

ESTTA Tracking number: **ESTTA31549**

Filing date: **04/27/2005**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Michael J. Bullinger
Granted to Date of previous extension	04/27/2005
Address	2833 Lilac Lane Fargo, ND 58102 UNITED STATES

Attorney information	James A. Wahl Krass Monroe, P.A. 8000 Norman Center Drive, Suite 1000 Minneapolis, MN 55437-1178 UNITED STATES trademark@krassmonroe.com Phone:952-885-5991
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Applicant Information

Application No	78313918	Publication date	12/28/2004
Opposition Filing Date	04/27/2005	Opposition Period Ends	04/27/2005
Applicant	Seven Gables Gutters, Inc. 2715 Holcomb Bridge Road Alpharetta, GA 30022		

UNITED STATES

Goods/Services Affected by Opposition

Class 006. First Use: 20030315First Use In Commerce: 20030315

All goods and services in the class are opposed, namely: self-cleaning metal hooded gutters and structured parts and metal guard barriers to protect rain gutters for commercial, residential and industrial use

Class 037. First Use: 20030315First Use In Commerce: 20030315

All goods and services in the class are opposed, namely: installation, repair and maintenance of gutters and guards to protect gutters

Applicant Information

Application No	78313948	Publication date	12/28/2004
Opposition Filing Date	04/27/2005	Opposition Period Ends	
Applicant	Seven Gables Gutters, Inc. 2715 Holcomb Bridge Road Alpharetta, GA 30022 UNITED STATES		

Goods/Services Affected by Opposition

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All goods and services in the class are opposed, namely: installation, repair and maintenance of gutters and guards to protect gutters

Related Proceedings

Opposer has initiated concurrent use proceedings with the United States Patent & Trademark Office by amendment of Opposer's application Serial No. 78/315,365; the Trademark Trial and Appeal Board has not yet assigned a proceeding number to this action.

Attachments

Leafaway Notice of Opposition.pdf (2 pages)

Signature	/James A. Wahl/
Name	James A. Wahl
Date	04/27/2005

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

Michael J. Bullinger, Opposer,)	
)	
v.)	Opposition No. _____
)	
Seven Gables Gutters, Inc., Applicant)	
)	
)	

In the matter of Application Serial Numbers 78/313,918 and 78/313,948 filed by Seven Gables Gutters, Inc. ("Applicant") on October 10, 2003 and published in the Official Gazette on December 28, 2004 (the "Seven Gables Applications"), Opposer Michael J. Bullinger, 2833 Lilac Lane, Fargo, ND 58102, believes that he would be damaged by the registration of the marks as shown in the Seven Gables Applications and therefore opposes registration of the Seven Gables Applications.

Grounds for this Opposition are as follows:

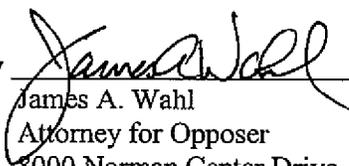
1. Opposer is aware of a business known as Seven Gables Gutters, Inc. located at 2715 Holcomb Bridge Road, Alpharetta, Georgia ("Seven Gables Gutters"), which uses the mark LEAF AWAY in offering and selling metal rain gutters and related goods and services.
2. Seven Gables Gutters filed application serial no. 78/313,918, for the mark LEAF AWAY and application serial no. 78/313,948, for the mark LEAF AWAY DEBRIS-FREE and design on October 10, 2003.
3. The Seven Gables Applications allege use of the marks shown therein as of March 15, 2003, and allege use of the marks shown therein in commerce as of March 15, 2003.
4. Opposer filed an application to register the mark LEAF AWAY on October 17, 2003, which application was assigned serial no. 78/315,365 ("Opposer's Application").
5. Opposer first used its mark on October 3, 2003, and first used its mark in commerce on October 3, 2003.
6. Opposer's first use and first use in commerce predate the filing date of the Seven Gables Applications.
7. Opposer licenses its mark for use by dealers who advertise and sell the metal rain gutter products identified in the Application and provide installation and related services.
8. Opposer's products are advertised, sold and installed by such licensed dealers using specially-made rollforming equipment manufactured by an affiliate of Opposer. Such equipment is transported to job sites using specially-equipped trucks and trailers. As a result, each licensed dealer operates in a defined geographic area.
9. On information and belief, Seven Gables Gutters products and services are advertised, offered and sold in a similar manner, namely by production and installation at a homeowner's job site using equipment transported to the job site using trucks or trailers.

10. On information and belief, Seven Gables Gutters has used the LEAF AWAY mark and advertised its products and services identified in the Seven Gables Applications only within a limited geographic area extending outward from Seven Gables Gutters' business location, which geographic area of use does not extend beyond the boundaries of the State of Georgia.
11. Opposer has advertised and marketed its dealership program for its LEAF AWAY products at building trade shows in locations including Las Vegas, Nevada, Baltimore, Maryland and Denver, Colorado, via its Internet web site at www.leafaway.net, and via various marketing activities from Opposer's business location in Fargo, North Dakota. As a result of these advertising and marketing activities, Opposer has promoted the goods offered under its mark and related products and services offered in connection therewith in many states and is seeking to establish licensed dealers throughout the United States, with the exception of the State of Georgia.
12. Opposer has no plans to, and will not, advertise its goods and services for installation in the geographic area in which Seven Gables Gutters operates.
13. On January 26, 2005, Opposer amended Opposer's Application to seek registration of its mark on a concurrent use basis with the marks shown in the Seven Gables Applications in the geographic area described as the United States excluding the State of Georgia.
14. On March 11, 2005, the Examining Attorney assigned to examine Opposer's Application issued an examiner's amendment reflecting amendment of Opposer's Application to seek registration on a concurrent use basis as set forth above.
15. As of the date of this Notice of Opposition, the Trademark Trial and Appeal Board had not initiated a concurrent use proceeding in response to the amendment of Opposer's Application.
16. Opposer would be damaged by registration of the Seven Gables Applications in that Opposer had established lawful use of Opposer's mark in commerce prior to the filing date of the Seven Gables Applications, in that such registration would be in derogation of Opposer's rights under Lanham Act Section 2(d)(1) and Lanham Act Section 7(c)(1). 15 U.S.C. §§ 1052(d)(1) and 1057(c)(1).

WHEREFORE, Opposer prays that this Opposition be sustained and that the Seven Gables Applications be denied registration.

Respectfully submitted,

KRASS MONROE, P.A.

By 
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Dated: April 27, 2005