

ESTTA Tracking number: **ESTTA618136**

Filing date: **07/28/2014**

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	Mr.Troy R. Brannon
Granted to Date of previous extension	07/30/2014
Address	2919 Custer Drive Corinth, TX 75210 UNITED STATES
Party who filed Extension of time to oppose	Mr.TroyR.Brannon
Relationship to party who filed Extension of time to oppose	TTAB's name for opposer omits spaces between first name, middle initial and last name. Corrected herein.

Attorney information	Guy V. Manning, Esq. Law Offices of Guy V. Manning 300 Burnett Street, Suite 160 Fort Worth, TX 76102 UNITED STATES guyvmann@flash.net Phone:817.294.7744
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Applicant Information

Application No	86108765	Publication date	04/01/2014
Opposition Filing Date	07/28/2014	Opposition Period Ends	07/30/2014
Applicant	Timo Aijo 148 High Street Ashland, MA 01721 UNITED STATES		

Goods/Services Affected by Opposition

Class 037. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Roofing repair

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)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4564726	Application Date	06/13/2012
Registration Date	07/08/2014	Foreign Priority Date	NONE
Word Mark	ROOF BUDDY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2014/04/10 First Use In Commerce: 2014/04/10 Collapsible platform seats and stools; Non-metal tool boxes; Wood boxes		

Attachments	85651055#TMSN.png(bytes) 0675M003 Brannon ROOF BUDDY Not Opp as filed 20140728.pdf(181862 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	/gvmanningTM/
Name	Guy V. Manning, Esq.
Date	07/28/2014

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

TROY BRANNON

Opposer

vs.

TIMO AIJO

Defendant

Mark:

ROOFBUDDY

Ser. No.

86/108,765

Opposition No.

NOTICE OF OPPOSITION

Opposer, **TROY BRANNON** (“Opposer”), is an individual having a business address of 2919 Custer Drive, Corinth, Texas 76210. Defendant, **TIMO AIJO** (“Defendant”), on information and belief, is an individual having a business address of 148 High Street, Ashland, Mass 01721-1354.

1. Opposer has used the mark **ROOF BUDDY** (“the Mark”) for, among other things, a roofer’s toolbox for use upon a roof during the rendering of roofing and/or re-roofing services. See Declaration of Troy Brannon in attached **Exhibit A**.

2. Opposer filed his application to register his Mark, **ROOF BUDDY**, for such goods on June 13, 2012, and it was approved for registry on October 15, 2013. Applicant’s Mark was registered on July 8, 2014, based on Statement of Use filed April 13, 2014, which cited dates of first use and first use in commerce of April 10, 2014. See Opposer’s Registration Certificate No.

4,564,726, (“the Registration”) attached hereto as **Exhibit B**, and the USPTO’s file wrapper for the Registration.

3. Opposer has openly and continuously promoted and marketed his products for several months using the Mark. Opposer has not abandoned the Mark, and, since at least April 10, 2014, Opposer’s use of the mark has been in interstate commerce in connection with Opposer’s goods. *Ibid.*

4. By virtue of such continuous and exclusive use of the Mark in commerce, and of the Registration, Opposer’s Mark **ROOF BUDDY** has acquired significant value to Opposer as an identifier of Opposer in promoting Opposer’s goods. Further, Opposer’s mark **ROOF BUDDY** has accumulated goodwill through advertising, promotion, continued use in commerce since at least April 10, 2014, and, by virtue and operation of the Registration, constructive use in commerce since June 13, 2012.

5. Defendant is Applicant in the above designated Intent-to-Use application (“the Application”) to register “RoofBuddy”, a mark almost identical to Opposer’s Mark, the only difference being the lack of a space between the Mark’s constituent words, for “roofing repair.” See the Application, recitation of its Identification of Services for International Class 037.

6. Defendant proposes to register for itself what is essentially Opposer’s Mark for services in the roofing industry, the same industry wherein Opposer’s target consumers are found.

7. Furthermore, Defendant represents that, in fact, he plans to sell roofing materials, presumably along with his roofing repair services, using the proposed mark. See Defendant’s emailed communication to Opposer in attached **Exhibit C** (emphasis added).

8. Opposer's and Defendant's goods thus are highly related, are employed in identical channels of trade and promoted and marketed to similar if not identical clients. Therefore, confusion between the marks is obvious and more than merely likely. It is to be expected.

