

ESTTA Tracking number: **ESTTA708466**

Filing date: **11/13/2015**

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

Proceeding	91224230
Party	Defendant Clopay Building Products Company, Inc.
Correspondence Address	APRIL L. BESL DINSMORE & SHOHL LLP 255 E 5TH ST STE 1900 CINCINNATI, OH 45202-1971 april.besl@dinsmore.com
Submission	Answer
Filer's Name	April L Besl
Filer's e-mail	april.besl@dinsmore.com
Signature	/april l besl/
Date	11/13/2015
Attachments	Answer to Notice of Opp - CAPELLA.pdf(28934 bytes)

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

PELLA CORPORATION,

Opposer,

vs.

**CLOPAY BUILDING PRODUCTS
COMPANY, INC.,**

Applicant.

**Serial No. 86/500,569
Opposition No. 91224230**

Applicant, Clopay Building Products Company, Inc. (hereinafter “Clopay” or “Applicant”), a Delaware corporation with its principal place of business at 8585 Duke Boulevard, Mason, Ohio 45040, is the owner of an application for the mark CAPELLA in Class 19 for “*Decorative window lites in the nature of glass and plastic panels for use in metal and non-metal entry doors and as replacement units for such metal and non-metal entry doors; decorative window lites, side lites and transom lites in the nature of glass and plastic panels for use in metal and non-metal entry doors and as replacement units for such metal and non-metal entry doors.*” The CAPELLA application was filed by Applicant on January 12, 2015, and assigned Serial No. 86/500,569.

Applicant denies the averment in the introductory paragraph of the Notice of Opposition that the registration of Applicant’s trademark CAPELLA will damage Opposer Pella Corporation (hereinafter “Opposer”). Applicant denies each and every allegation contained in the Notice of Opposition unless otherwise admitted or responded to as follows:

1. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 1, and therefore denies same.

2. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 2, and therefore denies same.

3. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 3, and therefore denies same.

4. Applicant admits that the United States Patent and Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 836,191 for the mark PELLA is owned by an entity identified as Pella Corporation in connection with "Double hung windows, casement windows, awning type windows, stationary windows, double glazed sashes, sliding glass doors, window screens, and rolling window screens (with 'folding doors and folding partitions' omitted)." Applicant is without sufficient knowledge to form a belief as to the whether this Registration is registered in International Class 19; upon information and belief, this mark was cancelled as to Class 19, and is currently registered in Class 12. Applicant further admits that the publicly-accessible TARR database reflects that U.S. Registration Nos. 811,964; 959,647; 959,646; 4,197,287; and 4,608,705 for the mark PELLA or PELLA & Design are owned by an entity identified as Pella Corporation.

5. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 5 and therefore denies same.

6. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 6 and therefore denies same.

7. Applicant denies each and every allegation in Paragraph 7.

8. Applicant admits that it is a Delaware corporation and that its mailing address of record is 8585 Duke Boulevard, Mason, Ohio.

9. Applicant denies that Applicant filed the Application Serial No. 78/417, 269; according to the publicly available TARR records, Application Serial No. 78/417,269 was filed by an entity identified as Medal USA, Inc for the mark BELLA. Applicant admits that Applicant filed an intent-to-use application on January 12, 2015, to register the mark CAPELLA for use in connection with “Decorative window lites in the nature of glass and plastic panels for use in metal and non-metal entry doors and as replacement units for such metal and non-metal entry doors; decorative window lites, side lites and transom lites in the nature of glass and plastic panels for use in metal and non-metal entry doors and as replacement units for such metal and non-metal entry doors,” in International Class 19, which was subsequently assigned Serial No. 86/500,569.

10. Applicant admits that it is primarily in the business of manufacturing and selling garage doors, and that Applicant also manufactures and sells component products for garage doors, including garage door window inserts, referred to in the industry as “window lites.”

11. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 11 and therefore denies same.

12. Applicant denies each and every allegation in Paragraph 12.

13. Applicant denies each and every allegation in Paragraph 13.

14. Applicant denies each and every allegation in Paragraph 14.

15. Applicant denies each and every allegation in Paragraph 15.

Applicant denies the allegations contained in the “Wherefore” clause at the end of Opposer’s Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant states as follows for its affirmative defenses:

1. Petitioner fails to state a claim upon which relief can be granted.
2. Applicant's CAPELLA mark is sufficiently distinctively different from the PELLA marks referenced by Opposer in the Notice of Opposition so as to avoid confusion, deception or mistake as to the source, sponsorship, association, or approval of Applicant's services.
3. The goods covered by Applicant's CAPELLA mark are sufficiently distinctively different from the goods offered under the PELLA marks referenced by Opposer in the Notice of Opposition so as to avoid confusion, deception, or mistake as to the source, sponsorship, association, or approval of Applicant's goods.
4. The US Patent and Trademark Office Examining Attorney tasked with examining the application for Applicant's CAPELLA mark approved the application for publication indicating that the Patent and Trademark Office Examiner did not find a conflict between the two marks cited in the Notice of Opposition.

Applicant reserves the right to assert additional affirmative defenses as they may become known through the process of discovery.

PRAYER FOR RELIEF

WHEREFORE, Clopay Building Products Company, Inc. prays that:

- A. This action be dismissed in its entirety with prejudice;
- B. That Applicant has such other and further relief as the Board may deem just and proper.

Dated: **November 13, 2015**

/ april l besl /

April L. Besl
Michelle Browning Coughlin
DINSMORE & SHOHL LLP
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8527-direct
(513) 977-8141-fax
april.besl@dinsmore.com

*Attorneys for Applicant
Clipay Building Products Company, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by first class mail, postage prepaid, on this 13th day of November, 2015 to Peter M. Routhier, Faegre Baker Daniels LLP, 90 South Seventh Street, 2200 Wells Fargo Center, Minneapolis, MN 55402.

/ april l besl /
April L. Besl