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

Proceeding	91194599
Party	Plaintiff StonCor Group, Inc.
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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.	:	
	:	
Opposer	:	Opposition No.: 91194599
	:	
v.	:	Application No.: 77/795,684
	:	
Metroflor Corporation	:	Mark: TEKSTONE
	:	
Applicant	:	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

STONCOR’S MOTION FOR SUMMARY JUDGMENT

StonCor Group, Inc. (“StonCor”) hereby moves for summary judgment against Metroflor Corporation (“Metroflor”) on the grounds that there is a likelihood of confusion as between Metroflor’s mark “TEKSTONE”, which is the subject of Metroflor’s pending application serial number 77/795,684, and StonCor’s mark “STONTEC”, which is the subject of U.S. registration 3,700,433.

The evidence of record respecting this Motion for Summary Judgment includes Metroflor’s application as filed, StonCor’s pleaded and of record U.S. registration 3,700,433¹, StonCor’s accompanying Exhibit 1, which is the Declaration of Michael Jewell, StonCor’s accompanying Exhibit 2, which is Metroflor’s Response to StonCor’s First Interrogatories to Metroflor, and StonCor’s Exhibit 3, which is a page from Webster’s New Collegiate Dictionary.

¹ TARR and TESS printouts for StonCor’s U.S. registration 3,700,433 accompanied StonCor’s Notice of Opposition when filed, pursuant to 37 CFR 2. 122(d)(1).

Statement of Facts

Metroflor filed application serial number 77/795,684 on 3 August 2009 seeking registration of the mark “TEKSTONE” for use on and in connection with “vinyl floor tile”.

In its application under 15 USC 1051(a), Metroflor represented that it had used the mark “TEKSTONE” in commerce, on the vinyl floor tile for which Metroflor sought registration, since 31 December 2004.

StonCor opposed registration of Metroflor’s mark “TEKSTONE” based on, *inter alia*, likelihood of confusion as between “TEKSTONE” and StonCor’s mark “STONTEC”, U.S. registration 3,700,433, for use on “non-metal floors, namely, vinyl flake decorated and colored floors, aspartic urethane-based floors”, with use since 31 December 2002².

Legal Authorities

The policy underlying summary judgment is that of judicial economy, namely to avoid unnecessary work by litigants and tribunals when there is no genuine issue of material fact and when additional evidence, not presented in connection with the summary judgment motion, could not reasonably be expected to change the result of the case.³

² StonCor also pleaded likelihood of confusion with StonCor’s U.S. registration 3,694,310 for “STONTEC” registered for “methyl methacrylate resins; methyl methacrylate resin-based primers including resin, catalyst and aggregate; methyl methacrylate resin-based sealers including resin and catalyst; methyl methacrylate resin-based undercoatings including resin, catalyst and aggregate; urethane resins; urethane resin-based primers including resin and curing agent; urethane resin-based undercoatings including curing agent, resin and filler; urethane resin-based sealers including curing agent and resin” with a date of first use of 21 December 2002. StonCor further asserted additional ones of StonCor’s marks as bases for denying registration; those bases are not the subject of this motion. Limitation of this motion to assertion of likelihood of confusion as between Metroflor’s TEKSTONE mark and StonCor’s ‘433 registration for STONTEC should not be construed as abandonment of StonCor’s other pleaded bases for denial of registration for Metroflor’s TEKSTONE mark.

³ *Celotex Corp v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *T.A.B. Systems v. PadTel Teletrac*, 77 F.3d 1372, 37 USPQ2d 1879 (Fed. Cir. 1996); *Dana Corp v. Belvedere International Inc.*, 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991)

When a moving party such as StonCor demonstrates absence of any genuine issue of material fact, such moving party is entitled to judgment as a matter of law.

Summary judgment is just as applicable in trademark opposition proceedings as in any other *inter partes* proceeding in the federal system.⁴

Summary judgment is appropriate where *duPont*⁵ likelihood of confusion is the asserted basis for denial of registration⁶.

Any doubt as to whether there is a likelihood of confusion must be resolved in favor of StonCor as the registrant⁷.

Argument

The likelihood of confusion determination turns on an analysis of all probative facts and evidence relevant to the *duPont* factors. The focus is

[O]n the question of whether the purchasing public would mistakenly assume that the applicant's goods originate from the same source as, or are associated with, the goods in the cited registrations⁸.

In the analysis the key considerations are the similarities between the marks and the similarities between the goods of the parties⁹.

Addressing the *duPont* factors and commencing with factor one (the similarity of the marks in their entireties as to appearance, sound, and connotation), as regarding appearance

⁴ *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987); *Levi Strauss & Co. v. Genesco, Inc.*, 742 F.2d 1401, 222 USPQ 939 (Fed. Cir. 1984); *The Clorox Co. v. Chemical Bank*, 40 USPQ2d 1098 (TTAB 1996)

⁵ *In re E.I. duPont DeNemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973)

⁶ *Kellogg Co. v. Pack'Em Enterprises, Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 951 F. 2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991)

⁷ *In re Shell Oil Co.*, 992 F. 2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Hyper Shoppes (Ohio), Inc.*, 837 F. 2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP 1207.01.

⁸ *In re Majestic Distilling Company, Inc.* 315 F. 3d 1311 at 1315, 65 USPQ2d 1201 at 1205 (Fed. Cir. 2003) citing *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F. 2d 901,902, 177 USPQ 76,77 (CCPA 1973).

⁹ *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F. 2d 1098, 192 USPQ 24 (CCPA 1976); *In re Dixie Restaurants, Inc.* 105 F. 3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

“TEKSTONE” and “STONTEC” are obviously similar in appearance and would be so perceived by any lay person. “TEKSTONE” has eight letters, “STONTEC” has seven. Six of the seven “STONTEC” letters are present in “TEKSTONE”. When one sees “TEKSTONE” and one later sees “STONTEC”, the recollection is of sameness as between “TEKSTONE” and “STONTEC.”¹⁰ The two marks share in common the letter string “s t o n”, and share the letters “t” and “e” as part of essentially identical three letter groupings “tek” and “tec”. “TEKSTONE” and “STONTEC” are essentially visual flip-flops of one another.

The test for appearance similarity is not to be made by comparing the marks side-by-side¹¹. The test is whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion, as to the source of the goods offered under the respective marks, is likely to result¹². People often rely on imperfect recollections thereby to often poorly distinguish marks. Where there is a transposition of elements as between the marks, e.g. “TEKSTONE” and “STONTEC”, with no change in overall commercial impression, there is appearance similarity and likelihood of confusion¹³.

