

ESTTA Tracking number: **ESTTA326672**

Filing date: **01/13/2010**

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	GP Harmon Recycling LLC
Granted to Date of previous extension	01/13/2010
Address	133 Peachtree Street NE Atlanta, GA 30303 UNITED STATES

Attorney information	Jaime Rich Vining Lott & Friedland, P.A. 355 Alhambra Circle Suite 1100 Coral Gables, FL 33134 UNITED STATES jrvining@lfiplaw.com, ljlott@lott-friedland.com, acaceres@lfiplaw.com Phone:305-448-7089
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Applicant Information

Application No	77725583	Publication date	09/15/2009
Opposition Filing Date	01/13/2010	Opposition Period Ends	01/13/2010
Applicant	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, TX 77002 UNITED STATES		

Goods/Services Affected by Opposition

Class 039. All goods and services in the class are opposed, namely: Refuse collection, storage, and transport; storage, distribution, transmission, and supply of methane gas; and consulting services regarding the collection and transport of refuse by truck

Applicant Information

Application No	77725585	Publication date	09/15/2009
Opposition Filing Date	01/13/2010	Opposition Period Ends	
Applicant	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, TX 77002 UNITED STATES		

Goods/Services Affected by Opposition

Class 042.

All goods and services in the class are opposed, namely: Design of pollution and control systems and equipment for others; consulting services in the field of environmental assessment compliance, and planning; and environmental testing and inspection

Applicant Information

Application No	77725578	Publication date	09/15/2009
Opposition Filing Date	01/13/2010	Opposition Period Ends	
Applicant	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, TX 77002 UNITED STATES		

Goods/Services Affected by Opposition

Class 040.

All goods and services in the class are opposed, namely: Recycling and waste treatment services; treatment of waste using bioreactors; production of methane gas; generation of energy from the conversion of waste; treatment and incineration of solid and hazardous waste materials; solid and hazardous waste material control; sorting of waste and recyclable materials; resource recovery, namely, sorting waste and recyclable material; water and waste water treatment; consultation in the field of waste treatment; consultation in the field of recycling; and bioremediation services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3068081	Application Date	03/22/2005
Registration Date	03/14/2006	Foreign Priority Date	NONE
Word Mark	O		
Design Mark			
Description of Mark	The mark consists of a stylized letter 'o'.		
Goods/Services	Class 040. First use: First Use: 2005/03/31 First Use In Commerce: 2005/03/31 Waste paper management and recycling services		

Attachments	78592097#TMSN.jpeg (1 page)(bytes) NTC OPP - GP Harmon 11310.pdf (6 pages)(137549 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 Overnight Courier on this date.

Signature	/Jaime Rich Vining/
Name	Jaime Rich Vining
Date	01/13/2010

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

GP Harmon Recycling LLC, a Georgia
limited liability company,
Opposer,

v.

Waste Management, Inc., a Delaware
corporation,
Applicant.

Opposition No.: _____
Application Serial Nos.: **77/725,583**;
77/725,585; and **77/725,578**

Date of Publication: September 15, 2009
Mark: Circular design mark

CONSOLIDATED NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. § 1063(a) and TBMP § 303.01, Opposer, GP Harmon Recycling LLC (“Opposer”), a Georgia limited liability company, located and doing business at 133 Peachtree Street, N.E., Atlanta, Georgia 30303, is and will be damaged by Application Serial Nos. 77/725,583; 77/725,585; and 77/725,578 (hereinafter referred to as “the Applications”), and hereby opposes the registration of same.

Upon information and belief, Applicant, Waste Management, Inc. (“Applicant”), a corporation organized and existing under the laws of the State of Delaware, located and doing business at 1001 Fannin, Suite 4000, Houston, Texas 77002, is the owner of the Applications filed on April 29, 2009, for a circular design mark as displayed below (“Applicant’s Trademark”):



Applicant seeks registration of the Applications on the Principal Register based on its intent to use Applicant's Trademark in connection with the following services:

MARK	SERIAL NUMBER	GOODS AND SERVICES	FILING DATE
	77/725,583	Refuse collection, storage, and transport; storage, distribution, transmission, and supply of methane gas; and consulting services regarding the collection and transport of refuse by truck, in International Class 39	April 29, 2009
	77/725,585	Design of pollution and control systems and equipment for others; consulting services in the field of environmental assessment compliance, and planning; and environmental testing and inspection, in International Class 42	April 29, 2009
	77/725,578	Recycling and waste treatment services; treatment of waste using bioreactors; production of methane gas; generation of energy from the conversion of waste; treatment and incineration of solid and hazardous waste materials; solid and hazardous waste material control; sorting of waste and recyclable materials; resource recovery, namely, sorting waste and recyclable material; water and waste water treatment; consultation in the field of waste treatment; consultation in the field of recycling; and bioremediation services, in International Class 40	April 29, 2009

As grounds for opposition, it is alleged that:

1. Opposer believes that it will be damaged by registration of Applicant's Trademark as shown in the Applications.

2. Opposer owns United States Trademark Registration No. 3,068,081 for the following design mark (hereinafter "**GP DESIGN** Trademark"):



3. Opposer's **GP DESIGN** Trademark has been in continuous use since March 31, 2005 for "waste paper management and recycling services," in International Class 40.

