

ESTTA Tracking number: **ESTTA621241**

Filing date: **08/13/2014**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	Berry Plastics Corporation
Granted to Date of previous extension	08/13/2014
Address	P.O. Box 959 Evansville, IN 47706 UNITED STATES

Name	COVALENCE SPECIALTY ADHESIVES LLC
Granted to Date of previous extension	08/13/2014
Address	25 FORGE PARKWAY FRANKLIN, MA 02038 UNITED STATES

Attorney information	Jonathan P. Froemel BARNES & THORNBURG LLP 1 North Wacker, Suite 4400 chicago, IL 60606 UNITED STATES jfroemel@btlaw.com, jlong@btlaw.com, maburto@btlaw.com, bri-an.mcginis@btlaw.com, jonathan.froemel@btlaw.com Phone:312-214-8315
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**Applicant Information**

Application No	86106393	Publication date	04/15/2014
Opposition Filing Date	08/13/2014	Opposition Period Ends	08/13/2014
Applicant	Intertape Polymer Corp. Suite 300 Sarasota, FL 34232 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 017. First Use: 2013/08/01 First Use In Commerce: 2013/08/01  
All goods and services in the class are opposed, namely: Duct Tape

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3290220	Application Date	02/12/2007
Registration Date	09/11/2007	Foreign Priority Date	NONE
Word Mark	IRONFORCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 017. First use: First Use: 2006/12/22 First Use In Commerce: 2006/12/22 Duct tape		

U.S. Application No.	86077320	Application Date	09/27/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	IRONFORCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 001. First use: First Use: 0 First Use In Commerce: 0 adhesive materials for the building industry; adhesive substances for use in industry; adhesives and glues for industrial and commercial use; adhesives for industrial use; adhesives for mounting, bonding, and laminating in consumer household use; industrial adhesives; spray adhesives for consumer use; spray adhesives of rubber for consumer use; adhesives and glues for industrial purposes; adhesives and glues for industrial and commercial use; glue for use in construction industry</p> <p>Class 006. First use: First Use: 0 First Use In Commerce: 0 metal heating ducts; metal air conditioning ducts; ventilating ducts of metal; duct fittings of metal; metal pipes; metal pipes and metal fittings therefor; metal pipe fittings; metal pipes and fittings for residential, commercial, and consumer use</p> <p>Class 017. First use: First Use: 0 First Use In Commerce: 0 duct tapes; foil-backed duct tape; masking tape; painter's masking tape; flashing tape, namely, self-adhesive tapes used to seal window and door openings against moisture; waterproofing tape, namely, self-adhesive tapes used for sealing and to create a water-resistant barrier against moisture; adhesive tape for industrial and commercial use; adhesive sealants for general use; adhesive sealants for use in construction industry; air duct adhesive sealant compounds for use in the heating and cooling industry; silicone based sealants and adhesives; flexible PVC pipes; flexible PVC pipe fittings; flexible plumbing pipes of plastic; fiberglass insulation; fiberglass fabrics for building insulation; foam insulation for use in building and construction; foam sheeting for use as a building insulation; acoustical insulation for buildings; building insulation; extruded construction forms for insulation; foils of metal for building insulation; glass fiber insulation for use in construction; glasswool for insulation; insulation for air conditioners; insulation for underground pipes and tanks; insulation tape for use on pipes and other air conditioning, refrigeration, heating, and ventilation equipment; metal foil for building insulation; pipe insulation; spray-on insulation for use in residential, commercial, and consumer fields</p> <p>Class 019. First use: First Use: 0 First Use In Commerce: 0 non-metal heating ducts; non-metal air conditioning ducts; non-metal ventilating ducts; non-metal duct fittings; non-metal water pipes and fittings for residential, commercial, and consumer use; pipe fittings comprised primarily of plastic; non-metal water pipes; non-metal pipe fittings</p>		

