

TTAB

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



03-03-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

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

Opposition No. 91151964

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

**OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Applicant asserts that since no details of the instances of actual confusion were set forth in Robert Huta's Declaration, it cannot pursue discovery as to the alleged instances, and that this factor should be given no weight by the Board.

Opposer submits herewith a copy of an excerpt from its Response to Applicant's Interrogatories, served on Applicants attorneys on November 12, 2002. Specifically, the Response to Interrogatory No. 20, in which Opposer provided specific details of instances of confusion.

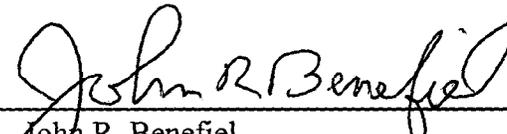
The discovery period is now over, but Applicant had ample opportunity to pursue further discovery as to the instances noted in that response but did not choose to pursue the same.

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Thus, Opposer's claim of instances of actual confusion stands as undisputed, and Applicant has not made any showing of a disputed factual issue as to this factor.

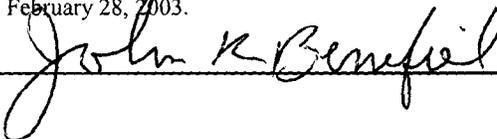
RLH Industries, Inc.

Date: February 28, 2003

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 February 28, 2003.

By: 

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

RLH Industries, Inc. ("Opposer"), by its counsel, John R. Benefiel, hereby submits its objections to Trans Continental Equipment Ltd. ("Applicant") First Set of Interrogatories to Opposer.

General Objections

1. Opposer objects to each interrogatory to the extent that it seeks information protected from discovery by the attorney-client privilege, work product doctrine, or other applicable privilege.
2. Opposer objects to each definition and interrogatory contained in Applicant's First Set of Interrogatories that seeks to impose on Opposer any obligations or

Interrogatory No. 18

Identify and explain all types of advertising and all types of media used to advertise and promote Opposer's products in connection with which Opposer's Mark is used.

Response to Interrogatory No. 18

Trade magazines, promotional mailings, trade show displays.

Interrogatory No. 19

Identify and describe all advertisements or promotional materials dealing with the goods covered by Opposer's Mark as described in the Notice of Opposition.

Response to Interrogatory No. 19

Opposer objects to Interrogatory No. 19 as unduly burdensome and irrelevant.

Representative samples will be produced.

Interrogatory No. 20

Describe in detail any evidence of confusion, mistake, and/or deception of actual or potential customers, suppliers or other persons as to the source of Applicant's goods and the goods and/or services of Opposer.

Response to Interrogatory No. 20

Opposer is aware of numerous instances of confusion. Details are only available for some of these:

1. Mr. Tim Flemming of Best Fire Inc. stopped by Opposer's booth at the 2001 Hearth Products Association trade show in Salt Lake City March 29, 2001. As he walked

toward the booth he looked up at the logo which prominently displays the CHIM-FLEX trademark. He immediately stated that he buys CHIM-FLEX products. Mr. Robert Huta asked him his company name and upon being told Mr. Huta could not identify it. Mr. Huta asked him where he was getting his stainless steel liners. Mr. Flemming stated that he was buying chimney liners from Summit Wholesale. Mr. Huta told him that Opposer does not sell to Summit Wholesale and that he couldn't be buying out liners from them. He was still sure that it was our product because it says "CHIMNEYFLEX" right on the box. It wasn't until Mr. Huta informed him of Trans Continental Equipment's use of the terms CHIMNEYFLEX and CHIMNEYFLEXible Liners that he understood he was getting a different product manufactured by a different company than what he was looking at in Opposer's booth. This gentleman had clearly been confused by the terms "CHIMNEYFLEX" and "CHIMNEYFLEXible" as to who's product he was buying and installing.

2. Opposer has had calls from retailers and chimney sweeps where they had seen a promotion or set of buying terms shown in Trans Continental Equipment's advertising and assumed it was Opposer who was offering that promotion or particular set of buying terms. Opposer also has had cases where fireplace retailers and chimney sweeps believed Opposer's advertising was an extension of their advertising and vice versa. This was particularly a problem when by an accident a layout of Opposer's advertisement ran on the backside of one of Applicant's advertisements. A gentleman called Opposer and simply thought he was looking at a two page advertisement for the same company selling the same products.

3. At the 2002 HPBA trade show a sales representative from West End Brick N' Fire entered Opposer's booth, began handling samples of our product and informed Opposer's

representative that he was selling CHIM-FLEX products. On information and belief, was and still is a Trans Continental Equipment distributor.

4. Oil Heating: Journal of Indoor Comfort Marketing was contacted by Opposer to advertise in this publication. Leonard Butler, the magazine contact, stated that he was excited Opposer had called since he had been in Opposer's trade show booth the previous year at the NAOHSM show. Opposer had to date, never exhibited at the NAOHSM show. After some discussion, he realized the booth he had been in was Trans Continental Equipment's.

5. Ms. Judy Garber was contacted by Opposer regarding booth space for the NAOHSM trade show. She was under the impression Opposer had already been exhibiting at the show and had a booth chosen.

Interrogatory No. 21

Describe any complaints or comments Opposer has ever received regarding the quality of any of Applicant's goods and/or services.

Response to Interrogatory No. 21

No complaints concerning the quality of Applicant's goods have been directed to Opposer.

Interrogatory No. 22

Describe any complaints or comments Opposer has ever received regarding the quality of any of Opposer's goods and/or services.

