen partners went to Deloitte & Touche, we specifically asked for a new leadership team on the audit. We wanted a fresh perspective. And in addition, in the second quarter, you will recall that we asked Deloitte to undertake a full review of the company's accounting policies to get their perspectives right out of the box. Following that review, we announced a change in the American Home Shield recognition — deferred acquisition cost recognition policy, and we announced that we would be changing our accounting to begin expensing stock options.

When we opened up our books in the prior years as a result of the re-audit, we began a deep dive into judgments we had made in those prior years, which would not have received the same kind of deep review that we went through in the second quarter, because these items generally didn't have an effect on 2002. This review has been very, very extensive. It highlighted any adjustments over 50,000 — this is an extremely low threshold. But it added to the thoroughness of the review and it helped us actually get insight into smaller issues that we might not have seen otherwise if we hadn't gone to that degree, and that was very helpful for us.

So the review was extremely thorough in looking at the company's policies, its historical transactions, its accounting mechanics, and I want to note and I think it's important to understand, we are treating all of these changes we are making as having resulted from accounting errors.

Now I'd like to go through those items, and once again you're familiar with many of them. First let me talk about American Home Shield. We discussed with you in the second quarter earnings release that we were changing our policy for recognizing deferred customer acquisition costs for 2002 and future years in American Home Shield.

We also discussed the impact of that change with you at that time. We are now restating prior years to put them on a comparable basis. So that's all that's happening in that American Home Shield line.

Next, the trade name license fee. We disclosed when we filed our third quarter 10-Q last year that we would be restating 2001 to increase operating income by 15 million to reflect a three-year licensing agreement we had with Amerck for use of the ServiceMaster name in those businesses that they acquired. We had been recognizing that revenue over three years to match the contract life because there is not a significant duty to perform services over that period and because it occurred concurrent with the sale of the business that generated a gain, it was deemed appropriate to recognize that up front.

And in the other line, I mentioned that we'd opened up prior years to miscellaneous adjustments the net impact of those adjustments just shown on that other line. Now, the reincorporation tax adjustment, for years, we've been discussing the fact that we have major ongoing tax benefits from the reincorporation in that it gave rise to a significant tax deductible step-up in intangibles. The challenging thing has been understanding how to reflect this cash benefit on the accounting books. For 2002 and beyond the accounting answer is easy, the entire benefit flows to the cash flow statement in the deferred tax line just as we discussed.

The challenge comes that when we sell companies that were affected by the step-up, simply put, when we reincorporated in 1997 and got the benefit of the tax step-up, we needed to determine how much of the future benefit to allocate to assets and how much would be reflected in a gain. If you compare what we did back then to the restatement, the restated accounting would say that we put too much on assets and did not reflect enough of it in a gain in 1997. So when we sold some of those assets in 2001, we should have booked a higher tax provision on the gain.

So when you put it all together, the restated numbers show a higher retained earnings number at the year-end of 1999, which reflects the gain we would have taken in 1997, a somewhat higher tax rate for 2000-2001, and a higher tax impact on the sale of businesses in 2001. At the end of 2002, as we stand here today, there's a net positive impact on retained earnings from all these items. I just want to emphasize, none of these adjustments have an impact on cash. They only have to do with how and when we recognize this benefit on our accounting books.

Finally, I'd like to mention an item we disclosed in the press release that's not related to the re-audit — in the fourth quarter of 2001, we did announce the sale of certain subsidiaries of our European pest control and property services operation. In the fourth quarter of 2002, the buyer of those businesses made a claim for a purchase price adjustment following the true-up of the 2001 financials. In the course of responding to that claim, we did discover that personnel in those operations had made unsupported adjustments to the monthly accounts. In recognition of those facts, we agreed to make a purchase price adjustment consisting of a payment of \$8 million and a cancellation of a note which we'd actually had reserved. So the impact of that payment is to reduce earnings from continuing - discontinued operations by about 1-1/2 cents a share in 2002. And as part of our commitment to full disclosure, because of the nature of these items, we did contact the SEC and volunteered to provide them with any information that they would like to see regarding those activities.

Now I would like to turn it over to Jon for his comments and then we will open it up to all of you for questions.

JONATHAN WARD, CHAIRMAN AND CEO, SERVICEMASTER COMPANY: Thank you, Steve, and good morning.

As we enter 2003, the vast majority of our revenue is now or shortly will be returning above the cost of capital. That means our focus and intention is in three areas. One, revenue growth in those businesses that are above the cost of capital, two, maximizing the use of our scale to build competitive advantage, gain share and expand margins, and three, streamlining the underperforming 15% of our business. Getting those businesses focused right going forward to once again return above the cost of capital. It's a straightforward approach that recognizes that we have powerful brands, needed services, and significant market opportunity.

ServiceMaster remains well positioned to produce annual earnings growth over the next several years. This year, we will maintain a strong focus on top-line sales, increased retention, controlling expenses, and generating even stronger cash flow. But the economic uncertainty and world events both contribute to consumer confidence being at a 10-year low. It makes it difficult for us to have full visibility to 2003's full-year results. If the current conditions persist, we would expect to achieve mid single digit earnings growth in 2003.

