

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. 152,104

Mark: SERVICEMARK

Serial No. 76/166,568



10-25-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #70

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

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

**Count I - Confusion**

Applicant, UGI HVAC Enterprises, Inc., through counsel, hereby responds to the Notice of Opposition of Opposer, The ServiceMaster Company, as follows:

1. On information and belief, Opposer's averments as to its state of corporation and principle place of business are admitted.
2. Denied. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 2 and, accordingly, the averments are denied.
3. Denied. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 3 and, accordingly, the averments are denied.
4. Admitted in part and denied in part. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 4

regarding ownership and status of the registrations listed in Paragraph 4 of the Notice of Opposition and, accordingly, the averments are denied. It is admitted that Opposer has identified purported trademark registrations, but it is denied that Opposer has accurately quoted the services therein. By way of further response, the averments relating to the validity and incontestability of the purported trademark registrations and the corresponding common law rights afforded by the alleged use therein are denied. Applicant admits that Opposer's Exhibits 1 and 2 appear to be copies of registration Nos. 1,220,269 and 1,272,228.

5. Denied. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 5 and, accordingly, the averments are denied. By way of further response, it is denied that use of Opposer's mark for the services named in Paragraph 5 of the Notice of Opposition is a natural extension of Opposer's use of its mark in connection with the registrations identified.

6. Denied. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 6 and, accordingly, the averments are denied.

7. Admitted.

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

9. Denied. Upon information and belief, it is denied that 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. Admitted in part and denied in part. It is admitted that opposer purports to challenge the bona fides of Applicant's intent-to-use and leaves the Applicant to its proofs with regard to same. It is denied that Applicant's intent-to-use is not apparent from materials of record in the subject application.

11. Denied. It is denied that Opposer's customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's services marked under Applicant's mark. It is further denied that Opposer's customers, and the public in general, are likely to be misled into believing that Applicant's 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**

12. Denied. It is specifically denied that Opposer's mark has achieved the status of a famous mark. The balance of the averments in Paragraph 12 are also denied.

13. Denied. It is specifically denied that Opposer's mark has achieved the status of a famous mark in connection with consumer services including heating, ventilating and air conditioning (HVAC) and plumbing services. Thus, the balance of the averments in Paragraph 13 are also denied.

14. Denied.

15. Denied.

16. Denied.

**ADDITIONAL DEFENSES**

17. There is no likelihood of confusion, mistake or deception between the marks cited by Opposer in its Notice, because, *inter alia*, Applicant's services and those of

Opposer are not likely to be sold to the same customers or to travel through the same channels of trade. Applicant's services consist of "distributorship featuring heating, ventilation, cooling and appliances, and plumbing and related equipment;" and "installation, repair, and maintenance of heating, ventilation and cooling equipment and appliances; installation, repair, and maintenance of plumbing and related equipment." These services are rendered in the heating, cooling, and plumbing industry as Applicant is a provider for industrial, commercial, governmental and residential customers. Upon information and belief, opposer's services exist primarily in the field of home improvement, where such services are used by homeowners to cosmetically enhance, in particular with services such as carpet cleaning and lawn care. Such services do not overlap.

18. There is no likelihood of confusion, mistake or deception between the marks cited by Opposer in its Notice, because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded marks of Opposer. The only commonality between Applicant's mark and Opposer's mark is the shared term SERVICE. For any service industry, the term SERVICE by itself is quasi-descriptive of what the mark is used for – to provide some sort of services. The use of the common term SERVICE certainly does not suggest that the goods originate from the same source.

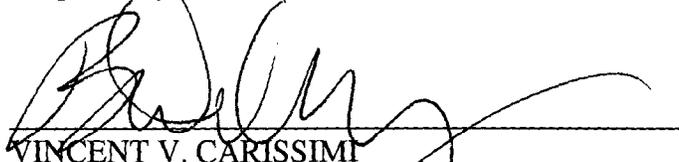
19. There is no likelihood of confusion, mistake or deception between the marks cited by Opposer in its Notice, because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded marks of Opposer. The marks cited by Opposer in its Notice do not share a commonality of appearance, sound, connotation or commercial impression with Applicant's marks.

20. Opposer's **SERVICEMASTER** mark cannot be diluted because it has not achieved the requisite degree of distinctiveness and strength beyond that needed to serve as a trademark, and thus has not achieved the status of a famous mark.

21. All the factors set forth in the foregoing additional defenses demonstrate that there is no likelihood of confusion or potential for confusion or dilution as between Applicant's and Opposer's respective marks.

WHEREFORE, Applicant demands that the Notice of Opposition be dismissed and that judgment be entered in Applicant's favor and against Opposer, together with the award to Applicant of such other and further relief as the Board may deem appropriate.

Respectfully submitted,



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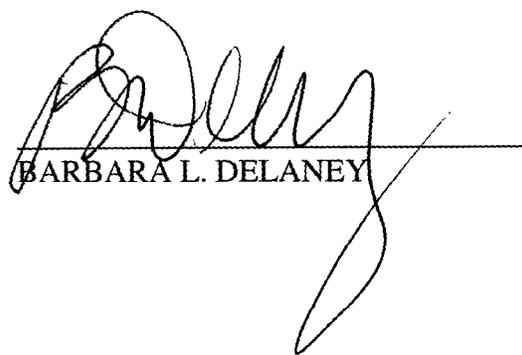
Dated: October 25, 2002

Attorneys for Applicant  
UGI HVAC Enterprises, Inc.

**CERTIFICATE OF SERVICE**

I certify that on October 25, 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. **EL096287121US**, postage prepaid, upon the following:

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October 25, 2002



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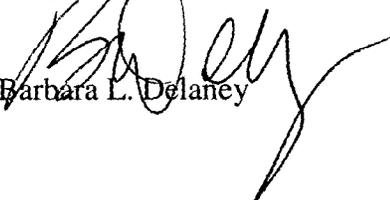
Commissioner for Trademarks  
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**Re: Opposition by The ServiceMaster Company v.**  
**UGI HVAC Enterprises, Inc.**  
**Mark: "SERVICEMARK" (Serial No. 76/166,568)**  
**Opposition No. 152,104**  
**Applicant's Answer to Notice of Opposition**

Madam:

I enclose herewith Applicant, UGI HVAC Enterprise, Inc.'s Answer to Notice of Opposition with respect to the above-referenced proceeding. I have also enclosed a postcard for the mailroom to acknowledge receipt of same.

Respectfully,

  
Barbara L. Delaney

02 NOV 2002 AM 9:01  
TRADEMARK TRIAL AND APPEALS DIVISION

Enclosures

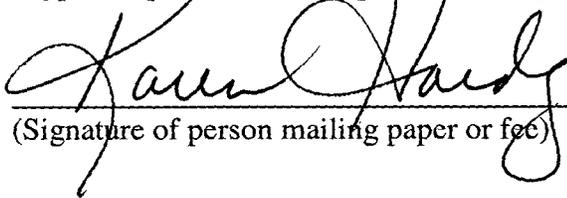
**MARK: SERVICEMARK**  
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**(Opposition No. 152,104)**  
**Applicant's Answer to Notice of Opposition**

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Karen Hardy

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