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

Proceeding	91204070
Party	Defendant Tammy L. Goldthorpe fka Tammy Price
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Date	04/08/2012
Attachments	3-Answer to Opposition.nsw.pdf (6 pages)(66472 bytes)

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Opposed Mark: SLIPPERY WIZARD (Class 1)
U.S. Trademark Application Serial Number 85/099,334

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

Brody Chemical Company, Inc. Opposer, v. Goldthorpe, Tammy L. fka Tammy Price Applicant.	Opposition No. 91/204,070
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APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

TO: Commissioner for Trademarks

Tammy L. Goldthorpe fka Tammy Price (hereinafter "Applicant") answers the Notice of Opposition filed by Brody Chemical Company, Inc. (hereinafter "Opposer") against the registration of Applicant's trademark in Class 1, Serial No. 85/099,334,

<u>CERTIFICATE OF DEPOSIT</u>	
I hereby certify that this correspondence is being deposited with the Trademark Trial and Appeal Board via ESTTA on the date indicated below.	
Date of Deposit <u>4/8/2012</u>	<u>/Nathan S. Winesett/</u>

published in the Official Gazette on January 24, 2012, and believes that it is entitled to registration of said published mark, and pleads and avers as follows:

Applicant generally denies each and every allegation of the Notice of Opposition unless expressly admitted herein.

In response to the introductory paragraph of the Notice of Opposition, Applicant denies that Opposer will be damaged by the issuance of the registration of the mark in Class 1, Serial No. 85/099,334.

1. In response to paragraph 1 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same. Applicant is uncertain of the current status of Opposer's business.

2. In response to paragraph 2 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same. Applicant is uncertain of the current status of Opposer's business.

3. In response to paragraph 3 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same. Applicant is uncertain of the current status of Opposer's business.

4. In response to paragraph 4 of the Notice of Opposition, Applicant denies the allegations contained therein.

5. In response to paragraph 5 of the Notice of Opposition, Applicant denies the allegations contained therein.

6. In response to paragraph 6 of the Notice of Opposition, Applicant denies the allegations contained therein. Any and all use by Opposer was pursuant to a license from Applicant.

7. In response to paragraph 7 of the Notice of Opposition, Applicant denies the allegations contained therein. Any and all use by Opposer was pursuant to a license from Applicant.

8. In response to paragraph 8 of the Notice of Opposition, Applicant denies the allegations contained therein. Any and all use by Opposer was pursuant to a license from Applicant. Applicant admits only that Applicant's SLIPPERY WIZARD mark is used in connection with an asphalt release product.

9. In response to paragraph 9 of the Notice of Opposition, Applicant denies the allegations contained therein. Any and all use by Opposer was pursuant to a license from Applicant.

10. In response to paragraph 10 of the Notice of Opposition, Applicant denies the allegations contained therein. Any and all use by Opposer was pursuant to a license from Applicant.

11. In response to paragraph 11 of the Notice of Opposition, Applicant denies the allegations contained therein. Any and all use by Opposer was pursuant to a license from Applicant. Applicant admits only that the specimen submitted by Applicant was a use made by Applicant pursuant to the license with Opposer.

12. In response to paragraph 12 of the Notice of Opposition, Applicant denies the allegations contained therein.

13. In response to paragraph 13 of the Notice of Opposition, Applicant denies the allegations contained therein.

14. In response to paragraph 14 of the Notice of Opposition, Applicant denies the allegations contained therein.

In further response to the Notice of Opposition, Applicant avers the following:

FIRST DEFENSE (PRIORITY)

Applicant conceived of, adopted, and used the SLIPPERY WIZARD mark prior to any use by Opposer. Applicant is also the owner of the related family marks CLEAR WIZARD (4,086,331) and WHITE WIZARD (4,086,330) which also have priority over any use by Opposer. Furthermore, any and all use by Opposer of the SLIPPERY WIZARD mark or related family marks, were made pursuant to a license from Applicant. Accordingly, Applicant has priority over Opposer for the use of the SLIPPERY WIZARD mark and Opposer's opposition should not be sustained.

SECOND DEFENSE (ESTOPPEL)

Applicant conceived of, adopted, and used the SLIPPERY WIZARD mark prior to any use by Opposer. Furthermore, Opposer's use of the SLIPPERY WIZARD mark, and related family marks CLEAR WIZARD and WHITE WIZARD, were made pursuant to a license from Applicant. This license has been established through agreement, payment of royalties, and the conduct of the parties. Applicant believes that the establishment of a license is clear based upon evidence to be presented. However, even if such license is not clearly established, Applicant reasonably and detrimentally relied upon the express and implied acts, deeds, representations, and promises of Opposer that induced Applicant to disclose proprietary trade secrets and the use and marketing of Applicant's SLIPPERY WIZARD mark and product. Accordingly, Opposer should be estopped from sustaining an opposition of Applicant's mark.

THIRD DEFENSE (FRAUD, INEQUITABLE CONDUCT, UNCLEAN HANDS)

Applicant conceived of, adopted, and used the SLIPPERY WIZARD mark prior to any use by Opposer. Furthermore, Opposer's use of the SLIPPERY WIZARD mark,

and related family marks CLEAR WIZARD and WHITE WIZARD, were made pursuant to a license from Applicant. Opposer has willfully and fraudulently asserted that it adopted the SLIPPERY WIZARD mark and that it owns the mark in order to cease paying Licensor its rightful royalties. Applicant believes that these assertions are fraudulent statements and representations to the Trademark Office and Trademark Trial and Appeal Board. Moreover, Opposer has acted unethically and in bad faith in an effort to fraudulently misappropriate Applicant's trade secrets and trademark rights. Accordingly, this fraudulent, inequitable conduct should bar Opposer from maintaining this Notice of Opposition due to its unclean hands.

WHEREFORE, Applicant prays:

1. That the Notice of Opposition be dismissed in its entirety with prejudice.
2. That a registration on the Principal Register issue to Tammy L. Goldthorpe fka Tammy Price for the mark as set forth in Application Serial No. 85/099,334.

Dated this 8th day of April, 2012.

Respectfully submitted,

/Nathan S. Winesett/

Nathan S. Winesett
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served on Opposer by depositing said true and correct copy with the United States Postal Service, First Class Mail, postage prepaid, this 8th day of April, 2012, in an envelope addressed to Opposer's attorney of record as follows:

David G. Bray
MARISCAL WEEKS MCINTYRE & FRIEDLANDER PA
2901 N Central, Ste 200
Phoenix, AZ 85012-2705

/Nathan S. Winesett/