9. Opposer will be damaged significantly by registration to Defendant of Opposer's Mark pursuant to the Application since Defendant's proposed mark in the Application is essentially identical to Opposer's Mark for goods that will be found in the same industry and marketed through the same channels of trade. Thus, Opposer has standing to oppose the Application (U.S. Serial No. **86/108,765**) under 15 U.S.C. § 1064.

10. The Application (U.S. Serial No. **86/108,765**) does not have a date of first use in commerce as it is a § 1(b) application. The proposed mark in the Application thus has not acquired incontestable status and can be challenged on the basis of likelihood of confusion. 15 U.S.C. § 1064(1).

11. Opposer's priority date is at least as early as June 13, 2012, the date Opposer filed his trademark application. That date that predates by almost seventeen (17) months the Application's filing date of November 3, 2013. Further, and by definition, since the Application is based on Defendant's stated Intent-to-Use the proposed mark, Defendant had not used his proposed mark at least by the filing date of the Application, and, since no Allegation of Use has been filed in the Application, Defendant presumably has yet to use the proposed mark. Further, Defendant admits the same in writing. See **Exhibit C**.

12. Defendant therefore has accumulated no common law rights in his proposed mark in contravention of Opposer's rights in the Mark. Opposer therefore is the senior user of the Mark for the recited goods and any related goods, and has seniority of use for the Mark for the purpose of this Opposition. TBMP § 309.03(c).

13. Opposer will be damaged by Defendant's use and registration of its proposed mark. As registrant and senior and continuous user in commerce of the Mark ROOF BUDDY, Opposer is entitled to oppose the Defendant's registration pursuant to the Application (U.S. Serial No. **86/108,765**).

WHEREFORE, Opposer prays that Application (U.S. Serial No. **86/108,765**) be denied registration and that this notice of opposition be sustained in favor of Opposer.

Respectfully submitted,

/Guy V. Manning/

GUY V. MANNING
Texas State Bar No. 12943050

LAW OFFICES OF GUY V. MANNING
300 Burnett Street, Suite 160
Fort Worth, Texas 76102
(817) 294-7744; (817) 294-7742 (fax)

ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

On this _____ day of July, 2014, I electronically conveyed the foregoing document via email (timo.aijo@gmail.com) to Applicant/Defendant in the Application (U.S. Serial No. **86/108,765**), as authorized by Trademark Rule 2.119, 37 CFR 2.119.

/Guy V. Manning/

GUY V. MANNING

EXHIBIT A

Declaration of Opposer, Troy Brannon

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

TROY BRANNON

Opposer

vs.

TIMO AIJO

Defendant

Mark:

ROOFBUDDY

Ser. No.

86/108,765

Opposition No.

DECLARATION OF TROY BRANNON

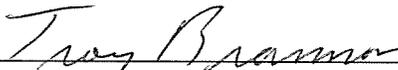
I, **TROY BRANNON**, Opposer in the above referenced Opposition, hereby declare the following:

1. My name is Troy Brannon. I am over 18 years of age and have never been adjudged incompetent. I am fully authorized and competent to make this Declaration, and I have personal knowledge of the facts set forth herein, and they are all true and correct.
2. I have used, and continue now to use, the Mark ROOF BUDDY for roofing repair goods, specifically a tool box for use on rooftops by roofing repair specialists rendering roofing or re-roofing repair services. My application for registration of my Mark for such goods was filed on June 13, 2012, and approved for registry on October 15, 2013. It was registered on July 8, 2014, based on Statement of Use filed April 13, 2014, which cited dates of first use and first use in commerce of April 10, 2014.
3. Since at least April 10, 2014, I have used the Mark ROOF BUDDY in interstate commerce with the above recited goods. My goods are promoted and marketed nationwide through word of mouth, print media and by point-of-purchase displays within the roofing repair channels of trade.
4. My use of the mark ROOF BUDDY as described above has been open, continuous and hostile to encroachments, though there have been no encroachments so far that have come to my attention. I have not abandoned nor formed any intent to abandon the mark ROOF BUDDY as an indicator of me as the exclusive source of the goods.
5. It has come to my attention, however, that Defendant is attempting to register the term RoofBuddy” for “roofing repair” services, presumably for the repair of roofs in the same channels of trade as my goods are found.

