

ESTTA Tracking number: **ESTTA209539**

Filing date: **05/06/2008**

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	The Gates Corporation
Granted to Date of previous extension	05/31/2008
Address	1551 Wewatta StreetMS 10-A3 Denver, CO 80202 UNITED STATES

Attorney information	Curtis H. Castleman THE GATES CORPORATION 1551 Wewatta StreetMS 10-A3 Denver, CO 80202 UNITED STATES rp5897@gates.com Phone:3037444685
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Applicant Information

Application No	77137669	Publication date	04/01/2008
Opposition Filing Date	05/06/2008	Opposition Period Ends	05/31/2008
Applicant	Ames True Temper Properties, Inc. 300 Delaware Avenue, Suite 1704 Wilmington, DE 19801 UNITED STATES		

Goods/Services Affected by Opposition

Class 017. All goods and services in the class are opposed, namely: Garden hoses

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1923649	Application Date	10/24/1994
Registration Date	10/03/1995	Foreign Priority Date	NONE
Word Mark	DURO FLEX		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 017. First use: First Use: 1983/07/15 First Use In Commerce: 1983/07/15 multipurpose elastomeric type hose for industrial and agricultural use
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Attachments	Opposition.pdf (2 pages)(58183 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	/curtiscastleman/
Name	Curtis H. Castleman
Date	05/06/2008

The grounds for opposition are as follows:

Opposer is the owner of U.S. Registration No. 1,923,649 for DURO FLEX for “multipurpose elastomeric type hose for industrial and agricultural use” in International Class 17. This registration is valid and subsisting.

Opposer is, and has been, engaged in promotion and sale in the United States of its hose under the DURO FLEX trademark. In connection with these sales, Opposer has used its DURO FLEX trademark in interstate commerce since at least as early as 1983, which is prior to Applicant's date of application of its trademark DURA-FLEX.

Opposer's products bearing its trademark DURO FLEX have been continuously offered to the public through various channels of trade and advertised and promoted throughout the United States. By reason of such advertising, promotion and distribution of Opposer's products, the public has come to recognize DURO FLEX as signifying Opposer and its products, and Opposer has built up extensive goodwill from the sale of its products under the trademark DURO FLEX.

The trademark proposed for registration by Applicant, namely DURA-FLEX, conveys a confusingly similar commercial impression to Opposer's mark DURO FLEX and is intended to be used on goods confusingly similar to Opposer's. In addition, Applicant's products are capable of sale to the same customers and distribution to the same trade and through the same channels as that of Opposer's. Persons familiar with Opposer's mark would be likely to purchase Applicant's goods as and for those goods offered by Opposer

The Applicant's trademark DURA-FLEX is nearly identical to Opposer's

trademark DURO FLEX. Applicant's registration of the trademark DURA-FLEX for its goods is likely to cause confusion, deception or mistake with Opposer's trademark DURO FLEX. Applicant's intended use of said mark interferes with Opposer's prior use of the mark DURO FLEX, and use or registration of the mark DURA-FLEX by Applicant will seriously damage Opposer and the goodwill it has built up in said mark.

If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer believes it will be damaged by said registration and prays it be denied.