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

Proceeding	91187194
Party	Defendant Geopier Foundation Company, Inc.
Correspondence Address	E. ERIC MILLS WARD AND SMITH, P.A. 1001 COLLEGE COURT POST OFFICE BOX 867 NEW BERN, NC 28563-0867 eem@wardandsmith.com
Submission	Answer
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Date	12/08/2008
Attachments	Applicant's Answer and Defenses.pdf (7 pages)(39091 bytes)

3. Applicant admits that Applicant is a corporation organized and existing under the laws of the State of Georgia. Except as admitted, Applicant denies the allegations contained in Paragraph 3 of the Notice of Opposition.

4. Applicant denies the allegations contained in Paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations contained in Paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations contained in Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations contained in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice of Opposition.

SECOND DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted and, in particular, fails to state legally sufficient grounds for sustaining the opposition.

THIRD DEFENSE

Applicant's mark, RAMMED AGGREGATE PIER, is distinctive, has acquired secondary meaning, and is exclusively associated with Applicant and Applicant's proprietary products and services through extensive, exclusive and continuous use of the mark by Applicant and others in connection with Applicant's proprietary products and services over a term of over five years, resulting from extensive advertising and promotion of the mark by Applicant during this time, and as further evidenced by Applicant's registration of the mark which has continued registered on the Supplemental Register as U.S. Reg. No. 2,548,544 without challenge or petition for cancellation by any party (including, but not limited to, Opposer).

FOURTH DEFENSE

The mark RAMMED AGGREGATE PIER is recognized in the industry as Applicant's distinctive mark, as evidenced by licensee and customer testimonials, use by others (including, but not limited to, Opposer), and use in other public communications.

FIFTH DEFENSE

Opposer has not used the mark RAMMED AGGREGATE PIER in a generic or descriptive manner to refer to its ground improvement and structural support systems, as evidenced by its description of its services on its own website, www.haywardbaker.com, and Opposer, in fact, has specifically acknowledged - through proper use of Applicant's RAMMED

AGGREGATE PIER mark, as a trademark - the commercial distinctiveness of the RAMMED AGGREGATE PIER mark as being uniquely associated with Applicant.

SIXTH DEFENSE

Opposer's action in filing this opposition is an attempt to commercially disrupt Applicant's business and to tip the existing competitive commercial balance between Applicant and Opposer, who are competitors, advantageously towards Opposer by effectively taking from Applicant the market position that has been secured through the investment in and extensive, exclusive and continuous use of the RAMMED AGGREGATE PIER mark by Applicant. Opposer's action is not based on any legitimate claim of right to use Applicant's mark as a generic or descriptive term.

SEVENTH DEFENSE

Opposer has acquiesced in Applicant's long-term, extensive, exclusive and continuous use and registration of the RAMMED AGGREGATE PIER mark, and Opposer is barred by laches from opposing Applicant's registration of the mark RAMMED AGGREGATE PIER as a result of its inaction in objecting to Applicant's use of the mark RAMMED AGGREGATE PIER. Specifically, Applicant has used the mark RAMMED AGGREGATE PIER continuously since at least as early as January 1, 2000, and Applicant has had the RAMMED AGGREGATE PIER mark registered on the Supplemental Register since March 12, 2002. During this time, extending from at least as early as March 12, 2002, Opposer and others in the trade have had knowledge of Applicant's claim of right in and distinctiveness of the mark, have passively observed the mark acquire distinctiveness for Applicant in the market, and have failed to take any affirmative action to challenge or cancel Applicant's registration on the

Supplemental Register. When combined with Opposer's correct use of Applicant's RAMMED AGGREGATE PIER mark as a trademark term, this acquiescence by Opposer and others in the trade is clearly and unequivocally inconsistent with Opposer's assertions made in this opposition.

EIGHTH DEFENSE

Opposer's prior and continuing failure to petition to cancel Applicant's prior registration is inconsistent with and evidence that Opposer's claims of genericness and descriptiveness of Applicant's mark are unfounded in law and fact, and provide evidence that Opposer considers Applicant's mark to be distinctive and exclusively associated with Applicant and Applicant's proprietary products and services by the consuming public. Thus, Opposer is estopped by such conduct relative to the prior registration as contrasted to Opposer's assertions in this opposition.

NINTH DEFENSE

Applicant's mark RAMMED AGGREGATE PIER is not a generic term synonymous with Applicant's products and services because a review and weighing of the factors considered when evaluating a mark for genericness weighs clearly and unequivocally in Applicant's favor. Included among these factors are: (1) Applicant uses the mark properly as a trademark; (2) competitors, including Opposer, overwhelmingly use the mark properly as a trademark associated exclusively with Applicant; (3) the mark is not a defined dictionary term based on a general review of various dictionaries; (4) testimony of persons in the trade recognize the term as a trademark associated exclusively with Applicant; and (5) media usage clearly recognizes the term as a trademark associated exclusively with Applicant.

RELIEF REQUESTED

WHEREFORE, Applicant respectfully requests that this opposition proceeding be dismissed, with prejudice; that Applicant's RAMMED AGGREGATE PIER mark be registered forthwith on the Principal Register; and that the Board grant Applicant such other relief as it deems just and appropriate.

Dated: December 8, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and copy of Applicant's Answer and Defenses is being sent by First Class Mail on the 8th day of December, 2008, to the attorney of record for the Opposer at the following address:

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