

ESTTA Tracking number: **ESTTA193659**

Filing date: **02/20/2008**

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	John R. Toscano, Inc.
Granted to Date of previous extension	02/20/2008
Address	2751 NE 9th Street Pompano Beach, FL 33062 UNITED STATES

Attorney information	Mark E. Stein, Esq. Lott & Friedland, P.A. P.O. Drawer 141098 Coral Gables, FL 33114-1098 UNITED STATES cgoe@lfiplaw.com, mestein@lfiplaw.com, chammond@lfiplaw.com, kriviera@lfiplaw.com, kruiz@lfiplaw.com Phone:305-448-7089
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**Applicant Information**

Application No	77002453	Publication date	10/23/2007
Opposition Filing Date	02/20/2008	Opposition Period Ends	02/20/2008
Applicant	Attaway Services, Inc. 8101 SE 28th Street Fort Lauderdale, FL 33316 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 006. First Use: 2002/07/23 First Use In Commerce: 2002/07/23 All goods and services in the class are opposed, namely: Metal fluid storage tank liners
Class 037. First Use: 2002/07/23 First Use In Commerce: 2002/07/23 All goods and services in the class are opposed, namely: Storage tank installation services

**Grounds for Opposition**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	NOT of OPP - ENVIRO STEEL - FINAL 22008doc.pdf ( 4 pages )(91723 bytes )
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**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mark E. Stein/
Name	Mark E. Stein, Esq.
Date	02/20/2008

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

Opposition No. \_\_\_\_\_

**JOHN R. TOSCANO,**

Opposer,

v.

In the Matter of Application  
Serial No. 77/002,453  
Published in the Official Gazette  
Date: October 23, 2007  
Mark: **ENVIRO-STEEL**

**ATTAWAY SERVICES, INC.,**

Applicant.  
\_\_\_\_\_ /

**NOTICE OF OPPOSITION**

Opposer, John R. Toscano, an individual residing at 2751 N.E. 9<sup>th</sup> St., Pompano Beach, Florida 33062, believes that he is or will be damaged by United States Trademark Application Serial No. 77/002,453 (the "Application") maturing into a registration and hereby opposes the registration of same.

John R. Toscano, Inc., a corporation organized and existing under the laws of the State of Florida, with a principal address of 2751 N.E. 9<sup>th</sup> St., Pompano Beach, Florida 33062, was granted an extension of time to oppose the Application on November 5, 2007. Opposer is President of and one (1) of only two (2) shareholders in John R. Toscano, Inc., and therefore is in privity with the party granted the extension.

Upon information and belief, Applicant, Attaway Services, Inc., a corporation organized and existing under the laws of the State of Florida, with a principal address of 8101 SE 28<sup>th</sup> St., Fort Lauderdale, Florida, 33316, is the owner of the Application.

The Application was filed on September 19, 2006 for the mark **ENVIRO-STEEL**. Applicant seeks registration of this mark on the Principal Register in respect of “Metal fluid storage tank liners” in International Class 6 and “Storage tank installation services” in International Class 37, and claims a date of first use in commerce of July 23, 2002 with respect to both classes.

As grounds for opposition, it is alleged that:

1. Applicant is not, and was not at the time of filing the Application, the rightful owner of the mark **ENVIRO-STEEL**.

2. Applicant did not make *bona fide* use in commerce of the mark **ENVIRO-STEEL** before filing the use-based Application under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

3. Upon information and belief, Applicant has never made *bona fide* use in commerce of the mark **ENVIRO-STEEL**.

4. Any use of the mark **ENVIRO-STEEL** and any use prior to January 8, 2007, was made by or on behalf of Enviro-Steel Corporation, a corporation organized and existing under the laws of the State of Florida, with a principal address of 1200 SE 38<sup>th</sup> St., Fort Lauderdale, Florida 33316.

5. Upon information and belief, prior to January 8, 2007, the only officers, directors and shareholders of Enviro-Steel Corporation were Opposer, Troy Brown, and Yuri Hernandez. Troy Brown is and at all times has been an employee of Applicant.

6. By naming itself as the only owner of the Application and claiming in the Application that it had used the **ENVIRO-STEEL** mark in commerce, Applicant has committed fraud on the United States Patent and Trademark Office (“USPTO”).

7. By claiming in the Application that “no other person, firm, corporation, or association has the right to use the mark in commerce,” Applicant committed fraud on the USPTO because Applicant knew Opposer and Enviro-Steel Corporation had the right to use the mark in commerce.

8. Applicant willfully withheld from the USPTO the facts that: 1) it was not the rightful owner of the mark **ENVIRO-STEEL** at the time of filing the Application; 2) it had not made *bona fide* use in commerce of the mark **ENVIRO-STEEL** at the time of filing the Application; 3) any use of the mark **ENVIRO-STEEL** prior to the filing of the Application was made by or on behalf of Enviro-Steel Corporation; and 4) Opposer and Enviro-Steel Corporation had the right to use the mark in commerce at the time of filing the Application.

9. The facts described in paragraph 9 above constitute material information which, if it had been transmitted and disclosed to the USPTO, would have resulted in the disallowance of the registration of the mark shown in the Application.

10. Opposer believes that he will be damaged by registration of the mark shown in the Application.

#### **PRAYER FOR RELIEF**

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in favor of Opposer and that the Application be denied registration in whole.

Date: February 20, 2008

Respectfully submitted,

**LOTT & FRIEDLAND, P.A.**

/s/ Mark E. Stein  
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Attorneys for Opposer  
*John R. Toscano*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing **NOTICE OF OPPOSITION** was served upon the Applicant by delivering a true and correct copy of same to counsel for Applicant via U.S. first-class mail as follows:

Stephen M. Greenberg  
Carey Rodriguez, Greenberg & Paul, LLP  
950 Peninsula Corporate Circle, Suite 3020  
Boca Raton, Florida 33487

Served via U.S. Mail on February 20, 2008.

/s/ Mark E. Stein  
Mark E. Stein