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

Proceeding	91194599
Party	Defendant Metroflor Corporation
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STONCOR GROUP, INC.	:	
	:	
v.	:	Opposition No.: 91194599
	:	
METROFLOR CORPORATION	:	Mark: TEKSTONE
	:	
Applicant.	:	

**APPLICANT, METROFLOR CORPORATION'S RESPONSE
TO OPPOSER, STONCOR'S MOTION FOR SUMMARY JUDGMENT,
AND APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

Opposer's motion for Summary Judgment should be denied because Opposer has failed to demonstrate the absence of any genuine issue of material fact that entitles it to summary judgment as a matter of law. Instead, Applicant by its remarks herein is entitled to summary judgment as a matter of law.

Opposer's motion for Summary Judgment is based on assertions that Applicants mark TEKSTONE and Opposer's mark STONTEC are very similar in appearance, highly similar in sound, identical in connotation, and sufficiently similar in overall commercial impression. Opposer's motion also includes a concocted self-serving declaration of Mr. Michael Jewell, vice president of a division of the Opposer, StonCor Group Inc.

Although Opposer alleges of likelihood of confusion between Applicant's TEKSTONE mark and Opposer's mark, STONTEC, U.S. Registration 3,700,433, Opposer has not provided a sound basis for likelihood of confusion and has not shown one single instance of actual confusion.

In accordance with the reasoning used by Opposer to demonstrate confusion, simply reversing the formatives of the mark STONTEC and then adding an “E” after the “N” to obtain TEKSTONE shows likelihood of confusion with the resulting conversion. Using this logic the following names would also be confusingly similar:

<u>Name</u>	<u>Confusingly similar to</u>
STONCOBBLE	COBBLESTONE
STONFREE	FREESTONE
STONLIME	LIMESTONE
STONSOAP	SOAPSTONE
STONCURB	CURBSTONE
STONFIELD	FIELDSTONE
STONBRIM	BRIMSTONE
STONGRIND	GRINDSTONE
STONFIRE	FIRESTONE
STONBRIDGE	BRIDGESTONE
STONMILL	MILLSTONE
STONCAP	CAPSTONE
STONRHINE	RHINESTONE
STONTOUCH	TOUCHSTONE
STONMILE	MILESTONE
STONBROWN	BROWNSTONE

It should be evident from the above names that merely reversing the order of the formatives in the mark STONTEC and adding an “E” after the “N” to obtain TEKSTONE does not demonstrate likelihood of confusion with the resulting conversion.

The formatives “STON” and “STONE” do not look alike, nor do they sound alike. “STONE” is a formative that has a meaning, e.g., *concreted earthy or mineral matter, rock*. “STON” has no meaning. Opposer’s assertions that STONTEC and TEKSTONE are confusingly similar, look alike, and sound alike are as ridiculous as an assertion that the name of the village LYNBROOK, NY is confusingly similar to the borough of BROOKLYN, NY.

Thus, Opposer has not demonstrated similarity in appearance, sound and overall commercial impression. Insofar as connotation is concerned, Applicant’s mark TEKSTONE designating vinyl floor tile is used for commercial and residential applications, whereas Opposer’s mark STONTEC designating non-metal floors is used for protective coatings in industrial and institutional applications. There is no commercial intersection between Applicant’s mark TEKSTONE and Opposer’s mark STONTEC.

Accordingly, for the above reasons, Applicant’s mark TEKSTONE is not confusingly similar to Opposer’s mark STONTEC.

Therefore, it is respectfully requested that Opposer’s motion for summary judgment be denied and that Applicant’s motion for summary judgment be granted.

Dated: May 3, 2011
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METROFLOR CORPORATION

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