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

Proceeding	91200832
Party	Plaintiff Briggs & Stratton Corporation and Kohler Co.
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Signature	/s/ Robert N. Phillips
Date	10/14/2015
Attachments	Opposers' Tenth Notice of Reliance (Public Version).pdf(303457 bytes )

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

BRIGGS & STRATTON CORPORATION	)	
	)	
Opposer,	)	Opposition No. 91200832 (Parent)
vs.	)	
	)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,	)	
	)	
Applicant.	)	
	)	
KOHLER CO.	)	
	)	
Opposer,	)	Opposition No. 91200146
vs.	)	
	)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,	)	
	)	
Applicant.	)	
	)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**OPPOSERS' TENTH NOTICE OF RELIANCE**  
**(REDACTED – PUBLIC VERSION)**

Pursuant to 37 C.F.R. § 2.120 and TBMP § 704.09, Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively, “Opposers”), by and through their attorneys, hereby submit their Tenth Notice of Reliance. Opposers’ Tenth Notice of Reliance contains the following attached materials:

1. Excerpts from the August 9 and 10, 2012 Deposition of Steven Scott Connor, Applicant’s Senior Vice President and Rule 30(b)(6) designee, included as **Exhibit QQ as pages:**

- 5:8-10
- 21:24-22:22
- 23:15-24:1
- 38:8-14
- 43:2-7
- 44:12-20
- 91:3-14
- 92:20-94:21
- 145:19-147:3
- 155:7-15
- 156:11-158:1
- 162:10-163:9
- 294:18-298:5
- 301:8-22
- 380:9-11
- 386:10-388:4
- 393:13-394:7
- 395:12-15
- 406:4-408:5
- 410:5-13
- 411:22-412:12
- 413:19-414:1
- 414:17-415:3
- 418:25-420:10
- 421:4-24
- 430:11-431:11
- 432:14-434:1

2. Exhibit No. 1 from the August 9, 2012 Deposition of Steven Scott Connor, included as **Exhibit QQ1**.

3. Exhibit No. 50 from the August 10, 2012 Deposition of Steven Scott Connor, included as **Exhibit QQ2**.

The excerpts and exhibit from Mr. Connor’s deposition are relevant to the issues of abandonment, functionality, lack of secondary meaning, and genericness of the Applicant’s trademark.

The attached exhibits are marked with sequential page numbers in the upper right corner in the form of [Exhibit Letter – Page Number]. For example, the first page of Exhibit QQ is “QQ-1” and so forth. Where the upper right corner of a document does not allow for such

marking, page numbers will be located along the right hand margin of the document. For briefing purposes, material within this Notice of Reliance will be identified as “O10NOR” (an acronym for Opposers’ Tenth Notice of Reliance). For example, a reference to the first page of Exhibit QQ in the trial brief would be O10NOR QQ-1.

The attached exhibits contain information that Applicant considers confidential pursuant to the Stipulated Protective Order entered into by the parties and approved by the Board. Accordingly, Opposers are simultaneously filing and serving an unredacted copy. Redactions are based on input from Applicant, and are not necessarily considered worthy of redaction by Opposers.

Respectfully Submitted,

Dated: October 14, 2015

By: /s/ Robert N. Phillips  
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Attorneys for Opposer Briggs & Stratton  
Corporation

Dated: October 14, 2015

By: /s/ Kenneth Nowakowski  
Kenneth Nowakowski  
Elizabeth Townsend Bridge  
Melinda Giftos  
Whyte Hirschboeck Dudek S.C.  
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Attorneys for Opposer Kohler Co.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing OPPOSERS' TENTH NOTICE OF RELIANCE (Redacted – Public Version) was served via first class mail, postage prepaid, this 14th day of October, 2015 upon:

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*/s/ Deborah L. Kalahale*  
\_\_\_\_\_  
Deborah L. Kalahale

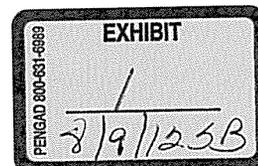
**EXHIBIT QQ**  
**FILED UNDER SEAL**

# **EXHIBIT QQ1**

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

<p>BRIGGS &amp; STRATTON CORPORATION, Opposer, v. HONDA GIKEN KOGYO KABUSHIKI KAISHA, Applicant.</p>	<p>Opposition No. 91200832 (Parent)</p>
<p>KOHLER CO., Opposer, v. HONDA GIKEN KOGYO KABUSHIKI KAISHA, Applicant.</p>	<p>Opposition No. 91200146</p>

