

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

TAB
Exhibits

WEYERHAEUSER COMPANY,)
)
Opposer,)
)
v.)
)
J.M. HUBER CORPORATION)
)
Applicant.)
_____)

Opposition No.



03-18-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

Assistant Commissioner for Trademarks
Box TTAB FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

NOTICE OF OPPOSITION

In the matter of the application of J.M. Huber Corporation (“Applicant”), for registration of the mark PERFORMMAX, application Serial No. 78/031,865, published in the Official Gazette on February 12, 2002. Weyerhaeuser Company, is a corporation organized under the laws of Washington (“Opposer”), believes that it will be damaged by registration of the mark shown in Serial No. 78/031,865, and hereby opposes registration.

The grounds for opposition are as follows.

1. Opposer is a corporation organized under the laws of Washington, with its principal place of business at 33663 Weyerhaeuser Way South, Federal Way, Washington 98003.
2. Opposer and its predecessor in interest have been engaged in the business of manufacturing and selling structural wood products, including oriented strand board products that are used with trusses, joists, beams, headers and columns, throughout the United States, under the mark PERFORMANCE PLUS since at least 1995. Examples of use of the PERFORMANCE PLUS

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mark used on oriented strand board truss webs are appended hereto as Exhibit A.

3. Opposer was assigned the rights to Registration No. 1,873,867 to the mark PERFORMANCE PLUS, registered on January 17, 1995 for structural wood products; namely, structural trusses and joists; structural beams, headers, and columns. A Declaration under Sections 8 and 15 was filed in a timely fashion. A copy of the registration is attached as Exhibit B. A copy of the PTO Acceptance of the 8 and 15 Declaration is appended hereto as Exhibit C.

4. The use of Opposer's mark has been valid and continuous since the date of first use, and has not been abandoned. Opposer's mark is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

5. Notwithstanding Opposer's rights in and to its PERFORMANCE PLUS mark, Applicant, on October 23, 2000, filed an application for registration of the mark PERFORMMAX for oriented strand board for use in construction. That application was given Serial No.78/031,865, and published for opposition in the Official Gazette on February 12, 2002.

6. Applicant's mark PERFORMMAX, if registered in connection with oriented strand board, would be confusingly similar, and would result in mistake and deception because of the similarity to Opposer's use of its PERFORMANCE PLUS mark in connection with oriented strand board products used with trusses, joists, beams, headers and columns, and as set forth and protected by Opposer's above-identified registration.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark, and prays that registration be denied.

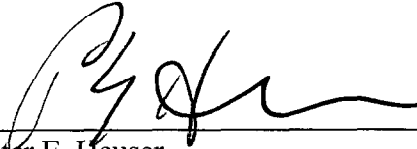
A triplicate copy of this Notice of Opposition is enclosed. Also enclosed is our check for \$300.00. Please charge our Deposit Account No. 11-1540 for any additional fees which

may be required and credit any overpayment to the same account.

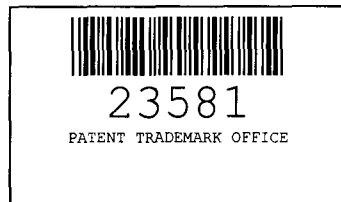
DATED this 14th day of March, 2002.

Respectfully submitted,

KOLISCH, HARTWELL, DICKINSON,
McCORMACK & HEUSER

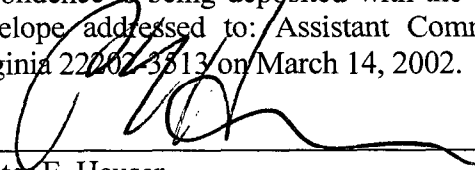


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on March 14, 2002.



Peter E. Heuser
Date of Signature: March 14, 2002