

6. Optimizer, Inc. ("Applicant") has, through the '210 Application, sought to register the mark OPTIMIZER for "vehicle and marine engine part, namely air bypass valve, air bypass valve for automotive and marine engines; valve for reducing harmful emissions of gasoline engines; valve for improving performance of gasoline engines for marine boats and driven vehicles" ("Applicant's Goods").

7. There is no issue as to priority, as Opposer has used its OPTIMIZER 6500 mark prior to the filing date of the '210 Application.

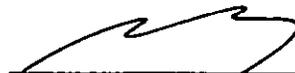
8. There is no issue as to priority, as Opposer has used its OPTIMIZER 6500 mark prior to Applicant's use of the OPTIMIZER mark.

9. Opposer will be damaged by registration of the OPTIMIZER mark by Applicant because such registration will grant to Applicant *prima facie* evidence of the exclusive right to use the mark in conjunction with Applicant's Goods and such use would be likely to cause confusion or mistake or to deceive as to the affiliation, connection or association of Applicant with Opposer and as to the origin, sponsorship and approval of Applicant's goods, services and other commercial activities by Opposer.

10. Such confusion would cause irreparable harm to Opposer in that any defects or fault found with Applicant's goods, services or other commercial activities would erroneously be attributed to Opposer, thereby harming Opposer's reputation and damaging its substantial goodwill in the OPTIMIZER 6500 mark.

WHEREFORE, Opposer respectfully requests that the Board deny registration of Applicant's OPTIMIZER mark sought through the '210 Application and award Opposer all other relief to which it is entitled.

Respectfully submitted,



Gerard T. Gallagher, Reg. No. 39,679

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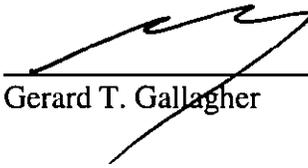
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Attorney for Opposer

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being served upon the Commissioner for Trademarks, BOX TTAB, 2900 Crystal Drive, Arlington, VA 22202-3514, by depositing the same in the United States mail, postage prepaid, this 23rd day of June, 2004.



Gerard T. Gallagher

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TTAB

June 23, 2004

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



06-28-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

Re: AM General, LLC v. Optimizer, Inc.
Mark: OPTIMIZER
Serial No. 76/519,210
Our Reference: AMG-L0011 (971153.2)

Dear Sir:

Enclosed for filing is an original and two copies of a Notice of Opposition, together with a check in the amount of \$300.00 representing the requisite filing fee. Please confirm receipt by date-stamping the enclosed filing receipt card and returning same to our offices. If there are any fees due, please charge them to Baker & Daniels' Deposit Account No. 02-0387 (971153.2).

Very truly yours,

BAKER & DANIELS


Gerard T. Gallagher

GTG:rac
Enclosure
cc: Kevin D. O'Rear, Esq.