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

Proceeding	91211208
Party	Defendant Chemian Technology Limited
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Date	07/30/2013
Attachments	Answer.pdf(47143 bytes) Exhibit A Definition of Repel.pdf(410881 bytes)

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

UNITED INDUSTRIES CORPORATION,)	
)	
Opposer,)	TM: CITREPEL
)	
v.)	Serial No. 85/805,232
)	
CHEMIAN TECHNOLOGY LIMITED,)	
)	
Applicant.)	

ANSWER

Chemian Technology Limited (“Chemian” or “Applicant”), a United Kingdom corporation having its principal place of business at Unit 2, 80 Eastmount Road, Darlington, DL1 1LA, United Kingdom, for its Answer to the Notice of Opposition, states:

Applicant does not believe that the preamble to the Notice of Opposition necessitates a specific response. Applicant, however, acknowledges that the preamble correctly identifies the application by application serial number. Applicant denies each and every allegation not hereinafter specifically admitted, modified, or explained. Applicant responds to the corresponding paragraphs as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and therefore denies same.

2. Applicant admits that the Notice of Opposition identifies a “REPEL Mark” to name a purported REPEL trademark. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 and therefore denies same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 and therefore denies same.

4. Applicant admits that according to the United States Patent and Trademark Office (“USPTO”) online TSDR database the mark REPEL was registered on July 17, 1984 with Registration No. 1285753 in International Class 005 with the identification of goods and services being for “Insect Repellent.” Applicant admits that the Notice of Opposition identifies this registration as the “REPEL Registration.” Applicant admits the online TSDR database shows a date of November 15, 1968 as the purported date of first use in commerce for the REPEL Registration. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 and therefore denies same.

5. Applicant admits that electronic copies were attached in Exhibit A to the Notice of Opposition that purported to show the current status and title for the REPEL Registration. Applicant also admits that the REPEL Registration has been registered on the Principal Register for more than five years. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 and therefore denies same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 and therefore denies same.

7. Applicant admits that it filed Application Serial No. 85/805,232 (“the Application”) on December 18, 2012 for the mark CITREPEL (“Applicant’s Mark”) in standard character format in connection with “insect repellent preparations” in International Class 5.

8. Denied.

9. Applicant admits that Applicant’s mark CITREPEL includes the word REPEL within the mark. Applicant denies the remaining allegations of paragraph 9.

10. Applicant denies that it had constructive or actual knowledge of the REPEL Mark as that term is used in the Notice of Opposition prior to adopting Applicant's Mark.

11. Applicant denies that it had constructive or actual knowledge of the REPEL Mark as that term is used in the Notice of Opposition prior to filing the Application for CITREPEL.

12. Applicant admits that the REPEL Registration was issued prior to the filing date of Applicant's application for the mark CITREPEL. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12 and therefore denies same.

13. Denied.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 and therefore denies same.

DEFENSES

FIRST DEFENSE: LIMITED RIGHTS

15. Opposer is not entitled to own or enforce exclusive and expansive mark rights in the word "REPEL" in connection with the goods and services listed in International Class 005. Numerous companies throughout the United States are using and have registered with the USPTO similar and related marks to Opposer's REPEL Mark and REPEL Registration in International Class ("IC") 005 which include the word "REPEL".

16. Given the crowded field which exists in the United States for marks which incorporate "REPEL", Opposer's rights are limited in scope and Opposer's REPEL Mark and REPEL Registration already coexist with numerous similar marks without issue.

17. Upon information and belief, Opposer’s REPEL Mark and REPEL Registration have coexisted, and continue to coexist, with the following third-party marks, owned by multiple parties, in the United States in IC 005:

Reg. No	Mark	IC	Goods and Services
3038100	REPELS-ALL	005	Animal Repellents
1659392	REPEL’M	005	Tape barrier for controlling gypsy moth caterpillar larval migration
1181799	REPEL-X	005	Emulsifiable Fly Spray Concentrate for Use on Horses and Livestock
2392095	SMELL REPEL	005	Anti-bacterial foggers and deodorizers
4236340	ROSEMARY REPEL SHAMPOO	005	Domestic biopesticides and lice treatment preparations containing rosemary
3367171	REPEL-A-TIE	005	Polymeric bendable ribbon strips bearing animal repellent
3038100	REPELS-ALL	005	Animal repellents
3720972	REPEL-A-PEST	005	Animal repellents
2392095	SMELL-REPEL	005	Anti-bacterial foggers and deodorizers
1445908	REPEL	005	Chemical preparations used outdoors to prevent defecation and urination by dogs and digging by cats in lawns, gardens and other areas

18. Upon information and belief, numerous companies throughout the United States use and own repellent-related marks that coexist with Opposer’s REPEL Mark and REPEL Registration. This evidence provides demonstrable proof of the crowded field in which Opposer is seeking to enforce its alleged “exclusive” rights in “REPEL”. The marks listed above coexist in the same areas that Opposer describes for its REPEL Mark and REPEL Registration: insect repellents and closely related products.