Appearance *similarity* is the issue, **not** appearance *identity*. This being the case, and in light of all of the above, appearance similarity of “TEKSTONE” and “STONTEC” is clear. Accordingly, there is no genuine issue of material fact as respecting the appearance similarity of “TEKSTONE” and “STONTEC”.

¹⁰ ¶ 5, Jewell Declaration, StonCor’s accompanying Exhibit 1.

¹¹ *Grandpa Pidgeon’s of Missouri, Inc. v. Borgsmiller*, 477 F. 2d 586, 177 USPQ 573 (CCPA 1973).

¹² *In re Majestic Distilling Company and Paula Payne Prods. Co.*, fn 8, *supra*.

¹³ TMEP 1207.01 citing *In re Wine Society of America*, 12 USPQ2d 1139 (TTAB 1989) (THE WINE SOCIETY OF AMERICA and design, found likely to be confused with AMERICAN WINE SOCIETY 1967 and design, for newsletters, etc.); *In re Nationwide Industries, Inc.*, 6 USPQ2d 1882 (TTAB 1998) (RUST BUSTER (“RUST” disclaimed) likely to be confused with BUST RUST for penetrating oil and rust penetrating spray lubricants); *In re General Tire & Rubber Co.*, 213 USPQ 870 (TTAB 1982) (SPRINT STEEL RADIAL (“STEEL” and “RADIAL” disclaimed) likely to be confused with RADIAL SPRINT (“RADIAL” disclaimed”) for tires).

As regarding sound, “TEKSTONE” and “STONTEC” are similar in sound, constituting aural flip-flops or phonetic reversals one of another¹⁴. “TEKSTONE” and “STONTEC” both have two syllables in common, one common syllable sounding of the word “stone” and the second common syllable sounding of the word or abbreviation “tech”. “TEKSTONE” has the letters “tek” followed by the word “stone”, whereas “STONTEC” has the letters “ston”, followed by the letters “tec”. The “tec” in “STONTEC” is pronounced identically with the “tek” in “TEKSTONE”; both are pronounced “tech”.¹⁵

When pronounced, “TEKSTONE” and “STONTEC” have the same rhythm and the same cadence. The hard “k” when “TEKSTONE” is pronounced evokes the same sound as the terminal “c” in “STONTEC”. Pronouncing “TEKSTONE” and “STONTEC” one after another, not just in one’s head but actually speaking “TEKSTONE” and “STONTEC” aloud, immediately evidences the aural similarity of the two marks, to both the speaker and the listener. Clearly “TEKSTONE” and “STONTEC” are highly similar in sound. StonCor notes that such phonetic similarity¹⁶ alone can be sufficient to find likelihood of confusion¹⁷. In view of the above, there is no genuine issue of material fact as respecting phonetic similarity of “TEKSTONE” and “STONTEC”.

¹⁴ ¶ 6, Jewell Declaration, StonCor’s accompanying Exhibit 1.

¹⁵ See StonCor’s accompanying Exhibit 3, the page from Webster’s New Collegiate Dictionary where “tech” appears.

¹⁶ TMEP 1207.01(b)(iv); see *Centraz Industries Inc. v. Spartan Chemical Co. Inc.*, 77 USPQ2d 1698, 1701 (TTAB 2006) (ISHINE (stylized) likely to be confused with ICE SHINE, for floor-finishing preparations); *Kabushiki Kaisha Hattori Tokeiten v. Scutto*, 228 USPQ 461 (TTAB 1985) (SEYCOS and design likely to be confused with SEIKO for watches); *In re Great Lakes Canning, Inc.*, 227 USPQ 483 (TTAB 1985) (CAYNA (stylized) likely to be confused with CANA for juices); *In re Energy Telecommunications & Electrical Ass’n*, 222 USPQ 350 (TTAB 1983) (ENTELEC likely to be confused with INTELECT for services for the electrical industry); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963) (CRESCO and design for leather jackets likely to be confused with KRESSCO for hosiery).

¹⁷ *TBC Corp. v. Holsa, Inc.*, 126 F. 3d 1470, 44 USPQ2d 1315 (Fed. Cir. 1997); *Kimberly-Clark Corp. v. H. Douglas Enterprises, Ltd.*, 774 F. 2d 1144, 227 USPQ 541 (Fed. Cir. 1985); *CBS, Inc. v. Morrow*, 708 F. 2d 1579, 218 USPQ 198 (Fed. Cir. 1983); *Crown Radio Corp. v. Soundsciber Corp.*, 506 F. 2d 1392, 184 USPQ 221 (CCPA 1974); *Vornado, Inc. v. Breuer Electric Mfg. Co.*, 390 F. 2d 724, 156 USPQ 340 (CCPA 1968).

As regarding connotation, both “TEKSTONE” and “STONTEC” connote technology together with stone¹⁸. To any English-speaking adult, the “tek” in “TEKSTONE” unquestionably connotes technology, as does the “tec” in “STONTEC”. Similarly, to any English-speaking adult, the “ston” in “STONTEC” connotes “stone”, as does the “stone” in “TEKSTONE”. When the “tec/tek” and “stone” connotations are combined, the connotation of both “TEKSTONE” and “STONTEC” is that of technology with stone. As respecting connotation similarity:

[T]he focus is on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks¹⁹.

StonCor notes that connotation similarity alone, like appearance similarity alone and like aural similarity alone, can be sufficient to find likelihood of confusion:

[T]he ... similarities in sound and appearance are ...limited ... nevertheless these marks ...readily evoke the same commercial impression. **It is well established that similarity of connotation or commercial impression alone is sufficient to support a finding of likelihood of confusion between marks.** *H. Sichel Sohne, GmbH v. John Gross & Co.*, 204 USPQ 257, 260 (TTAB 1979); and this is true even if the marks exhibit aural and optical dissimilarity **when they convey the same general idea or stimulate the same mental reaction.** *Procter & Gamble Co. v. Conway*, 164 USPQ 301, 304 (CCPA 1970), especially where, as in this case, the marks are coined or arbitrary. See *Hancock v. The American Steel & Wire Co. of New Jersey*, 97 USPQ 330 (CCPA 1953).²⁰

¹⁸ ¶ 7, Jewell Declaration, StonCor’s accompanying Exhibit 1.

¹⁹ TMEP 1207.01(b)(v) citing *In re M Serman & Co. , Inc.* 223 USPQ 52 (TTAB 1984) (CITY WOMAN likely to be confused with CITY GIRL, for clothing); *Gastown, Inc. of Delaware v. Gas City, Ltd.* 187 USPQ 760 (TTAB 1975) (GAS CITY (“GAS” disclaimed) like to be confused with GASTOWN, for gasoline); *Watercare Corp. v. Midwesco-Enterprise, Inc.* 171 USPQ 696 (TTAB 1971) (AQUA-CARE (stylized) likely to be confused with WATERCARE (stylized) for water-conditioning products).

