

ESTTA Tracking number: **ESTTA518007**

Filing date: **01/25/2013**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Lubrizol Advanced Materials, Inc.
Granted to Date of previous extension	01/27/2013
Address	9911 Brecksville Road Cleveland, OH 44141-3247 UNITED STATES

Correspondence information	Lubrizol Advanced Materials, Inc. 9911 Brecksville Road Cleveland, OH 44141-3247 UNITED STATES teresan.gilbert@lubrizol.com, andrea.zwegat@lubrizol.com Phone:(440) 347-5072
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Applicant Information

Application No	85567443	Publication date	07/31/2012
Opposition Filing Date	01/25/2013	Opposition Period Ends	01/27/2013
Applicant	3-Flow, Inc. 2000 Hunter Lake Drive Reno, NV 89509 UNITED STATES		

Goods/Services Affected by Opposition

Class 017. First Use: 2012/03/11 First Use In Commerce: 2012/03/11 All goods and services in the class are opposed, namely: Pipe gaskets; Pipe gaskets for use in fluid hydrocarbon transmission pipe
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1393656	Application Date	05/13/1985
Registration Date	05/20/1986	Foreign Priority Date	NONE
Word Mark	FLOWGUARD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 1985/03/27 First Use In Commerce: 1985/03/27 CHLORINATED POLYVINYL CHLORIDE SOLD IN RAW FORM FOR FURTHER USE IN INDUSTRY Class 017. First use: First Use: 1985/03/27 First Use In Commerce: 1985/03/27 CHLORINATED POLYVINYL CHLORIDE PIPE AND FITTINGS

U.S. Registration No.	1889280	Application Date	06/10/1991
Registration Date	04/11/1995	Foreign Priority Date	NONE
Word Mark	FLOWGUARD GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 017. First use: First Use: 1992/03/16 First Use In Commerce: 1992/03/16 chlorinated polyvinyl chloride pipes and fittings for use in hot and cold water distribution systems		

U.S. Registration No.	2109574	Application Date	08/11/1995
Registration Date	10/28/1997	Foreign Priority Date	NONE
Word Mark	FLOWGUARD GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1997/01/09 First Use In Commerce: 1997/01/09 cements and adhesives made from chlorinated polyvinyl chloride used to join pipes and fittings		

U.S. Registration No.	2410604	Application Date	12/15/1999
Registration Date	12/05/2000	Foreign Priority Date	NONE
Word Mark	FLOWGUARD GOLD		
Design Mark	FLOWGUARD GOLD		
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1992/01/27 First Use In Commerce: 1992/01/27 chlorinated polyvinyl chloride compounds and synthetic resins for use in the fluid conveyance industry, namely, the manufacture of pipes and fittings and pipe cements and adhesives		

U.S. Registration No.	3308168	Application Date	04/19/2004
Registration Date	10/09/2007	Foreign Priority Date	NONE
Word Mark	FLOWGUARD GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 017. First use: First Use: 2005/05/11 First Use In Commerce: 2006/11/15 Multi-layered, composite pipe comprised mainly of plastic for use in plumbing applications		

U.S. Registration No.	1906527	Application Date	11/04/1991
Registration Date	07/18/1995	Foreign Priority Date	NONE
Word Mark	FLOWGUARD GOLD		
Design Mark			
Description of Mark	The mark consists of a gold stripe and the words "FLOWGUARD GOLD" which appear on the goods.		
Goods/Services	Class 017. First use: First Use: 1992/03/16 First Use In Commerce: 1992/03/16 pipe or tubing for hot and cold water distribution systems made of chlorinated polyvinyl chloride		

U.S. Registration No.	3330282	Application Date	10/26/2006
Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	FLOWGUARD		

Design Mark	FLOWGUARD
Description of Mark	NONE
Goods/Services	Class 017. First use: First Use: 2007/01/15 First Use In Commerce: 2007/01/15 Bendable pipes made from a cross linked polyethylene resin

Attachments	75872787#TMSN.gif (1 page)(bytes) 78403998#TMSN.jpeg (1 page)(bytes) 74220195#TMSN.gif (1 page)(bytes) 77030313#TMSN.jpeg (1 page)(bytes) 3-Flow Opposition Notification.pdf (6 pages)(3273659 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Teresan W. Gilbert/
Name	Lubrizol Advanced Materials, Inc.
Date	01/25/2013

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

IN THE MATTER OF:)

Lubrizol Advanced Materials, Inc.,)

Opposer,)

v.)