We believe that the trends coming out of first quarter will provide us with greater visibility to the year-end results.



We will talk this further through in our April conference call. Let me just add there that between this being a significant period of our sales season and the world events right now, it's too uncertain to make significant calls, and I will discuss in further detail in this call what we're seeing in each one of our businesses.

Let me tell you what I am seeing across the businesses. As you see in the press release, we've enhanced our segment disclosure by breaking up home maintenance and improvement. The segments are separated into the following areas. A separate segment for American Home Shield, a segment combining ARS and AMS, and we have moved ServiceMaster Clean and Merry Maids into other operations.

Let me now turn to these segments. TruGreen — TruGreen lawn care. In 2002, our lawn care business increased revenues by 1%. Full program customer accounts finished the year up 2%, compared with a 4% decline in 2001. It's encouraging to see growth in customer counts through higher sales in non-telemarketing channels such as direct mail and television advertising and an increase in customer attention of 160 basis points.

In addition, we continue to see margin leverage resulting from top-line growth and clear benefits of our Six Sigma and strategic sourcing initiatives. As the top line gets going in this business, the incremental profitability will be tremendous because of the leverage we get in our fixed cost structure and route density of the business.

We began 2003 with higher customer counts in TruGreen lawn care. So far this season, our customer counts are tracking towards budget. We have a large direct mail campaign in the next month, so there are still some unknowns, but overall, we are pleased with the results so far. Cancellations are running below budget, which is a further sign of the hard work and better data being used along with the measurements we put in place last year. Year-to-date prices are up slightly, a change of 1 to 2% from this time last year, and we're pleased with our tuck-in acquisition program so far. There are good opportunities for us and we're taking a more disciplined and focused approach than we have historically.

Let me move to LandCare now for a few minutes. In 2002, our commercial landscaping business, TruGreen LandCare, revenues were down about 1% with flat branch margins but higher overheads due to sales retentions and efficiency initiatives. We entered 2002 at the end of a very difficult two-year period. If you remember, we restructured this business, focusing the unit on recurring revenue and moving out of construction. We now believe we are in position to achieve strong top-line and bottom-line growth in LandCare. We believe the TruGreen team has accomplished this task and we're excited about the prospects going forward. Although workman's comp cost negatively hit this business in 2002, we've taken steps to increase our safety programs in LandCare and throughout our organization.

In the second half, we began to see clear improvements from our sourcing materials and the use of the new ERP system in this business. In 2003, prospects for LandCare have really improved. LandCare has seen a significant increase in new sales. Year-to-date comparisons with 2002 updated as recently as this morning are up 23% from prior year. This is largely due to new sales leadership in this business. Additionally, retention rates are improving and forecasted to be up at least 2% from prior year, and I'm confident we may do even better than this.

We believe the sales momentum, increasing pricing discipline and continued focus from the leadership team will lead this business to be a strong contributor in ServiceMaster over the next 18 months, and confident it will become a business above the cost of capital.

The first quarter results reflect a positive effect on snow, that means more snow removal for LandCare. It was somewhere offset, however, by lower enhancement sales in this same business, and it has caused a delay in some services in lawn care, although we are highly confident we'll make it up in the second and third quarter.

On balance, it's good news. We should recover the lawn care revenue. If we do, then the snowfall revenue becomes a bonus. The downside risk is if the cold weather persists so long that it hurts the spring sales season, then some revenue can be lost. We are not anticipating that at this time.

Let me move my comments now to Terminix. Revenue in Terminix surpassed \$900 million last year, up 9% for the year reflecting good internal growth and some strong comparisons from the addition of Sears' business in 2001. We had particularly strong sales in termites, both renewals and new sales. Operating income in 2002 increased 3%, but overall margins declined slightly. As we said before, Terminix experienced a significant fall-off in the Sears pest control business over the first year, yet this acquisition is still a solid addition to our business. As the profitable pest contracts have rolled off, they've been difficult to replace at the same rate, but we are working on it.

2003 does have some challenges, particularly in pests for Terminix. Year-to-date leads in pest control are down double-digit from the year before. The good news is that our leads are closing at a much stronger rate. Year-to-date sales are only down 2 to 3% from prior year. Our ability to generate leads and maintain retention rates is being affected somewhat in pest by lower consumer confidence. We've seen short term swings like this before, which can bounce back quickly as they left, but it's still too early to call.

As we go into the main pest and termite season, moisture and climate conditions across the country seem favorable to a good season, although it now appears it's running a couple weeks late. These conditions must continue if we're going to offset the slowdown in lead flow and consumer spending.

So as I said before, we'll have great visibility to this by the time our first quarter conference call in April, which is only four weeks away.

In the fourth quarter, Terminix began to roll out our new mission system, its IT platform integrated system across all of the branches. The roll-out will continue through 2003. The new system will give us a competitive advantage in our sales productivity, customer satisfaction, cost efficiency and importantly, regulatory compliance. However, like any other system, there are near-term expenses associated with deployment, rollout and development.

Later this year, we expect to begin seeing the benefits of the operating leverage of our mission system realized along with the impact of the Sears acquisition being more favorable.

Let me now move to American Home Shield. The new American Home Shield segment reported in 2002 had revenues of 422 million, up 16% compared to '01. This reflects strong growth in all sales channels. Operating income for 2002 was 48 million, up 26% from—excuse me—up 26 million from the prior year. In addition, because of various initiatives to improve its cost structure and more unprofitable geographic mix, American Home Shield experienced very significant an increase in margins and finished the year with the largest dollar increase of operating profit of all our businesses. These improvements were somewhat—in some part due to favorable weather trends that adversely affected other businesses such as ARS.

Strong sales in real estate channel in 2002 were supported by record home resales and increased usage, customer retention that increased by 110 basis points.

Going into 2003, our direct to consumer channel continues to accelerate and grow daily. We've also seen a dramatic fall-off in new home listings. It's dropped 15 to 20% during the first two months of this year. Once again, this may be temporary, but in the short term, it does lead our—slow down the leads for our real estate channel. Despite these challenges, we continue to gain share at our competitors' expense. Year-to-date, we've also seen a reduction in service calls and lower cost per service call offset some of this real estate softness.

Let me also move to our new segment now on ARS and AMS. The revenues of American Residential Services and American Mechanical Services segment were 719 million, a decline of 12% for the full year, reflecting a continued lower call volume for residential air conditioning and plumbing repairs, and our adoption in HVAC, commercial and construction activity along with electrical work. Operating income in the business declined by approximately \$31 million from 2001 to 2002. This represented a full 6 cents impact on our earnings statement.

Profits at ARS and AMS declined as they continue to comprehensively rebuild our marketing sales strategies to reflect this decrease in demand. The trend of consumers choosing to repair versus replace their HVAC equipment which has been going on now for about a year and a half has continued to put pressure on this business because simply a replacement is much more profitable than a service offering.

In addition, the construction business, both commercial and residential, has been negatively affected by the slow economy. Going into 2003, AMS, our commercial HVAC and mechanical systems company, has increased their backlog by 25% since the beginning of the year. A more focused sales effort and some disarray among our competitors is leading to this opportunity. This backlog increase is the first such in almost a year.

In ARS, we really feel like we hit bottom during the fourth quarter of 2002. We've narrowed our geographic focus and offerings in HVAC. More locations are being refocused on their core service line, plumbing or HVAC, instead of splitting their attention across multiple service lines. The leaders of ARS are conducting a thorough review of individual branches to determine the long term profit potential and whether underperforming operations should be exited.

Also we're excited about our expanded HVAC installation relationship with Home Depot, moving the relationship from 27 stores early this year to 90 by mid year. We believe that we're focused on the right issues in this business. In February, we saw our first year to year increase in add-on replacement sales in a very long time.

ServiceMaster Clean and Merry Maids, our largest franchise businesses, continue to make solid contribution to the company. ServiceMaster Clean 2002 revenue, which included the Pentagon clean-up, was replaced by strong disaster recovery coming across the businesses. Let me restate that. We had to overcome some Pentagon revenue. The Pentagon revenue was in 2001, and despite having to replace that, we had strong sales in disaster recovery across the business.

Merry Maids, our most discretionary service line, continues to feel the impact of the economy, yet the business model is good, and we continue to acquire branches. The business model has been basically flat to slightly down.

In conclusion, we are moving ahead with our vision for ServiceMaster to be America's service branch for homes and businesses. We are on track, ready to take on a year with strong focus on top-line sales, increased retention, controlling expenses, and generating positive cash flow.

Thanks. Now it's time for your questions.

Before we take your questions, I would like to remind you that the comments have included statements that are forward-looking in nature. Our actual results may differ materially from those stated. Additional information concerning factors that could cause actual results to differ materially from those in our forward-looking statements is contained in the company's press release, 10-K, annual report and other SEC filings.

In addition, I would invite you to read the forward-looking statement in our press release for broader discussion of these risks.

Now I'll turn it over to Amy to get our questions.

OPERATOR: Thank you. Ladies and gentlemen, if you would like to register for a question, please press the 1 followed by the 4 on your telephone. You'll hear a three-tone prompt to acknowledge your request. If your question has been answered and would you like to withdraw your registration, please press 1 followed by 3. If you are using a speakerphone, please lift your handset before entering your request.

One moment please for our first question. Our first question comes from the line of Jim Barrett with CL King and Associates. Please go ahead, sir.

JIM BARRETT, CL KING AND ASSOCIATES: Good morning, everyone.

JONATHAN WARD: Good morning, Jim.

JIM BARRETT: Jon, could you talk a little bit about ARS and discuss how the economics of the business would change if you were to close or just maintain those branches that are achieving their cost of capital or are likely to do so in a reasonably short period of time?

