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Filing date: **12/16/2004**

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

Proceeding	91125743
Party	Plaintiff THE SERVICEMASTER COMPANY ,
Correspondence Address	P. JAY HINES OBLON, SPIVAK, MCCLELLAND 1940 DUKE STREET ALEXANDRIA, VA 22314
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	P. Jay Hines
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Signature	/P. Jay Hines PJH/ASC/
Date	12/16/2004
Attachments	mottoamend.PDF (34 pages)

The decision to seek leave to amend the pleadings stems from the fundamental change in the law of dilution pursuant to the Supreme Court's decision in *Moseley v. V. Secret Catalog, Inc.*, 65 USPQ2d 1801, 537 U.S. 418 (2003), decided since filing the instant proceedings.

BACKGROUND

Opposer filed Notice of Opposition No. 91/152,104 on June 17, 2002, objecting to the registration of SERVICEMARK, U.S. Appln. Serial No. 76/166,568. A second Notice of Opposition assigned Opposition No. 91/125,743, was filed against SERVICEMARK HEATING COOLING PLUMBING (& Design), U.S. Appln. Serial No. 76/237,328 on July 9, 2002. Opposer then filed Cancellation No. 92/041,147 seeking to cancel Registration No. 2,591,190 for SERVICEMARK HEATING COOLING PLUMBING (& Design), on September 16, 2002.

In the three proceedings, Opposer objected to Applicant/Respondent UGI HVAC Enterprises, Inc.'s registration of SERVICEMARK and SERVICEMARK HEATING COOLING PLUMBING (& Design) ("Applicant's Marks") in connection with sales, repair and maintenance of HVAC and plumbing equipment, on the basis of Opposer's longstanding registration of and common law rights in the SERVICEMASTER marks of U.S. Registration Nos. 1,220,269 and 1,272,228 ("the SERVICEMASTER marks"), for identical and overlapping goods and services. Opposition Nos. 91/125,743 and 91/152,104 were later consolidated together with Cancellation No. 92/041,147, by Board Order of July 8, 2003.

Opposer originally asserted that the registration of Applicant's Marks would (1) be likely to cause confusion among consumers as to the origin and sponsorship of Applicant's goods and services marketed under Applicant's Marks, and (2) dilute the distinctive quality of Opposer's famous SERVICEMASTER mark. The Supreme Court's decision in *Moseley v. V. Secret Catalog, Inc.*, 65 USPQ2d 1801, 537 U.S. 418 (2003), issued on March 4, 2003, settled the legal

question of the proper standard for relief from one based on a showing of likelihood of dilution in favor of one requiring proof of actual dilution. In light of this change in the law and the resultant unsettled nature of dilution law in general, including in *inter partes* proceedings before the Board, Opposer now seeks leave to file an amended pleading in each of the three proceedings that eliminates the dilution claim in each instance. Opposer will proceed solely on the legal theory of likelihood of confusion under Section 2(d) of the Lanham Act, including the factor of strength of the prior mark. *In re E.I. DuPont DeNemours*, 177 USPQ 563, 567 (C.C.P.A. 1973).

ARGUMENT

A party seeking to amend a pleading not as a matter of course may do so by leave of the Board, and leave must be freely given when justice so requires. TBMP §507.01 and Trademark Rule 2.107. The Board has liberally granted a party leave to amend pleadings at any stage of a proceeding when justice so requires, unless the proposed amendment would violate settled law or be prejudicial to the rights of the non-moving party. *See, e.g., Polaris Industries v. DC Comics*, 59 USPQ2d 1789 (TTAB 2001) and *Space Base Inc. v. Staid's Corp.*, 17 USPQ2d 1216, 1217 n.1. (TTAB 1990).

Opposer seeks to delete one of two independent legal theories based on intervening changes in applicable law, leaving a single basis for its claims, namely, the likelihood of confusion under Section 2(d) of the Lanham Act, to support the Oppositions and Petition for Cancellation. An amendment to delete one of two legal bases for Opposer's claims cannot prejudice Applicant because Applicant was on notice of Opposer's likelihood of confusion claims since the time the original pleadings were filed.

