

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

RLH Industries, Inc.,

Opposer,

vs.

Trans Continental Equipment Ltd.,

Applicant.

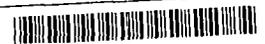
Opposition No. 91151964

Serial No. 75/723671

Mark:

CHIMNEY FLEXIBLE LINERS

Attorney's Reference: 32071-



02-20-2003

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #77

DECLARATION OF DALTON B. BARNOFF

I, Dalton B. Barnoff, state and declare:

1. I am the President of Trans Continental Equipment, Ltd. and I have personal knowledge of the facts set forth below and if called upon could competently testify thereto.
2. I submit this declaration in support of Trans Continental Equipment, Ltd.'s Response to Opposer's Motion for Summary Judgment.
3. I am responsible for the day to day management and direction of the company.
4. I have been in the business of manufacturing and selling chimney products for over thirty (30) years.
5. Trans Continental Equipment, Ltd., filed an intent-to-use application to register the mark CHIMNEY FLEXIBLE LINERS and Design on June 4, 1999, Serial No. 75/723671, claiming priority on its corresponding Canadian application No. 1013353 filed April 27, 1999.
6. The mark as depicted in Serial No. 75/723671 was published for opposition in the *Official Gazette* on March 19, 2002 covering "ducts hoses, tubing pipes, collars and coils for heating, ventilation and air conditioning, all entirely or predominantly of metal processes; parts

for the foregoing" and disclaiming the terms CHIMNEYFLEXIBLE LINERS apart from the mark as shown.

7. The Applicant, Trans Continental Equipment, Ltd., is in the business of manufacturing and selling chimney products including flexible chimney liners and parts therefor.

8. The suggested retail price of applicant's products are approximately \$350.00.

9. Applicant's products are either sold directly to professional installers or sold in bulk to wholesalers and distributors who in turn re-sell the products to professional installers.

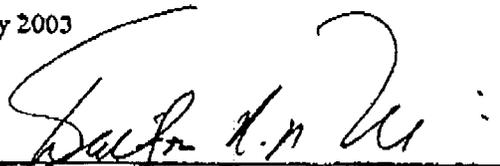
10. Because Applicant's products are installed by professional installers, the owners of the homes in which Applicant's products are installed are generally not aware of the trademarks of Applicant's products.

11. The general public does not typically purchase applicant's products directly because installation of applicant's products by a non-licensed installer will void warranties.

12. In view of the manner in which Applicant's products are sold and distributed, I do not believe that there would be a likelihood of confusion between Applicant's products sold under the CHIMNEYFLEXIBLE LINERS and Design mark, and Opposer's products sold under the CHIM-FLEX mark.

I declare under penalty of perjury under the laws of the United States and the State of Virginia that the foregoing is true and correct.

Done this 14th day of February 2003



Dalton B. Barnoff
President
Trans Continental Equipment Ltd

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CERTIFICATE OF SERVICE

The undersigned, attorney for Applicant, hereby certifies that she served, by first class mail, postage prepaid, a copy of the foregoing Supplement to Applicant's Response to Opposer's Motion for Summary Judgment and Memorandum in Support of Applicant's Response to Opposer's Motion for Summary Judgment upon John Benefiel, 280 Daines Street, Suite 100B, Birmingham, MI 48009, this 20th day of February, 2003.



Jacqueline Levasseur Patt