JONATHAN WARD: Let me not maybe answer your question directly but let me tell you what we are doing. As we've gotten into the business this past year under Mark Burrell's leadership, we took extensive review that the strategy before had to have close to all 100 locations aggressively expanding at the same time into heating and cooling along with plumbing. So if you were a Rescue Rooter branch, you might have a great \$5 million business, you were being challenged by leadership to get in the air conditioning business. As we started looking into this around the country, we said we've got some great air conditioning locations, we've got some great plumbing locations, and we do have a significant number of combined shops. What we said in the short term is, if your combined shop that's profitable, stay with the strategy. If you're basically a plumbing shop, you might be \$5 million plumbing shop with a half a million dollar air conditioning revenue, we said don't bother with the air conditioning revenue.

So in the short term, what we've done is focused product lines and service lines. It does a couple things. It makes our advertising more focused. We will also be moving our operational structure to be aligned by service line so we'll have someone really in charge of our plumbing locations, someone in charge of our combo shops, and someone running our air conditioning and cooling — heating and cooling locations.

That all said, we will also look at number of locations we are in. I would not expect a significant reduction as we go through this, if any, in the number of locations. We have 100 locations. I think as we talk it through, there's a

dozen or so where we're trying to figure out if we've got the right business mix and the right location, but outside of this, I think the business is solid.

What we would say, if you take all the plumbing locations, those that are dedicated to plumbing, we think they're a highly attractive business today. We haven't quite finished the math, but I'm confident when we get done, we will say they either are at the cost of capital or easily will be above the cost of capital in the short term.

On the air conditioning side, we think we know what we want to have in that business. I'm not going to go any further on this call because I think we have figured out what we believe is the competitive advantage and sweet spot in air conditioning. We're going to work very hard on it, and we think our scale in our marketing organization under Brad Cummings and how we're going to approach the air conditioning market can lead to significant enhancement. Now, we believe the full opportunity in air conditioning may not be seen for 12 to 24 months, but we've got a very focused strategy on air conditioning.

I think what you're also going to see later this year is we're going to start to aggressively grow our plumbing locations because as I said, they are at or moving quickly above the cost of capital. Our combo shops, it is still part of our long-term vision, but the short term, we think separating our business lines apart and letting those guys who have proven model in being a combo shop run ahead with both service lines.

JIM BARRETT: You may have somewhat answered it, but AMS and their new construction economics versus LandCare's new construction economics when LandCare was a new construction, are there any differences or nuances between those two businesses in terms of how attractive that segment is?

JONATHAN WARD: Yeah, I think the biggest difference is that Ed Dunn and his team have a very deep-rooted understanding of how to run a construction business, the cost to dates, so I look back on it and say if you have a dedicated team that understands construction, it could be a good business. My judgment, both from our TruGreen side and our LandCare acquisitions, they had a bias and an understanding of the recurring revenue model, and we chose not to invest — to get those skill sets in our lawn business but are very comfortable with the leadership skill sets we have around the tight management needed to make sure you don't get surprises in construction in AMS.

JIM BARRETT: Thank you very much.

OPERATOR: Our next question comes from Matt Liftin with William Blair and Company.

MATT LIFTIN, WILLIAM BLAIR AND COMPANY: Good morning. I was looking for a little more color on the new guidance. The mid-single digit EPS growth for 2003, do you still expect margin improvement for ServiceMaster overall in 2003, or is that 5% or so growth coming all from revenue? You could also maybe address what is your new view of pricing power?

JONATHAN WARD: Matt, maybe I'll take the first half of that. One thing we want to say is this conference call is coming much later in the quarter obviously. We're four weeks away and Steve and I were debating how much better guidance to give you. We want to give you guys firm guidance. We're right in the middle as you know our peak sales season, so we're not trying to be evasive here, but we'd much rather wait four weeks and give you a more thorough review. By then we'll have a real good visibility what this warm season looks like as — does TruGreen continue on the trend.

Having said that, I'll let Steve comment on margins as it relates to 2003 earnings in relation to sales.

STEVEN PRESTON: Yeah, Matt, I think we do see the opportunity to improve margins. It is very early in the year. There's some strong benefits we're getting from a number of the cost base initiatives, but as we highlighted in the script, there are some trends in the healthcare insurance side and to a lesser extent fuel that we're going to be dealing with in 2003. So frankly I don't think that the positive trend in margins is going to be really significant this year because of sort of balancing factors, but it really is early to tell right now.

JONATHAN WARD: Matt, one of the comments that I would get into is we have seen — new sales has really been on a roller coaster this year. We started the year ahead of budget. February, the consumer shutdown in our two largest businesses and since the first of March, response to our leads and advertising has been very, very strong, so that's why we're just really saying here, let's wait four weeks — you know, my judgment would be if the events that are likely happening on a world basis, which I think is a very, very high probability they'll happen this week and it's a relatively short duration and the weather continues as it has in the last week, I think we're going to come out of the sales season

in pretty good shape.

Between that war worry and very, very unusual weather patterns in February, we saw some things that were very hard for us to read, but I would say the last couple weeks, things have rebounded terrifically.