6. Further, based upon an email from Defendant in response to a letter from my attorney, it appears that, though he applied to register his term for roofing repair services, Defendant also intends to use his term as a mark with specialized roofing materials, goods which would be found in the same channels of trade as my goods are found.
7. Such use by Defendant of the term "RoofBuddy" for such services and/or goods, which are related to my goods and which services would be rendered by persons operating in the same channels of trade in which my goods are found, would create confusion in the relevant channels of trade between Defendant's services and/or goods and my goods.
8. Accordingly, such confusion would damage the valuable goodwill in my Mark. Thus, I will be damaged by Defendant's registration of his mark pursuant to the above referenced Application.

FURTHER DECLARANT SAYETH NOT.

Dated this 28 day of July, 2014.



TROY BRANNON

EXHIBIT B

Trademark Registration No. 4.564,726

United States of America
United States Patent and Trademark Office

ROOF BUDDY

Reg. No. 4,564,726

TROY BRANNON (UNITED STATES INDIVIDUAL)
2919 CUSTER DRIVE
CORINTH, TX 76210

Registered July 8, 2014

Int. Cl.: 20

FOR: COLLAPSIBLE PLATFORM SEATS AND STOOLS; NON-METAL TOOL BOXES;
WOOD BOXES, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

TRADEMARK

FIRST USE 4-10-2014; IN COMMERCE 4-10-2014.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ROOF", APART FROM THE MARK AS SHOWN.

SN 85-651,055, FILED 6-13-2012.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

EXHIBIT C

Email communication by Applicant/Defendant addressed to Opposer

Guy Manning

From: Timo Aijo <timo.ajjo@gmail.com>
Sent: Monday, July 21, 2014 10:37 PM
To: 'Guy Manning'
Subject: RE: ROOFBUDDY trademark

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Manning,

Please deliver this email to Mr. Brannon.

Thank you

Dear Mr. Brannon

This email is in reference to a letter from your attorney, Mr. Manning earlier this month.

It is my understanding that your trademark is not for all roofing services but for "Collapsible platform seats and stools; Non-metal tool boxes; Wood boxes". I assume that those are some kind of furniture - I really do not know anything about your product since I can find absolutely no information on the internet. Since you are already using the product (statement of use recently filed) in question in trade, I would kindly ask for a website or brochure where I can learn more about your products.

My trademark application is for roofing material - more or less to replace asphalt shingles. The main market for this product would be customers looking to replace their roofing material. I am still in development phase with the product and not ready to enter the market at this time.

Since both the products, trademark classifications, their usage as well as needs that products serve are completely different I do not believe that there will be any danger of any mistake or confusion in the applicable market places. I would be interested in learning more basis to your claim of deception. Are you indeed implying that I would intentionally try to deceive someone?

People looking at furniture would under no circumstances accidentally purchase roofing material and vice versa. Typically roofing material is only purchased at either new construction or to replace aging roofing. There are no competing interests between our products and the goods are completely unrelated. I have not used the trademark anywhere yet, only as acknowledged by your attorney as well, applied for the trademark. Thus unfortunately it is impossible for me to cease using the mark in question; simply because I never started to use it!

It looks like your trademark is two words with a space in between - my application is for one where the two words are written together. Should I be awarded the trademark I could modify the appearance of my potential trademark / logo so that it can be clearly differentiated from yours.

At this point I am on the fence but perhaps slightly leaning towards letting the trademark office perform their due diligence and determine the outcome for my application. Should the trademark office decline my application, will I look for another trademark. I have not had time to look into information available on the PTO's website to determine a firm course of action. Naturally it depends on you filing or not filing an objection.

Should you want to discuss this over telephone I am happy to do that,

Best regards,
Timo Aijo

From: Guy Manning [<mailto:guyvmann@flash.net>]
Sent: Thursday, July 03, 2014 4:41 PM
To: timo.ajio@gmail.com
Subject: ROOF BUDDY trademark infringement

Mr. Aijo,

Please see attached letter.

Please respond as soon as practicable.

Thank you.

Guy

Guy V. Manning
LAW OFFICES OF GUY V. MANNING
Patent, Copyright & Trademark |Voice: 817-294-7744 |
300 Burnett Street, Suite 160 |Fax: 817-294-7742 |
Fort Worth, Texas 76102 |Email: guyvmann@flash.net |

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