²⁰ *United Rum Merchants Ltd.*, 216 USPQ 217 at 219 (TTAB 1982) (emphasis added).

With “TEKSTONE” and “STONTEC” having the same connotation, there is no issue whatsoever of any material fact, let alone any genuine issue of material fact, as to connotation similarity as between “TEKSTONE” and “STONTEC”.

In summary, “TEKSTONE” and “STONTEC”, being very similar in appearance, highly similar in sound, and identical in connotation, are sufficiently similar in overall commercial impression that there is no genuine issue of material fact as respecting *duPont* factor one and likelihood of confusion as between “TEKSTONE” and “STONTEC”.

Respecting *duPont* factor two, the similarity or nature of the goods as described in the application and registration at issue, it is not necessary that Metroflor’s goods and StonCor’s goods be even similar or competitive to find that they are related for purposes of demonstrating likelihood of confusion²¹. Here Metroflor’s and StonCor’s goods are not just similar or competitive; they are functional equivalents, with Metroflor’s “vinyl floor tile” recitation using some of the same words, namely “vinyl” and “floor”, as StonCor’s ‘433 registration.

Both Metroflor’s application and StonCor’s ‘433 registration recite flooring products, namely “vinyl floor tile” and “vinyl flake decorated in colored floors” respectively²². While the recitations are not word-for-word the same and hence are not identical, for likelihood of confusion analysis there is no meaningful distinction between “floor tile” in Metroflor’s application and “floors” in StonCor’s ‘433 registration. This being the case, there is no issue of fact, let alone any genuine issue of material fact, respecting *duPont* factor two and the related, highly similar, nearly identical, and certainly competitive “TEKSTONE” and “STONTEC” goods.

²¹ *In re Rexel, Inc.*, 223 USPQ 830 (TTAB 1984); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

²² ¶ 8, Jewell Declaration, StonCor’s accompanying Exhibit 1.

Respecting *duPont* factor three, the similarity or dissimilarity of established, likely to continue trade channels, there is no trade channel limitation in Metroflor's "TEKSTONE" application. Therefore Metroflor's "TEKSTONE" vinyl floor tile is conclusively presumed, as a matter of law²³, to move in the same trade channels in which StonCor's "STONTEC" floors move. Metroflor's "TEKSTONE" vinyl floor tile is also conclusively presumed to be sold to the same customers as StonCor's "STONTEC" floors are sold²⁴.

Metroflor has stated that its "TEKSTONE" vinyl floor tile is for both residential and commercial customers²⁵ and that Metroflor markets its "TEKSTONE" vinyl floor tile to purchasers of residential and commercial flooring²⁶. There are no other types of customers-- "residential and commercial" are all there are. Accordingly, as respecting *duPont* factor three, there is no genuine issue of material fact as respecting the identity of the trade channels in which the "TEKSTONE" and STONTEC" goods move²⁷.

Respecting *duPont* factor four, the conditions under which and buyers to whom sales are made, i.e. impulse versus careful, sophisticated purchasing, there is no evidence of record as respecting the conditions under which and buyers to whom sales are made. StonCor submits at this time that no such evidence is necessary or even relevant to the issues presented by StonCor's instant motion. Even so, with Metroflor's application containing no restriction as to identity of purchasers or potential purchasers, is legally presumed that Metroflor's products will be sold to all available and reasonable customers, which would include sophisticated and unsophisticated customers, both commercial and residential. Accordingly, to the extent *duPont* factor four

²³ *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F. 2d 901, 177 USPQ 76 (CCPA 1973); *Kalart Co. v. Camera-Mart, Inc.*, 258 F. 2d 956, 119 USPQ 139 (CCPA 1958); *In re Elbaum*, 211 USPQ 639 (TTAB 1958).

²⁴ *Id.*

²⁵ Metroflor's response to StonCor's interrogatory 14, Metroflor's Responses to StonCor's First Set of Interrogatories, StonCor's accompanying Exhibit 2.

²⁶ Metroflor's response to StonCor's interrogatory 20, Metroflor's Responses to StonCor's First Set of Interrogatories, StonCor's accompanying Exhibit 2.

might be relevant as respecting the instant motion, there is no genuine issue of material fact as respecting *duPont* factor four, the conditions under which and buyers to whom sales of the “TEKSTONE” and “STONTEC” goods are made.

Respecting *duPont* factor five, the fame of the prior mark, StonCor has not to date placed into the record fame evidence respecting StonCor’s “STONTEC” mark. StonCor further notes that such evidence is not necessary to support StonCor’s motion. Accordingly, there is no genuine issue of material fact to be considered at this time as respecting *duPont* factor five, the fame of StonCor’s “STONTEC” mark.

Respecting *duPont* factor six, the number and nature of similar marks in use on similar goods, there is no evidence of record as regarding any similar marks being used on similar goods and, accordingly there is no genuine issue of material fact as regarding *duPont* factor six. In this regard, StonCor notes that absence of evidence for any one or more of the *duPont* factors is not fatal to StonCor’s motion; the law is clear that

Not all of the *duPont* factors are relevant or of similar weight in every case.²⁸

Respecting *duPont* factor seven, the nature and extent of any confusion, there is no evidence of record of any actual confusion and, accordingly, there is no genuine issue of material fact as respecting *duPont* factor seven. As noted for factor six, such evidence is not necessary for StonCor’s instant motion.

Respecting *duPont* factor eight, the length of time during and conditions under which there has been concurrent use without evidence of actual confusion, while Metroflor has asserted a date of first use for its mark, there is no evidence of record as regarding actual use of

²⁷ ¶ 9, Jewell Declaration, StonCor’s accompanying Exhibit 1.

²⁸ *Opryland USA, Inc. v. Great American Music Shoe, Inc.*, 970 F. 2d 847, 852, 23 USPQ2d 1471, 1476 (Fed. Cir. 1992)

Metroflor's mark. Accordingly, there is no evidence of record of any time during which or conditions under which there has been concurrent use of "STONTEC" and "TEKSTONE", and hence there is no evidence of actual confusion. It follows that there is no genuine issue of material fact respecting *duPont* factor eight. As noted for *duPont* factors six and seven, such evidence is not necessary for StonCor's instant motion.

