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

Proceeding	92057488
Party	Defendant Precision Sewer Services LLC
Correspondence Address	MICHAEL A BURNS BURNS LAW LLC 110 W FRONT STREET MEDIA, PA 19063 UNITED STATES legal@burnslaw.org
Submission	Answer
Filer's Name	Michael A. Burns
Filer's e-mail	legal@burnslaw.org
Signature	/Michael A. Burns/
Date	03/14/2014
Attachments	Answer Petition for Cancellation 92057488.pdf(5048878 bytes)

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

In the matter of Registration No. 4,251,607
Date of Issue: November 27, 2012
PRECISION SEWER SERVICES

A to U Sewer Services, Inc., d/b/a A to U Sewer Service, Petitioner,	:	
v.	:	Cancellation No. 92057488
Precision Sewer Services, LLC Registrant.	:	

REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION

Registrant, Precision Sewer Services, LLC, by and through its Attorney, Burns Law, P.C., herby responds to the Petition for Cancellation as follows:

1. Registrant admits the allegations in Paragraph 1.
2. Registrant is without knowledge or information sufficient to form a belief as to Paragraph 2 of the petition for cancellation and therefore denies the same.
3. Registrant is without knowledge or information sufficient to form a belief as to Paragraph 3 of the petition for cancellation and therefore denies the same.
4. Registrant denies the allegation contained in Paragraph 4 of the Petition for Cancellation that Petitioner currently uses the mark attached as Petitioner has since abandoned and discontinued use of the mark subsequent to filing its Petition for Cancellation.
5. Registrant admits the allegations in Paragraph 5.
6. Registrant admits the allegations in Paragraph 6.
7. Registrant admits the allegations in Paragraph 7 as well as to the attached registered mark belonging to Registrant.
8. Registrant admits the allegations in Paragraph 8.

9. Registrant denies the allegation contained in Paragraph 9 of the Petition for Cancellation that Petitioner and states to the contrary that Petitioner has since abandoned and discontinued use of the mark subsequent to filing its Petition for Cancellation.
10. Registrant is without knowledge or information sufficient to form a belief as to Paragraph 10 of the petition for cancellation and therefore denies the same.
11. Registrant denies the allegation contained in Paragraph 11 of the Petition for Cancellation that Petitioner and states to the contrary that the mark fraudulently used by Petitioner was identical and caused confusion but has since been abandoned and no longer used by Petitioner.
12. Registrant denies the allegation contained in Paragraph 12 of the Petition for Cancellation that Petitioner and states to the contrary that all affirmations made in Registrant's application were truthful.

[REGISTRANT HAS ONLY BEEN PROVIDED PAGES 1-4 AND IN SPITE OF REQUEST FROM ITS MOTION TO SET ASIDE DEFAULT STILL ONLY HAS PAGES 5-7. REGISTRANT WILL ANSWER REMAINING PARAGRAPHS WITHOUT NUMBERING SEQUENCE OR ALLEGATION AVAILABLE]

13. Registrant denies the allegation contained in Paragraph 13 of the Petition for Cancellation.
14. Registrant denies the allegation contained in Paragraph 14 of the Petition for Cancellation.
15. Registrant denies the allegation contained in Paragraph 15 of the Petition for Cancellation.
16. Registrant denies the allegation contained in Paragraph 16 of the Petition for Cancellation.
17. Registrant denies the allegation contained in Paragraph 17 of the Petition for Cancellation.
18. Registrant denies the allegation contained in Paragraph 18 of the Petition for Cancellation.
19. Registrant denies the allegation contained in Paragraph 19 of the Petition for Cancellation.

20. Registrant denies the allegation contained in Paragraph 20 of the Petition for Cancellation.
21. Registrant denies the allegation contained in Paragraph 21 of the Petition for Cancellation.
22. Registrant denies the allegation contained in Paragraph 22 of the Petition for Cancellation.
23. Registrant denies the allegation contained in Paragraph 23 of the Petition for Cancellation.
24. Registrant denies the allegation contained in Paragraph 24of the Petition for Cancellation.
25. Registrant denies the allegation contained in Paragraph 25 of the Petition for Cancellation.

WHEREFORE, Registrant prays that the Cancellation be dismissed with prejudice.

AFFIRMATIVE DEFENSES

The Petition for Cancellation, although crafted to appear valid, is based on statements taken out of context and references to rights that do not exist.

1. Petitioner has not and will not be damaged by the registration of the trademark PRECISION SEWER SERVICES and therefore lacks standing to petition to cancel the registration.
2. Petitioner assumed the risk of damage to itself.
3. Petitioner failed to accurately identify its interest in registrant's trademark.
4. Petitioner is barred from seeking cancellation of the registrant's trademark because Registrant has demonstrated by way of Exhibit A that Registrant lawfully purchased the mark, which was in use prior to Petitioner's alleged first use, for valuable consideration from American Sewer Service, Inc.
5. Petitioner is barred from seeking cancellation of the registrant's trademark since Petitioner is no longer using the mark whatsoever.
6. Petitioner is barred from seeking cancellation of the registrant's trademark under the doctrines of laches, estoppel, waiver and unclean hands.
7. Petitioner has acquiesced in registrant's adoption, registration and use of the mark that is the subject of the petition for cancellation.

8. Petitioner made a material omission to the TTAB by filing the petition for cancellation and failing to inform the TTAB of ongoing proceedings before the Eastern District Court of Pennsylvania that it has filed a stipulation to withdraw its complaint against third party Edward Bodtke, a member of the company of Registrant.
9. Petitioner's persistent refusal to recognize the authority of the USPTO in granting the PRECISION SEWER SERVICES mark as evidenced by its refusal to enforce the trademark against acts of infringement prior to filing the petition for cancellation, after repeated requests and reports of damage to the registrant, should prevent this groundless claim from being heard.

WHEREFORE, Registrant prays that the Cancellation be dismissed with prejudice.

Respectfully Submitted,

Michael A. Burns, Esq.
Attorney ID No. 94782
Burns Law, P.C.
110 W Front Street
Media, PA 19063

Dated: March 13, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION was served on counsel for Petitioner, this 14th day of March, 2014, by sending the same via first class mail service to:

Nancy Rubner Frandsen
Woodcock Washburn, LLP
Cira Centre, 12th Floor
2929 Arch Street
Philadelphia, PA 19104-2891

Michael A. Burns, Esq.
Attorney for the Registrant

EXHIBIT A

AGREEMENT FOR LIMITED SALE OF ASSETS

This Agreement, made this 10th day of November, 2011 by and between American Sewer Service, Inc., a Pennsylvania Corporation with a registered business office address of 734 B Ashland Avenue Folcroft Pennsylvania, 19032 and Precision Sewer Services, LLC, a Limited Liability Company with a registered business office address of 1527 Huddell Avenue Linwood Pennsylvania 19061 is governed by the terms and conditions as set forth below:

RECITALS

That American Sewer Service, Inc. (hereinafter "American") has been an active Pennsylvania Corporation since its creation date of January 3, 1991 and has been operating a sewer service and repair business in the Philadelphia region; and

That during its time of operation, American has established itself as a leader in sewer services and has created a positive good will amongst its clients and the community as a whole; and,

That American has particular phone numbers and a logo design that have identified itself to its customers and the community as a whole that portray a positive image of quality and reliability for sewer services; and,

That American has determined to cease operation of its business and begin a winding down phase; and,

That American wishes to convey, transfer and sell the phone numbers and logo as well as various equipment for valuable consideration; and,

That Precision Sewer Services, LLC (hereinafter "Precision") is a newly created and active Pennsylvania Limited Liability Company since its creation date of October 24, 2011 and provides sewer, rootering and repair services to residential, commercial and municipal customers in the Philadelphia area; and

That Precision as being a newly formed company has not yet established itself as a known provider of its services; and,

That Precision wishes to purchase phone numbers, a logo design and various pieces of equipment from American for valuable consideration.

By consultation, American and Precision (hereinafter collectively "the Parties") have reached an agreement with regard to the transfer of the application right of the above-mentioned phone numbers, logo and equipment.

In consideration of the mutual covenants as set forth and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the Parties agree as follows:

I. SALE OF LIMITED ASSETS

1.1 Acquisition Generally. Upon the Effective Date of this Agreement, Precision will acquire from American all right, title and interest in the following assets:

a) Telephone Numbers. Precision will receive the rights to use all current operating telephone numbers registered to American. The telephone numbers (land lines and cell phone) for American are listed and attached hereinto as "Schedule A".

b) Equipment. Precision will receive all of American's rights, title and interest to the equipment as detailed in this Agreement. The equipment for American is listed and attached hereinto as "Schedule B".

c) Logo and Service Mark Rights. Precision will receive the exclusive rights to utilize for the benefit of Precision all valid Logo and Service Marks designed, owned and used by American pursuant to the terms of this Agreement. Precision will be entitled to receive all improvements and changes to such service mark as Precision sees fit and without input, permission or consideration required from the American. The service mark for American is listed and attached hereinto as "Schedule C".