The consolidated proceedings were suspended by Board Order of November 8, 2004 pending the resolution of Applicant/Respondent's Motion to Compel Discovery Responses filed

November 3, 2004. Opposer's Motion for Leave to File Amended Pleadings is germane to the pending Motion to Compel under TBMP § 523.01 and Trademark Rule 2.120(e)(2). Applicant's Motion to Compel seeks the discovery of documents that Applicant claims are required to refute Opposer's claims of fame asserted in the Oppositions and Petition for Cancellation. The amended pleadings delete Opposer's dilution claims, rendering this portion of Applicant's Motion to Compel Discovery moot.

CONCLUSION

For the forgoing reasons, Opposer respectfully requests that the Board grant its Motion for Leave to File Amended Pleadings, namely Opposer's Amended Notice of Opposition in Opposition No. 91/152,104 (attached hereto as Exhibit A), Opposer's Amended Notice of Opposition in Opposition No. 91/125,743 (attached hereto as Exhibit B), and Opposer's Amended Petition for Cancellation in Cancellation No. 92/041,147 (attached hereto as Exhibit C).

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
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e-mail: tmdocket@oblon.com

Date: December 16, 2004
PJH/ASC/kae

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER/PETITIONER'S MOTION FOR LEAVE TO FILE AMENDED NOTICES OF OPPOSITION AND AMENDED PETITION FOR CANCELLATION** was served on counsel for Applicant, this 16th day of December, 2004, by sending same via First Class mail, postage prepaid, to:

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

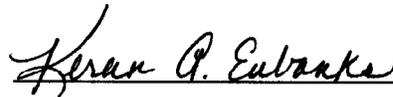


EXHIBIT A

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:

<u>MARK</u>	<u>REGISTRATION NO.</u>	<u>ISSUED</u>
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 incontestable 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 incontestable 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 plumbing, HVAC, electrical, drain rooting and cleaning services and sales 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. Opposer, 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.

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.
1940 Duke Street
Alexandria, Virginia 22314

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

Date: December 16, 2004

PJH/ASC/mjo {I:\ATTY\PJH\SERVICEMASTER\3165-224797US-MOT-AMD.DOC}

EXHIBIT 1

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

EXHIBIT 2

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 MANAGE-
MENT SERVICES PROVIDED TO INSTITU-
TIONAL 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 B

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:

<u>MARK</u>	<u>REGISTRATION NO.</u>	<u>ISSUED</u>
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 incontestable 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 incontestable 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 plumbing, HVAC, electrical, drain rooting and cleaning services and sales 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.

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.
1940 Duke Street
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Respectfully submitted,

THE SERVICEMASTER COMPANY

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Amy Sullivan Cahill
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1940 Duke Street
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(703) 413-3000
fax (703) 413-2220

Date: December 16, 2004

PJH/ASC/mjo {I:\ATTY\PJH\SERVICEMASTER\3165-224797US-NOP.DOC}

EXHIBIT 1

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

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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

EXHIBIT 2

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 MANAGE-
MENT SERVICES PROVIDED TO INSTITU-
TIONAL 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 C

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 incontestable 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 incontestable 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 plumbing, HVAC, electrical, drain rooting and cleaning services and sales 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 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, 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. 76/237,455, and was published for Opposition in the Official Gazette of April 16, 2002 at Page TM 202 in connection with "retail services featuring heating, ventilation, cooling and appliances, and plumbing and related equipment," in International Class 35; and "installation, repair and maintenance 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. 2,591,290, 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.

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

Respectfully submitted,

THE SERVICEMASTER COMPANY

By:



P. Jay Hines
Amy Sullivan Cahill
Oblon, Spivak, McClelland,
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Date: December 16, 2004

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EXHIBIT 1

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

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Servicemaster Industries Inc. (Delaware corporation)
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First use Dec. 1978; in commerce Dec. 1978.

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ELECTRICAL, PLUMBING, HEATING AND
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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

EXHIBIT 2

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.
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For: ENERGY CONSERVATION MANAGE-
MENT SERVICES PROVIDED TO INSTITU-
TIONAL 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