

ESTTA Tracking number: **ESTTA34928**

Filing date: **06/06/2005**

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

Proceeding	91165024
Party	Defendant Seven Gables Gutters, Inc. Seven Gables Gutters, Inc. 2715 Holcomb Bridge Road Alpharetta, GA 30022
Correspondence Address	JASON W. GRAHMAN SCHREEDER, WHEELER & FLINT, LLP 127 PEACHTREE STREET N.E., SUITE 1600 ATLANTA, GA 30303
Submission	Answer
Filer's Name	Jason W. Graham
Filer's e-mail	jgraham@swflp.com
Signature	/Jason W. Graham/
Date	06/06/2005
Attachments	Answer.pdf (4 pages)

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

In the matter of application Serial Nos. 78/313,918 and 78/313,948
For the Trademarks LEAF AWAY and LEAF AWAY DEBRIS-FREE
Published in the Official Gazette 12/28/04

Michael J. Bullinger)	
)	
Opposer,)	
)	Opposition No. 91165024
Seven Gables Gutters, Inc.,)	
)	
Applicant.)	
_____)	

Answer to Notice of Opposition

Seven Gables Gutters, Inc. (“Applicant”), for its answer to the Notice of Opposition (the “Notice”) filed by Michael J. Bullinger (“Opposer”) against the applications for registration of Applicant’s trademark LEAF AWAY (the “Mark”), Serial Nos. 78/313,918 and 78/313,948, filed October 15, 2003 and published in the *Official Gazette* December 28, 2004 (the “Applications”) pleads and avers as follows:

1. Applicant admits the allegations contained in Paragraph 1 of the Notice.
2. Applicant denies the allegations contained in Paragraph 2 of the Notice and states that it filed its applications on October 15, 2003.
3. Applicant admits the allegations contained in Paragraph 3 of the Notice.
4. Applicant admits the allegations contained in Paragraph 4 of the Notice.
5. Applicant denies the allegations contained in Paragraph 5 of the Notice.
6. Applicant denies the allegations contained in Paragraph 6 of the Notice.

7. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth or accuracy of the allegations contained in Paragraph 7 of the Notice and therefore denies the same.
8. Applicant denies the allegations contained in Paragraph 8 of the Notice.
9. Applicant admits the allegations contained in Paragraph 9 of the Notice.
10. Applicant denies the allegations contained in Paragraph 10 of the Notice and further states that it advertises and markets its product under the LEAF AWAY mark nationwide through its website at www.leafaway.com. Applicant further states that it uses the mark in connection with the advertising, marketing and sale of its goods and services beyond the boundaries of the State of Georgia.
11. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth or accuracy of the allegations contained in Paragraph 11 of the Notice and therefore denies the same.
12. Applicant denies the allegations contained in Paragraph 12 of the Notice and further states that Opposer advertises its goods and services within the State of Georgia through its website at www.leafaway.net and that the same is likely to cause, and has caused, actual confusion among consumers within the State of Georgia.
13. Applicant admits the allegations contained in Paragraph 13 of the Notice.
14. Applicant admits the allegations contained in Paragraph 14 of the Notice.
15. Applicant admits the allegations contained in Paragraph 15 of the Notice.
16. Applicant denies the allegations contained in Paragraph 16 of the Notice.

Affirmative Defenses

In asserting the following affirmative defenses, Applicant does not concede that it has the burden of proof as to any of them.

1. The Notice, and each paragraph thereof, taken individually or collectively, fails to state a basis for the relief sought.
2. The Notice is barred by the doctrines of waiver, laches, and estoppel.

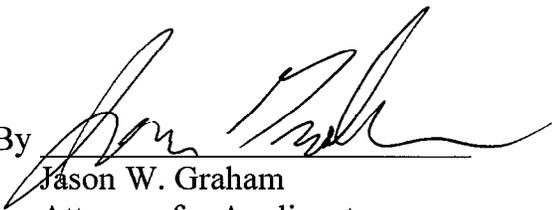
3. Opposer lacks standing to oppose registration of the Mark because Opposer does not have rights, superior or otherwise, sufficient to support the Notice.
4. The Notice should be dismissed because Opposer is not entitled to concurrent use of the Mark.

WHEREFORE, Applicant submits that the Notice of Opposition is without merit and that Opposer is otherwise precluded from bringing the instant opposition, and therefore prays for judgment dismissing the Notice of Opposition in its entirety.

Respectfully submitted,

Seven Gables Gutters, Inc.

By



Jason W. Graham
Attorney for Applicant

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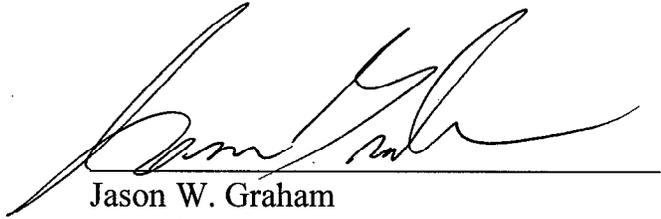
Dated: June 6, 2005

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Opposer in the foregoing matter with a copy of Answer to Notice of Opposition via first class mail addressed to:

James A. Wahl, Esq.
Krass Monroe, P.A.
800 Norman Center Drive
Suite 1000
Minneapolis, MN 55437

This the 6th day of June, 2005.



Jason W. Graham
Georgia Bar No. 304595

Attorney for Applicant
Seven Gables Gutters, Inc.

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