Respecting *duPont* factor nine, the variety of goods on which a mark is or is not used and whether the mark is a house mark, a family mark, or a product mark, both of the marks at issue are product marks. Metroflor asserts only that its mark is used in connection with vinyl floor tile²⁹; there is no variety of goods on which Metroflor's "TEKSTONE" mark is used. StonCor's "STONTEC" mark is used on and in connection with floors, as is Metroflor's "TEKSTONE" mark. There is no genuine issue of material fact respecting *duPont* factor nine.

Respecting *duPont* factor ten, the mark and interface between the applicant and the owner of the prior mark, there is no evidence of record respecting this factor. As noted for *duPont* factors six, seven, and eight, such evidence is not necessary for StonCor's instant motion, and there is no genuine issue of material fact respecting *duPont* factor ten..

Respecting *duPont* factors eleven, twelve, and thirteen, namely the extent to which the applicant has the right to exclude others from use of its mark on its goods, the extent of potential confusion, whether *de minimis* or substantial, and any other established fact probative of the effect of use, there is no evidence of record as regarding any of these factors. As noted for *duPont* factors six, seven, eight and ten, such evidence is not necessary for StonCor's instant motion. It follows that there is no genuine issue of material fact respecting *duPont* factors eleven, twelve, and thirteen.

²⁹ Metroflor's response to StonCor's interrogatories 14 and 20, Metroflor's Responses to StonCor's First Set of Interrogatories, StonCor's accompanying Exhibit 2.

Summary and Prayer for Relief

“TEKSTONE” and “STONTEC” are more than similar in appearance, sound and connotation. As apparent from the foregoing, “TEKSTONE” and “STONTEC” are very, very close in sound when spoken, are highly similar in appearance when recalling one mark after having seen the other, and are unquestionably identical in connotation. There is no legitimate genuine issue of material fact respecting any of the foregoing.

It is indisputable that the “TEKSTONE” and “STONTEC” goods are essentially identical, both being floorings. Moreover, the “TEKSTONE” and “STONTEC” goods are conclusively presumed, as a matter of law, to move in the same trade channels, because there is no trade channel limitation recited in the “TEKSTONE” application.

As a matter of law, evidentiary doubts are to be resolved in favor of StonCor, as the registrant.

StonCor respectfully submits that when all of the foregoing is considered, this Board will find there is no genuine issue of material fact to deny summary judgment. StonCor respectfully solicits entry of judgment in favor of StonCor and issuance of an order sustaining this opposition and denying registration of “TEKSTONE”.

Respectfully submitted,

Date: 22 April 2011

/Charles N. Quinn/
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v.	:	Application No.: 77/795,684
	:	
Metroflor Corporation	:	Mark: TEKSTONE
	:	
Applicant	:	

CERTIFICATE OF SERVICE

I, Charles N. Quinn, of full age, by way of certification, state that a copy of the attached StonCor's Motion for Summary Judgment (with attachments) is being sent to applicant's counsel via email on the date and to the electronic address indicated below. This is done in accordance with a 17 May 2010 agreement between the parties for electronic service.

rodrod@rodman-rodman.com

Date: 22 April 2011

/Charles N. Quinn/
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**Exhibit 1 Accompanying StonCor's Motion for
Summary Judgment**

Declaration of Mr. Michael Jewell

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TRADEMARK TRIAL AND APPEAL BOARD

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Commissioner for Trademarks
P. O. Box 1451
Alexandria, VA 22313-1451

DECLARATION OF MICHAEL JEWELL

I, Michael Jewell, hereby declare as follows:

1. I am a citizen of the United States, a resident of the State of New Jersey, residing at 116 Greenbriar Road, Delran, New Jersey, 08075.
2. I am employed by the Stonhard Division of StonCor Group, Inc. I presently hold the title of Vice President of Product Development for the Stonhard Division. I previously held the title of Vice President of Marketing the Stonhard Division. I have held executive positions of comparable level with Stonhard for over ten years. I have been employed by Stonhard for over

20 years. I hold a Bachelor of Science degree in chemical engineering from Drexel University in Philadelphia, Pennsylvania. I make this declaration on behalf of StonCor Group, Inc. in support of a motion for summary judgment by StonCor Group, Inc. and for no other purpose.

3. In this proceeding, StonCorGroup, Inc. has opposed registration of the mark “TEKSTONE”, filed by Metroflor Corporation, as being likely to cause confusion with StonCor’s registered mark “STONTEC”. A copy of a printout from the United States Patent and Trademark Office showing the particulars of Metroflor’s mark “TEKSTONE” is attached.

4. StonCor Group owns two United States trademark registrations for the mark “STONTEC”. These are U.S. registrations 3,694,310 and 3,700,433. Printouts from the United States Patent and Trademark Office for each of these two trademark registrations are also attached.

5. I find Metroflor’s mark “TEKSTONE” and StonCor’s mark “STONTEC” similar in appearance. This is especially so when one sees Metroflor’s mark “TEKSTONE” and one later sees or recalls StonCor’s mark “STONTEC”; the recollection is of similarity in appearance as between “TEKSTONE” and “STONTEC”.

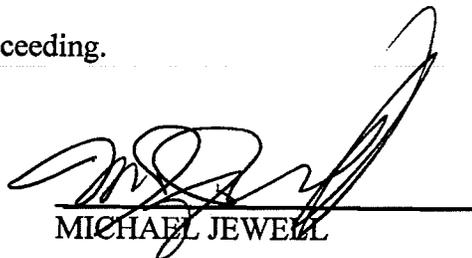
6. The marks “TEKSTONE” and “STONTEC” are highly similar in sound. The two marks are essentially aural flip-flops of one another. Metroflor’s mark has the letters “tek” first followed by the word “stone”, whereas StonCor’s mark has the letters “ston” first, followed by the letters “tec”. The “ston” in StonCor’s mark is pronounced identically with the “stone” in Metroflor’s mark. The “tec” in StonCor’s mark is pronounced identically with the “tek” in Metroflor’s mark. Accordingly, when the two marks are pronounced, they are highly similar in sound.

7. The Metroflor mark and the StonCor mark are identical in connotation. Each mark connotes technology together with stone. The “tek” in the Metroflor mark connotes technology as does the “tec” in the StonCor mark. The “ston” in the StonCor mark connotes hardness or stone, as does the word “stone” in the Metroflor mark. When the two connotations are put together, the connotation of both “TEKSTONE” and “STONTEC” is that of technology together with stone.

8. Metroflor seeks registration of “TEKSTONE” for use on and in connection with “vinyl floor tile”. StonCor’s mark “STONTEC” is registered pursuant to U.S. registration 3,700,433 for use on and in connection with “non-metal floors, namely, vinyl flake decorated and colored floors, aspartic urethane-based floors”.