1.2 Excluded Assets. This sale excludes all other assets not included in 1.1 subsections a, b and c, and Schedules A, B and C.

1.3 Conveyance of Phone Numbers. American irrevocably assigns, conveys, grants and transfers to Precision, all of American's right, title, and interest in and to the phone numbers set forth in Schedule A.

a) Usage. American agrees to stop using said any and all phone numbers included in Schedule A and not to claim any right over the application right of such numbers after this Agreement takes effect.

b) Contact Rights. American agrees that Precision has the right to contact and/or receive contact from any and all customers that have associated American with said phone numbers as if the customers were Precision's own, and without legal ramification or consequence to interference of business practices with American.

c) Reversion. Should Precision cease operation of business within one (1) year from date of its creation, said numbers shall revert back to American and/or Debra Bodtke.

1.4 Conveyance of Service Mark. American irrevocably assigns, conveys, grants and transfers to Precision, all of American's right, title, and interest in and to the Service Mark,

including all common law rights, and any future rights to trademark registrations and applications, along with the goodwill of the business symbolized by use of the Service Mark or future trademarks, and the right to sue third parties for and recover damages from future infringement of the trademarks, the same to be held and enjoyed by American for its own use and enjoyment, as fully and entirely as the same would have been held and enjoyed by Precision if this conveyance had not been made.

a) Usage. American agrees to stop using said Service Mark and not to claim any right over the application right of such trademark (and the trademarks) after this Agreement takes effect.

b) Registration Rights. American agrees that Precision shall have the right to apply to the United States Patent and Trademark Office (hereinafter "USPTO") for the handling of registration procedures for the Service Mark or for a similar Service Mark should Precision wish to alter said mark or to remove American's name and substitute Precision's name, and submit an Application/Application for Registered Trademark directly to the USPTO, and upon verification/announcement by the USPTO, become the proprietor of the application right of such trademarks, and further complete the registration procedures of the trademarks.

c) Receipt. The Parties agree during the period whereby the Precision's receipt of the USPTO's Acceptance Notice of the above-mentioned application until Precision is announced by the USPTO to be the proprietor of the application right of such trademarks, the American shall pledge the application right of such trademarks to the Precision to the extent as permitted by the laws and regulations, until the USPTO verifies/announces Precision to be the proprietor of the application right of such trademarks.

d) Registration Ownership. Once the Precision completes the registration of the trademarks at the USPTO and obtains a Trademark Registration Certificate, it shall become the proprietary owner of such registered trademarks and have independent and full right over such registered trademarks. At all times during the above-mentioned process and after the obtaining of the Trademark Registration Certificate, American shall not raise any disputes or objections in relation to the trademark application right (and the trademarks) for any reason.

e) Acknowledgement of Transfer. American herby acknowledges its transfer in all rights and interests in registration, preparation of derivative works, income, royalties, and claims related to the mark which are due or payable on or after the date of execution and the goodwill related to the mark. Any and all letterhead, business cards, advertising and or equipment, whether owned or leased, that bears said service mark shall be subject to the transfer of the common law rights to Precision and any

third party using said Service Mark shall be deemed to be using said mark without permission of American and Precision.

II. PURCHASE PRICE AND ALLOCATION

2.1 Purchase Price. The Purchase Price shall be ten thousand dollars ($10,000.00) and shall be payable as set forth below. Additionally, the Purchase Price shall also include fifteen (15) installment payments of one thousand dollars ($1,000.00) payable as set forth below in section 2.4. Except as specifically set forth below, Precision does not assume any of American's liabilities.

2.2 Allocation. The purchase price set forth in Section 2.1 shall be in consideration for all equipment and tenant improvements as listed in Schedule A.

2.3 Form of Payment. All funds to be paid by Precision to American shall be in the form of any one of the following, payable to the order of "American Sewer Service, Inc.":

a) Cash;
b) Attorney Trust Account Check;
c) Cashier's /Certified Check; or,
d) Business Check.

2.4 Financing. Precision shall pay the sum of ten thousand dollars ($10,000.00) in full on or before November 30, 2011 and the installment payments of one thousand dollars ($1,000.00) per month for a period of fifteen (15) months due on the first day of each month.

III. REPRESENTATIONS OF SELLER

Seller hereby represents and warrants as follows:

3.1 Organization. American is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to execute all documents contemplated in this transaction.

