

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

In the matter of Application Serial No.: 76/540,792

For the mark: DRYERBOX

Published in the Official Gazette on : May 18, 2004



06-21-2004

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #66

ROBERT W. HARDING)

Opposer)

v.)

Opposition No. _____

IN-O-VATE TECHNOLOGIES CORP.)

Applicant)

)

NOTICE OF OPPOSITION

Robert W. Harding, an individual residing at 375 South 1215 East, Springville, Utah 84663, believes that it will be damaged by registration of the trademark "DRYERBOX" in International Class 006, shown in application serial number 76/540,792, which was filed August 15, 2003 and published in the Official Gazette on May 18, 2004, and hereby opposes the same.

The grounds of opposition are as follows:

1. Opposer Robert W. Harding is the owner and inventor of U.S. Patent No. 6,550,157, titled RECESSED DRYER VENT SYSTEMS, and is now and has been for a number of years engaged in the business of designing, manufacturing, and marketing rough-in boxes for dryer vent systems.

2. Applicant In-O-Vate Technologies Corporation is a business owned in whole or in part by Richard J. Harpenau. Mr. Harpenau is the inventor of both U.S. Pat. No. 6,419,102 and U.S. Pat. No. 5,476,183. Both of these patents also deal with rough-in dryer vent boxes.

3. On March 16, 2004, Mr. Mark D. Passler, the attorney of record in the opposed trademark application, sent a letter to Michael Richman, an employee of Mr. Harding, in which he alleges that Mr. Harding has engaged in copyright, trademark and patent infringement. A copy of this letter is attached hereto as Exhibit A.

4. Mr. Passler's allegations that Mr. Harding has engaged in patent infringement are totally unfounded and likely constitute patent misuse and antitrust violations in restraint of trade.

5. Mr. Passler's allegations that Mr. Harding has engaged in trademark infringement are also unfounded. The trademark "DRYERBOX" is entirely descriptive. The product to which the mark applies is a rough-in dryer vent box. Mr. Harpenau and his company, In-O-Vate Technologies Corp. are attempting to preclude the use of descriptions of competing products which use the words "dryer" and "box" in close proximity.

6. The registration and use of Applicant's mark would clearly have a chilling effect on the marketing of the rough-in dryer vent box being manufactured by the Opposer, as well as on the marketing of similar products manufactured by others.

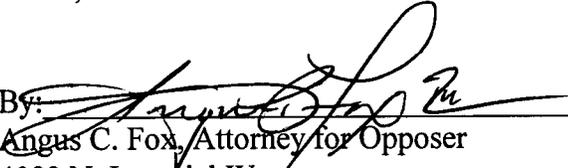
7. Based upon the foregoing, the mark depicted in Application Serial No. 76/540,792, filed August 15, 2003, on the Principal Register of the United States Patent and Trademark Office, fails to satisfy the standards for registration, and if registered would cause injury and damage to Opposer.

WHEREFORE, Opposer requests that registration of Applicant's mark "DRYERBOX", the subject of trademark application Serial No. 76, 540,792, be denied and this opposition be

sustained.

A duplicate copy of this Notice of Opposition and exhibits and the fee of \$300.00 for opposing Applicant's mark in two classes are enclosed herewith. The Patent and Trademark Office is requested to serve a copy thereof on Applicant or its attorney.

Signed at Provo, Utah this 17th day of June, 2004.

By: 
Angus C. Fox, Attorney for Opposer
4093 N. Imperial Way
Provo, Utah 84604-5386
(801) 225-9000

EXPRESS MAIL CERTIFICATE

I hereby certify that the foregoing Notice of Opposition and check for the \$300 filing fee and any other documents listed in the accompanying transmittal letter are being deposited with the U.S. Postal Service Express Mail to Addressee service under 37 C.F.R. 1.10 on June 17, 2004 and addressed to the Commissioner for Trademarks, 2900 Crystal Drive; Arlington, VA 22202-3514.

Express Mail mailing label number *EU868560518US*

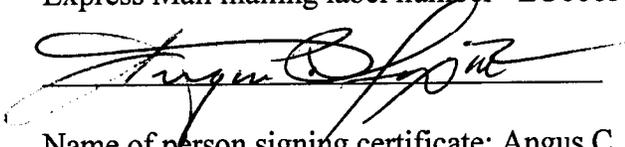

Name of person signing certificate: Angus C. Fox, III

EXHIBIT A

Akerman Senterfitt
ATTORNEYS AT LAW

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March 16, 2004

VIA CERTIFIED MAIL
ARTICLE NO. 7003 2260 0007 2010 6624

Mr. Michael Richman
Direct Flow Technologies
3575 North 100 East #125
Provo, Utah 84604

Re: In-O-Vate Technologies Intellectual Property Rights
Our Ref. No.: 6878-7

Dear Mr. Richman:

Please be advised that Akerman Senterfitt represents In-O-Vate Technologies ("In-O-Vate") in connection with intellectual property matters. As you know, In-O-Vate is the owner of a significant number of intellectual property assets, including copyright rights in the content and features of its website, www.dryerbox.com.

In addition, In-O-Vate is the owner of the trademark DRYERBOX for use in connection with receptacles for appliance exhaust hoses. By virtue of widespread advertising, promotion and use of the DRYERBOX mark since the 1990's, the mark has become well known and associated exclusively with In-O-Vate in connection with receptacles for appliance hoses. Accordingly, the DRYERBOX mark is a highly valued and significant asset of In-O-Vate, which In-O-Vate is committed to protecting from infringement and dilution.

It has recently come to our attention that your company is using the DRYERBOX mark in connection with receptacles for appliance hoses. Your company's actions are likely to cause confusion and mistake among the trade and with the consuming public who are familiar with In-O-Vate's DRYERBOX mark and who associate this mark exclusively with In-O-Vate's products.

We have also recently learned that you have taken copyrighted material from our client's website, and are using the copyrighted material without permission in your advertising. Your company's continued use of our client's copyrighted material after receipt of this letter will be with knowledge of our client's rights and, therefore, would be willful. The copyright laws of the United States provide for significantly enhanced damages in favor of an aggrieved copyright owner in the case of willful infringement.

Direct Flow Technologies
March 16, 2004
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Furthermore, we advise that In-O-Vate is the owner of U.S. Patent No. 6,419,102 (the "Patent"), a copy of which is enclosed for your convenience. We have reviewed your product carefully in light of the claims in the Patent. Based upon our review, we can see no reason why your product would not infringe the Patent. We would like to hear from you to make certain there is nothing we have overlooked. Please be advised that 35 U.S.C. § 271 of the patent laws states that whoever, without the patent owner's permission, either makes, uses, offers to sell or sells any patented invention infringes the patent. If infringement is found, our client is entitled to an award of damages that can include profits lost to your company due to the infringement. These damages can then be increased up to three times by the court if, for example, the court finds that the infringement is willful. Continued use of the infringing process after notice of infringement is usually regarded as willful.

As this matter is of the utmost importance to our client, please advise how you intend to proceed within fourteen (14) days of the date of this letter.

This letter is not a complete statement of In-O-Vate's rights in connection with this matter, and nothing contained herein constitutes an express or implied waiver of any rights, remedies, or defenses of In-O-Vate in connection with this matter, all of which are expressly reserved.

We look forward to your response.

Sincerely,

AKERMAN SENTERFITT



Mark D. Passler

MDP/kq
Enclosure
cc: In-O-Vate Technologies, Inc.