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

Proceeding	91194562
Party	Defendant Karl Burgeson and Lynne Burgeson
Correspondence Address	THOMAS H. YOUNG THOMAS H. YOUNG, PC 5500 HAWTHORN CIRCLE GREENWOOD VILLAGE, CO 80121 UNITED STATES tyoung9851@msn.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	06/25/2010
Attachments	Motion to Dismiss.pdf (4 pages)(292455 bytes)

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

AGAPE ROOFING AND CONSTRUCTION,
LLC,

Opposer,

v.

KARL BURGESSON and
LYNNE BURGESSON,
Individuals

Applicants.

Opposition No. 91194562

Application Serial No. 77/832917

Mark: AGAPE CONTRUCTION &
ROOFING

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND ANSWER

Applicants, Karl Burgesson and Lynne Burgesson, by their attorney, hereby submit this Motion to Dismiss and, if not granted, answer the allegations set forth in Opposer's Objection to Registration of Serial Number 77832917.

Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted

In order to be sufficient, a pleading must allege such facts as would, if proved, establish that the Opposer is entitled to the relief sought, namely that 1) Opposer has standing to maintain the proceeding, and 2) a valid ground exists for denying the registration sought. Dismissal for insufficiency is appropriate if it appears certain that the Opposer is entitled to no relief under any set of facts that could be proved in support of its claim. TBMP §503.02.

In the Objection to Registration of Serial Number 77832917 which has been treated by the Board as a Notice of Opposition, Opposer does not set forth a short and plain statement showing why the Opposer believes it would be damaged by the registration of the opposed mark,

namely Opposer's standing to maintain the proceeding. TBMP §309.03(b). Opposer has not alleged facts sufficient to show that Opposer has a real interest in the proceeding and a reasonable basis for its belief of damage. In fact, there is no allegation of how Opposer will be damaged by registration of Application Serial No. 77832917. Opposer has not alleged that it has a direct and personal stake in the outcome of the proceeding. Rather, Opposer merely states that it objects to Application Serial No. 77832917 because Applicants have not rendered the services in more than one state since Applicants' website "distinguishes its services from other service providers who operate outside of the Denver area" by advertising that Applicants offer services in the Denver Metro Area. Aside from the facts that 1) Applicants render services in more than one state, and 2) that advertising Denver services is not an indication that services are not provided elsewhere, Opposer has not asserted any basis for why registration of Application Serial No. 77832917 will damage or otherwise affect Opposer.

In addition to the issue of standing, it is not clear what the grounds are for opposition. It appears that Opposer is alleging that Applicants have not used the mark in Application Serial No. 77832917 in commerce in connection with the services listed in the application. This is not a basis for opposition.

Finally, the averments in the Objection to Registration of Serial Number 77832917 are not made in numbered paragraphs which are limited to a statement of a single set of circumstances. TBMP §309.03(a)(2).

For these reasons, Applicants request that Opposer's Objection to Registration of Serial Number 77832917 which has been treated as a Notice of Opposition be dismissed with prejudice.

Answer

In the event that Applicants' Motion to Dismiss is not granted, Applicants answer the opposition as follows:

Applicants have insufficient knowledge or information as to the truth of the allegations set forth in the first paragraph of the Objection to Registration of Serial Number 77832917 and, therefore, deny said allegations.

Applicants admit that their web page at <http://agaperoofting.com/> states:

Agape Construction & Roofing™ is the wood shake specialist in the Denver Metro/Front Range for two decades.

Their Colorado-based, family-owned, and operated company has become well known in the industry for the quality of their work, and is a preferred roofing contractor for most major insurance companies.

Applicants admit that their web page at <http://agaperoofting.com/roof-certifications> states:

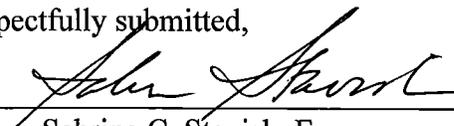
Buyers and Homeowners Beware of unscrupulous contractors that are out to make a quick buck and won't be there for you in the long run. We have a 20 year track record in the Denver Metro area, providing sellers and buyers with quality workmanship. We stand behind our service 100%.

Applicants deny all other allegations set forth in the Objection to Registration of Serial Number 77832917.

Date: June 25, 2010

Respectfully submitted,

By: _____


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ATTORNEYS FOR APPLICANTS

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2010, a true and correct copy of the foregoing **MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND ANSWER** was placed in the U.S. Mail, First Class postage prepaid, and served via email, addressed to:

Soula Skokos, Esq.
Skokos Law Group
1100 Jorie Blvd., Suite 220
Oak Brook, Illinois 60523

And via email to the below email address:

sskokos@aol.com

ATTORNEYS FOR OPPOSER

A handwritten signature in cursive script, appearing to read "Jessica Adle", is written over a horizontal line.