3.2 Authorization. American and its directors, officers and agents acting on its behalf, have full corporate power and authority to perform its obligations under this Agreement and the documents to be signed and all other transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the other transactions contemplated hereby have been duly and validly authorized by all necessary corporate action by American. The Board of Directors has approved the execution, delivery and performance of this Agreement and the consummation of all other transactions contemplated hereby. This Agreement has been duly executed and delivered by American and constitutes the valid and binding agreement of American enforceable

against American in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

3.3 No Violations. The execution, delivery and performance of this Agreement, the consummation of the other transactions contemplated hereby and the fulfillment of a compliance with the terms and conditions of this Agreement do not and will not violate or conflict with any terms or provisions of the Articles of Incorporation or By-laws of American or any judgment, decree, order, statute, rule or regulation applicable to American or any of its assets except for such violations which could not reasonably be expected to materially impair or delay the ability of American to consummate the transactions contemplated hereby.

3.4 Title to Assets. Title to all assets identified in Schedules A, B and C, which American will transfer to Precision, is valid and transferable by American except as specifically excluded. The Service Mark sold to Precision is validly held by American for use without dispute or challenge against all other individuals, entities and beings, and has not been abandoned at any point but rather has been held and used continuously since the creation date of the corporation through and unto the date of this Agreement.

3.5 Buyer's Inspection. Repairs reasonably determined to be necessary to the equipment and to bring them into standard operating condition through an Inspection performed by Precision at Precision's sole cost and expense, whereby the equipment shall be situated and maintained in a good and workmanlike manner. After Precision's inspection, any repairs or costs requested by Precision to American may be either: 1.) accepted by American and repaired by American at American's sole cost; 2.) accepted by American and an amount agreed upon by the Parties shall be reduced from the Purchase Price; or 3.) rejected by American whereby granting Precision the opportunity to cancel this Agreement.

3.6 No Brokers. No one from American, or any of their respective executive officers or directors, has employed any broker, finder or investment banker or incurred any liability for commissions or finder's fees in connection with the transactions contemplated hereby.

3.7 Party Relationships. The Parties are independent parties and are not partners, joint ventures or otherwise affiliated, and neither party has any right or authority to bind the other in any way.

IV. REPRESENTATIONS OF BUYER

Buyer hereby represents and warrants as follows:

4.1 Organization. Precision is a Pennsylvania Limited Liability Company, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, duly qualified to do business in the Commonwealth of Pennsylvania and has all requisite power and authority to execute, deliver and perform all documents contemplated in this transaction.

4.2 Authorization. Precision has full power and authority to perform its obligations under this Agreement and the documents to be signed and all other transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the other transactions contemplated hereby have been duly and validly authorized by the managers and members of Precision. This Agreement has been duly executed and delivered by Precision and constitutes the valid and binding agreement of Precision enforceable against Precision in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies, and no other company act or proceeding on the part of the Precision, its managers or members is necessary to authorize the execution and delivery of this Agreement.

4.3 No Violations. The execution, delivery and performance of this Agreement, the consummation of the other transactions contemplated hereby and the fulfillment of a compliance with the terms and conditions of this Agreement do not and will not violate or conflict with any terms or provisions of the Articles of Organization or Operating Agreement of Precision or any judgment, decree, order, statute, rule or regulation applicable to Precision or any of its assets except for such violations which could not reasonably be expected to materially impair or delay the ability of Precision to consummate the transactions contemplated hereby.

4.4 Financial Resources. Precision has the financial resources to undertake the duties and responsibilities imposed upon it by this Agreement.

4.5 Approvals. Precision shall obtain all necessary governmental and private approvals for the acquisition and transfer of Seller's assets as described herein.

4.6 No Brokers. None of Precision, or any of their respective executive officers or directors, managers or members, have employed any broker, finder or investment banker or incurred any liability for commissions or finder's fees in connection with the transactions contemplated hereby.

4.7 Party Relationships. The Parties are independent parties and are not partners, joint ventures or otherwise affiliated, and neither party has any right or authority to bind the other in any way.

V. INDEMNIFICATION

5.1 Pre-Effective Date Expenses. Except as provided herein, American will indemnify and hold Precision harmless or any and all expenses of operation which arise or are fully due prior to the effective date hereof whereby American takes responsibility to satisfy and pay any and all of its debts and obligations that are due or become due, even after the execution date, which were under the American's control and obligation at the time of operation.

5.2 Post-Effective Date Expenses. Precision shall indemnify and hold American harmless for any and all expenses which arise or are fully due after the Effective Date hereof for any debts or obligations that arise during the operation of Precision.

