



2. Opposer has used blue on and in connection with the Products as an indicator of a source. Such use has been continuous since 1947 and such use has been throughout the United States and throughout the world. As a result of decades of use of the color blue on and in connection with the Products and hundreds of thousands of dollars spent to advertise and promote the color blue on and in connection with the Products, the relevant consuming public has come to associate the color blue with the Products and Opposer.

3. Applicant seeks to register the color blue as shown in Serial No. 75/621,248 to identify airless paint sprayers ("the Application").

4. Opposer uses the color blue on the Products which compete with the goods identified in the Application.

5. Opposer's use of blue on the Products predates Applicant's use of blue as shown in the Application.

6. In view of the similarity of the Applicant's and Opposer's use of the color blue and the related nature of the goods offered for sale by the respective parties, Applicant's use of blue so resembles Opposer's use of blue on the Products previously used in the United States as to be likely to cause confusion, to cause mistake, or to deceive as to source.

7. Applicant has claimed that it is entitled to registration of the mark shown in the Application on the basis of 15 U.S.C. § 1052(f).

8. Applicant has failed to properly demonstrate that its use of the color blue has acquired distinctiveness pursuant to 15 U.S.C. § 1052(f).

9. Applicant has failed to demonstrate that its use of the color blue has acquired secondary meaning.

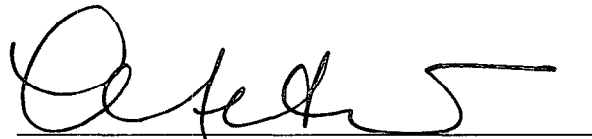
10. Use of the color blue is so widespread in the relevant industry and has been since at least as early as 1947 that the color blue cannot be identified exclusively with Applicant for the goods listed in the Application.

11. The mark shown in the Application is incapable of achieving trademark significance. Applicant's alleged mark is common for all such goods and related goods produced by competitors engaged in similar businesses. Applicant's alleged mark cannot identify Applicant's goods and distinguish them from goods offered by others.

WHEREFORE, Opposer prays that Application Serial No. 75/621,248 be rejected, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 28<sup>th</sup> day of January, 2003

By:



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**ATTORNEYS FOR OPPOSER**

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing AMENDED NOTICE OF OPPOSITION has been served via United States Mail, postage prepaid to:

Stephen R. Baird  
Fish & Richardson, P.C., P.A.  
3300 Dain Rauscher Plaza  
60 South Sixth Street  
Minneapolis, Minnesota 55402

on this 28<sup>th</sup> day of January, 2003.

