

ESTTA Tracking number: **ESTTA605261**

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

Proceeding	92059016
Party	Defendant Radius Track Corporation
Correspondence Address	RADIUS TRACK CORPORATION 9320 EVERGREEN BOULEVARD NORTHWEST, SUITE G COON RAPIDS, MN 55433 UNITED STATES
Submission	Answer
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Date	05/20/2014
Attachments	Registrant's Answer.pdf(148344 bytes)

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

In the matter of U.S. Trademark Registration No. 2,215,593
For the mark: RADIUS TRACK
Date registered on Supplemental Register: December 29, 1998

DURAFRAME, LLC,

Petitioner,

Cancellation No.: 92059016

v.

RADIUS TRACK CORPORATION,

Registrant.

REGISTRANT'S ANSWER TO PETITION TO CANCEL

In response to the Petition to Cancel (hereinafter the "Petition") filed by Duraframe, LLC on April 9, 2014, Registrant, Radius Track Corporation, answers as follows:

1. Registrant is without knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Petition and, placing its denial on said ground, denies each and every allegation therein and leaves Petitioner to its proof.
2. Registrant admits the allegations of paragraph 2 of the Petition.
3. Registrant denies that Petitioner will be damaged by U.S. Trademark Reg. No. 2,215,593 (hereinafter the "'593 Registration"), and admits that Petitioner is petitioning to cancel the '593 Registration.
4. Registrant admits that its attorneys sent a letter dated March 21, 2014 setting forth the language in the quotation of paragraph 4 of the Petition. Registrant is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations of

- paragraph 4 of the Petition, and placing its denial on said ground, denies such allegations and leaves Petitioner to its proof.
5. Registrant denies the allegations of paragraph 5 of the Petition.
 6. Registrant admits that paragraph 6 of the Petition repeats and realleges the allegations of paragraphs 1-5, and Registrant repeats and realleges the information set forth in paragraphs 1-5 above as if more fully set forth herein.
 7. Registrant denies that Registrant's mark RADIUS TRACK lists goods. Registrant admits that the '593 Registration lists the goods "curved wall and ceiling member made of metal" in International Class 006.
 8. Registrant is without knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Petition and, placing its denial on said ground, denies each and every allegation therein and leaves Petitioner to its proof.
 9. Registrant admits that the '593 Registration is based on Serial Number 75/315627 filed on June 17, 1997, and that a first Office action (hereinafter the "Action") was issued on March 13, 1998. Registrant denies the remaining allegations of paragraph 9 of the Petition.
 10. Registrant admits that the examiner cited excerpts from U.S. Patent Nos. 4,695,691 (hereinafter "the '691 Patent") and 5,655,345 (hereinafter "the '345 Patent"), and that the words "radius track" and "radius track member" were underlined in those excerpts. Registrant denies the remaining allegations of paragraph 10 of the Petition.
 11. Registrant admits the allegations of paragraph 11 of the Petition.

12. Registrant admits that the words “radius track member” are used in the cited passage of the ‘345 Patent reproduced in paragraph 12 of the Petition, but denies the remaining allegations of paragraph 12 of the Petition.
13. Registrant denies that TMEP 1209.01 contains the language cited by Petitioner in paragraph 13 of the Petition, while admitting that the language quoted in paragraph 13 is set forth at TMEP 1209.01(c)(i).
14. Registrant denies the allegations of paragraph 14 of the Petition.
15. Registrant denies the allegations of paragraph 15 of the Petition.
16. Registrant is without knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Petition and, placing its denial on said ground, denies each and every allegation therein and leaves Petitioner to its proof.
- 17-27. Paragraphs 17-27 of the Petition are subject to Registrant’s co-pending Motion to Dismiss pursuant to TBMP §503. Answers to paragraphs 17-27 of the Petition are therefore stayed pursuant to TBMP §503.01.
- 28-33. Paragraphs 28-33 of the Petition are subject to Registrant’s co-pending Motion to Dismiss pursuant to TBMP §503. Answers to paragraphs 28-33 of the Petition are therefore stayed pursuant to TBMP §503.01.

AFFIRMATIVE DEFENSES

34. Duraframe’s Petition fails to state a claim upon which relief may be granted.
35. Registrant’s RADIUS TRACK mark, through over seventeen years of exclusive use, has acquired secondary meaning pursuant to 15 U.S.C. §1052(f).

WHEREFORE, it is respectfully requested that Duraframe's Petition to Cancel be denied,
and for such other and further relief as is deemed just and proper.

Respectfully submitted,

Date: May 20, 2014



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Attorneys for Registrant,
Radius Track Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANT'S ANSWER TO PETITION TO CANCEL was served on Woods, Oviatt, Gilman, LLP, c/o Katherine H. McGuire, 2 State Street, 700 Crossroads Building, Rochester, NY 14614, Attorney for Petitioner, via U.S. Mail, postage pre-paid on May 20, 2014.

Respectfully submitted,

Date: May 20, 2014



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