U.S. Application No.	86226129	Application Date	03/19/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SUPER TOUGH IRONFORCE		
Design Mark			
Description of Mark	The mark consists of the words SUPER TOUGH with an I BEAM design in between, followed by the word IRONFORCE below.		
Goods/Services	<p>Class 001. First use: First Use: 0 First Use In Commerce: 0  adhesive materials for the building industry; adhesive substances for use in industry; adhesives and glues for industrial and commercial use; adhesives for industrial use; adhesives for mounting, bonding, and laminating in consumer household use; industrial adhesives; spray adhesives for consumer use; spray adhesives of rubber for consumer use; adhesives and glues for industrial purposes; adhesives and glues for industrial and commercial use; glue for use in construction industry</p> <p>Class 006. First use: First Use: 0 First Use In Commerce: 0  metal heating ducts; metal air conditioning ducts; ventilating ducts of metal; duct fittings of metal; metal pipes; metal pipes and metal fittings therefor; metal pipe fittings; metal pipes and fittings for residential, commercial, and consumer use</p> <p>Class 017. First use: First Use: 0 First Use In Commerce: 0  duct tapes; foil-backed duct tape; masking tape; painter's masking tape; flashing tape, namely, self-adhesive tapes used to seal window and door openings against moisture; waterproofing tape, namely, self-adhesive tapes used for sealing and to create a water-resistant barrier against moisture; adhesive tape for industrial and commercial use; adhesive sealants for general use; adhesive sealants for use in construction industry; air duct adhesive sealant compounds for use in the heating and cooling industry; silicone based sealants and adhesives; flexible PVC pipes; flexible PVC pipe fittings; flexible plumbing pipes of plastic; fiberglass insulation; fiberglass fabrics for building insulation; foam insulation for use in building and construction; foam sheeting for use as a building insulation; acoustical insulation for buildings; building insulation; extruded construction forms for insulation; foils of metal for building insulation; glass fiber insulation for use in construction; glasswool for insulation; insulation for airconditioners; insulation for underground pipes and tanks; insulation tape for use on pipes and other air conditioning, refrigeration, heating, and ventilation equipment; metal foil for building insulation; pipe insulation; spray-on insulation for use in residential, commercial, and consumer fields</p> <p>Class 019. First use: First Use: 0 First Use In Commerce: 0  non-metal heating ducts; non-metal air conditioning ducts; non-metal ventilating ducts; non-metal duct fittings; non-metal water pipes and fittings for residential, commercial, and consumer use; pipe fittings comprised primarily of plastic; non-metal water pipes; non-metal pipe fittings</p>		

Attachments	77105531#TMSN.png( bytes ) 86077320#TMSN.png( bytes ) 86226129#TMSN.png( bytes ) Notice of Opposition.pdf(509556 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 Overnight Courier on this date.

Signature	/jonathan p froemel/
Name	Jonathan P. Froemel
Date	08/13/2014

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

Berry Plastics Corporation and )  
Covalence Specialty Adhesives LLC )  
 )  
Opposers )  
 )  
v. ) Opposition No. \_\_\_\_\_  
 )  
Intertape Polymer Corp. ) Serial No.: 86/106,393  
 )  
Applicant )  
 )

**NOTICE OF OPPOSITION**

Berry Plastics Corporation (“Berry Plastics”) and Covalence Specialty Adhesives LLC (“Covalence”) (hereinafter collectively referred to as “Opposers”), believe that they will be damaged by the registration of the IRON GRIP DUCT TAPE AND DESIGN mark shown in Application Serial No. 86/106,393 for use in connection with duct tape in International Class 17. On May 13, 2014, Opposers timely filed requests for extensions of time to oppose Applicant’s application until August 13, 2014. In support of their Notice of Opposition, Opposers state as follows:

1. Covalence is the owner of United States Trademark Registration 3,290,220 for the mark IRONFORCE for use in connection with duct tape in International Class 17. A copy of the Certificate of Registration and of a current printout of information from the electronic database records of the USPTO showing the current status and title of the registration are attached hereto as Exhibit A.

