

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

In the Matter of Application Serial No.: 75/723,671  
Published on March 19, 2002

RLH Industries, Inc. )  
                                  Opposer, )  
                                  ) )  
                                  v. )  
                                  ) )  
Trans Continental Equipment Ltd. )  
                                  Applicant. )  
\_\_\_\_\_ )

Opposition No.



03-28-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #70

Box TTAB  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202

**NOTICE OF OPPOSITION**

Opposer, RLH Industries, Inc., a Michigan corporation, with its principal place of business at 1584 Dickerson Road, Gaylord, Michigan 49735 ("Opposer"), believes it will be damaged by registration of the mark CHIMNEYFLEXible Liners, published in the Official Gazette on March 19, 2002 (TM244), for "ducts, hoses, tubing, pipes, collars and coils for heating, ventilation, and air conditioning, all entirely or predominantly of metal processes; parts for the foregoing" (International Classes 2, 12, 13, 14, 23, 25 and 50), and hereby opposes same. As grounds for the opposition, it is alleged that:

1. Opposer is now, and its predecessors in interest, have been engaged in the manufacture, distribution, and sale in interstate commerce of a wide variety of metal building materials including flexible metal chimney liners.
2. For many years, and long prior to applicant's filing date, Opposer has used

and is using the mark CHIM-FLEX in interstate commerce throughout the United States in connection with the sale of said items.

3. Opposer is the owner of Registration No. 1,730,636 for the CHIM-FLEX trademark.

The aforesaid registration is valid and subsisting, unrevoked, and uncanceled, and Opposer is the owner of that registration and the CHIM-FLEX mark and all of the business and goodwill represented thereby. Registration No. 1,730,636 has become incontestable pursuant to 15 U.S.C. §1065.

4. Ever since the adoption and use of the CHIM-FLEX trademark, Opposer has widely and extensively advertised and sold goods bearing said CHIM-FLEX trademark. As a consequence of same, the consuming public and trade have come to recognize and do recognize the CHIM-FLEX trademark as being used by Opposer, and to associate and identify said mark and name with Opposer, and Opposer derives substantial goodwill and value from the aforesaid identification by the consuming public and trade.

5. By the application herein opposed, Applicant seeks to register the mark CHIMNEYFLEXible Liners for “ducts, hoses, tubing, pipes, collars and coils for heating, ventilation, and air conditioning, all entirely or predominantly of metal processes; parts for the foregoing” (International Classes 2, 12, 13, 14, 23, 25 and 50). The goods identified in Applicant’s application are identical or closely related to Opposer’s products which bear the CHIM-FLEX trademark and which is covered by Opposer’s federal registration for said mark.

6. The mark CHIMNEYFLEXible Liners is confusingly similar to Opposer’s CHIM-FLEX trademark.

7. Applicant's mark opposed herein is likely, when applied to Applicant's goods, to cause confusion and mistake and to deceive, with consequent injury to Opposer, the consuming public and the trade, particularly in the particular form used by Applicant.

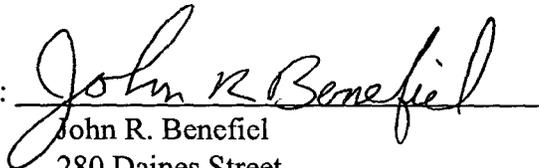
8. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered, and will give color and exclusive right to Applicant in violation and derogation of prior and superior rights of opposer.

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's mark and prays that it be refused registration.

RLH Industries, Inc.

Date: March 26, 2002

By:



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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8(a)**

It is hereby certified that this correspondence, along with any items referred to as being attached or enclosed, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box TTAB, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on March 26, 2002.

By:

