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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Lucite International, Inc.,)
)
 Opposer,)
)
 v.)
)
 Metl-Span I, Ltd., MSGP, Inc.)
)
 Applicant.)
)
 Our Ref. No. 81904/000003)

Ser. No. 76/538,263



10-12-2004

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

MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION

Box TTAB FEE
 Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, Virginia 22202-3514

Sir:

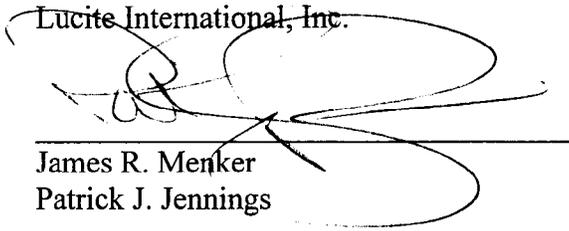
In the interests of justice, Opposer Lucite International, Inc. (“Opposer”) hereby requests leave to file the attached Amended Notice of Opposition. Opposer is making this request because it inadvertently stated in Paragraph 10 of the aforementioned Notice of Opposition that it began using its TUFCOAT® mark more than six and a half years *after* Applicant Metl-Span I, Ltd., MSGP, Inc. (“Metl-Span”) filed an intent-to-use application to register the TUFF COTE mark. However, in actuality, Opposer meant to say that it began using its TUFCOAT® mark more than six and a half years *before* Metl-Span filed an intent-to-use application to register the TUFF COTE mark.

In light of the foregoing explanation, Opposer respectfully requests that the Trademark Trial and Appeal Board accept the attached Amended Notice of Opposition.

Respectfully submitted,

Lucite International, Inc.

By:

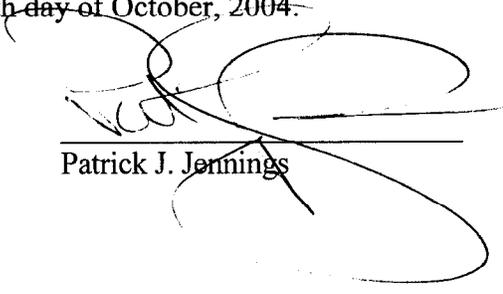


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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing REQUEST FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION has been served on Charles S. Cotropia, Esq., at Sidley, Austin, Brown & Wood, LLP, 717 North Harwood, Suite 3400, Dallas, Texas 75201-6538, by first class mail, postage prepaid, this 12th day of October, 2004.



Patrick J. Jennings

sixteen manufacturing sites and thirty-five sales offices around the world. Opposer serves and supports customers in more than one hundred different countries, and has revenues over \$1 billion.

2. Opposer owns and is using the TUFCOAT[®] mark in commerce, and has been doing so since December 31, 1996.

3. On December 31, 2002, the Opposer registered the TUFCOAT[®] mark on the Principal Register, for use in connection with “unprocessed acrylic resins, namely, capping resins for use as a protective layer over substances such as polymers, wood-based products,” with the USPTO. *See* Reg. No. 2,667,526. Opposer owns this registration. Attached please find additional information from the USPTO’s T.A.R.R. database regarding Opposer’s TUFCOAT[®] registration.

4. Opposer’s TUFCOAT[®] brand unprocessed acrylic resins are now the construction industry’s leading architectural capping product, with sales growing eight times in the last five years. Because Opposer’s TUFCOAT[®] brand unprocessed acrylic resins are extruded over a traditional substrate material, such as PVC, they impart exceptional durability and performance characteristics to siding, including ultraviolet weathering resistance. As a result, Opposer’s customers can offer a wide range of color options that will not fade or change color over time.

5. Opposer has widely and extensively sold, advertised, and promoted goods bearing the TUFCOAT[®] mark in interstate commerce. Opposer has also used the TUFCOAT[®] mark to identify and distinguish its goods from the goods of its competitors. Consequently, consumers have come to know and recognize the TUFCOAT[®] mark as the source of high quality, unprocessed acrylic resins.

6. On August 19, 2003, Applicant filed an intent-to-use application to register the mark TUFF COTE, for use on “fiber reinforced polymer material that is spray applied and oven

cured to create a stucco-like appearance,” with the USPTO. *See* Serial No. 76/538,263.

Attached please find additional information from the USPTO’s T.A.R.R. database regarding Applicant’s TUFF COTE mark.

7. Applicant’s TUFF COTE mark so resembles Opposer’s TUFFCOAT® mark as to be likely, when used on or in connection with Applicant’s goods, to cause confusion, to cause mistake, and to deceive.

8. Applicant’s goods are closely related to Opposer’s goods.

9. Applicant’s goods move in the same channels of trade and appeal to the same consumers as Opposer’s goods.

10. Opposer began using the TUFFCOAT® mark more than six and a half years before Applicant filed an intent-to-use application to register the TUFF COTE mark. Upon information and belief, Opposer began using its mark prior to any actual use or constructive use of the mark set forth in Serial No. 76/538,263.

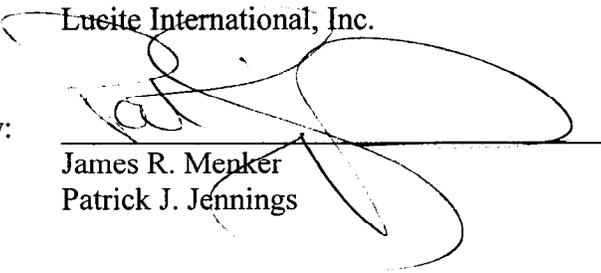
11. Opposer is likely to be damaged by the registration of Applicant’s TUFF COTE mark.

WHEREFORE, Opposer requests that the USPTO refuse registration of Applicant’s TUFF COTE mark.

Respectfully submitted,

Lucite International, Inc.

By:



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