

ESTTA Tracking number: **ESTTA777251**

Filing date: **10/17/2016**

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

Proceeding	91229977
Party	Defendant Black Diamond Structures, LLC
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Date	10/17/2016
Attachments	Answer to Notice of Opposition BLACK DIAMOND STRUCTURES 10.17.16.pdf(151200 bytes)

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

CTI Services, LLC	§	Opposition No. 91229977
	§	
Opposer,	§	
	§	
vs.	§	Mark: BLACK DIAMOND
	§	STRUCTURES & Design
	§	
Black Diamond Structures, LLC,	§	
	§	
Applicant.	§	Application No. 86/567,083

ANSWER TO NOTICE OF OPPOSITION

Applicant Black Diamond Structures, LLC (“Applicant”) hereby answers the Notice of Opposition filed by CTI Services, LLC (“Opposer”) as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition and therefore denies same.
2. Applicant admits the allegations in paragraph 2 of the Notice of Opposition.
3. Applicant admits the allegations in paragraph 3 of the Notice of Opposition, except for the reference to the mark as “BLACK DIAMOND STRUCTURES.” The mark being opposed contains design elements and is more properly referenced as BLACK DIAMOND STRUCTURES and Design.
4. Applicant admits the allegations in paragraph 4 of the Notice of Opposition.
5. Applicant admits the allegations in paragraph 5 of the Notice of Opposition.
6. 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 same.

7. 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 same.

8. 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 same.

9. Applicant denies the allegation that Trademark Application Serial No. 77/009,563 was filed on October 3, 2006. The records of the U.S. Patent and Trademark Office (“USPTO”) show the filing date as September 28, 2006. Applicant admits that USPTO records show that this application was filed for the mark BLACK DIAMOND. Applicant is without knowledge or information sufficient to form a belief as to whether Roger Walker is the predecessor in interest to Opposer, and therefore denies this allegation.

10. Applicant admits that USPTO records show that Registration Number 3,322,311 was issued on October 30, 2007 for the mark BLACK DIAMOND on the Principal Register. Applicant denies that a copy of the registration was attached to the Notice of Opposition as an exhibit. Applicant is without knowledge or information sufficient to form a belief as to the validity of the registration or the truth of the facts presented in the corresponding application, and therefore denies same.

11. Applicant admits that USPTO records show that a combined declaration of continued use and incontestability was filed on October 30, 2013 in connection with Registration No. 3,322,311. Applicant is without knowledge or information sufficient to form a belief as to the truth of the facts recited in the declaration, and therefore denies same.

12. Applicant admits that USPTO records show that the declaration of continued use and incontestability was accepted on November 16, 2013. Applicant is without knowledge or

information sufficient to form a belief as to the truth of the facts recited in the declaration, and therefore denies same.

13. 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 same.

14. Applicant denies the allegations in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegation that the Opposed Mark is “virtually identical” to the BLACK DIAMOND mark. Applicant admits that the marks differ, in part, because of the inclusion of the word “STRUCTURES” in Applicant’s mark, and also by the design elements included in Applicant’s mark.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Notice of Opposition and therefore denies same.

17. Applicant admits that its trademark application was filed on March 17, 2015 and that this date will constitute its constructive use date.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Notice of Opposition and therefore denies same.

19. Applicant denies the allegations in paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations in paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegations contained in paragraph 21 of the Notice of Opposition.

WHEREFORE, Applicant prays that Application No. 86/567083 for the mark BLACK DIAMOND STRUCTURES and Design be granted registration and the Notice of Opposition be dismissed.

Dated: October 17, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent to counsel for Opposer, who has consented to service by email, at the following email address:

rachel.blue@mcafeetaft.com



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