2. Covalence’s registration is valid and subsisting, and is incontestable. Petitioners have used the IRONFORCE mark in connection with duct tape in commerce since at least as early as 2006.

3. Covalence is also the owner of United States Trademark Application Serial Number 86/077320 for IRONFORCE for use in connection with a wide variety of adhesive, tape and other products in International Classes 1, 6, 17 and 19. A copy of the current printout of information from the electronic database records of the USPTO showing the current status and title of the application is attached hereto as Exhibit B.

4. Berry Plastics is the owner of United States Trademark Application Serial Number 86/226,129 for the mark SUPER TOUGH IRONFORCE AND DESIGN for use in connection with a wide variety of adhesive, tape and other products in International Classes 1, 6, 17 and 19. A copy of the current printout of information from the electronic database records of the USPTO showing the current status and title of the application is attached hereto as Exhibit C.

5. By reason of Opposers' long and extensive use of the IRONFORCE mark, the mark has achieved widespread and favorable public appearance and recognition and has become an asset of great value as a symbol of Opposers' products and goodwill.

6. Opposers have invested a great deal of time and money in promoting their goods under the IRONFORCE mark and they continue to use and promote these goods under the IRONFORCE mark.

7. By virtue of Opposers' continuous, exclusive and widespread use of the IRONFORCE mark, the mark is entitled to a broad scope of protection.

8. On October 31, 2013, Applicant filed Application Serial No. 86/106,393 to register the mark IRON GRIP DUCT TAPE AND DESIGN in International Class 17 for use in connection with duct tape, the identical goods sold by Opposers in connection with the IRONFORCE mark.

9. Opposers acquired trademark rights in and to the IRONFORCE mark for Opposers' goods that pre-date the actual and/or constructive use by Applicant of the mark IRON GRIP DUCT TAPE AND DESIGN.

10. Applicant's IRON GRIP DUCT TAPE AND DESIGN mark has the same or a highly similar meaning and commercial impression in comparison to Opposers' IRONFORCE mark. Applicant's mark is highly similar to Opposers' mark and as such is likely to be confused with Opposers' mark.

11. Applicant's mark IRON GRIP DUCT TAPE AND DESIGN, when used in connection with duct tape, is likely to cause confusion, mistake or deception.

12. Use of and registration by Applicant of the IRON GRIP DUCT TAPE AND DESIGN mark is without Opposers' consent.

13. Continued registration of the mark IRON GRIP DUCT TAPE AND DESIGN by Applicant will harm Opposers by interfering with Opposers' rights to the IRONFORCE mark.

14. Opposers have the right to continue using the IRONFORCE mark in connection with their goods and related goods and services and to use the mark without interference by Applicant and without confusion, mistake or deception.

WHEREFORE, Opposers believe that they will be damaged by the registration of the IRON GRIP DUCT TAPE AND DESIGN mark by Applicant and pray that the registration of the IRON GRIP DUCT TAPE AND DESIGN mark be denied.

Respectfully submitted,

/s/ Jonathan P. Froemel  
Jonathan P. Froemel  
Joan L. Long

BARNES & THORNBURG LLP  
P.O. Box 2786  
Chicago, Illinois 60606  
312-357-1313  
Attorney for Petitioner

Date: August 13, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the Notice of Opposition has been served on counsel of record for Applicant by sending via overnight courier said copy on August 13, 2014 and by electronic mail to:

J. Gregory Humphries, Esq.  
Shutts & Bowen LLP  
300 South Orange Ave., Suite 1000  
Orlando, FL 32801-5403

Courtesy copies were also served by the same method on counsel listed below based on correspondence between counsel and Petitioners' counsel:

Thomas Brooke, Esq.  
Holland & Knight  
800 17<sup>th</sup> Street, NW, Suite 1100  
Washington, DC 20006

/s/Carol Boruta

# **EXHIBIT A**

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Int. Cl.: 17

Prior U.S. Cls.: 1, 5, 12, 13, 35 and 50

United States Patent and Trademark Office

Reg. No. 3,290,220

Registered Sep. 11, 2007

TRADEMARK  
PRINCIPAL REGISTER

IRONFORCE

COVALENCE SPECIALTY MATERIALS CORP.  
(DELAWARE CORPORATION)  
1401 WEST 94TH STREET  
MINNEAPOLIS, MN 55431

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

FOR: DUCT TAPE, IN CLASS 17 (U.S. CLS. 1, 5, 12,  
13, 35 AND 50).