3-Flow, Inc., AKA Three-Flow)

Applicant)

Application Serial No. 85-567,443)

Filed: March 12, 2013)

Published: July 31, 2012 in)

the *Official Gazette* at page TM 655)

Trademark: FLOWGUARD)

NOTICE OF OPPOSITION

Opposition No. _____

9911 Brecksville Road
Cleveland, Ohio 44141-3247
Corporation: Delaware

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Commissioner:

Lubrizol Advanced Materials, Inc., a corporation duly organized and existing under the laws of the State of Delaware with a principal place of business at 9911 Brecksville Road, Cleveland, Ohio 44141-3247 (“Opposer”), believes that it would be damaged by the registration of the mark FLOWGUARD as shown in Application Serial No. 85-567,443, filed March 12, 2012 and published July 31, 2012 in the name of 3-Flow, Inc., AKA Three-Flow for “pipe gaskets; pipe gaskets for use in fluid hydrocarbon transmission pipe” in International Class 17, and hereby opposes same.

As grounds for opposition, it is alleged that:

1. Opposer and its licensees are actively engaged in the development, production, distribution and sale of chlorinated polyvinyl chloride ("CPVC") resins, piping systems and materials, including pipe gaskets, for applications in plumbing, industrial and fire protection systems in the United States and throughout the world. Opposer, through its predecessors, has been continuously in the CPVC piping system markets and business since as early as 1959.
2. Opposer's business including its CPVC resins and piping systems is active in more than 64 countries and is a leader in this market.
3. Since at least as early as March 27, 1985 and continuing through the present, Opposer and its predecessors Noveon, Inc. of Ohio, a successor in interest to BF Goodrich Company has used the trademark FLOWGUARD in connection with pipes and fittings made from CPVC to designate the source of its products and services.
4. Opposer is a leader and technology innovator that provides essential components to its customers through its services and products. Opposer's trademarks are well known and famous to our customers in a wide range of applications here in the United States and throughout the world. The CPVC piping systems and services are promoted, sold and distributed in the United States and throughout the world. The FLOWGUARD product line is available in North and South America, Asia, Europe, India and the Middle East. Over at least the past 20 years and to the present, Opposer and its licensees have enjoyed profitable sales of its piping products and Opposer and its licensees have expended significant amounts for advertising and promoting its FLOWGUARD and FLOWGUARD GOLD marks in connection with its CPVC plumbing products and

services. By virtue of Opposer's extensive and successful advertising, promotion and sales, Opposer's FLOWGUARD and FLOWGUARD GOLD marks have acquired substantial and valuable goodwill, which is owned by Opposer.

5. Opposer is the owner of the following Registrations in the U.S. Registrations, among others, that all contain the term FLOWGUARD.

Trademark	App. No.	Filing Date	Reg. No.	Reg. Date	International Class(es)
FLOWGUARD	73537426	5/13/1985	1393656	5/20/1986	1, 17
FLOWGUARD GOLD	74174131	6/10/1991	1889280	4/11/1995	17
FLOWGUARD GOLD	74720467	8/11/1995	2109574	10/28/1997	1
FLOWGUARD GOLD	75872787	12/15/1999	2410604	12/5/2000	1
FLOWGUARD GOLD	78403998	4/19/2004	3308168	10/9/2007	17
FLOWGUARD GOLD with Stripe	74220195	11/4/1991	1906527	7/18/1995	17
FLOWGUARD	77030313	10/26/2006	3330282	11/6/2007	1, 17

Opposer's FLOWGUARD Reg. No. 1393656 has the earliest first use date of March 27, 1985. All Opposer's registrations easily predate the Applicant's filing date and Applicant's alleged first use date of March 11, 2012. Most of the registrations are incontestable.

