

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

Harris Corporation

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v.

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Opposition No. 91226204 -86.657974

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Phelan, Randal

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ANSWER

Defendant, Randal Phelan (“Defendant”), files this his answer, by and through his attorney, Harold Phelan, to Notice of Opposition, filed by Opposer, Harris Corporation (“Plaintiff”) (ESTTA725406), and would show this Board the following:

1. Defendant has a trademark application for “Caprock Engineering” (application number 86657974). Caprock Engineering is a professional limited liability company (“PLLC”) in Edmonds, Washington. The trade name “Caprock Engineering” will be the name of the PLLC. Plaintiff has a design mark “FieldAccess by CapRock.” The design mark is not a part of Plaintiff’s corporate name.

2. Defendant denies all of Plaintiff’s allegations that Defendant’s trade name “Caprock Engineering” is in opposition to Plaintiff’s alleged trademark “Caprock” and its design mark “FieldAccess by CapRock.” The trade names or trade marks have nothing in common except the word “Caprock.” Plaintiff has not demonstrated the use of the word “Caprock” nor does it even use the word “Caprock” as would Defendant. Plaintiff uses “Harris CapRock” and “FieldAccess by



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Harris Caprock,” and Defendant would use “Caprock Engineering.” Further, Plaintiff is contending it can have the exclusive use of the name “Caprock” when “Caprock” is the name of a natural geological formation in West Texas. In addition, Plaintiff does not use the name “Caprock” in its corporate name. Plaintiff’s corporate name is Harris Corporation.

3. Plaintiff alleges in its “Short and Plain Statement of Grounds for Opposition” (“Opposition”) that it acquired Caprock Communications Inc., which it alleges is a Texas Corporation that is a global satellite communications provider for the energy, government, maritime, engineering and construction and mining industries as well as for disaster recovery services. Among its assets, it lists as the trade name “CAPROCK” and the mark “FIELDACCESS BY CAPROCK.” Defendant’s PLLC is focused solely on structural bridge engineering; it has no design mark. There is no conflict with Defendant’s use of a trade name “Caprock Engineering” and Plaintiff’s use of a design mark “FIELDACCESS BY CAPROCK.” Defendant responds as follows to each of the paragraphs in Plaintiff’s Opposition.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of Plaintiff’s statements in its paragraphs 1 to 9 of Plaintiff’s Opposition.

5. Defendant admits the statements in paragraph 10 of Plaintiff’s Opposition. As Plaintiff set out in paragraph 10 of its Opposition, Defendant’s trade mark will be used in connection with the following services “Consulting in the field of structural engineering.”

6. Defendant denies Plaintiff’s allegation in paragraph 11 of Plaintiff’s Opposition that Defendant’s Listed Services and the services listed in Plaintiff’s registration are, or are likely to be, directed to at least partially overlapping classes of customers. Because Plaintiff is focused on communication, telephony, satellites, etc. and Defendant’s corporation is focused solely on structural

bridge engineering, there is no conflict.

7. Defendant denies the statements in paragraph 12 of Plaintiff's Opposition that the services of Caprock Engineering are advertised and promoted through at least partially overlapping channels of trade. Plaintiff has not set out any overlapping channels of trade.

8. Defendant denies the statements in paragraph 13 of Plaintiff's Opposition that Defendant's Listed Services are of a nature closely related to the services in Plaintiff's Asserted Registration. In paragraph 4 of Plaintiff's Opposition, Plaintiff stated that under the Asserted Registration, the Asserted Mark "FIELDACCESS BY CAPROCK" is registered on the Principal Register for use in connection with "providing satellite-based communication services to potential and actual land-based mineral sites" in International Class 038. As Plaintiff admits in its paragraph 10, Defendant's Listed Services is "Consulting in the field of structural engineering." Defendant's Listed Services are not in "nature closely related" to Plaintiff's listed services in its Asserted Registration.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of Plaintiff's statements in its paragraphs 14 and 15 of Plaintiff's Opposition.

10. Defendant denies Plaintiff's allegations in its paragraph 16 of its Opposition. Defendant's trade mark "Caprock Engineering" is not identical with Plaintiff's mark "FIELDACCESS BY CAPROCK" and does not convey an impression that Defendant's Listed Services originate with Plaintiff or with Plaintiff's licensee, Harris Caprock Inc. If Defendant's alleged trade mark was similar to Plaintiff's licensee's name, Plaintiff does not use the name "Harris Caprock Inc." As noted in Plaintiff's "Notice of Opposition," Plaintiff uses the name "Harris Corporation."

11. Defendant denies Plaintiff's allegations in its paragraphs 17 to 20 of its Opposition. The word "Caprock" in Defendant's trade name will not leave the impression that Defendant is somehow affiliated with or is otherwise connected with Plaintiff. Plaintiff has not shown how the use of that term, which is the name of a natural geological formation in West Texas, will leave an impression that Caprock Engineering is affiliated with Plaintiff or its licensee. Defendant's use of the name Caprock Engineering will not cause confusion regarding Defendant's Listed Services as Defendant's Listed Services are different than Plaintiff's listed services. Plaintiff has not shown how it will be damaged with regard to Defendant's use of the trade name "Caprock Engineering."

12. In *Interpace corp. v. Lapp, Inc.*, 721 F.2d 460, 463 (3rd Cir. 1983), the Third Circuit Court of Appeals set out the relevant standards on likelihood of confusion in noncompeting goods cases. These standards, commonly known as the *Lapp* factors include, among others, the following: (a) the degree of similarity between the owner's mark and the alleged infringing mark, (b) the strength of the owner's mark, (c), whether the goods, though not competing, are marketed through the same channels of trade and advertised through the same media, (d) the extent to which the targets of the parties' sales efforts are the same, and (e) the relationship of the goods in the minds of consumers because of the similarity of functions.

There is no "degree of similarity" between the trade name "Caprock Engineering," and the alleged design mark "FIELDACCESS by CapRock" and no similarity with the trade mark being used "FIELDACCESS by Harris CapRock." Further, there is little strength in Plaintiff's design mark. It is not one that carries widespread, immediate recognition that one would associate Defendant's PLLC with that design mark. Plaintiff does not use the design mark as part of its name. In addition, services provided by Defendant's PLLC and Plaintiff are not provided through

the same channels of trade nor advertised through the same media. The targets of Plaintiff's and Defendant's sales efforts are not the same. Plaintiff has not provided any facts or evidence to show that the average consumer would likely confuse Defendant's PLLC with Plaintiff's design mark.

WHEREFORE, Defendant requests that Plaintiff's Opposition be DENIED.

Respectfully submitted:

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By: 

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Attorney for Defendant, Randal Phelan

SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Donald S. Showalter, Attorney for Opposer, by mailing said copy on March 7, 2016, via First Class Mail, postage prepaid to: Donald S. Showalter Esq, GrayRobinson, PA, 401 East Las Olas Boulevard Suite 1000, Fort Lauderdale, Florida 33301.


Harold Phelan