MATT LIFTIN: That's very helpful. Let me just throw one more follow-up in there on the same point. I didn't hear a lot of change from previously in your segment discussion, Jon. You actually seem a bit encouraged by LandCare here. Is there any particular business that you really feel that that roller coaster has really kicked in on and that you feel less confident about that sort of made you decide to reduce the guidance a little bit?

JONATHAN WARD: Yeah, I think the one that's gotten the - the discretionary spend in Terminix is the one that seems to be pulling back, Matt. We're coming into a swarm season, and as I think you know, if you have termites in your house it doesn't matter if there's a war going on or the economy is good or bad, you call Terminix. Also, a significant number of our customers, new customers in Terminix are generated from what we call creative sales where there isn't an apparent swarm in the house, and it's just our lead generation, sale comes in and our salesperson goes out and sells it. That's the one segment right now that looks a little bit - to be a little bit soft as we go into our prime selling season.

MATT LIFTIN: Great. Thanks very much.

OPERATOR: Our next question comes from the line of Chris Gutek with Morgan Stanley. Please go ahead with your question.

CHRIS GUTEK, MORGAN STANLEY: Thanks. A couple follow-up questions on the customer retention rate, the TruGreen in particular. In the press release, we see on a year-over-year basis the retention rates did improve, but when we compare the rolling 12 months data at the end of December versus the 12 month rolling data at the end of September we saw a decline. I assume that would have removed seasonality. Is there some seasonal effect there or was there actually a sequential decrease in retention?

STEVEN PRESTON: There is a seasonal effect, and it's a little hard to describe computationally, but it just has to do with the timing and the progression of customer accounts getting added in throughout the year and the cancellation trending and how those move from quarter to quarter. But there definitely is seasonality to it.

CHRIS GUTEK: Ok. And then the marketing initiatives, you mentioned in the prepared speech that there were some - you're basically halfway through an aggressive direct mail marketing campaign. Could you talk specifically about how much you're using telemarketing this year versus last year and how much of the negative impact you're feeling because of increasing state regulation -

JONATHAN WARD: We strive to be in full compliance with the do-not-call list. In some states, Chris, we have seen a fall-off of 50% in the number of households that are available to call. These numbers are—you know, plus or minus a couple percent, in 2001, we generated around 50,000 customers through non-telemarketing sales. Last year, that went over 100,000, and our budget this year is to be over 200,000. And we generate about a million new customers a year.

So you can see a significant change, and once again, we're calling for our customer counts to be up more than a couple percent this year despite that environment of having to retool on the fly as we go here. We have moved back - you know, we held some direct mail as most direct marketers did in this type of business in February. With a significant amount of snow on the ground, we said let's hold our direct mail, so it's kind of shortened the cycle. Our direct mail response is coming in as we anticipated with the revised response curve. So we see nothing that says that's not falling as it should.

Our telemarketing sales continue to be basically - except for that one four-week period I talked about in February, on track with our budget, so overall, I'm pleased with how this business unit is responding to a very, very changing consumer marketing availability over the last 18 months.

CHRIS GUTEK: Great. And finally a follow-up on Terminix. When we look at the growth in customer accounts in December versus the same data for September of '02, there's a significant deceleration in the customer accounts both in the pest control and the termite side. Any explanation there?

JONATHAN WARD: Yeah - Steve?



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STEVEN PRESTON: Year over year, the Sears business would have been included both in the fourth quarter of last year and the fourth quarter of this year. And the fourth quarter of last year would have had really a full impact of initially bringing those accounts over to us. Throughout the year, we did see some attrition, so on a year-over-year basis for the fourth quarters, that comparison for a particular piece of business is difficult.

CHRIS GUTEK: Ok. Great. Thanks.

JONATHAN WARD: Chris, just one other comment there. We're doing some more work on it, but as we look back over the last 36 months, we do find particularly in the pest side that new sales follow very, very closely to consumer confidence, so we're doing some aggressive analysis. We've got a good proxy there to start talking to you guys about. I would also say a little bit of that fourth quarter is when we started seeing the consumer confidence start tumbling here, so I think there's a little bit of aspect in new sales in Terminix fourth quarter related to reduced consumer confidence during that period.

CHRIS GUTEK: Great. Thanks.

OPERATOR: Our next question comes from the line of Kevin Monroe with Thomas Weisel Partners. Please go ahead.

KEVIN MONROE, THOMAS WEISEL PARTNERS: Good morning. Couple questions, and one of them maybe a follow-up to Chris's. First is, when do you expect the 10-K to come out?

STEVEN PRESTON: 10-K would be filed at the end of this month.

KEVIN MONROE: Ok. Secondly, on the Terminix Europe sale, could you just go over what the issues were there, and is there any other potential repercussions from this other than just, you know, the 8 million or 9 million that you had to kind of reduce -

JONATHAN WARD: We have come to complete and final settlement with NIC Max Nordic Capital so there are no other financial impacts that we can even think about at this time, so that seems to be closed in. Basically, the results that happened here is we were contacted by the buyer. They felt there were some issues in running the business. We launched our own independent investigation to understand the facts. We came to the conclusion, quite honestly, that the books that had been presented were not consistent with what we believed. We felt in good faith effort, our responsibility was to make an adjustment. We concluded that and resolved it. Part of that internal investigation, we looked into responsibility both in oversight and conduct. We have taken some actions particularly with two individuals inside the organization. I've got a basic zero tolerance on making sure that both conduct and accountability is full and appropriate within an organization, and we have taken those steps and are executing them with the company right now.