SER. NO. 77-105,531, FILED 2-12-2007.

FIRST USE 12-22-2006; IN COMMERCE 12-22-2006.

CAROL SPILS, EXAMINING ATTORNEY



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# IRONFORCE

**Word Mark** IRONFORCE  
**Goods and Services** IC 017. US 001 005 012 013 035 050. G & S: Duct tape. FIRST USE: 20061222. FIRST USE IN COMMERCE: 20061222  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 77105531  
**Filing Date** February 12, 2007  
**Current Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** June 26, 2007  
**Registration Number** 3290220  
**Registration Date** September 11, 2007  
**Owner** (REGISTRANT) Covalence Specialty Materials Corp. CORPORATION DELAWARE 1401 West 94th Street Minneapolis MINNESOTA 55431  
 (LAST LISTED OWNER) COVALENCE SPECIALTY ADHESIVES LLC LIMITED LIABILITY COMPANY DELAWARE 25 FORGE PARKWAY FRANKLIN MASSACHUSETTS 02038  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Brian J. McGinnis  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator** LIVE

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## **EXHIBIT B**

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# IRONFORCE

**Word Mark  
Goods and  
Services**

IRONFORCE

IC 001. US 001 005 006 010 026 046. G & S: adhesive materials for the building industry; adhesive substances for use in industry; adhesives and glues for industrial and commercial use; adhesives for industrial use; adhesives for mounting, bonding, and laminating in consumer household use; industrial adhesives; spray adhesives for consumer use; spray adhesives of rubber for consumer use; adhesives and glues for industrial purposes; adhesives and glues for industrial and commercial use; glue for use in construction industry

IC 006. US 002 012 013 014 023 025 050. G & S: metal heating ducts; metal air conditioning ducts; ventilating ducts of metal; duct fittings of metal; metal pipes; metal pipes and metal fittings therefor; metal pipe fittings; metal pipes and fittings for residential, commercial, and consumer use

IC 017. US 001 005 012 013 035 050. G & S: duct tapes; foil-backed duct tape; masking tape; painter's masking tape; flashing tape, namely, self-adhesive tapes used to seal window and door openings against moisture; waterproofing tape, namely, self-adhesive tapes used for sealing and to create a water-resistant barrier against moisture; adhesive tape for industrial and commercial use; adhesive sealants for general use; adhesive sealants for use in construction industry; air duct adhesive sealant compounds for use in the heating and cooling industry; silicone based sealants and adhesives; flexible PVC pipes; flexible PVC pipe fittings; flexible plumbing pipes of plastic; fiberglass insulation; fiberglass fabrics for building insulation; foam insulation for use in building and construction; foam sheeting for use as a building insulation; acoustical insulation for buildings; building insulation; extruded construction forms for insulation; foils of metal for building insulation; glass fiber insulation for use in construction; glass wool for insulation; insulation for air conditioners; insulation for underground pipes and tanks; insulation tape for use on pipes and other air conditioning, refrigeration, heating, and ventilation equipment; metal foil for building insulation; pipe insulation; spray-on insulation for use in residential, commercial, and consumer fields

IC 019. US 001 012 033 050. G & S: non-metal heating ducts; non-metal air conditioning ducts; non-metal ventilating ducts; non-metal duct fittings; non-metal water pipes and fittings for residential, commercial, and consumer use; pipe fittings comprised primarily of plastic; non-metal water pipes; non-metal pipe fittings

