

TTAB

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

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11 In the matter of trademark
12 application Serial No.: 85/099334
13 For the mark: SLIPPERY WIZARD
14 Published in the Official Gazette on: January 24, 2012
15 Name of Opposer: Brody Chemical Company, Inc.
16 v.
17 Name of Applicant: Tammy L. Goldthorpe
18

19
20 NOTICE OF OPPOSITION

21 Brody Chemical Company, Inc., a Utah corporation
22 6125 West Double Eagle Circle
23 Salt Lake City, Utah 84118

24 The above-identified Opposer believes that it will be damaged by registration of the mark shown
25 in the above-identified application, and hereby opposes the same.

26 The grounds for opposition are as follows:



02-21-2012

28 02/27/2012 HPHAM1 00000001 85099334 300.00 OP
01 FC:6402

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #72

1 1. Opposer Brody Chemical Company, Inc. (“Brody Chemical” or “Opposer”) is a Salt Lake
2 City, Utah-based manufacturer of a complete line of sanitation, institutional, industrial and maintenance
3 chemicals for professional use.

4 2. Brody Chemical manufactures over 600 different quality products, including automotive,
5 floor care, grounds, car washing, industrial, institutional, laundry, insecticides, pool and spa products,
6 and restaurant and food service products.

7 3. Brody Chemical services over 50,000 customers in a variety of different industries
8 including hotels, apartments, commercial buildings, car dealerships, industrial shops, restaurants,
9 municipalities, government, manufacturing plants, golf courses, and food service establishments.

10 4. Applicant Tammy Goldthorpe (“Goldthorpe” or “Applicant”) is a former employee of
11 Brody Chemical.
12

13 5. The name and mark SLIPPERY WIZARD (the “Mark”) was adopted by Brody Chemical
14 during the term of Applicant’s employment at Brody Chemical.
15

16 6. Brody Chemical’s first use of the SLIPPERY WIZARD mark was no later than
17 September 27, 2004.

18 7. Brody Chemical has used the SLIPPERY WIZARD mark in interstate commerce
19 continuously since September 27, 2004 for an asphalt release product sold primarily to the asphalt
20 industry.
21

22 8. Brody Chemical’s SLIPPERY WIZARD asphalt release product consists of natural,
23 completely biodegradable products that work extraordinarily well to prevent asphalt or any tar based
24 product from sticking to metal -- such as the metal bed of a dump truck.

25 9. Brody Chemical’s use in commerce of the mark SLIPPERY WIZARD predates any
26 claimed use by Applicant.
27

28 10. Upon information and belief, Applicant has never offered any product in commerce
marked as “Slippery Wizard” except the Brody Chemical product.

1 11. By way of example, the specimen submitted by Applicant to the USPTO for SLIPPERY
2 WIZARD is a Brody marketing piece that refers to "Brody's Slippery Wizard."

3 12. Brody Chemical denies that Applicant played any role in suggesting or creating the name
4 SLIPPERY WIZARD for Brody Chemical's asphalt release product but, in any event, "the mere
5 suggestion by a sales agent or an employee during or before entering employment that the employer
6 market its product under a particular designation cannot bestow any proprietary right in said trademark
7 upon the employee." *Scranton Plastic Laminating, Inc. v. Mason*, 1975 WL 21259 (TTAB Feb. 27,
8 1975).

9 13. Put plainly, Brody Chemical owns the SLIPPERY WIZARD mark, not Applicant.

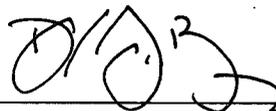
10 14. Because Brody Chemical is using the SLIPPERY WIZARD mark in commerce and its
11 use predates any alleged Applicant's alleged use of the Mark, Brody Chemical would be damaged by the
12 registration of a mark upon the principal register.
13
14

15 WHEREFORE, Opposer requests that the Applicant's mark be disallowed and the application
16 canceled.

17 The filing fee for this Notice of Opposition in the amount of Three Hundred Dollars (\$300.00) is
18 enclosed.

19 DATED this 21st day of February, 2012.

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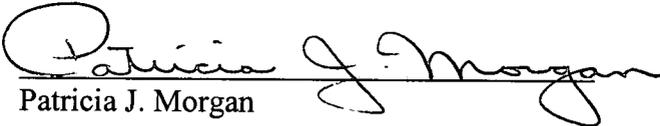
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I, PATRICIA J. MORGAN, do hereby certify that the foregoing document is being deposited with the United States Postal Services on February 21, 2012, as Express Mail, postage prepaid, in envelopes addressed as follows:

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