KEVIN MONROE: Ok. On Terminix business, backing out kind of the Sears impact, what's internal growth of the business and how has it been trending the past couple quarters?

STEVEN PRESTON: The overall growth was about half internal and half Sears for the full year. So that should give you sense of internal growth. Once the full year inclusion of Sears comes into the numbers, you then look at that base as being part of your internal growth. So that did have an impact on the internal growth portion of the fourth quarter.

KEVIN MONROE: And on the retention rate, I know you said the decline versus the third quarter was somewhat seasonal, but it seems to be trending down after a peak in the second quarter of 2002. Is that seasonal factors there or is there just - what's going on there?

JONATHAN WARD: As it relates to Terminix, we did not say it was seasonal. We said it was really two things. One, our ability to retain the Sears customers is not what we thought it would be. Quite honestly they didn't allow us quite as much use of their name as we would have anticipated during the sale, so the branding of Sears to Terminix, we lost some. The other thing we said was consumer confidence, not seasonality.

KEVIN MONROE: Ok.

JONATHAN WARD: So those are the two issues that I'd point you back to.

STEVEN PRESTON: The seasonality issue, Kevin, was on the TruGreen.

KEVIN MONROE: Ok. What was customer retention in American Home Shield?



STEVEN PRESTON: Customer retention was up a little over a percent to 53-1/2. Now, the American Home Shield business, if you look at people that have actually purchased that service for themselves either through a renewal or through direct sale, the retention rates are much higher. This is really a blend of people who've effectively inherited the warranty upon the purchase of a home, and a blend of those with who actually purchased for themselves.

KEVIN MONROE: Ok. Thank you.

OPERATOR: Our next question comes from the line of Jon Fox with Fennimore Asset Management. Please go ahead.

JON FOX, FENNIMORE ASSET MANAGEMENT: Hello, everyone. First of all, thank you for the expanded segment results. I appreciate it. Related to that, maybe Steve, could you talk about American Home Shield, the margin really increased last year. Give us a sense, what is kind of a normal run rate margin in that business going forward?

STEVEN PRESTON: Yeah, we do think that — 2002 was exceptionally strong for a number of reasons. Number one, the business did take some very clear actions to improve the cost structure. They've increased to some extent the deductible, we call it the trade call fee, when somebody comes out to the home, so it effectively reduces — I don't want to call them nuisance calls, but sort of low importance-type calls. We've continued to be very aggressive in managing our rates with the third parties that provide the services and continue to work to provide more volume to the largest partners that we have and those over whom we have the most leverage.

So there are some very strong factors in the managing of that cost structure that have taken place. The other thing we will say, and Jon mentioned it in his script, that the weather did provide a favorable benefit last year, so we did see a decline in the incident rate among the customer base. So that was clearly favorable. So we would expect potentially to see some give back in those margins in 2003, but most, I'd probably say our expectation at this point is probably 75 or 80% of the margin gain that we've seen here is expected to continue into 2003.

JON FOX: Ok. That's helpful. And the working capital is wonderful. What do you think for this year will happen on the working capital side?

STEVEN PRESTON: Working cap capital this year, we had a great year, and it really came all across the board. A big part of that was, you know, increased deferred revenue at TruGreen and American Home Shield, stronger working cap management throughout the business. ARS, even though we have had some challenges on the operating side did a great job in managing working capital. I don't think we're going to see the same level of improvement next year because it really was just an outstanding year there.

My assumption, and this is probably one of the most difficult things for us to project because there are kind of monthly fluctuations in this, my estimation would be next year you'd probably see, you know, something in the \$50 million range there, but that really is—it's very difficult for us to project at this time.

JON FOX: As a positive?

STEVEN PRESTON: As a positive.

JON FOX: Ok. That would be great.

STEVEN PRESTON: The thing I would point, to if you look at our balance sheet, you pull out our excess cash, this company is in a negative working capital position. So if we can continue to even maintain the working capital structure we have in place right now, it continues to generate positive working capital. Just by maintaining what it is today wouldn't generate \$50 million. It would have to come from continuing efforts in the business and continued growth in the businesses that generate deferred revenue, particularly like American Home Shield.

JON FOX: Ok. And is there any off balance sheet debt out on the securitization or anything?

STEVEN PRESTON: There's no off balance sheet debt on the securitization.

JON FOX: There's nothing outstanding?

STEVEN PRESTON: We haven't had anything outstanding since late 2001.

JON FOX: Thank you.

OPERATOR: Our next question comes from the line of Alex Paris with Barrington Research. Please go ahead.

ALEX PARIS, BARRINGTON RESEARCH: Hi, guys.

