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

Proceeding	91186473
Party	Plaintiff Apex, LLC
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Submission	Opposition/Response to Motion
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Date	02/25/2009
Attachments	Response to Motion to Amend 2.23.09.pdf (2 pages)(428373 bytes)

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

APEX, LLC

Opposer,

v.

APEX PAVERS, INC.

Applicant

Opposition No. 91186473

Trademark: APEX PAVERS (and design)

Serial No. 77/243,433

**OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO AMEND
APPLICATION**

Opposer, APEX, LLC. (hereinafter "Opposer"), by and through the undersigned counsel, hereby files Opposer's Response and Objection to Applicant's Motion to Amend Application, and in support thereof states as follows:

1. On July 31, 2007, Applicant filed application serial no. 77/243,433, claiming a date of first use anywhere and a date of first use in commerce on June 1, 2006.
2. On January 3, 2009, the Applicant filed a Motion to Amend the Application to correct both the dates of first use anywhere and the date of first use in commerce to July 17, 2006 and September 12, 2006, respectively.
3. In its Motion, Applicant stated that Applicant filed the Application without assistance of counsel and therefore, unintentionally entered incorrect dates.
4. Opposer is of the opinion that it is not necessary to have the assistance of counsel to enter correct dates. Further, Applicant was represented by counsel during the prosecution of the Application at least as early as January 17, 2008, when counsel for Applicant filed the Response to Office Action with the Patent and Trademark Office.

5. Opposer believes that the Motion to Amend would cause prejudice and harm to the Opposer as this request to amend raises issues which were not known at the time of the filing of the Opposition and therefore, there may be further grounds to oppose the application, such as fraud.

WHEREFORE, the Opposer respectfully requests that the Board Deny the Applicant's Motion to Amend.

Dated: February 17, 2009

Respectfully Submitted,

Apex, LLC

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the correspondent of record for the Applicant on this 23rd day of February, 2009 via First Class U.S. Postal Mail:

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