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

Proceeding	91212414
Party	Defendant Cochrane Steel Products (PTY) LTD
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Date	10/21/2013
Attachments	183-44 - signed ANSWER to Not of Opposition_10-21-13.pdf(577842 bytes)

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

INVISIBLE FENCE, INC.,

Opposer,

v.

COCHRANE STEEL PRODUCTS, LTD,

Applicant.

Opposition No.: 91212414
Application Serial No.: 85/739,687
Mark: **THE INVISIBLE WALL**
Filed: September 27, 2012

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Answer to Notice of Opposition With Affirmative Defenses

Applicant, COCHRANE STEEL PRODUCTS, LTD, hereby through its attorneys, hereby submits its answer to the Notice of Opposition (hereinafter "Opposition") filed by the Opposer, INVISIBLE FENCE, INC., as follows:

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted.

3. As to paragraph 3 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

4. As to paragraph 4 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

5. As to paragraph 5 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

6. As to paragraph 6 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

7. As to paragraph 7 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

8. As to paragraph 8 of the Opposition, Opposer cites U.S. Trademark applications the records of which are the best evidence of their content; therefore, reference is hereby made to the same. Except as admitted, denied.

9. As to paragraph 9 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

10. As to paragraph 10 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

11. As to paragraph 11 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

12. As to paragraph 12 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

13. As to paragraph 13 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

14. As to paragraph 14 of the Opposition, Applicant denies each and every allegation contained therein.

15. As to paragraph 15 of the Opposition, Applicant denies each and every allegation contained therein.

16. As to paragraph 16 of the Opposition, Applicant denies each and every allegation contained therein.

17. As to paragraph 17 of the Opposition, Applicant denies each and every allegation contained therein.

18. As to paragraph 18 of the Opposition, Applicant denies each and every allegation contained therein.

19. As to paragraph 19 of the Opposition, Applicant admits that Applicant seeks registration of THE INVISIBLE WALL mark in connection with metal fences and fence-related products. Except as admitted therein, the remaining allegations of paragraph 19 are denied.

20. As to paragraph 20 of the Opposition, Applicant denies each and every allegation contained therein.

21. As to paragraph 21 of the Opposition, Applicant admits that Applicant's products include physical barriers. Except as admitted therein, the remaining allegations of paragraph 21 are denied.

22. As to paragraph 22 of the Opposition, Applicant denies each and every allegation contained therein.

23. As to paragraph 23 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

24. As to paragraph 24 of the Opposition, Applicant denies each and every allegation contained therein.

25. As to paragraph 25 of the Opposition, Applicant denies each and every allegation contained therein.

26. As to paragraph 26 of the Opposition, Applicant denies each and every allegation contained therein.

27. As to paragraph 27 of the Opposition, Applicant denies each and every allegation contained therein.

28. As to paragraph 28 of the Opposition, Applicant denies each and every allegation contained therein.

29. As to paragraph 29 of the Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

1. The Opposer has failed to allege grounds sufficient to sustain the Opposition.

2. The Applicant is entitled to register a trademark for "THE INVISIBLE WALL" since Applicant's mark is distinctive from Opposer's alleged line of marks including the term 'invisible' according to the tests of visual, phonetic, and commercial impression comparison.

3. The Applicant is entitled to register the subject trademark in International Class 006 in respect of "METAL FENCES AND FENCING; METAL FENCE POSTS AND STAYS; ARTICLES OF DRAWN AND ROLLED METAL, NAMELY, WIRES, PIPES, TUBES AND PALES; MOBILE AND STATIONARY METAL BARRIERS; RAZOR MESH AND WIRE; METAL SECURITY BARRIERS; METAL WALL SPIKES; METAL PALISADE FENCES AND COMPONENTS THEREFOR; COILED CONTINUOUS METAL STRIPS FOR USE AS FENCING, NAMELY, BARBED TAPE; CONCERTINA COILS, WIRES OF ALL KINDS," because the Applicant properly filed an application for said mark which was examined by the USPTO and issued a Notice of Publication.

4. The Applicant's "THE INVISIBLE WALL" mark is used for above-ground fence products not used or provided by Opposer.

5. The Applicant's "THE INVISIBLE WALL" mark is a unique phrase at most fancifully suggesting the overall nature of the associated goods which are not at all invisible, and is not similar to any of the Opposer's alleged marks containing the term "invisible," which are used with goods including an underground cable that works with a transmitter/receiver to provide a selective invisible barrier.

6. The use and registration of Applicant's mark is not likely to cause confusion, to cause mistake, or to deceive purchasers as to source or origin of Applicant's goods.

7. There is no likelihood of confusion, mistake or deception because, *inter alia,* Applicant's mark and Opposer's alleged marks as well as their respective goods are wholly unrelated and thus not confusingly similar.

8. There is no likelihood of confusion, mistake or deception because, *inter alia,* Applicant's mark and Opposer's alleged marks convey different commercial impressions.

9. There is no likelihood of confusion, mistake or deception because, *inter alia,* Applicant's mark and Opposer's alleged marks are dissimilar as to appearance.

10. There is no likelihood of confusion, mistake or deception because, *inter alia,* consumers are not likely to believe that the goods bearing the Applicant's mark originate with or are authorized by Opposer.

11. Upon information and belief, goods offered for sale by the Applicant, and goods covered by Opposer's alleged marks, are offered to dissimilar consumer groups, and circulate in different channels of commerce.

12. Applicant's mark is not likely to disparage or falsely suggest a trade connection with Opposer's alleged marks.

13. Applicant's mark is not likely to dilute Opposer's alleged mark(s) since Opposer's alleged marks do not constitute famous marks deserving of dilution protection.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, with prejudice, and that the Application Serial Number 85/739,687 to register the subject mark be allowed to issue as a registration to Applicant.

Respectfully submitted,

Susan Paik, Esq.
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ATTORNEY(S) FOR APPLICANT

CERTIFICATE OF FILING

I hereby declare that the attached Answer to the Notice of Opposition has been filed via the Electronic system for Trademark Trials and Appeals (ESTTA) this 21st day of October, 2013.

Susan Paik

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to the Notice of Opposition has been served on INVISIBLE FENCE, INC. and its representative, Merchant & Gould, P.C., by mailing said copy on October 21, 2013 via First Class Mail to: INVISIBLE FENCE, INC., 10427 PetSafe Way, Knoxville, Tennessee 37932 and Merchant & Gould, P.C., P.O. Box 2910, Minneapolis, MN 55402-9944.

Susan Paik