9. Metroflor’s application for registration of the mark “TEKSTONE” does not contain any limitation of the channels of trade in which the “vinyl floor tile” would be sold. Accordingly, it is presumed that Metroflor would sell its vinyl floor tile under the mark “TEKSTONE” to all classes of customers, including those to whom StonCor sells its vinyl flake decorated and colored floors under the mark “STONTEC”.

10. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor’s position in this proceeding.


MICHAEL JEWELL

Date: 20 APRIL 2011

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.	:	
	:	
Opposer	:	Opposition No.: 91194599
	:	
v.	:	Application No.: 77/795,684
	:	
Metroflor Corporation	:	Mark: TEKSTONE
	:	
Applicant	:	

**Exhibit 3 Accompanying StonCor's Motion for
Summary Judgment**

Page from Webster's New Collegiate Dictionary

teal \tē(ə)\ *n*, *pl* teal or teals [ME *tele*; akin to MD *teling* teal] : any of several small short-necked river ducks (esp. genus *Anas*) of Europe and America

teal blue *n* : a variable color averaging a dark greenish blue

team \tēm\ *n* [ME *teme*, fr. OE *tēam* offspring, lineage, group of draft animals; akin to OE *tēon* to draw, pull — more at TOW] 1 *a* : two or more draft animals harnessed to the same vehicle or implement; *also* : these with their harness and attached vehicle 2 *a* : a draft animal often with harness and vehicle 3 *a* : a drawn vehicle (as a wagon) 2 *obs* : LINEAGE, RACE 3 : a group of animals: as *a* : a brood esp. of young pigs or ducks *b* : a matched group of animals for exhibition 4 : a number of persons associated together in work or activity: as *a* : a group on one side (as in football or a debate) *b* : CREW, GANG

team *vt* 1 : to yoke or join in a team 2 : to convey or haul with a team ~ *vi* 1 : to drive a team or motortruck 2 : to form a team

team *adj* : of or performed by a team <a ~ effort>

tea maker *n* : a perforated covered spoon that holds tea leaves and is used in brewing tea in a cup

team foul *n* : one of a designated number of personal fouls the players on a basketball team may commit during a given period of play before the opposing team begins receiving bonus free throws

team handball *n* : a game developed from soccer which is played between two teams of seven players each and in which the ball is thrown, caught, and dribbled with the hands

team-mate \tēm-māt\ *n* : a fellow member of a team

team play *n* 1 : collective play with mutual assistance of team members <skillful team play in hockey> 2 : cooperative effort <need for team play in time of war—Christopher La Farge>

team-ster \tēm(p)-stər\ *n* : one who drives a team or motortruck esp. as an occupation

team-work \tēm-wɔrk\ *n* : work done by several associates with each doing a part but all subordinating personal prominence to the efficiency of the whole

tea party *n* 1 : an afternoon social gathering at which tea is served 2 [fr. the Boston Tea Party, name facetiously applied to the occasion in 1773 when a group of citizens threw a shipment of tea into Boston harbor in protest against the tax on imports] : an exciting disturbance or proceeding

tea-pot \tē-pət\ *n* : a vessel with a spout in which tea is brewed and from which it is served

tea-poy \tē-poi\ *n* [Hindi *tipai*] 1 : a 3-legged ornamental stand 2 : a stand for a tea service

tear \ti(ə)r\ *n* [ME *tæher*, *tær*; akin to OHG *zahar* tear, L *lacruma*, *lacrima*, Gk *dakry*] 1 *a* : a drop of clear saline fluid secreted by the lacrimal gland and diffused between the eye and eyelids to moisten the parts and facilitate their motion 2 *pl* : a secretion of profuse tears that overflow the eyelids and dampen the face 2 *pl* : an act of weeping or grieving <broke into ~s> 3 : a transparent drop of fluid or hardened fluid matter (as resin)

tear *vi* : to fill with tears : shed tears <eyes ~ing in the November wind—Saul Bellow>

tear \tə(ə)r, tē(ə)r\ *vb* tore \tō(ə)r, tō(ə)r\; torn \tō(ə)r, tō(ə)r\; **tear-ing** [ME *teren*, fr. OE *teran*; akin to OHG *zeran* to destroy, Gk *derain* to skin] *vt* 1 *a* : to separate parts of or pull apart by force : REND *b* : to wound by tearing : LACERATE <~ the skin> 2 : to divide or disrupt by the pull of contrary forces <a mind torn with doubts> 3 : to remove by force : WRENCH <~ a cover off a box> 4 : to make or effect by or as if by tearing <~ a hole in the wall> ~ *vi* 1 : to separate on being pulled : REND <this cloth ~s easily> 2 : to move or act with violence, haste, or force <went ~ing down the street> — **tear-er** *n* : to separate forcibly — **tear at** : LACERATE <the sight of her grief tore at his heart> — **tear into** : to attack without restraint or caution — **tear one's hair** : to pull one's hair as an expression of grief, rage, frustration, desperation, or anxiety

tear \tə(ə)r, tē(ə)r\ *n* 1 *a* : the act of tearing *b* : damage from being torn; *esp* : a hole or flaw made by tearing 2 *a* : a tearing pace : HURRY. *b* : SPREE <go on a ~>

tear around *vi* 1 : to go about in excited or angry haste 2 : to lead a wild or disorderly life

tear away *vt* : to remove (as oneself) reluctantly

tear-down \tə(ə)r-dəun, tē(ə)r-\ *n* : the act or process of disassembling

tear down \tə(ə)r-dəun, tē(ə)r-\ *vt* 1 *a* : to cause to decompose or disintegrate *b* : VILIFY, DENIGRATE 2 : to take apart : DISASSEMBLE <tear an engine down for an overhaul>

tear-drop \ti(ə)r-drɔp\ *n* 1 : TEAR 1a 2 : something shaped like a dropping tear; *specif* : a pendant gem (as on an earring)

tear-ful \ti(ə)r-fəl\ *adj* 1 : flowing with or accompanied by tears <~ entreaties> 2 : causing tears : TEARY — **tear-ful-ly** \tē-fəl-ē\ *adv* — **tear-ful-ness** *n*

tear-gas \tē-gas\ *vt* : to use tear gas on

tear gas *n* : a solid, liquid, or gaseous substance that on dispersion in the atmosphere blinds the eyes with tears and is used chiefly in dispelling mobs

tear-ing \tə(ə)r-ɪŋ, tē(ə)r-\ *adj* 1 : causing continued or repeated pain or distress 2 : HASTY, VIOLENT 3 *chiefly* Brit : SPLENDID

