

CERTIFICATE OF MAILING

I hereby certify that this paper or fee is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3515.

Amanda L. Amato
Amanda L. Amato

3/4/03
Date

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

In the matter of Application Serial No. 75/869,343
Published in the Official Gazette on August 27, 2002

American Flange & Manufacturing Co., Inc.,	:	Opposition No. 91154680
	:	
Opposer,	:	
	:	
v.	:	
	:	
Rieke Corporation,	:	APPLICANT'S ANSWER TO
	:	OPPOSER'S NOTICE OF
Applicant.	:	OPPOSITION

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TRADEMARK TRIAL AND APPEAL BOARD

ANSWER

For its Answer to the Notice of Opposition (the "Notice") filed by American Flange & Manufacturing Co., Inc. ("Opposer"), Rieke Corporation ("Applicant"), by and through counsel, states as follows:

Applicant denies that Opposer will be damaged by the registration of Application Serial No. 75-869,343 (the "Application").

1. Applicant admits that it is in the business of manufacturing and marketing closures for containers, including flanges and plug assemblies for use with steel drums. Applicant further admits that the federal purchasing specification No. PPP-P-420B expired in

1994, and that a copy of a document bearing the marking "PPP-P-420B" is attached as Exhibit A to the Notice. Applicant admits that a copy of a document entitled "Draft International Standard" is attached as Exhibit B to the Notice. Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations with respect to Opposer's business in Paragraph 1 of the Notice of Opposition, and therefore denies the same. Applicant denies all other allegations in Paragraph 1 of the Notice of Opposition.

2. Applicant admits that a document that appears to bear a trademark, "Tri-Sure"®, is attached as Exhibit C to the Notice. Applicant denies all other allegations in Paragraph 2 of the Notice of Opposition. Applicant denies all allegations in the Notice relying on any reference to a Type I, II, or III closure since the only basis for such classification alleged by Opposer is the federal purchasing specification No. PPP-P-420B, which expired in 1994

3. Applicant denies all allegations in Paragraph 3 of the Notice of Opposition. Applicant denies all allegations relying on any reference to a Type I, II, or III closure since the only basis for such classification alleged by Opposer is the federal purchasing specification No. PPP-P-420B, which expired in 1994. Applicant denies that any present specification for drum closures, draft or otherwise, requires a "hexagonally-shaped plug" or a "butterfly-shaped grip," including the document attached as Exhibit B to the Notice.

4. Applicant admits that a market segment in the steel drum industry is for recycled, or reconditioned, drums; that such drums are rendered fit for re-use by subjecting them to heat to burn away residues of previous contents, such as chemicals; and that this burning operation may also destroy the flange gaskets used in some closures. Applicant denies all other allegations in Paragraph 4 of the Notice of Opposition. Applicant denies all allegations relying on any reference to a Type I, II, or III closure since the only basis for such classification alleged by

Opposer is the federal purchasing specification No. PPP-P-420B, which expired in 1994. Applicant denies that the drum reconditioning process has any relevance to this trademark application or the appearance of a plug for drums.

5. Applicant admits that in the Application, Applicant is seeking a registration for a configuration of a drum closure incorporating a distinctively shaped "butterfly" grip situated in the center of a closure, and a hexagonally-shaped plug head. Applicant denies all other allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant admits that what purports to be copies of Trademark Status Reports from the "TARR Database System" of the U.S. Patent and Trademark Office are attached as Exhibit D to the Notice. Applicant further admits that Exhibit D indicates that Opposer owned two registrations for drum closure configurations and that one such registration appears to have expired in 1985 and the other appears to have been cancelled in approximately January of 2001. Applicant denies all allegations relying on any reference to a Type I, II, or II closure since the only basis for such classification alleged by Opposer is the federal purchasing specification No. PPP-P-420B, which expired in 1994.

7. Applicant admits that a company called Allen-Stevens sold hexagonally-shaped drum closures in the United States about 20 years ago, but states that, upon information and belief, Allen-Stevens stopped selling hexagonally-shaped drum closures in 1982. Applicant admits that a company called Contech, Ltd. marketed and sold hexagonally-shaped drum closures, but states that, upon information and belief, Contech stopped selling hexagonally-shaped drum closures in or about 1998. Applicant is without knowledge and information sufficient to form a belief as to the truth of the other allegations of Paragraph 7 and therefore denies the same. Applicant denies all allegations relying on any reference to a TYPE I,

II, or II closure since the only basis for such classification alleged by Opposer is the federal purchasing specification No. PPP-P-420B, which expired in 1994.

