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

Proceeding	91214508
Party	Defendant Selig Sealing Products, Inc.
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Attachments	Answer First Amended NOO Opp No 91215874.pdf(374748 bytes)

1800-132882

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

Tekni-Plex, Inc.)	
)	
Opposer,)	Opposition No.: 91/215874
v.)	
)	
Selig Sealing Products, Inc.)	
)	
Applicant.)	
)	
Serial No.: 86/001,764)	
Filed: July 3, 2013)	
Mark: EDGEPEEL)	

ANSWER TO FIRST AMENDED NOTICE OF OPPOSITION

Selig Sealing Products, Inc., Applicant in the above-identified Opposition, hereby responds to the Notice of Opposition filed by Tekni-Plex, Inc., a Delaware Corporation opposing registration of the U.S. Application Serial No. 86/001764 for the trademark EDGEPEEL.

In response to the Notice of Opposition, Applicant states as follows:

1. In its Application Serial No. 86/001764 (the "764 Application") Selig Sealing Products, Inc. ("Selig" or "Applicant") seeks registration of the mark EDGEPEEL in Class 17 for "primarily non-metal seals comprised of various layers including a metallic foil layer for use in container closures and caps." The '764 Application was filed on July 3, 2013 and is based on Applicant's intent to use the mark in commerce pursuant to Section 1(b) of the Trademark Act.

ANSWER: Applicant admits that it filed Application No. 86/001764 and the contents of that Application.

2. On information and belief, Selig made no use of the mark EDGEPEEL prior to July 3, 2013.

ANSWER: Applicant admits that it has made no use of the mark prior to July 3, 2013.

3. Prior to the filing date of the '764 Application, Tekni-Plex adopted and began using the mark EDGE PULL in commerce for the same type of goods, which are manufactured by both parties.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition and, therefore, denies the same.

4. More particularly, in Spring 2012 Tekni-Plex employees came up with the idea to use "EDGE PULL" as a mark with adhesive seals for packaging, also known as closure liner/seal products, of the type identified in the '764 Application.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition and, therefore, denies the same.

5. In April 2012 Tekni-Plex adopted the EDGE PULL mark for such goods and began to use the EDGE PULL mark in the United States in marketing, promotion and product testing of goods bearing the EDGE PULL mark at various customers' facilities.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition and, therefore, denies the same.

6. Goods bearing the EDGE PULL mark were transported by Tekni-Plex in interstate commerce on or before October 1, 2012.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition and, therefore, denies the same.

7. By virtue of Tekni-Plex's prior consistent use of the EDGE PULL mark with closure liner/seal products of the type identified in the '725 Application, an association between that mark and Tekni-Plex as the source of such goods was created among a substantial number of potential customers, well before the filing date of the '764 Application.

ANSWER: Applicant is without knowledge or information sufficient to form a

belief as to the truth of the allegations contained in Paragraph 7 of the Notice of Opposition and, therefore, denies the same.

8. Tekni-Plex established goodwill and exclusive rights in and to the EDGEPULL mark prior to the filing date of the '764 Application.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice of Opposition and, therefore, denies the same.

9. Upon information and belief, Selig, a competitor of Tekni-Plex, learned about Tekni-Plex's adoption and use of the EDGEPULL mark with such goods.

ANSWER: Applicant admits that it is a competitor of Tekni-Plex, and denies the rest of the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Upon information and belief, Selig filed its own application to register the confusingly similar EDGEPEEL mark with full knowledge of Tekni-Plex's prior rights in the EDGEPULL mark and in an attempt to improperly usurp such rights and cause confusion as to source among the consuming public.

ANSWER: Denied.

11. Tekni-Plex has priority of use in and to the EDGEPULL mark over any rights that Selig may claim to that mark.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice of Opposition and, therefore, denies the same.

12. Applicant's EDGEPEEL mark is highly similar to Opposer's EDGEPULL mark in terms of appearance, sound, meaning and commercial impression.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Notice of

Opposition and, therefore, denies the same.

13. Applicant's EDGEPEEL mark and Opposer's EDGEPULL mark cover the same or related goods.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Notice of Opposition and, therefore, denies the same.

14. Further, the channels of trade and class of consumers are the same.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Notice of Opposition and, therefore, denies the same.