tear-jerk-er \ti(ə)r-jɔrk-ər\ *n* : an extravagantly pathetic story, play, film, or broadcast — **tear-jerk-ing** \-kɪŋ\ *adj*

tear-less \ti(ə)r-ləs\ *adj* : shedding no tears : free from tears — **tear-less-ly** *adv* — **tear-less-ness** *n*

tear-off \tə(ə)r-ɔf, tē(ə)r-\ *n* : part of a piece of paper intended to be removed by tearing usu. along a marked line

tear off \tə(ə)r-ɔf, tē(ə)r-\ *vt* : to compose rapidly <tear off two letters before dinner>

tea-room \tē-rūm, -rūr\ *n* : a small restaurant with service and decor designed primarily for a female clientele

tea rose *n* : any of numerous tender or half-hardy hybrid garden bush roses descended chiefly from a Chinese rose (*Rosa odorata*) and valued esp. for their abundant large usu. tea-scented blossoms — compare HYBRID TEA ROSE

tear sheet *n* : a sheet torn from a publication usu. to prove insertion of an advertisement to an advertiser

tear-stain \ti(ə)r-stān\ *n* : a spot or streak left by tears

tear-stained \-stānd\ *adj*

tear strip *n* : the scored band in a can or added narrow ribbon in a wrapper or on a fiber box that provides an easy and defined way of opening

tear tape *n* : a strong tape glued to the inside of a shipping container with one end protruding so that the container is readily opened by pulling out the tape

tear up *vt* 1 : to damage, remove, or effect an opening in <tear up the street to lay a new water main> 2 : to tear into pieces

teary \ti(ə)r-ē\ *adj* tear-i-er; -est 1 *a* : wet or stained with tears : TEARFUL *b* : consisting of tears or drops resembling tears 2 : causing tears : PATHETIC <a ~ story> — **tear-ily** \tē-ri-ē\ *adv*

tease \tēz\ *vt* teased; teas-ing [ME *tesen*, fr. OE *tēsan*; akin to OHG *zeisan* to tease] 1 *a* : to disentangle and lay parallel by combing or carding <~ wool> *b* : TEASEL 2 : to tear in pieces *esp* : to shred (a tissue or specimen) for microscopic examination 3 *a* : to disturb or annoy by persistent irritating or provoking *b* : to attempt to provoke to anger, resentment, or confusion : COAX *c* : to annoy with petty persistent requests : PESTER; *also* : to obtain by repeated coaxing *d* : to persuade to acquiesce *esp* : by persistent small efforts : COAX 4 : to comb (hair) by taking hold of a strand and pushing the short hairs toward the scalp with the comb *syn* see WORRY — **teas-er** *n* — **teas-ing-ly** \tē-zɪŋ-lē\ *adv*

tease *n* 1 : the act of teasing : the state of being teased 2 : one that teases

tea-sel or **tea-zel** or **tea-zle** \tē-zəl\ *n* [ME *tesel*, fr. OE *tāsel*; akin to OE *tēsan* to tease] 1 *a* : an Old World prickly herb (*Dipsacus fullonum* of the family Dipsacaceae, the teasel family) with flower heads that are covered with stiff hooked bracts and are used in the woolen industry — called also *fuller's teasel* *b* : a plant of the same genus as the teasel 2 *a* : a flower head of the fuller's teasel used when dried to raise a nap on woolen cloth *b* : a wire substitute for the teasel

tease *vt* tea-seled or tea-selled; tea-sel-ing or tea-sel-ing \tēz-(ə)-lɪŋ\ : to nap (cloth) with teasels

tease out *vt* : to obtain by disentangling or freeing with a pointed instrument

tea service *n* : a set of china or metalware for service at table: *a* : a set of china consisting of a teapot, sugar bowl, creamer, sometimes a coffeepot, and usu. plates, cups, and saucers *b* : a set of metalware consisting of a teapot, sugar bowl, creamer, sometimes a coffeepot, and usu. waste bowl, kettle, and tray

tea set *n* 1 : TEA SERVICE 2 : a china set consisting of a teapot, sugar bowl, creamer, cups and saucers, and plates

tea shop *n* 1 *chiefly* Brit : TEAROOM 2 Brit : RESTAURANT

tea-spoon \tē-spūn, -spūn\ *n* 1 : a small spoon that is used esp. for eating soft foods and stirring beverages and that holds one third of a tablespoon 2 : TEASPOONFUL

tea-spoon-ful \-fūl\ *n*, *pl* teaspoonfuls \-fūlz\ *also* teaspoons-ful \-spūnz-fūl, -spūnz-\ 1 : as much as a teaspoon can hold 2 : a unit of measure equal to 1/2 fluidrams

teat \tit, tēt\ *n* [ME *tete*, fr. OF, of Gmc origin; akin to OE *tīt* teat, MHG *zitze*] 1 : the protuberance through which milk is drawn from an udder or breast : NIPPLE 2 : a small projection or a nib (as on a mechanical part) — **teat-ed** \-əd\ *adj*

tea table *n* : a table used or spread for tea; *specif* : a small table for serving afternoon tea

tea-time \tē-tīm\ *n* : the customary time for tea : late afternoon or early evening

tea towel *n* : DISH TOWEL

tea tray *n* : a tray that accommodates a tea service

tea wagon *n* : a small table on wheels used in serving tea

Te-bet \tā-vət(h), tā-ves\ *n* [Heb *Tebēth*]: the 4th month of the civil year or the 10th month of the ecclesiastical year in the Jewish calendar — see MONTH table

tec *abbr* technical; technician

tech *abbr* 1 technical; technically; technician 2 technological; technology

teched \tēcht\ *adj* [alter. of *touched*] : mentally unbalanced

tech-ne-tium \tek-nē-sh(ē)-əm\ *n* [NL, fr. Gk *technētōs* artificial, fr. *technasthai* to devise by art, fr. *technē*] : a metallic element obtained by bombarding molybdenum with deuterons or neutrons and in the fission of uranium — see ELEMENT table

tech-ne-tron-ic \tek-nə-trən-ik\ *adj* [technological + electronic] : of, relating to, or being a society shaped by the impact of technology and electronics and esp. by the impact of computers and communications on its structure, culture, psychology, and economics

tech-nic \tek-nik, for 1 also tek-nēk\ *n* 1 : TECHNIQUE 1 2 *pl* but *sing* or *pl* in *constr* : TECHNOLOGY 2a

