

TTAB



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

FUEGO HD, LLC. ]  
Opposer, ]  
v. ]  
STEVEN KAREL, ]  
Applicant. ]  
\_\_\_\_\_ ]

#77980136

Opposition No. 91197680

**MOTION FOR A MORE DEFINITE STATEMENT**  
**OR ALTERNATIVELY TO DISMISS FOR**  
**FAILURE TO STATE A CLAIM**

The undersigned counsel for Applicant, hereby moves the Honorable Board to dismiss the present Opposition or to order the Opposer to submit a more definite statement and notice of opposition.

This Motion is submitted in lieu of an Answer and pursuant to Fed. R. Civ. P. 12(e) and TBMP § 505.01.

A Brief as required by 37 CFR §2.127(a) is attached hereto.

LAW OFFICES  
DENNISON, SCHULTZ & MACDONALD  
SUITE 105  
1727 KING STREET  
ALEXANDRIA, VIRGINIA 22314-2700  
703 837-9600



12-13-2010

Respectfully submitted,



Donald L. Dennison  
Attorney for Applicant  
Dennison, Schultz & MacDonald  
Suite 105  
1727 King Street  
Alexandria, VA 22314  
(703)837-9600 Ext. 15  
ddennison@dennisonlaw.com

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Motion was served by first class mail with proper postage affixed, this 13<sup>th</sup> day of December, 2010 upon Ivan Vargas, President of Opposer, c/o Fuego HD, LLC 95-60 Queens Boulevard, #105, Rego Park, NY 11274.



Donald L. Dennison



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

FUEGO HD, LLC. ]  
Opposer, ]  
v. ] Opposition No. 91197680  
STEVEN KAREL, ]  
Applicant. ]  
\_\_\_\_\_ ]

**APPLICANT'S BRIEF IN SUPPORT OF ITS**  
**MOTION FOR A MORE DEFINITE STATEMENT**  
**OR ALTERNATIVELY TO DISMISS FOR**  
**FAILURE TO STATE A CLAIM**

The grounds for Opposition as set forth in the Notice of Opposition filed on December 2, 2010 are believed to be fatally defective, insufficient to show proper standing and are too indefinite for the Applicant to respond by a proper Answer.

LAW OFFICES  
DENNISON, SCHULTZ & MACDONALD  
SUITE 105  
1727 KING STREET  
ALEXANDRIA, VIRGINIA 22314-2700  
703 837-9600

The opposer alleges that a third party (not identified) "began using a mark identical to one of the marks in the application...prior to the Defendant's first use date in the application." (See Paragraphs 1 and 4 of the Notice).

An allegation of prior use by an unidentified third party does not enure to the benefit of the Opposer or confer standing in the Opposer to contest the mark of the Applicant.

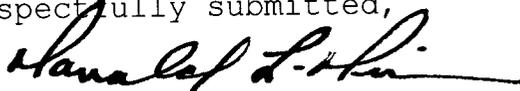
Further, Paragraph 4 refers to "one of the marks in the application". The record is clear that the application opposed contains but a single mark, not several as suggested by the Opposer. In this regard, Paragraph 2 of the Notice references "two separate marks" of the Applicant, whereas, there is only one mark in the application.

Plaintiff refers to "its mark", but does not further identify what that mark is in the body of the Notice of Opposition.

For these reasons, it is believed that the Notice of Opposition fails to state a claim upon which relief can be granted<sup>1</sup> and is so vague and indefinite that it would not be possible to submit a reasonable responsive pleading in good faith or without prejudice to itself<sup>2</sup>.

For the reasons noted above, relief by dismissal of the Opposition or alternatively for an order requiring Opposer to submit a more definite statement is solicited.

Respectfully submitted,



Donald L. Dennison  
Attorney for Applicant  
Dennison, Schultz & MacDonald  
Suite 105  
1727 King Street  
Alexandria, VA 22314  
(703)837-9600 Ext. 15  
ddennison@dennisonlaw.com

---

<sup>1</sup> See *Advanced Cardiovascular Systems Inc. V. SciMed Life Systems Inc.* 988 F.2d 1157, 26USPQ2d 1038 (Fed. Cir. 1993)

<sup>2</sup> See Fed.R. Civ.P. 12(e)