5.3 General Indemnification American. American will indemnify, defend, and hold Precision harmless from claims, demands and causes of action asserted against the indemnitee by any person (including, without limitation, American and American's employees, agents, contractors or any third party) for personal injury or death or for loss of or damage to property and resulting from the indemnitor's active or passive negligence or willful misconduct. Where personal injury, death, or loss of or damage to property is a result of the joint active or passive negligence or willful misconduct of American, the indemnitor's duty of indemnification shall be in proportion to its allocable share of joint active or passive negligence or willful misconduct.

5.4 General Indemnification Precision. Precision will indemnify, defend, and hold American harmless from claims, demands and causes of action asserted against the indemnitee by any person (including, without limitation, Precision and Precision employees, agents, contractors or any third party) for personal injury or death or for loss of or damage to property and resulting from the indemnitor's active or passive negligence or willful misconduct. Where personal injury, death, or loss of or damage to property is a result of the joint active or passive negligence or willful misconduct of Precision, the indemnitor's duty of indemnification shall be in proportion to its allocable share of joint active or passive negligence or willful misconduct.

VI. CHOICE OF LAW AND JURISDICTION

6.1 Governing Law and Forum. This Agreement shall be governed and interpreted in accordance with the substantive laws (but not the choice of law provisions) of the Commonwealth of Pennsylvania. No party to this Agreement may bring or maintain an

action against, or which includes, another party to this Agreement except in the federal or state courts located in the Commonwealth of Pennsylvania unless the sole and exclusive forum for such claim lies in another jurisdiction. All parties to this Agreement expressly waive any defense of lack of jurisdiction or improper venue to any action brought in the Commonwealth of Pennsylvania.

6.2 Arbitration of Minor Disputes. For any action or dispute in which the damages claimed, less costs and attorney's fees, do not exceed Fifty Thousand Dollars ($50,000.00), the Parties expressly agree that the sole and exclusive forum shall be in the Court of Common Pleas County of Delaware, pursuant to its rules in effect at the time the action or dispute is brought.

6.3 Award of Costs and Attorney's Fees. For any action or dispute between the Parties, the forum court or arbitration panel shall have the power to award costs and attorney's fees incurred along with a judgment in favor of the prevailing party.

VII. SEVERABILITY

7.1 Generally. Any provision hereof which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, the parties hereto waive any provision of law which renders any such provision prohibited or unenforceable in any respect.

VIII. NOTICES

8.1 Place of Notice. All notices, communications and deliveries hereunder shall be made in writing signed by the party making the same, shall specify the paragraph of this Agreement pursuant to which it is being made or given, and shall be deemed given or made on the date delivered if delivered in person or sent by fax, the first business day after the date it is sent by a nationally recognized courier, or the third business day after the date it is mailed if mailed by registered or certified mail, return receipt requested, with all postage and other fees prepaid, as follows:

To Buyer
Precision Sewer Services, LLC
1527 Huddell Avenue
Linwood, Pennsylvania 19061
Attention: Ed Bodtke

To Seller
American Sewer Service, Inc.
734 B Ashland Avenue
Folcroft, Pennsylvania 19032
Attention: Debra Bodtke

IX. ADDITIONAL PROVISIONS

9.1 Cooperation. Each party to this Agreement agrees that, from time to time and upon the request of each other, they will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, consents and other assurances as may be reasonably required for the better assigning, transferring, granting, conveying, assuring and confirming to each other, their successors and assigns the assets to be transferred hereunder.

9.2 Assignment. Neither party may assign this Agreement unless the other party gives written permission.

9.3 Expenses of This Transaction. Each party hereto shall bear its own expenses in connection with the negotiation and consummation of this transaction.

9.4 Entire Agreement. This Agreement and the Schedules hereto contain the entire Agreement among the Parties with respect to the transactions contemplated herein and supersede all prior agreements, representations and understandings of the Parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties.

IN WITNESS WHEREOF, the parties hereto have caused their hands and seals to be subscribed on the day and date first set forth above.

ATTEST:

AMERICAN SEWER SERVICE, INC.

Debra Bodtke

PRECISION SEWER SERVICES, LLC

Edward W. Bodtke, Jr.

SCHEDULE A

Phone Numbers:

610-583-3600

610-583-7462
610-583-7463
610-583-7464
610-583-7475

SCHEDULE B

Equipment Description:	Quantity:
1/2 US Jetter Machine (1994)	1
Eel Machines	3
Middle Sized Machines	3
Small Sized Machines	3
Conde Unit	1
Rigid Camera Units	2
3/8 Rigid Jet Unit	1

SCHEDULE C

AMERICAN SEWER SERVICE

EST 1981

WBE / DBE

Certified

AMERICAN SEWER SERVICE

EST 1981

WBE CERTIFIED