

ESTTA Tracking number: **ESTTA579854**

Filing date: **01/03/2014**

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	Mazcon, a Kurtz Bros. Company, LLC
Granted to Date of previous extension	01/04/2014
Address	6279 Houchard Road Dublin, OH 43016 UNITED STATES
Attorney information	David G. Oberdick Meyer, Unkovic & Scott LLP 535 Smithfield Street, Suite 1300 Pittsburgh, PA 15222 UNITED STATES dgo@muslaw.com, tma@muslaw.com, dlh@dlharnish.com Phone: 412-456-2881

Applicant Information

Application No	86012811	Publication date	11/05/2013
Opposition Filing Date	01/03/2014	Opposition Period Ends	01/04/2014
Applicant	Filtrexx International, LLC 35481 Grafton Eastern Road Grafton, OH 44044 OH		

Goods/Services Affected by Opposition

Class 011. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Water filters

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86155952	Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	DIAMOND SOCK		
Goods/Services	International Class 019 for erosion control fabric, namely knitted fabric tubes to be filled with compost for controlling erosion and filtering water runoff used primarily in the construction industry; and environmental control barriers, namely knitted fabric tubes to be filled with compost for controlling erosion and filtering water runoff used primarily in the construction industry		

Attachments	DiamondSoxx_NtcOpp.pdf(143882 bytes) DiamondSoxx_ExA.pdf(525353 bytes)
-------------	---

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	/David G. Oberdick/
Name	David G. Oberdick
Date	01/03/2014

3. Opposer is the owner of the common law trademark "DIAMOND SOCK" as a word mark, and has filed a U.S. Trademark Application for the Opposer's mark at Application Serial No. 86/155,952 in International Class 019 for erosion control fabric, namely knitted fabric tubes to be filled with compost for controlling erosion and filtering water runoff used primarily in the construction industry; and environmental control barriers, namely knitted fabric tubes to be filled with compost for controlling erosion and filtering water runoff used primarily in the construction industry.

4. Opposer's products, provided under its "DIAMOND SOCK" mark, have been in use in commerce since at least May 1, 2013 and have gained major recognition and wide acceptance. Applicant only filed its trademark application, albeit on an intent-to-use basis, for competitive products **after** such use of Opposer's mark occurred in commerce.

5. Because of Opposer's extensive use of its trademark, it has substantial goodwill which is an extremely valuable asset of Opposer, and purchasers of such goods have come to associate the DIAMOND SOCK trademark with Opposer.

6. Upon information and belief, Applicant Filtrexx International, LLC is an Ohio limited liability company whose last known residence is 35481 Grafton Eastern Road, Grafton, Ohio 44044.

7. The Application was filed July 17, 2013, and seeks registration of DIAMONDSOXX, on an intent-to-use basis, as a trademark for: Class 011: Water filters. As shown in Exhibit A hereto, Applicant does not use the DIAMONDSOXX in connection with common water filters and instead uses it with products that directly compete with Opposer's products. Specifically, Applicant's products are used with the DIAMONDSOXX trademark for erosion control fabric, namely knitted fabric tubes to be filled with compost for controlling erosion and filtering water runoff used primarily in the construction industry; and environmental

control barriers, namely knitted fabric tubes to be filled with compost for controlling erosion and filtering water runoff used primarily in the construction industry.

8. Applicant's mark was published for opposition on November 5, 2013.

9. Applicant's use of DIAMONDSOXX on or in connection with its goods in Class 011, or any other applicable Class, are likely to cause confusion or to cause mistake, or will deceive the public into believing that said goods and services emanate from Opposer and/or are licensed by Opposer and/or are approved by Opposer.

10. If Applicant is permitted to register DIAMONDSOXX, the goodwill of Opposer's marks will be adversely affected.

11. 15 U.S.C. § 1052(d) bars Applicant's mark from registration.

12. Accordingly, Opposer will be damaged by registration of DIAMONDSOXX to Applicant.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this opposition be sustained.

The undersigned hereby authorizes the United States Patent and Trademark Office to charge any fees and or credit any overpayments to deposit account 50-3325. The below-signed individual is an authorized user of said account.

Respectfully submitted,

Dated: January 3, 2014

/s/ David G. Oberdick
David G. Oberdick, Esquire

Meyer, Unkovic & Scott LLP
535 Smithfield Street, Suite 1300
Pittsburgh, PA 15222
Telephone: (412) 456-2881
Facsimile: (412) 456-2864
E-mail: dgo@muslaw.com
Attorneys for Opposer,
Mazcon, a Kurtz Bros. Company, LLC, d/b/a
Mazcon Manufacturing & Logistics

EXHIBIT "A"

Next Webinar: Filtrex[®] DiamondSoxx[™]

January 9

[Register Now »](#)



Introducing Filtrex[®] DiamondSoxx[™] and DiamondSoxx[™] HD – Diamond Sock Compost Filter Sock

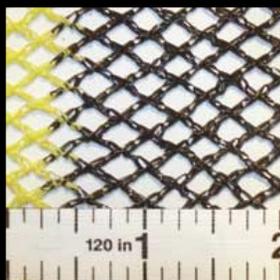
DiamondSoxx[™] and DiamondSoxx[™] HD are the same reliable Filtrex[®] Filter Sock Mesh products, now with a new name. This original diamond sock pattern meets all specs and allows for easy installations using a blower truck or FX Machine. Filtrex[®] mesh is the only proven mesh that meets specs – all others are imitation.

DiamondSoxx[™] – HDPE, 5 mil

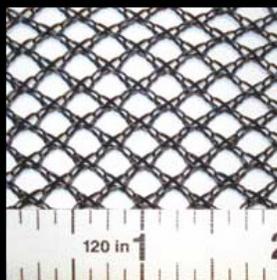
The original compost filter sock material. Photodegradable material with a functional longevity of 9 months-3 years and a mesh opening of 3/8-inch. Available diameters: 5", 8", 12", 18". Trademarked color stripe patterns are also available at no extra cost.

DiamondSoxx[™] HD – Polypropylene

Photodegradable material with a functional longevity of 1-4 years and a mesh opening of 1/8 inch. Available diameters: 8", 12", 18", 24", 32".



DiamondSoxx[™] Mesh



DiamondSoxx[™] Heavy
Duty Mesh

Ask about DiamondSoxx[™] for Blower Trucks

Filtrex International, LLC

35481 Grafton Eastern Rd | Grafton, OH 44044

440-926-2607 | fax: 440-926-4021

[email us](#)

Information contained herein is referenced where appropriate. Copyright © 2010 by Filtrex International, LLC. Duplication Expressly Prohibited.

Filtrex, Because nature can do what man cannot, the Branch and leaf logo, Let Nature Do It, Mimic Nature, BactoLoxx, DuraSoxx, EnviroSoxx, GardenSoxx, GreenLoxx, GroExo, GroSoxx, MetalLoxx, NutriLoxx, and PetroLoxx are registered trademarks of Filtrex International, LLC

BioSoxx, CECB, CSWB, DitchChexx, EdgeSaver, FilterCell, FilterMedia, FilterSoxx, Filtrex Certified, Green Tunnel, GreenField Report, GrowingMedia, InletSoxx, LivingWall, NitroLoxx, PhosLoxx, SiltSoxx, Soft Block, Soxx, and Trinity are trademarks of Filtrex International, LLC

Filtrex Certified and its accompanying logo are service marks of Filtrex International LLC. All Rights Reserved. US Patents 7,228,240, 7,452,165, 8,439,607 may apply & patents pending.