

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Lykos

Mailed: August 6, 2008

Concurrent Use No. 94002211

ABC Glass Enclosures, LLC

v.

John L. Thompson, Jr. and
Cynthia L. Thompson

Before Seeherman, Grendel and Kuhlke, Administrative
Trademark Judges.

By the Board:

ABC Glass Enclosures, LLC ("plaintiff") seeks a concurrent use registration for the mark THE WINDOW GUYS for "retail distributorships featuring windows and doors and retail store services featuring windows and doors" in International Class 35, and "window and door installation services" in International Class 37.¹ Plaintiff's claimed territory of use is the area comprising "the geographical area of the United States, excluding the area within the Commonwealth of Virginia that lies within a 75-mile radius of Roanoke, Virginia." In the application, plaintiff identified John L. Thompson Jr. and Cynthia L. Thompson

¹ Application Serial No. 76632240, filed on September 26, 2005, alleging December 2001 as the date of first use anywhere and in commerce.

("defendants") as an exception to plaintiff's exclusive right to use the mark.

On March 28, 2008, the Board entered default judgment against defendants. The entry of default judgment has the effect of precluding the named defendants or excepted users from claiming any right more extensive than that acknowledged in the involved concurrent use application. See TBMP § 1107 (2d ed. rev. 2004). The Board, in its order, also allowed plaintiff time in which to submit proof of its entitlement to registration by an "ex parte" type of showing. Trademark Rule 2.99(e), 37 C.F.R. § 2.99(e).

In response thereto, on April 11, 2008, plaintiff submitted the affidavit of its president, Lloyd Gillman, to support its entitlement to registration. The affidavit establishes that: plaintiff operates a single office located in the city of Chicago in the State of Illinois; that plaintiff markets its services under the mark THE WINDOW GUYS in the States of Illinois and Indiana, within the greater Chicago metropolitan area; that plaintiff never has nor intends to market its services within a 75-mile radius of Roanoke, Virginia; that there is no overlapping region in the United States where both plaintiff and defendant use their marks in commerce; and that there have been no instances of actual confusion.

In view of the foregoing, it is adjudged that plaintiff has made a sufficient *ex parte* showing which proves its entitlement to a geographically restricted registration based on the involved application. Accordingly, **plaintiff shall be granted a registration based on its Application Serial No. 76632240 for the mark THE WINDOW GUYS for "retail distributorships featuring windows and doors and retail store services featuring windows and doors" in International Class 35 and "window and door installation services" in International Class 37 for the territory comprising "the geographical area of the United States, excluding the area within the Commonwealth of Virginia that lies within a 75-mile radius of Roanoke, Virginia."**