

ESTTA Tracking number: **ESTTA96454**

Filing date: **08/25/2006**

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	R & M Supply, Inc.
Granted to Date of previous extension	08/26/2006
Address	4745 Hiers Avenue Suite A Riverside, CA 92505 UNITED STATES

Correspondence information	R & M Supply, Inc. 4745 Hiers Avenue Suite A Riverside, CA 92505 UNITED STATES laipmail@gtlaw.com, tenen-aokie@gtlaw.com Phone: 714.708.6587
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**Applicant Information**

Application No	78480984	Publication date	06/27/2006
Opposition Filing Date	08/25/2006	Opposition Period Ends	08/26/2006
Applicant	Winnett, Russell Russell Winnett 14670 Rory Calhoun Dr. Arizona City, AZ 85223 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. First Use: 1997/03/15 First Use In Commerce: 1997/03/15 All goods and services in the class are opposed, namely: garden supplies, agricultural supplies, and hydroponics supplies, namely, water filter controllers and electrical controllers, timers, electrical automatic water flow controls for use in irrigation, electronic controllers for misting greenhouse plants and flowers, electronic controllers for lighting in a greenhouse, and hydroponic controllers, namely, electrical controllers for the purpose of maintaining specified water flow and movement of hydroponic system parts
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Attachments	Document.pdf ( 5 pages )(143306 bytes )
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Signature	/elise tenen-aoki/
Name	R & M Supply, Inc.
Date	08/25/2006

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

In the matter of Trademark Serial No. 78/480,984

Date Filed: 9/09/2004

R&M Supply v. Opposer,	)	
	)	Opposition No.:
	)	
v.	)	
	)	
Winnett, et al	)	
Respondent,	)	
	)	
	)	
	)	

**NOTICE OF OPPOSITION**

R&M Supply, Inc. ("Opposer") believes that it would be damaged by the registration of Applicant Russell Winnett's mark, application Serial No. 78/480,984 (the "the Mark") and hereby opposes registration of same.

As grounds for opposition, Opposer respectfully alleges as follows:

- 1) Opposer is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business at Suite A, 4745 Hiers Avenue, Riverside, California 92505.

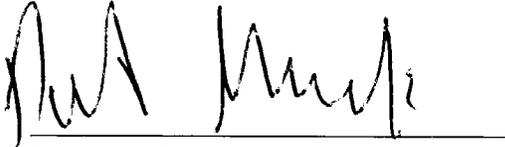
- 2) The subject of this Notice of Opposition is the mark, "C.A.P. Custom Automated Products," which was published for opposition on June 27, 2006, and covers "garden supplies, agricultural supplies, and hydroponics supplies, namely water filter controllers and electrical controllers, timers, electrical automatic water flow controls for use in irrigation, electronic controllers for misting greenhouse plants and flowers, electronic controllers for lighting in a greenhouse, and hydroponic controllers, namely electrical controllers for the purpose of maintaining specified water flow and movement of hydroponic system parts" in International Class.
- 3) Applicant claims as his date of first use and a date for first use in commerce of the mark March 15, 1997.
- 4) Applicant discontinued any and all use of the mark for at least a two year period, during years 2001-02. Applicant did not use the marks "C.A.P." or "Custom Automated Products," or any combination thereof, to market or sell any products, thus abandoning its rights in the mark.
- 5) In 2002, Applicant became an employee and shareholder of Opposer. As an employee and shareholder, Applicant participated in the development of several products, which Opposer has been manufacturing and marketing under the marks "C.A.P." and "Custom Automated Products" for several years.
- 6) Applicant led Opposer to believe that he had previously abandoned his rights in the Mark and the terms "C.A.P." and "Custom Automated Products", and that it had the right to use the marks "C.A.P." and "Custom Automated Products". In reliance thereon, Opposer has expended substantial money and effort in the development and marketing of products under these marks.
- 7) Applicant not only acquiesced to Opposer's use of the Mark, but further profited from Opposer's efforts in the development and marketing of its products under the terms "C.A.P." and "Custom Automated Products".

- 8) Applicant has abandoned any claim to the Applicant's Mark. For three years while in the employ of Opposer, and for two years prior to that, for a total of five years, Applicant did not use the mark "C.A.P.", "Custom Automated Products" or any combination thereof to market products. Thus Applicant should be presumed to have intended to abandon the Applicant's Mark.
- 9) Opposer has filed an application covering C.A.P. & Design, U.S. Serial No. 78/932,301.
- 10) Applicant now uses the Applicant's Mark to market products that are nearly identical to, and that are sold in the same channels of trade as, those manufactured and sold by Opposer.
- 11) Applicant's use of the Mark is confusingly similar to Opposer's use of the Mark or the components of the Mark, thus consumer confusion is likely to arise or has already arisen.
- 12) Accordingly, Applicant's registration of the Mark for the goods identified is inconsistent with Opposer's superior rights in the Mark and terms "C.A.P." and "Custom Automated Products". Such registration would cause damage to Opposer and result in a refusal to register Opposer's Mark which is the subject of Application Serial No. 78/932,301.
- 13) Applicant's registration would give it at least a *prima facie* exclusive right to the use of the Mark throughout the entire United States. Such rights and registration would directly impact and be a source of damage and injury to the Opposer.

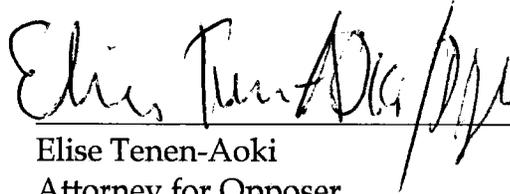
WHEREFORE, Opposer respectfully prays that registration of Applicant's Mark, Serial No. 78/480,984, be refused, and such relief is hereby earnestly solicited.

The Opposition fee of \$300 has been charged to Deposit Account No. 50-2639 with the electronic filing of this petition.

Respectfully submitted,  
Greenberg, Traurig, LLP



Peter J. Gluck  
Attorney for Opposer  
New York State Bar No.: 2567816  
USPTO Registration No.: 38,022



Elise Tenen-Aoki  
Attorney for Opposer  
California State Bar No.: 159449

Dated: 8/25/2006

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CERTIFICATE OF ELECTRONIC FILING AND/OR SERVICE

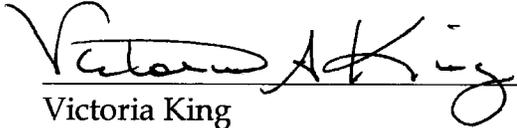
I hereby certify that on this 25 day of August, 2006, the original of the foregoing Notice of Opposition is being electronically filed with:

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

and served VIA FEDERAL EXPRESS to:

Russell Winnett  
14670 Rory Calhoun Drive  
Arizona City, Arizona 85223  
**Via Federal Express (one copy)**

Dated:

  
Victoria King

126603214v1 8/25/2006