

ESTTA Tracking number: **ESTTA427606**

Filing date: **08/29/2011**

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

Proceeding	91200757
Party	Defendant Storm Guard Restoration LLC
Correspondence Address	Jennifer C. Debrow Gray, Plant, Mooty, Mooty & Bennett, P.A P.O. Box 2906 Minneapolis, MN 55402-0906 trademark@gpmlaw.com
Submission	Answer
Filer's Name	Dean C. Eyler
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Date	08/29/2011
Attachments	Answer.pdf (4 pages)(89101 bytes)

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

In the matter of trademark application Serial No.: 85/142, 186
Filed: September 30, 2010
For the mark: **STORM GUARD**
RESTORATION & Design
Published in the Official Gazette on: March 22, 2011

_____)
Viracon, Inc.,)
)
Opposer,)
)
vs.) Opposition No.: 91,200,757
)
Storm Guard Restoration LLC,)
)
)
Applicant.)
_____)

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO NOTICE OF OPPOSITION

Applicant Storm Guard Restoration LLC, for its Answer to the Notice Of Opposition herein, states and alleges as follows:

1. Denies each and every allegation set forth in the Notice except those allegations that are specifically admitted, qualified, or otherwise answered herein.
2. Admits, on information and belief, the allegations of paragraphs 1, 2 and 3 of the Notice.
3. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Notice, and therefore denies the same.

4. Admits, on information and belief, the allegations of paragraph 5 of the Notice.

5. States that the description from Opposer's registration recited in paragraph 6 of the Notice speaks for itself.

6. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Notice, and therefore denies the same.

7. Admits the allegations of paragraph 10 of the Notice.

8. Specifically denies the allegations of paragraph 11 of the Notice.

9. Alleges that the Notice fails to state a claim upon which relief can be granted.

10. Alleges, upon information and belief, that both Applicant and Opposer have used their respective marks in the marketplace since at least 2004 and Applicant is unaware of any evidence of actual confusion among members of the public.

11. Alleges, upon information and belief, that there are a number of third parties using marks similar to Opposer's mark in the construction industry, including the following:

- STORMGUARD is the subject of a federal registration for use with "roofing membranes," owned by Building Materials Investment Corp., Reg. No. 3,988,820;
- STORM GUARD is the subject of a federal registration for use with "electric window fans and parts therefor," owned by Lasko Holdings, Inc., Reg. No. 2,196,572;
- STORMGUARD is the subject of a federal registration for use with "nails," owned by W.H. Maze Company, Reg. No. 3,448,972; and
- STORMGUARD is the subject of a federal registration for use with "water filtration screens for sewer networks," owned by John Meunier, Inc., Reg. No. 2,888,808.

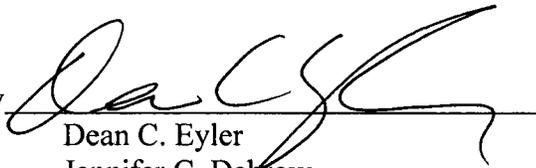
12. Alleges that Applicant's STORM GUARD RESTORATION & Design trademark for use with residential roofing, siding, and window contracting services is not confusingly similar to Opposer's mark for storm resistant glass.

WHEREFORE, Applicant respectfully requests that the Notice be dismissed with prejudice and on the merits, and that Applicant's application be permitted to proceed to registration forthwith.

Dated: August 29, 2011

GRAY PLANT MOOTY
MOOTY & BENNETT, P.A.

By



Dean C. Eyler
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CERTIFICATE OF SERVICE

I, Dean C. Eyler, certify that I arranged for a copy of the foregoing Answer to Opposition to be served upon:

Elizabeth C. Buckingham
Jeffrey R. Cadwell
Dorsey & Whitney LLP
50 S. Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

by first-class mail on the 29th day of August, 2011.


Dean C. Eyler