tech-ni-cal \tek-ni-kəl\ *adj* [Gk *technikos* of art, skillful, fr. *technē* art, craft, skill; akin to Gk *tektōn* builder, carpenter, L *texere* to weave, OHG *dahs* badger] 1 *a* : having special and usu. practical knowledge esp. of a mechanical or scientific subject *b* : marked by or characteristic of specialization 2 : of or relating to a particular subject; *esp* : of or relating to a practical subject organized on scientific principles 3 *a* : marked by a strict legal interpretation *b* : LEGAL 6 4 : of or relating to technique 5 : of, relating to, or produced by ordinary commercial processes without being subjected to special purification <~ sulfuric acid> 6 : resulting chiefly from internal market factors rather than external influences <~ reaction of the stock market> — **tech-ni-cal-ly** \-k(ə)-lē\ *adv* — **tech-ni-cal-ness** \-kəl-nəs\ *n*

technical foul *n* : a foul (as in basketball) that involves no physical contact with an opponent and that usu. is incurred by unsportsmanlike conduct — compare PERSONAL FOUL



teasel 1a

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.	:	
	:	
Opposer	:	Opposition No.: 91194599
	:	
v.	:	Application No.: 77/795,684
	:	
Metroflor Corporation	:	Mark: TEKSTONE
	:	
Applicant	:	

**Exhibit 2 Accompanying StonCor's Motion for
Summary Judgment**

**Metroflor's Responses to StonCor's First Set of
Interrogatories**

prejudice of Applicant in relation to further discovery, research, or analysis. Applicant, based upon its current knowledge, understanding, and belief of the facts, may discover further facts, information and documents. Applicant accordingly reserves the right to amend or supplement or modify its disclosures in accordance with subsequent factual and legal developments.

This Preliminary Statement applies to each and every response provided in this disclosure and is incorporated herein by this reference as though fully set forth in all responses in the disclosures that follow.

These responses are given without prejudice to using or relying on at trial information or documents omitted from these responses as a result of mistake, error, oversight, or inadvertence. Applicant further reserves the right to object on appropriate grounds to the introduction at trial of any information or documents included in these responses.

Applicant's responses are made without waiving or intending to waive, but on the contrary, preserving and intending to preserve, all objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the responses, or the subject matter thereof, in this or any subsequent proceeding.

GENERAL OBJECTIONS:

Applicant objects generally to the following:

1. Applicant objects to the interrogatories insofar as they seek to impose duties or obligations on Applicant beyond those imposed by the Federal Rules of Civil Procedure or the Rules of Practice of the US Patent and Trademark Office.

2. Applicant objects to the interrogatories insofar as they are vague, ambiguous, indefinite, overbroad, unduly burdensome, duplicative, cumulative, unintelligible or otherwise unclear as to the precise information sought.

3. Applicant objects to the interrogatories insofar as they seek information that is neither relevant to the claims or defenses of either party in this action nor reasonably calculated to lead to the discovery of admissible evidence.

4. Applicant objects to the interrogatories insofar as they call for information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, protection or immunity.

5. Applicant objects to the interrogatories insofar as they call for the production of confidential business information, trade secrets, or commercially sensitive information of Applicant.

Applicant's Mark shall mean TEKSTONE, which is the mark being opposed in Application No. 77/795,684.

Opposer's Marks shall mean all the marks listed in Opposer's Notice of Opposition, namely:

US Trademark Registration No. 3,700,433 – STONTEC

US Trademark Registration No. 3,694,310 – STONTEC

US Trademark Registration No. 1,706,070 – STONCLAD

US Trademark Registration No. 1,306,662 – STONCLAD-PT

US Trademark Registration No. 1,740,723 – STONCREST

US Trademark Registration No. 1,645,258 – STONCRETE

US Trademark Registration No. 1,703,299 – STONFIL

US Trademark Registration No. 1,487,280 – STONHARD

US Trademark Registration No. 1,697,228 – STONKOTE

US Trademark Registration No. 1,688,593 – STONLINER

US Trademark Registration No. 1,655,954 – STONLOK

US Trademark Registration No. 1,687,420 – STONLUX

US Trademark Registration No. 1,697,229 – STONPROOF

US Trademark Registration No. 1,697,230 – STONSEAL

US Trademark Registration No. 1,691,045 – STONSET

US Trademark Registration No. 1,689,713 - STONSHIELD

INTERROGATORIES

Interrogatory 1.

Identify all of Applicant's predecessors, subsidiaries and affiliates, including their names and addresses, their forms of business organization, the nature of their business, and the inclusive dates or period so engaged in such business.

Response:

Applicant objects to identifying all predecessors, subsidiaries, and affiliates to the extent they are not related to this Opposition and disclosure of Applicant's

predecessors, subsidiaries, and affiliates would not likely lead to any relevant or discoverable evidence. In addition, Applicant objects to the request for the form of business organization, nature of the business, and dates or period so engaged in such business is overly broad and not likely to lead to relevant or discoverable evidence. If Opposer lays a foundation for the relevance of this part of the request, Applicant will reconsider its objections.

The identity of Applicant, including name and address, and any predecessors, subsidiaries and affiliates related to this Opposition is as follows: Applicant was previously named Halstead International, Inc., having a place of business at 15 Oakwood Avenue, Norwalk, CT 06850.

Interrogatory 2.

State the general nature of Applicant's business, including in detail the goods and services it provides, and identify the twenty-five (25) largest customers. If Applicant is engaged in multiple lines of business, describe each of these lines and identify the ten (10) largest customers for each such line.

Response:

Applicant objects to stating the detail of goods and services Applicant provides unless it is related to this Opposition. Applicant objects to identifying any of its customers because the information is confidential and not likely to lead to any relevant or discoverable evidence. If Opposer lays a foundation for the relevance of this part of the request, Applicant will reconsider its objections.

The general nature of Applicant's business is residential and commercial flooring.

Interrogatory 3.

Identify all persons involved in the selection of the Mark at issue.

Response:

Norman Stone

Michael Raskin

Interrogatory 4.

Identify the person or persons most familiar with the use of the Mark at issue in connection with any goods or services.

Response:

Norman Stone

Michael Raskin

Interrogatory 5.

Identify the person or persons most familiar with the use of the Mark at issue in connection with any goods or services in the United States of America.

Response:

Norman Stone

Michael Raskin

Interrogatory 6.

Identify every person who has, or who may claim, any interest or right, including as an owner, co-owner, licensee, or sublicense, in the Mark at issue, and state the nature and extent of each person's interest in the Mark at issue.

Response:

Applicant is the sole owner of the Mark at issue.

Interrogatory 7.

If anyone other than Applicant has ever owned or used the Mark at issue, including in conjunction or cooperation with (or with the permission or acquiescence of) Applicant, identify each such party, the period of time and the full nature of such ownership, use, and/or cooperation, permission or acquiescence, and state whether, and if so how, Applicant has acquired full ownership interest in the Mark at issue.