SECOND DEFENSE: DESCRIPTIVE

19. Opposer is not entitled to own or enforce exclusive and expansive mark rights in the word “REPEL” in connection with the goods and services listed in IC 005 because the term “repel” is descriptive of the Opposer’s goods.

20. The word “repel” is defined as “to drive back: repulse,” “to fight against: resist,” “turn away, reject,” “to drive away: discourage,” “to cause aversion in: disgust.” This online dictionary definition is attached as **Exhibit A** and may be viewed at the following webpage: <http://www.merriam-webster.com/dictionary/repel>.

21. The REPEL Mark and REPEL Registration merely describe one or more of an ingredient, quality, characteristic, function, purpose and use of the Opposer’s goods. See TMEP § 1209.01(b). Here, the term “repel” merely describes the admitted quality, characteristic, function, purpose and use of the Opposer’s REPEL Mark and REPEL Registration to repel, namely, “insect repellent products and closely related products” set out at least in paragraph 2 of the Opposer’s Notice of Opposition.

THIRD DEFENSE: NO LIKELIHOOD OF CONFUSION

22. There is no likelihood of confusion between Applicant’s mark CITREPEL and Opposer’s REPEL Mark or REPEL Registration. Indeed, the Examiner did not even cite the REPEL Registration against Applicant’s CITREPEL mark during examination. Based on the factors listed in *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492 (1961) and *In re: E.I. duPont de Nemours & Co.*, 476 F.2d 1157 (1973), the Applicant’s mark CITREPEL would not be confused with Opposer’s REPEL Mark or REPEL Registration. Some of the factors relevant here include but are not limited to degree of similarity between the marks, strength of the marks, proximity of the products or services, good faith in adopting the mark, sophistication of the buyers, channels of distribution, number/nature of similar marks used for similar services, and variety of goods to which the mark is applied.

23. Applicant’s mark CITREPEL would not be confused with Opposer’s REPEL Mark or REPEL Registration because the marks have a low degree of similarity.

24. Applicant's mark CITREPEL would not be confused with Opposer's REPEL Mark or REPEL Registration because the Opposer's REPEL Mark and REPEL Registration are of low strength at least because they are suggestive of the goods they are associated with.

25. Applicant's mark CITREPEL would not be confused with Opposer's REPEL Mark or REPEL Registration because of the Applicant's good faith in adopting the mark CITREPEL.

26. Applicant's mark CITREPEL would not be confused with Opposer's REPEL Mark or REPEL Registration because of the sophistication of the buyers of the goods associated with Applicant's mark CITREPEL and the Opposer's REPEL Mark and REPEL Registration.

27. Applicant's mark CITREPEL would not be confused with Opposer's REPEL Mark or REPEL Registration because the channels of distribution are very different for the relevant products.

28. Applicant's mark CITREPEL would not be confused with Opposer's REPEL Mark or REPEL Registration because of the lack of variety of goods to which the mark is applied.

29. As evidence of an actual lack of confusion, Applicant's mark CITREPEL has coexisted with the mark REPEL of an insect repellent in the United Kingdom for at least ten years without confusion.

FOURTH DEFENSE: FAILURE TO STATE A CLAIM

30. The Notice of Opposition fails to state a claim upon which relief can be granted.

WHEREFORE, Chemian Technology Ltd. requests that the Opposition be dismissed and that Application Serial No. 85/805,232 be approved and that the applied-for mark be registered.

Date: July 30, 2013



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UNITED INDUSTRIES CORPORATION,)	
)	
Opposer,)	TM: CITREPEL
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v.)	Serial No. 85805232
)	
CHEMIAN TECHNOLOGY LIMITED,)	
)	
Applicant.)	

CERTIFICATE OF SERVICE

I certify that on July 30, 2013 a true and correct copy of the foregoing ANSWER was served on Opposer's Attorney of Record by first class mail, postage prepaid, at the following address:

William M. Bryner, Esq.
Kilpatrick Townsend & Stockton, LLP
1001 West Fourth Street
Winston-Salem, NC 27101
United States



William D. Hare
Attorney for Applicant

CERTIFICATE OF TRANSMITTAL

I certify that on July 30, 2013 a true and correct copy of the foregoing ANSWER is being filed electronically with the TTAB via ESTTA.



William D. Hare
Attorney for Applicant



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re·pel verb \ri-'pel\

re·pelled re·pel·ling

Definition of REPEL

transitive verb

- 1 a : to drive back : REPULSE b : to fight against : RESIST
2 : TURN AWAY, REJECT <repelled the insinuation>
3 a : to drive away : DISCOURAGE <foul words and frowns must not repel a lover — Shakespeare> b : to be incapable of adhering to, mixing with, taking up, or holding c : to force away or apart or tend to do so by mutual action at a distance
4 : to cause aversion in : DISGUST

intransitive verb

- : to cause aversion
— re·pel·ler noun
See repel defined for English-language learners » See repel defined for kids »

Examples of REPEL

a fabric that repels water
Their superior forces repelled the invasion.
Two positive electrical charges repel each other.
Magnets can both repel and attract one another.

Origin of REPEL

Middle English repellen, from Middle French repeller, from Latin repellere, from re- + pellere to drive — more at FELT
First Known Use: 15th century

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