JONATHAN WARD: Morning, Alex.

ALEX PARIS: Couple questions and just a clarification, I guess. You mentioned, I think, Steve, about plans to expense stock options on a go-forward basis. What are you going to specifically do for 2003 and beyond at this point?

STEVEN PRESTON: We think 2003 is going to affect the P & L to the tune of about a half penny. Over the next five years it will probably be an incremental half cent each year. The way the accounting layers in is you only expense the portion that vests, so it's sort of fully incorporated by the end of five years if you've got a five-year vesting plan.

ALEX PARIS: Just a clarification with regard to share purchases. Would you target somewhere around the same level that you made in 2002, which would suggest 50 to \$60 million for the share repurchases in the coming year?

STEVEN PRESTON: Yes. That's what we've said. We'll also be putting in a little bit more capital out there. We would anticipate on the acquisition side and continue with the dividend. So that would allow us to sustain the balance sheet, but also, you know, return a lot of capital to the shareholders.

ALEX PARIS: What do you have on your repurchase authorization now?

STEVEN PRESTON: It's well over \$200 million. I don't have the exact number in my head.

ALEX PARIS: And did you repurchase any shares I guess since the end of 2002? Have you been in an extended quiet period? That's sort of my question.

STEVEN PRESTON: We have been in an extended quiet period, and we will continue that quiet period until we release first quarter earnings.

ALEX PARIS: Ok. Did you give an estimate of cap-ex for the coming year? You were 54 million last year.

STEVEN PRESTON: We didn't give an estimate. We think it will be roughly in line with this year.

ALEX PARIS: Great. Thanks very much.

OPERATOR: Our next question comes from the line of Steve Marnison with Alster Weiss Capital Management.

STEVE MARNISON, ALSTER WEISS CAPITAL MANAGEMENT: Good morning. You're talking about LandCare, and you talked about new sales growth up 23% so far this year, is that new sales or total growth? I just want to be clear.

JONATHAN WARD: That is new sales compared to the period of prior year, so what we do is there's two pieces of the business, both retention rate and new customers coming in, so you're trying to improve our retention rate, which we are doing right now, and we're highly confident we'll move that up at least two percentage points and optimistic that may be more, and under Bill Frame's leadership on the sales side, we've got a much more disciplined, aggressive and consistent both sales strategy and pricing strategy as we go out in the marketplace.

Historically, our sales efforts here have honestly been left to the local general manager, branch manager with the other sales forces as we overhauled our sales organization, we brought in weekly follow-up calls. Every salesperson submits both a prospect list and an account status list each week. It's all done on kind of a web-based system. We've just got much better discipline and the guys are now being measured on how active they are, being out there, how many quotes they're putting out, what's the percent of quotes won, what's the pricing on it, so we've just got for the first time a much more disciplined strategy, along with an emerging national account perspective which is leading to some very, very nice opportunities for some of the multi-property managers around the country.

STEVE MARNISON: Thank you.

OPERATOR: Ladies and gentlemen, if there are any additional questions, please press the 1 followed by the 4.

Our next question is a follow-up from the line of Jim Barrett with CL King & Associates. Please go ahead.

JIM BARRETT: Yes, Jon, could you tell us what the retention rate first of all is in LandCare currently?

JONATHAN WARD: We haven't prior disclosed that so I'd rather not put that out right now. I would say this, that,

you know, we've had other B to B business management services that you typically see 90% retention rates, plus we know a couple of our competitors' rate. We have a ways to get to that level, so there is opportunity to grow there and we will take that. We've been debating whether to give you a retention number on that one. We may make a decision on that as early as first quarter.

JIM BARRETT: I see. And then in the lawn care business, the revenues appear to be up 1%, the customer count was down 2. Does that indicate pricing was down a bit or is that a rounding error? What's the story there?

JONATHAN WARD: Customer counts were up 2%, pricing was down 1. Here's what happens. You start adding customers during the year, so if you remember, if we go back to the year before, our customer count was down 4%, so we didn't cross over to a positive customer count until sometime late second quarter of last year from the prior year. So the benefit of that, we get a little — we'll get that natural lift coming into this year. As we said, we started this year up significantly, in our mind significantly, business has been down three or four years in a row, you know, single digit type of accounting going this year and we're anticipating to build from that again. So the hard work we do in 2002 in improving retention rates, increasing your customer accounts, you really almost get no benefit from it in that calendar year, but it does give you a little bit of a favorable breeze as we come into 2003.

JIM BARRETT: I see. Thank you.

OPERATOR: Our next question is also a follow-up from the line of Chris Gutek with Morgan Stanley. Please go ahead.

CHRIS GUTEK: Thanks, Steve. Just wanted to clarify management's thinking regarding the dividends because when I saw the quote in the press release, it basically says while maintaining a sound dividend policy during the year, we may take advantage of additional opportunities to purchase stock. In your prepared remarks, you basically said you're committed to I believe maintaining the dividend but I'm curious what the thought is for expected growth of the dividend going forward.

