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

| | |
|------------------------|--|
| Proceeding | 91204070 |
| Party | Plaintiff Brody Chemical Company, Inc. |
| Correspondence Address | DAVID G BRAY DICKINSON WRIGHT/MARISCAL WEEKS 2901 N CENTRAL, STE 200 PHOENIX, AZ 85012-2705 UNITED STATES dbray@dickinsonwright.com, sclaus@dickinsonwright.com,KArendt@dickinson-wright.com |
| Submission | Opposition/Response to Motion |
| Filer's Name | David G. Bray |
| Filer's e-mail | dbray@dickinsonwright.com, karendt@dickinsonwright.com |
| Signature | /David G. Bray/ |
| Date | 06/17/2013 |
| Attachments | Response to Applicant's Objections to Opposer's Notice of Reliance.pdf(288556 bytes) |

1 David G. Bray, Esq. (#14346)
2 Scot L. Claus, Esq. (#014999)
3 DICKINSON WRIGHT/MARISCAL WEEKS
4 2901 North Central Avenue, Suite 200
5 Phoenix, Arizona 85012-2705
6 Phone: (602) 285-5000
7 Fax: (602) 285-5100
8 dbray@dickinsonwright.com
9 sclaus@dickinsonwright.com

Attorneys for Opposer

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

10 Brody Chemical Company, Inc.

11 Opposer,

12 v.

13 Goldthorpe, Tammy L. fka Tammy Price,

14 Applicant.
15

OPPOSITION NO. 91/204,070

Mark: Slippery Wizard
Serial No. 85/099,334

16
17 **RESPONSE TO APPLICANT'S OBJECTIONS**
18 **TO OPPOSER'S NOTICE OF RELIANCE**

19
20 Opposer Brody Chemical Company, Inc. hereby submits this Response to Applicant's
21 Objections to Opposer's Notice of Reliance.
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23
24

25 **CERTIFICATE OF DEPOSIT**

26 I hereby certify that this correspondence is being deposited with the Trademark Trial and Appeal Board via ESTTA on the
date indicated below:

27 Date of Deposit 6/17/2013

/David G. Bray/

28 1.

1 ***Categories 2 and 3. Applicant’s Response to Opposer’s First Request for Production of***
2 ***Documents and a supporting declaration that no documents were produced is relevant.***

3 Opposer served a request for production of documents that was designed to require Applicant
4 produce all documents relevant to her claim that she owns the SLIPPERY WIZARD mark despite the
5 facts that (i) Ms. Goldthorpe was an employee of Brody Chemical at the time of the alleged first use
6 of the mark, (ii) only Brody Chemical has been identified as the source of the Slippery Wizard
7 product in any product labeling and advertising, including in the very specimen submitted by Ms.
8 Goldthorpe to the Trademark Office, and (iii) Applicant has never marked a product that indicated
9 that Mr. Goldthorpe was the source of the Slippery Wizard product. The lack of production is
10 relevant to a potential future objection to exhibits offered by Applicant at the trial deposition stage of
11 these proceeding but not produced pursuant to Applicant’s discovery obligations. At the time that the
12 Board evaluates each parties’ trial brief, it can determine if or whether Applicant’s Responses to
13 Opposer’s First Request for Production of Documents and lack of document production pursuant
14 thereto is relevant to its determination.
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17 ***Category 4. Applicant concedes the File Wrapper is “of record” and relevant.*** Opposer
18 does not understand Applicant’s objection to Category 4. Applicant concedes in her Notice of
19 Opposition “the file wrapper for the application that is the subject of this proceeding is automatically
20 of record.” [Notice of Opposition, at p. 3.] The crucial part of the file wrapper is the claimed date of
21 first use and the specimen submitted by Applicant to document her use of the SLIPPERY WIZARD
22 mark. The date of first use corresponds with her employment by Brody Chemical. *The specimen*
23 *actually documents opposer Brody Chemical’s use of the SLIPPERY WIZARD mark, not hers.* As
24 will be seen in the parties’ trial briefs, the fact that she used a Brody Chemical specimen as her
25 trademark specimen in conduction with her application is not in disputed but, in fact, was conceded
26 in her recently concluded trial deposition. In any event, the file wrapper is relevant.
27
28

DATED this 17th day of June, 2013.

DICKINSON WRIGHT/MARISCAL WEEKS

By David G. Bray/

David G. Bray

Scot L. Claus

2901 North Central Avenue, Suite 200

Phoenix, Arizona 85012-2705

Attorneys for Opposer

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that a true and correct copy of the foregoing RESPONSE
3 TO APPLICANT'S OBJECTIONS TO OPPOSER'S NOTICE OF RELIANCE was served on
4 Applicant by depositing said true and correct copy with the United States Postal Service, First Class
5 Mail, postage prepaid, this 17th day of June, 2013, in an envelope addressed to Applicant's attorney
6 of record as follows:

7 Nathan S. Winesett
8 AVERY, WHIGHAM & WINESETT, P.A.
9 P.O. Box 3277
10 Duluth, MN 88508

11 A courtesy copy of the foregoing was also e-mailed to Mr. Winesett
12 at nwinesett@awwlegal.com on this date.

13 /David G. Bray/
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