

11-2

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

In the Matter of Application Serial No.: 76/540,341
For the Mark: KUSTOMWERKS
Filed: August 14, 2003
Publication: July 27, 2004

D. S. MANUFACTURING, INC.

Opposition No. 91163328

Opposer,

v.

KUSTOMWERKS, INC.,

Applicant.

Box TTAB – NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S RESPONSE TO OPPOSITION

Applicant, by and through undersigned counsel, hereby files its response to the Opposition and states as follows:

1. Denied for lack of information.
2. Admitted on information and belief
3. Admitted on information and belief.
4. Denied for lack of information.
5. Denied. Applicant Kustomwerks, Inc. is a Delaware corporation with principal place of business at 1200 South Park Drive, Kernersville, NC 27284.
6. Admitted.
7. Denied for lack of information. Applicant admits that April 23, 1990 is prior to the filing of the KUSTOMWERKS application.
8. Denied.



9. Denied.

DEFENSES

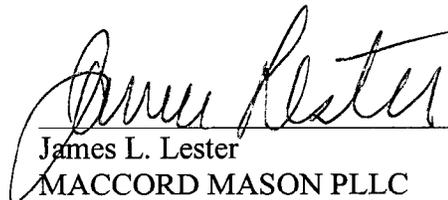
1. There is no likelihood of confusion, mistake or deception because Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

2. There is no likelihood of confusion, mistake or deception because Applicant's mark is not confusingly similar to the pleaded marks of the Opposer. Specifically, Applicant's mark is "Kustomwerks" and Opposer's marks are "Khrome Werks" and "Khrome Werks" with design. Thus, the dominant portions of the marks are "Kustom" vs. "Khrome". These terms are different in sight, sound and meaning. "Custom" generally refers to "made to order." On the other hand, "Chrome" generally refers to "chromium or a chromium alloy."

3. There is no likelihood of confusion, mistake or deception because Applicant's mark is not confusingly similar to the pleaded marks of Opposer. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer are in the term "Werks" which, upon information and belief, has been used by numerous third parties in the motor vehicle industry.

WHEREFORE, Applicant requests that the Opposition be dismissed in its entirety.

Respectfully submitted this 18th day of January, 2005.



James L. Lester
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Greensboro NC 27401
(336) 273-4422

ATTORNEY FOR OPPOSER

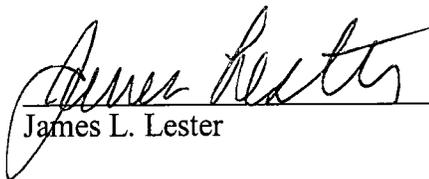
File No.: 8472-003

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S RESPONSE TO OPPOSITION was sent by first class mail to Opposer's attorney of record as follows:

Eunice P. Carvalho
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

This 18th day of January, 2005.


James L. Lester

CERTIFICATE OF EXPRESS MAILING

I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE VIA U. S. MAIL IN AN ENVELOPE ADDRESSED TO: **BOX TTAB – NO FEE, COMMISSIONER for TRADEMARKS, P.O. Box 1451, Alexandria, VA 22313-1451**, on January 18, 2005.

(Date of Deposit)

Deborah J. Beeler

Name of Depositor


Signature

18 Jan 2005