**OPPOSER BRIGGS & STRATTON CORPORATION'S  
AMENDED NOTICE OF TAKING DEPOSITION OF APPLICANT  
HONDA GIKEN KOGYO KABUSHIKI KAISHA**



PLEASE TAKE NOTICE that on August 9-10, 2012, beginning at 9:00 a.m., at the court reporting firm of Huseby, 1230 Peachtree Street N.E., Promenade II, 19<sup>th</sup> Floor, Atlanta, GA 30309, Opposer Briggs & Stratton Corporation, by and through its attorneys, will take the deposition of Applicant HONDA GIKEN KOGYO KABUSHIKI KAISHA ("Applicant"), upon oral examination pursuant to Federal Rule of Civil Procedure 30(b)(6). Applicant shall designate one or more officers, directors or managing agents to testify on the topics set forth in Exhibit A. The deposition will continue from day to day until concluded, or may be continued until completed at a further date or dates.

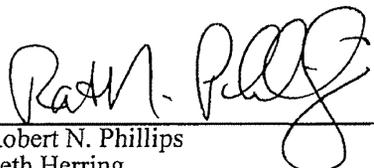
You are further notified that the deposition will be taken before a court reporter, officer, or other person duly authorized to administer oaths and shall be recorded by stenographic and videographic means and will be used for all purposes authorized by law.

The deposition will be take for purposes of discovery, for use at trial in this matter, and for any other purpose permitted under the Federal Rules of Civil Procedure.

You are invited to attend and participate.

DATED: July 26, 2012

By:

  
\_\_\_\_\_  
Robert N. Phillips  
Seth Herring  
Nina Habib Borders  
Reed Smith LLP

Attorneys for Opposer  
BRIGGS & STRATTON CORPORATION

Exhibit A

1. All settlement agreements between Applicant, its U.S. subsidiaries or affiliates and third parties concerning the Honda GX engine configuration.
2. All trademark enforcement efforts by Applicant or its U.S. subsidiaries or affiliates regarding the Honda GX engine configuration, including but not limited to their policies and parameters for determining which third party engine configurations to challenge or not challenge.
3. The redesign of the appearance of the Honda GX engine configuration to what is currently shown and described on Applicant's website, including the reasons for the redesign, the nature and extent of Applicant's current use of the redesign, and Applicant's plans regarding the future use of the redesign.
4. The nature and extent of Applicant's current use of the configuration described and shown in Application Serial No. 78,924,545 ("the '545 Application").
5. Applicant's plans regarding the future use of the configuration described and shown in the '545 Application.
6. The manner in which the declarations of distributors filed in support of the '545 Application were selected, prepared, and obtained, and the identity of the persons involved in such efforts.
7. The statements made in the declarations of distributors filed in support of the '545 Application.
8. Market research regarding whether consumers associate the configuration described and shown in the '545 Application solely with Applicant.
9. Amount and manner of advertising of the configuration described and shown in the '545 Application.
10. Amount of sales and number of customers of the configuration described and shown in the '545 Application.
11. Market share of Applicant's engines having the configuration described and shown in the '545 Application.
12. Third party use of each of the elements claimed in the configuration described and shown in the '545 Application.
13. Utility patents that disclose the utilitarian advantages of the configuration describe and shown in the '545 Application.
14. The functional purpose of each of the elements and overall configuration claimed in the '545 Application.

15. The aesthetic purpose of each of the elements and overall configuration claimed in the '545 Application.

16. The effect that each of the elements and overall configuration claimed in the '545 Application has on the performance of an engine.

17. The effect that each of the elements and overall configuration claimed in the '545 Application has on the cost or quality of an engine.

18. The availability of competitively acceptable alternatives to the configuration described and shown in the '545 Application.

CERTIFICATE OF SERVICE

I hereby certified that a true copy of the foregoing OPPOSER BRIGGS & STRATTON CORPORATION'S AMENDED NOTICE OF TAKING DEPOSITION OF APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA was served on the following counsel of record, by depositing same in the U.S. mail, first class postage prepaid, this 26th day of July, 2012:

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Deborah L. Kalahela

**EXHIBIT QQ2**  
**FILED UNDER SEAL**