Response:

Applicant is the sole owner of the Mark at issue. Applicant was previously named Halstead International, Inc.

Interrogatory 8.

If anyone other than Applicant has ever owned or used the Mark at issue in the United States of America, including in conjunction or cooperation with (or with the permission or acquiescence of) Applicant, identify each such party, the period of time and the full nature of such ownership, use, and/or cooperation, permission or

acquiescence, and state whether, and if so how, Applicant has acquired full ownership interest in the Mark at issue.

Response:

No one other than Applicant.

Interrogatory 9.

Identify all entities, other than Applicant, selling, or expected to sell, any of the Goods at issue under the Mark at issue in the United States of America.

Response:

No entity other than Applicant.

Interrogatory 10.

Identify all known third party state or federal registrations of or applications for the Mark at issue, or any colorable variation thereof.

Response:

None known to Applicant

Interrogatory 11.

Describe all known third party uses of the Mark at issue, or any colorable variation thereof.

Response:

None known to Applicant.

Interrogatory 12.

Is the Mark at issue in use in the United States of America? If so, provide the date of first use and explain briefly the factual basis supporting the earliest date of use. If not, provide the projected date of first use.

Response:

The Mark at issue has been in use in the U.S. since at least as early as April 25, 2003, the date on an invoice that identifies a sale by Applicant for TEKSTONE branded flooring.

Interrogatory 13.

Explain in detail how Applicant came to select the Mark at issue for use in connection with the Goods at issue.

Response:

Discussion between Norman Stone and Michael Raskin.

Interrogatory 14.

Identify every product in connection with which the Mark at issue is, has, or will be used in commerce in the United States of America, and state the applicable date of first use with respect to each such product.

Response:

Every product is vinyl flooring for residential and commercial flooring.

Interrogatory 15.

Describe in detail any instances of actual confusion between Applicant's Mark and any of Opposer's Marks, on or in connection with any goods or services.

Response:

No evidence of any actual or likelihood of confusion.

Interrogatory 16.

Describe the persons who purchase and use Applicant's Goods at issue and the circumstances under which those goods are purchased and used.

Response:

Applicant objects to identifying purchasers of Applicant's Goods at issue, which are Applicant's customers, because this information is confidential and not related to this Opposition and not likely to lead to relevant or discoverable evidence. If Opposer lays a foundation for the relevance of this part of the request, Applicant will reconsider its objections.

Interrogatory 17.

Identify, by name, date, sponsoring entity and location, including city and state, all trade shows and other exhibitions at which Applicant or any representative of Applicant has displayed, or intends to display, or has offered for sale, or intends to offer for sale, any of Applicant's Goods at issue, under the Mark at issue.

Response:

Applicant objects to this request because it is overly broad and burdensome because it requires Applicant identify all of the trade shows and exhibits attended to by Applicant. In view of the foregoing objections, Applicant has used the TEKSTONE mark in commerce throughout the United States.

Interrogatory 18.

Identify, by name, date, sponsoring entity and location, including city and state, all trade shows and other exhibitions at which Applicant or any representative of Applicant has offered or intends to offer, any services under the Mark at issue in the United States of America.

Response:

Applicant objects to this request because it is overly broad and burdensome because it requires Applicant identify all of the trade shows and exhibits attended to by Applicant. In view of the foregoing objections, Applicant has used the TEKSTONE mark in commerce throughout the United States.

Interrogatory 19.

Describe the distribution channels by providing a generic description of each entity involved in moving, distributing, shipping and selling goods, through sale to the ultimate user of the goods, via which Applicant sells, or intends to sell, the Goods at issue under the Mark at issue in the United States of America.

Response:

Applicant sells direct to distributors.

Interrogatory 20

Describe in generic terms all demographic groups to which Applicant has advertised, is advertising, or intends to advertise Applicant's Goods at issue to be sold under the Mark at issue in the United States of America.

Response:

Purchasers of residential and commercial flooring.

Interrogatory 21

Identify all third parties competing, or expected to compete, with Applicant in the sale of the Goods at issue, or products substantially functionally equivalent to the goods at same in the United States of America.

Response:

Armstrong Industries, Mannington Mills, and Congoleum Corp.

Interrogatory 22.

State the expected price range to the ultimate purchaser of the Goods at issue that Applicant intends to sell, or is selling, under the Mark at issue in the United States of America.

Response:

Applicant sells its products to distributors and does not determine prices that the ultimate purchaser pays for the Goods at issue.

Interrogatory 23.

Identify all business locales of Applicant in the United States of America including the street address, mailing address, telephone number, e-mail address and web address if applicable.

Response:

15 Oakwood Avenue, Norwalk, CT 06850.

1120 Boston Post Road, Darien, Connecticut 06820, telephone 203-662-0650.

6590 West Rogers Circle, Suite 11, Boca Raton, Florida 33487, telephone 866-687-6357.

Web address for all locations is www.metroflorusa.com.

Interrogatory 24.

Describe in generic terms all avenues via which Applicant intends to promote or does promote the Goods at issue under the Mark at issue to potential customers in the United States of America

Response:

Applicant objects to disclosing how it promotes the Goods at issue because this information is confidential and not related to this Opposition and not likely to lead to relevant or discoverable evidence. If Opposer lays a foundation for the relevance of this part of the request, Applicant will reconsider its objections.

Interrogatory 25.

To the extent applicant uses or intends to use independent sales persons to promote Applicant's Goods at issue under the Mark at issue, in the United States of America, describe the organization or organizations to which such independent sales people belong, if any, and describe the training, if any, provided or intended to be provided to such individuals including the locale where training is or will be furnished to such individuals.

Response:

None.

METROFLOR CORPORATION

Date: August 16, 2010

By: /Charles Rodman/

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10 Stewart Place
Suite 2CE
White Plains, NY 10603
Tel: (914) 949-7210
Facsimile: (914) 993-0668

Charles B. Rodman
Attorney for Applicant

Of Counsel:
Philip Rodman
David Chen

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **APPLICANT, METROFLOR CORPORATION'S RESPONSE TO OPPOSER, STONCOR GROUP INC.'S, FIRST SET OF INTERROGATORIES**, was served electronically on counsel for Opposer addressed to:

Charles N. Quinn
Fox Rothschild LLP
747 Constitution Drive, Suite 100
Exton, PA 19341-0673

METROFLOR CORPORATION

Dated: August 16, 2010

By: /Charles Rodman/
Charles B. Rodman
Attorney for Applicant