

ESTTA Tracking number: **ESTTA289491**

Filing date: **06/12/2009**

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	LFG Specialties, L.L.C.		
Entity	limited liability company	Citizenship	Louisiana
Address	4171 Essen Lane Baton Rouge, LA 70809 UNITED STATES		

Attorney information	John B. Edel Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman LLP P. O. Box 3513 Baton Rouge, LA 70821-3513 UNITED STATES john.edel@keanmiller.com,karen.lessard@keanmiller.com Phone:2253870999		
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Applicant Information

Application No	77208297	Publication date	05/19/2009
Opposition Filing Date	06/12/2009	Opposition Period Ends	06/18/2009
Applicant	Bishkin, David B. Suite 106 188 Industrial Dr. Elmhurst, IL 60126 UNITED STATES		

Goods/Services Affected by Opposition

Class 011. First Use: 2004/05/07 First Use In Commerce: 2004/05/07 All goods and services in the class are opposed, namely: Evaporators
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77739946	Application Date	05/19/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	E-VAP		

Design Mark	<h1>E-VAP</h1>
Description of Mark	NONE
Goods/Services	<p>Class 011. First use: First Use: 2000/11/17 First Use In Commerce: 2000/11/17 Volume reduction via evaporation for landfill leachate, wastewater and refinery caustic treatment; volume reduction systems and equipment composed of submerged gas evaporators for landfill leachate, wastewater and refinery caustic treatment; vapor injection systems composed of draft tubes for dispersing gases within liquid undergoing treatment; residual solidification systems composed of pumps for transferring settled sludge produced in the reduction process to downstream treatment and/or disposal; waste heat recovery blowers for transferring hot gasses to draft tubes within the reduction process; electronic programmable logic control panels for controlling the reduction process, demisters including gravity settling chambers, vane type demisters and mesh pads or spin vane separators for removing entrained liquid from the exhaust gas of the reduction process used in landfill leachate, wastewater and caustic treatment; landfill leachate and wastewater residual removal systems composed of pumps, piping and controls</p> <p>Class 040. First use: First Use: 2000/11/17 First Use In Commerce: 2000/11/17 Landfill leachate treatment services, wastewater treatment services; refinery caustic treatment services, namely, environmental remediation services in the name of landfill leachate, wastewater, and refinery caustic treatment, consulting services in the area of landfill leachate, wastewater and refinery caustic treatment services</p>

Related Proceedings	LFG Specialties, L.L.C. has applied for registration of E-VAP, U. S. Serial No. 77/739946
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Attachments	77739946#TMSN.jpeg (1 page)(bytes) NoticeofOppositionRVAP.pdf (5 pages)(169284 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	/johnbedel/
Name	John B. Edel
Date	06/12/2009

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

LFG SPECIALTIES, L.L.C.) OPPOSITION NO. _____
)
VS.)
)
DAVID B. BISHKIN)
)

APPLICATION SERIAL NO. 77/208297
PUBLISHED IN OFFICIAL GAZETTE ON
MAY 19, 2009

NOTICE OF OPPOSITION

LFG Specialties, L.L.C. (“Opposer”) believes that it will be damaged by registration of the mark shown in Serial No. 77/208297 for R-Vap, and hereby oppose same.

1.

Opposer, a Louisiana Limited Liability Company having a business address of 4171 Essen Lane, Baton Rouge, LA 70809, has common law trademark rights in the mark E-VAP and is the owner of an application for federal trademark registration of that mark under United States Trademark Office application serial number 77/739946 (“Opposer’s Mark”).

2.

David B. Bishkin (“Applicant”) has filed for registration of the R-Vap mark in application serial no. 77/208297. Opposer believes that Applicant’s address is Suite 106,

188 Industrial Dr., Elmhurst, IL 60126 based on the information provided in the application for registration of that mark.

3.

Opposer and Opposer's predecessor company have been continually using Opposer's Mark in connection with evaporative liquid volume reduction equipment since at least as early as November 17, 2000. Opposer's use and promotion of the mark during that time has been throughout the United States and in jurisdictions outside of the United States.

4.

Opposer asserts that the E-Vap mark is inherently distinctive.

5.

In the alternative, Opposer's Mark has been used in commerce for over five years, and has become distinctive through the acquisition of significant goodwill during that period of use.

6.

Opposer has filed for federal trademark registration for the mark E-VAP in international classes 11 and 40. That application for registration is under United States Trademark Serial No. 77/739946 and was filed on May 19, 2009. That application for registration claims a first use and a first use in commerce date of "at least as early as 11/17/2000."

7.

On June 18, 2007, Applicant filed a trademark application for R-Vap (Serial No. 77/208297) in International Class 11 for “Evaporators,” alleging May 7, 2004 as his date of first use and date of first use in commerce.

8.

Granting registration of R-Vap to Applicant would result in a likelihood of confusion between Opposer’s and Applicant’s products, as Applicant’s goods are similar to Opposer’s, Applicant’s mark is similar to Opposer’s in sight and sound, and Applicant’s and Opposer’s products are sold and advertised to the same consumers, in the same target market, and in the same manner.

9.

The specimen that Applicant submitted in connection with the R-Vap application coupled with Applicant’s description of the use of that mark reveals that his products are very similar to Opposer’s, in that both products relate to liquid volume reduction equipment.

10.

Applicant’s goods are similar to Opposer’s. Among Applicant’s goods, like Opposer’s, are systems specifically designed to reduce the volume of a liquid through evaporation. For example, both Applicant and Opposer provide systems associated with their respective marks that are designed to reduce the volume of landfill leachate.

11.

Applicant’s mark R-Vap creates an overall commercial impression which has a strong similarity to Opposer’s Mark E-VAP. The variation of only one letter between the

marks is strong evidence of this similarity of commercial impressions. The similarity of commercial impressions is evidence that confusion will exist as to at least one of source, sponsorship, affiliation or connection.

12.

Applicant's and Opposer's goods are both directed to industrial clientele with liquid volume reduction needs. Both Applicant and Opposer sell to landfill owners and operators. Both Applicant and Opposer appeal directly to this clientele as their means of marketing.

13.

Due to the high level of similarity between Opposer's Mark and Applicant's mark, the goods and services identified by the marks, the target market, and the channels of distribution, there is a likelihood that even a sophisticated consumer would be confused.

14.

Applicant's use of its mark is likely to result in economic loss to Opposer due to the confusion of Applicant's products with Opposer's products by Opposer's clients.

15.

Opposer is likely to be damaged if Applicant's mark is federally registered. Applicant's registration is likely to be raised by the Trademark Office in a rejection of the application for federal registration of Opposer's mark.

16.

Opposer's use of Opposer's Mark predates Applicant's date of first use. Opposer claims priority of use of these marks, pursuant to Section 2(d) of the Act, 15 U.S.C.

§1052(d) and rely on that section as the statutory basis for the denial of Applicant's application for registration.

17.

WHEREFORE, Opposer prays that said application Serial No. 77/208297 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposers.

Respectfully submitted:

/johnbedel/

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