STEVEN PRESTON: Right now, we've got a quarterly rate of about 10-1/2 cents, which would lead us to, if we continue at that rate, for 42 cents for the full year, and we really haven't announced an expectation to increase that on a quarterly basis. As I said, it would bring us up for the full year, but at this point, you know, there's no — there's nothing else to report on the dividend growth. Next year, obviously if we did want to report our 35th year in 2004, we would need to address the quarterly dividend at that time.

CHRIS GUTEK: And just to push a little bit further, so in other words there's no specific strategy as it relates to the pay out ratio for the dividend?

JONATHAN WARD: Chris, I would say that where we want to go with this is that our — we believe over the next several years that earnings will be increasing quicker than our dividend. You know, you've constantly got to be looking at your capital structure. It's got to be — dividend policy should always follow strategy. We believe as we're transitioning here, staying in — supporting our dividend policy as investors get better visibility to us as becoming a growth-oriented organization. Certainly the economy isn't helping us become a growth-oriented company, but we're pretty pleased with what we see going on right now. This is a tough economy out there. We see a lot of companies not even contemplating any revenue growth, and where we are right now on a very, very tough economy, we're still committed to profitable growth, getting customers, earning them. It's very tough to earn a customer right now. And we're still out there earning them one day at a time, one at a time, and feel for the next 12 to 24 months, our current dividend policy is appropriate to support us where we are and where the stock market in general is.

CHRIS GUTEK: Ok. Great. Thank you.

OPERATOR: Ladies and gentlemen, if there are any additional questions, please press 1, 4 at this time.

Our next question comes from the line of Jim Wilson with JMP Securities. Please go ahead.

JIM WILSON, JMP SECURITIES: Good morning. I was wondering, Jon, maybe if you could discuss as relates to American Home Shield your success rate. I know it's changed with driving the other services to those American Home Shield customers. How you think that might improve or roll out in the next year or so?

JONATHAN WARD: Yeah. We're talking about across elements broader than American Home Shield, you know, we will continue to say for the foreseeable future, the best brand equity we have is each individual brand. And the

majority of our efforts, we're doing a tremendous amount of work. Those of you that get to our investor day in June, I think you'll see some of it and we'll get it out to others in one on one's, but we've done a tremendous amount of basic consumer research over the last quarter. It's got some very interesting things about the current perception each one of our brands has, the value proposition and whether they're differentiated or not compared to their competitors.

When I talk about becoming a customer facing company, consumer orienting company, first we start with consumer satisfaction, now we've got the basic research, you see those SG&A numbers, that's part of this because we've invested a lot of money to understand what the consumer currently perceives about our brands and what they're really looking for in each one of our verticals. That's going to lead to a significant overhaul of our value propositioning to one of our brands. Our brands start basically with great brand awareness. Ok? Unparalleled brand awareness in each one of the verticals. But quite honestly, a somewhat undifferentiated value proposition. You take our brand strength, couple it with the value proposition and that's why we are highly confident we can move ahead in our ability to attract and retain customers. So that's number one.

As relates back to Home Shield, more and more what we're starting to see, and it's just the beginning of it, is individual micromarkets working on how do branch managers in the Bay area or in Tulsa or Florida get together and say, hey, let's reference, let's get our technicians talking about each one of our brands, so when I think about the cross sell and where it's going to be most effective, it's the skunk works with two branch managers in a given town can now compare customer satisfaction scores, each have a high degree of confidence they're doing well and meeting customers' expectations, and then say, ok, how can we start to work together and collaboratively locally here in order to bring together the brands.

Coupled with that is we'll start to put a tag on out there around TruGreen Terminix, all brands of linking them together as ServiceMaster companies. So in our literature, our trucks, our uniforms or invoices, it will start to say "TruGreen, a ServiceMaster Company." We're not going to be pouring hundreds of millions of dollars to building out an umbrella brand of ServiceMaster in advertising, it will just become part of who we are and once again, as we shape what we call the fully managed experience, we want it to be very consistent from brand to brand to brand so it becomes known as any time you call a ServiceMaster company, here's what you can expect from the home service or the business service.

JIM WILSON: Ok. Fair enough. Thanks.

OPERATOR: Gentlemen, I am showing no further questions at this time. I'll now turn the conference call back to you to continue with your presentation or any closing remarks.

STEVEN PRESTON: We thank you for your time and attention. We know it's been a long wait for the fourth quarter. We feel pleased about our progress. As I said earlier, it is a very, very tough economy out there and it is guerilla warfare, you're measuring success an inch at a time, a customer at a time. We're dedicated to that, but we're also working on the things that we think will lead to breakthrough improvements both in our ability to grow revenue and work on our margins.

So we thank you, we appreciate it. We'll be putting out a scheduled press release date for our first quarter sometime in late April, but we're only probably four or five weeks away from that at most, and Bruce, Steve and myself will be available for any follow-up calls throughout today and tomorrow. Thank you so much.

OPERATOR: Ladies and gentlemen, that does conclude your conference call for today. We thank you for your participation and ask that you please disconnect your lines.

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