8. Applicant admits that its attorney responded to an Office Action dated May 11, 2000. Applicant denies that Opposer's quote from and characterizations of the November 10, 2000, response are accurate. Applicant admits that a copy of what purports to be U.S. Patent No. 1,838,285 is attached as Exhibit F to the Notice. Applicant admits that its agent disclosed U.S. Patent No. 1,838,285 and other patents to the Examiner of the Application. Applicant denies all other allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant admits that its attorney responded to an Office Action dated May 11, 2000. Applicant denies that Opposer's quote from and characterizations of the November 10, 2000, response are accurate. Applicant denies that federal purchasing specification no. PPP-P-420B presently exists and further denies that it existed on May 22, 2000. Applicant further denies that the draft ISO specification upon which Opposer relies requires a plug with a hexagonal head and a butterfly grip and admits that this draft ISO specification clearly states in a caption above a drawing of drum closures "[s]teel plugs and elastomer plug washers may deviate from the figures shown hereafter." (See Exhibit B to the Notice of Opposition, Draft International Standards Organization Specification ISO/DIS 15750-3, at Annex B.3.) Applicant denies all other allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant admits that its attorney responded to an Office Action dated May 11, 2000. Applicant denies that Opposer's quote from and characterizations of the November 10, 2000, response are accurate. Applicant denies all other allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant admits that its attorney responded to an Office Action dated May 11, 2000. Applicant denies that Opposer's quote from and characterizations of the November 10, 2000, response are accurate. Applicant admits that there is a functional advantage in having a flange seal directly to the drum body without the use of any gaskets with respect to reconditioning of drums and that Rieke's flange system is superior to Tri-Sure's system for at least this reason. Applicant denies that this functional aspect of a drum flange set forth in the preceding sentence has any relevance to the appearance of a plug, the surface of a plug or this trademark application. Applicant denies all other allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant admits that its attorney responded to an Office Action dated May 11, 2000. Applicant denies that Opposer's quote from and characterizations of the November 10, 2000, response are accurate. Applicant denies all other allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant admits that on April 15, 2002, its attorney responded to a Final Office Action dated October 15, 2001, and to a supplemental Office Action dated April 2, 2002, and that six affidavits from employees of customers of Applicant were submitted with the response. Applicant further admits that each affidavit states, based on each affiant's knowledge, that "[a]t least for the past 10 years, Rieke has been the only company selling closures [that are hexagonal in shape and have a distinctive dog-bone or butterfly shaped handle at the center of the closure]." Applicant denies all other allegations in Paragraph 13 of the Notice of Opposition.

14. Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations with respect to Opposer's "wishes" referred to in Paragraph 14 of the

Notice of Opposition, and therefore denies the same. Applicant denies all other allegations in Paragraph 14 of the Notice of Opposition.

15. Applicant denies all allegations in Paragraph 15 of the notice of Opposition.

16. With respect to Paragraph 16 in the Notice of Opposition, Applicant restates its denials and admissions set forth in numbered paragraphs 1 through 15 above.

17. Applicant denies that any specifications for drum closure configurations presently exist. Applicant denies that the flange sealing system for a drum has any relevance to the appearance of any drum plugs or this trademark action. Applicant admits that a hexagonally-shaped plug in combination with a butterfly shaped grip is only one among several other plug configurations or "looks" that can accommodate a wrench. Applicant denies all other allegations in Paragraph 17 of the Notice of Opposition.

18. Applicant denies all allegations in Paragraph 18 of the Notice of Opposition.

19. With respect to Paragraph 19 in the Notice of Opposition, Applicant restates its denials and admissions set forth in numbered paragraphs 1 through 18 above.

20. Applicant denies all allegations in Paragraph 20 of the Notice of Opposition.

21. With respect to Paragraph 21 in the Notice of Opposition, Applicant restates its denials and admissions as set forth in numbered paragraphs 1 through 20 above.

22. Applicant denies all allegations in Paragraph 22 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Applicant's Closure Configuration mark is non-functional and is entitled to registration on the Principal Register.

2. Applicant's Closure Configuration mark has acquired distinctiveness and is entitled to registration on the Principal Register.

3. Applicant's Closure Configuration mark has acquired secondary meaning and is entitled to registration on the Principal Register.
4. Any statements of Applicant's attorney were accurate and true, to the best of his knowledge, and were made in good faith.
5. Any statements made by affiants in Affidavits submitted by Applicant's attorney were accurate and true, to the best of each affiant's knowledge, and were made in good faith.
6. Opposer has failed to state a claim upon which relief may be granted.
7. The relief Opposer seeks is barred by the doctrine of unclean hands and estoppel.

WHEREFORE, Applicant prays that Application Serial No. 75/869,942 be accepted and that registration of Closure Configuration as a trademark be granted to Applicant.

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

This will certify that, on March 4, 2003, a copy of APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION was served via first class mail to:

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TTAB



03-06-2003

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

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CERTIFICATE OF MAILING

I hereby certify that this paper or fee is being deposited with the United States Postal Service with sufficient postage as first class mail in an Envelope addressed to: Box TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Amanda L. Amato

3/4/03

Date

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March 4, 2003

BOX TTAB NO FEE
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2900 Crystal Drive
Arlington, VA 22202-3513

**Re: Trademark Opposition No. 91154680
American Flange & Manufacturing Co., Inc. v. Rieke Corporation**

Dear Madam:

Enclosed are the following:

- (1) Applicant's Answer to Opposer's Notice of Opposition (original and two copies); and
- (2) Postcard receipt

Please accept the Applicant's Answer to Opposer's Notice of Opposition and date-stamp and return the enclosed postcard as acknowledgment of receipt of this filing. We believe that there is no fee for this filing. However, if that is incorrect, please charge any required fees to our Deposit Account No. 130265.

Very truly yours,

James A. Dimitrijevs

JAD/ala
Enclosures

M
H