15. Purchasers or prospective purchasers, users and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Selig's goods emanate from and/or are in some way sponsored or approved by Tekni-Plex, thereby causing harm to Tekni-Plex.

ANSWER: Denied.

16. Tekni-Plex would be damaged by registration of the EDGEPEEL mark to Selig.

ANSWER: Denied.

17. Accordingly, Applicant is not lawfully entitled to register the EDGEPEEL mark because its mark so resembles Opposer's previously used EDGEPULL mark as to be likely, when used on or in connection with Applicant's goods, to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

ANSWER: Denied.

18. During discovery in this matter, Selig produced no documentary or other evidence of its *bona fide* intent to use the EDGEPEEL mark in commerce at the time of filing the '764 Application, or any time thereafter.

ANSWER: Admitted although Applicant notes that its investigation of this matter is ongoing and further information may still be provided.

19. Despite requests for such documents by Tekni-Plex, Selig produced no documents relating to its development, creation and decision to adopt the EDGEPEEL mark, its business plans, promotional activities, marketing, advertising or communications regarding the EDGEPEEL mark, its decision to apply to register the EDGEPEEL mark, or its *bona fide* intent to use the EDGEPEEL mark.

ANSWER: Denied although Applicant notes that its investigation of this matter is ongoing and further information may still be provided.

20. On the same date that Selig filed the '764 Application for the EDGEPEEL mark, Selig also filed U.S. App. Ser. No. 86/001,725 for the mark EDGEPEEL covering the identical goods, "primarily non-metal seals comprised of various layers including a metallic foil layer for use in container closures and caps," based on intent to use the mark in commerce."

ANSWER: Admitted

21. On the same date that Selig filed the '764 Application for the EDGEPEEL mark,, Selig also filed U.S. App. Ser. No. 86/001,746 for the mark EDGETAB covering the identical goods, "primarily non-metal seals comprised of various layers including a metallic foil layer for use in container closure and caps," based on intent to use the mark in commerce.

ANSWER: Admitted

22. Selig's simultaneous filing of three trademark applications for three marks for use with identical goods evidences Selig's lack of *bona fide* intent to use any of the marks at the time of filing, including EDGEPEEL.

ANSWER: Denied

23. Upon information and belief, at the time Applicant filed the '764 Application, it lacked a *bona fide* intent to use the EDGEPEEL mark in U.S. commerce in connection with the goods identified in the '764 Application, as required by 15 U.S.C. § 1051(b).

ANSWER: Denied

24. Accordingly, Applicant is not lawfully entitled to register the EDGEPEEL mark for the additional reason that lacked a *bona fide* intent to use the mark in U.S. commerce in connection with the goods identified in the application at the time of filing, as required by Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

ANSWER: Denied

25. Opposer therefore respectfully requests that this opposition be sustained and Applicant's application to register the EDGEPEEL mark be refused.

ANSWER: Denied, although Applicant believes no response is required given the nature of this paragraph.

AFFIRMATIVE DEFENSES

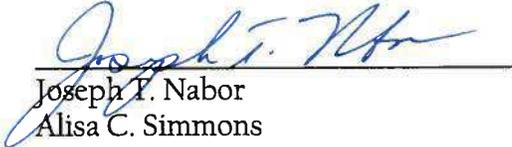
For its affirmative defenses to the Opposition, Applicant asserts the following:

1. The First Amended Notice of Opposition has failed to state a claim upon which relief may be granted.
2. Opposer has failed to allege adequate use in interstate commerce to support its claim.
3. Opposer does not have an adequate trademark right to support this Opposition.
4. Applicant hereby gives notice that it intends to rely upon such other and further defenses as may become available through discovery or otherwise and reserves its right to assert and rely upon further defenses as of right or by appropriate motion.

WHEREFORE, Applicant respectfully prays that opposition to registration its EDGEPEEL, Application No. 86/001764, be dismissed, that Notice of Allowance be issued, and that Applicant be granted such other and further relief as the board deems just and proper.

Respectfully submitted,
Selig Sealing Products, Inc.

August 10, 2015



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CERTIFICATE OF SERVICE

I, Joseph T. Nabor, Attorney for the Applicant, hereby certify that a copy of the foregoing ANSWER TO FIRST AMENDED NOTICE OF OPPOSITION was served by first class mail, postage prepaid, upon:

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Attorneys for Opposer

on this 10th day of August, 2015.



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