6. Upon information and belief 3-Flow, Inc. AKA Three-Flow is a corporation organized under the laws of the Nevada and is located at 2000 Hunter Lake Drive, Reno, Nevada 89509 ("Applicant"). Applicant is a new start-up company in the business of producing and selling sealing/isolating gaskets and flange isolation kits targeting the oil, gas and water pipeline markets. Applicant's FLOWGUARD products and Opposer's

FLOWGUARD and FLOWGUARD GOLD products are in the same or similar channels of trade with relevant purchasers include those purchasers and end users in the gas, oil and water pipeline markets.

7. According to the U.S. Patent and Trademark Office, Applicant seeks to register FLOWGUARD for “pipe gaskets; pipe gaskets for use in fluid hydrocarbon transmission pipe” Application Serial No. 85,567,443. Applicant’s mark FLOWGUARD is identical and confusingly similar to Opposer’s marks FLOWGUARD and FLOWGUARD GOLD. Applicant’s goods associated with FLOWGUARD are identical to, similar to, complementary of, and overlapping with Opposer’s and its licensees’ FLOWGUARD and FLOWGUARD GOLD pipe fittings (gaskets), pipes and resins used in CPVC piping systems business.
8. In the normal channels of trade as described in the Applicant’s application, the parties’ respective FLOWGUARD trademark and products, services and businesses may be overlapping and closely related, and likely will have the same relevant customers, be in the same or similar fields and industries, be used in the same or similar locations, and have the same or similar, closely related, and complementary uses.
9. Applicant’s filing date of its application for FLOWGUARD is March 12, 2012 and well after Opposer’s first use dates and the filing and federal registration dates for Opposer’s registrations as identified in the above table. Opposer has been using its mark 28 years prior to Applicant’s mark.
10. The mark sought to be registered by Applicant is identical or similar to the Opposer’s federally registered trademarks for FLOWGUARD and FLOWGUARD GOLD identified

above, collectively or individually, as to be likely to cause confusion or to cause mistake or to deceive, and the registration of Applicant's mark would damage Opposer.

11. The mark sought to be registered by Applicant is the same and so similar to Opposer's FLOWGUARD and FLOWGUARD GOLD marks as previously used by Opposer to designate its piping and fitting systems business, products and services, as to be likely to cause confusion or to cause mistake or to deceive, and the registration of Applicant's mark would damage Opposer.

12. Because of the similarity of Applicant's FLOWGUARD mark to Opposer's FLOWGUARD and FLOWGUARD GOLD marks as used by Opposer and registered, persons familiar with Opposer and its business and marks will be misled into believing that Applicant's goods are sponsored by, or otherwise associated with Opposer in some way, thereby damaging Opposer. With overlapping channels of trade, even sophisticated purchasers may be confused within this market. Further, confusion is likely at the end user level, particularly with those end users who are already familiar with industrial pipes, fittings and high-pressure flange kits with special gaskets developed for the industrial market. Confusion may occur if an end user starts interchanging Opposer's FLOWGUARD CPVC pipes and fittings used in water plumbing applications with Applicant's FLOWGUARD pipes and fittings used in oil and gas applications. Additionally, end users may be confused by using either party's flange kits or transition adapters for either party's pipe products.

WHEREFORE, Opposer requests that this Notice of Opposition be sustained and that the mark set forth in Application Serial No. 85-567,443 be denied and the application held abandoned.

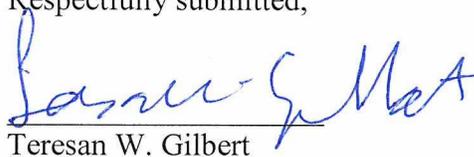
Please address all correspondence regarding this Opposition to:

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Respectfully submitted,

Date:

January 25, 2013



Teresan W. Gilbert
Attorney for Opposer
Lubrizol Advanced Materials, Inc.

CERTIFICATE OF SERVICE

I hereby certify that this Notice of Opposition is being filed electronically through the Electronic System for Trademark Trials and Appeals at the United States Patent and Trademark Office and copies to the Applicant and Applicant's attorney of record deposited with the United States Postal Service with sufficient postage as first class mail in an envelope on 1-25-2013 addressed as below.

3-Flow, Inc.
2000 Hunter Lake Drive
Reno, NV 89509

James M. Durlacher
Woodward Emhardt Moriarty McNett & Henry
LLP
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Indianapolis, IN 46204



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