4. Opposer's **GP DESIGN** Trademark is a well-known, distinctive and famous trademark which Opposer has advertised, promoted, and continuously used for nearly five (5) years.

5. Applicant's Trademark is confusingly similar to Opposer's **GP DESIGN** Trademark. Applicant's Trademark mimics significant portions of Opposer's **GP DESIGN** Trademark. Specifically, both Applicant's Trademark and Opposer's **GP DESIGN** Trademark are shown in the same style of drawing. They both appear to be a circular shape, comprised of repeating geometric shapes. In addition, the overall commercial impressions of the marks are very similar, which erroneously suggests an affiliation with Opposer.

6. A comparison of Applicant's Trademark and Opposer's **GP DESIGN** Trademark results inescapably in a conclusion of confusingly similarity:



Opposer's GP DESIGN Trademark



Applicant's Trademark

7. In view of the similarity of the parties' respective marks and the overlapping nature of the parties' respective services, Applicant's mark so resembles Opposer's **GP DESIGN** Trademark as to be likely to cause the public to be confused, mistaken, or deceived into believing that Applicant's services originate from Opposer or are in some way related to, associated with, or sponsored by Opposer.

8. Moreover, both Opposer and Applicant are in the business of recycling and waste management services, and both compete in the same market nationwide.

9. Upon information and belief, the customers served by Applicant are identical to those served by Opposer. Thus, the similarity of the parties' respective trade channels and customers increase the likelihood of confusion.

10. Upon information and belief, the advertising media employed by both Opposer and Applicant is similar based on the fact that Opposer and Applicant are competitors in the same industry. This factor weighs heavily in favor of a finding that confusion is likely.

11. Accordingly, registration of Applicant's Trademark is barred by the provisions of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in that Applicant's Trademark consists of or comprises a mark which so resembles a mark previously used in the United States by Opposer in respect of related services as to be likely to cause the public to be confused, mistaken or deceived.

12. Registration of the Applicant's Trademark would be a source of damage to Opposer because relevant end users are likely to attribute the source or sponsorship of Applicant's Goods to Opposer.

13. In addition, registration of Applicant's Trademark is barred by provisions of 15 U.S.C. § 1125(c), in that Applicant's intended use of Applicant's Trademark in connection with the promotion or sale of, *inter alia*, recycling, waste treatment and related services will cause the dilution of the distinctive quality of Opposer's **GP DESIGN** Trademark.

14. Applicant's intended use of Applicant's Trademark in connection with similar and/or identical services as Opposer will irreparably dilute the Opposer's distinctive **GP DESIGN** Trademark and injure Opposer's business reputation.

15. Finally, Applicant's Trademark will injure Opposer by impairing Opposer's ability to register other marks in connection with recycling, waste treatment and related services.

PRAYER FOR RELIEF

WHEREFORE, Opposer respectfully requests that the opposition be granted and the Application Serial Nos. 77/725,583; 77/725,585; and 77/725,578 be denied registration.

Date: January 13, 2010

Respectfully submitted,

LOTT & FRIEDLAND, P.A.



Leslie J. Lott
Jaime Rich Vining
355 Alhambra Circle
Suite 1100 (zip code: 33134)
P.O. Drawer 141098
Coral Gables, FL 33114-1098
(305)448-7089

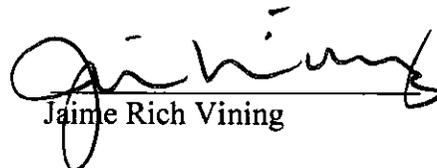
*Attorneys for Opposer
GP Harmon Recycling LLC*

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **NOTICE OF CONSOLIDATED OPPOSITION** was served upon Applicant by delivering true and correct copies of same to Applicant and counsel for Applicant via Federal Express on January 13, 2010 as follows:

Waste Management, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

Ben D. Tobor, Esq.
Greenberg Traurig LLP
1000 Louisiana St., Suite 1700
Houston, TX 77002



Jaime Rich Vining