**Standard  
Characters  
Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 86077320

**Filing Date** September 27, 2013

**Current Basis** 1B

**Original Filing Basis** 1B

**Owner** (APPLICANT) Covulence Specialty Adhesives LLC LIMITED LIABILITY COMPANY DELAWARE 25 Forge Parkway Franklin MASSACHUSETTS 02038

**Attorney of Record** Brian J. McGinnis

**Prior Registrations** 3290220

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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## **EXHIBIT C**

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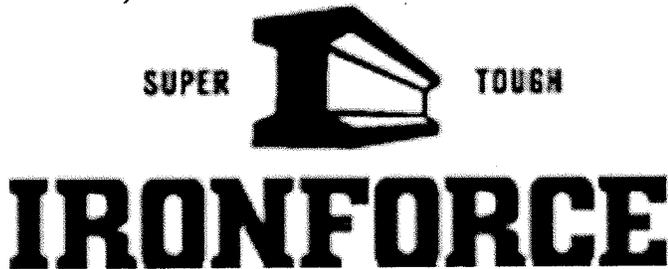
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**Word Mark** SUPER TOUGH IRONFORCE  
**Goods and Services** IC 001. US 001 005 006 010 026 046. G & S: adhesive materials for the building industry; adhesive substances for use in industry; adhesives and glues for industrial and commercial use; adhesives for industrial use; adhesives for mounting, bonding, and laminating in consumer household use; industrial adhesives; spray adhesives for consumer use; spray adhesives of rubber for consumer use; adhesives and glues for industrial purposes; adhesives and glues for industrial and commercial use; glue for use in construction industry

IC 006. US 002 012 013 014 023 025 050. G & S: metal heating ducts; metal air conditioning ducts; ventilating ducts of metal; duct fittings of metal; metal pipes; metal pipes and metal fittings therefor; metal pipe fittings; metal pipes and fittings for residential, commercial, and consumer use

IC 017. US 001 005 012 013 035 050. G & S: duct tapes; foil-backed duct tape; masking tape; painter's masking tape; flashing tape, namely, self-adhesive tapes used to seal window and door openings against moisture; waterproofing tape, namely, self-adhesive tapes used for sealing and to create a water-resistant barrier against moisture; adhesive tape for industrial and commercial use; adhesive sealants for general use; adhesive sealants for use in construction industry; air duct adhesive sealant compounds for use in the heating and cooling industry; silicone based sealants and adhesives; flexible PVC pipes; flexible PVC pipe fittings; flexible plumbing pipes of plastic; fiberglass insulation; fiberglass fabrics for building insulation; foam insulation for use in building and construction; foam sheeting for use as a building insulation; acoustical insulation for buildings; building insulation; extruded construction forms for insulation; foils of metal for building insulation; glass fiber insulation for use in construction; glass wool for insulation; insulation for air conditioners; insulation for underground pipes and tanks; insulation tape for use on pipes and other air conditioning, refrigeration, heating, and ventilation equipment; metal foil for building insulation; pipe insulation; spray-on insulation for use in residential, commercial, and consumer fields

IC 019. US 001 012 033 050. G & S: non-metal heating ducts; non-metal air conditioning ducts; non-metal ventilating ducts; non-metal duct fittings; non-metal water pipes and fittings for residential, commercial, and consumer use; pipe fittings comprised primarily of plastic; non-metal water pipes; non-metal pipe fittings

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 07.15.03 - Corrugated metal

**Serial Number** 86226129  
**Filing Date** March 19, 2014  
**Current Basis** 1B  
**Original Filing Basis** 1B  
**Owner** (APPLICANT) Berry Plastics Corporation CORPORATION DELAWARE P.O. Box 959 Evansville INDIANA 477060959  
**Attorney of Record** Brian J. McGinnis  
**Prior Registrations** 3290220  
**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the words SUPER TOUGH with an I BEAM design in between, followed by the word IRONFORCE below.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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