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CERTIFICATE OF MAILING

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[Handwritten Signature]



04-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

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

SOLUTIA, INC.,)	
)	
Opposer,)	Opposition No. 91152498
)	
vs.)	
)	Mark: KEEPCLEAN
JELD-WEN, INC.,)	
)	
Applicant.)	

APPLICANT'S FIRST AMENDED ANSWER AND COUNTERCLAIMS

Applicant JELD-WEN, INC. ("JELD-WEN"), through counsel and pursuant to 37 C.F.R. §§ 2.106 and 2.107, and Rule 15 of the Federal Rules of Civil Procedure, hereby submits its First Amended Answer and Counterclaim to the Notice of Opposition, filed August 2, 2002, as follows, each numbered paragraph below corresponding to the numbered paragraphs of the Notice of Opposition.

1. JELD-WEN is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 1 of the Notice of Opposition, and therefore denies same.

2. Admitted.

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3. Denied that the designations "KEEPSAFE" and "KEEPSAFE MAXIMUM," when used in connection with Opposer's Goods/Services, as defined in Paragraph 3 of the Notice of Opposition, are inherently distinctive, or that they had acquired distinctiveness at the time any federal trademark registration therefore had issued. Further denied that Opposer is the owner of any valid federal trademark registrations incorporating the designation "KEEPSAFE." As to the remaining averments contained in Paragraph 3 of the Notice of Opposition, JELD-WEN is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

4. Denied that the designations "KEEPSAFE" and "KEEPSAFE MAXIMUM," when used in connection with Opposer's Goods/Services, are inherently distinctive, or that they had acquired distinctiveness at the time any federal trademark registration therefore had issued. As to the remaining averments contained in Paragraph 4 of the Notice of Opposition, JELD-WEN is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

5. Denied.

6. JELD-WEN is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 6 of the Notice of Opposition, and therefore denies same.

7. Denied.

8. Denied.

9. Denied.

10. Admitted.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

At the time of issuance of any federal registration on which Opposer relies in this proceeding, the designation shown in such registration, when used on or in connection with the goods or services identified in each such Registration, was merely descriptive of the qualities or characteristics of such goods or services. In addition, at the time that each of the above-referenced KEEP SAFE Registrations was issued, the KEEP SAFE Mark shown therein had not become distinctive of Solutia's goods in commerce.

SECOND AFFIRMATIVE DEFENSE

When used in connection with the goods or services identified in Opposer's federal registrations, the designations "KEEP SAFE" and "KEEPSAFE" are merely descriptive of the qualities or characteristics of such goods and services. Consequently, the designations "KEEP SAFE" and "KEEPSAFE" are, as a matter of law, ineligible for protection from dilution under Lanham Act § 43(c), 15 U.S.C. § 1125(c).

THIRD AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim on which relief can be granted.

FURTHER AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

For its further affirmative defenses and counterclaim against Opposer Solutia, Inc. ("Solutia"), JELD-WEN states as follows:

1. JELD-WEN is engaged in the business of the manufacture, distribution and sale of, among other products, window panes, window glass, door glass, glass panels and panes, insulated glass, non-metal windows, and various related products and services.

2. Upon information and belief, Solutia is also engaged in the business of the manufacture, distribution and sale of windows and glass products, and related goods and services.

3. In connection with its business, JELD-WEN has used the mark "KEEPCLEAN" in connection with its various window and glass products (the "KEEPCLEAN Mark"). JELD-WEN has applied to register its KEEPCLEAN Mark under U.S. Trademark Ser. No. 76/342,197 for use in connection with "window panes; window glass; door glass; glass panels and panes; insulated glass; non-metal windows, namely, door lights, transom lights and side lights" in International Class 19 (the "'197 Application").

4. In the above-captioned proceeding, Solutia has opposed registration of JELD-WEN's KEEPCLEAN Mark, as shown in the '197 Application, on grounds of confusing similarity with Solutia's purported marks incorporating the term "KEEP SAFE" and/or "KEEPSAFE" (the "KEEP SAFE Marks"), which confusing similarity JELD-WEN has denied, and on grounds of dilution of the KEEP SAFE Marks, which dilution JELD-WEN has denied. In support of its opposition, Solutia has alleged that it is the owner of various federal trademark registrations for the KEEP SAFE Marks, but did not recite the specific registrations for the KEEP SAFE Marks on which it intended to rely.

5. Solutia is the present owner-of-record of the following registrations incorporating the designations "KEEP SAFE" or "KEEPSAFE" (collectively the "KEEP SAFE Registrations"):

<u>MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
KEEP SAFE	2,150,082	April 14, 1998	Plastic interlayer for use in the construction of safety glass windows, doors, and the like, and plastic interlayer sold as a component of safety glass, in Int'l Class 19
KEEPSAFE	2,168,828	June 30, 1998	Laminated safety glass for automotive and architectural use, in Int'l Class 19
KEEPSAFE MAXIMUM	2,369,263	July 18, 2000	Impact resistant window glass, in Int'l Class 19
KEEP SAFE GLASS MAXIMUM (stylized)	2,487,353	September 11, 2001	Impact resistant window glass, in Int'l Class 19
KEEP SAFE GLASS (stylized)	2,533,835	January 29, 2002	Plastic interlayer for use in the construction of safety glass windows, doors, and the like; plastic interlayer sold as a component of safety glass, in Int'l Class 17 Laminated safety glass for automotive and architectural use, in Int'l Class 19
KEEPSAFE	2,562,496	April 16, 2002	Installation, maintenance and

			repair of windows, doors and glass, in Int'l Class 37
KEEPSAFE	2,586,376	June 25, 2002	Retail store services and online store services featuring windows, doors, skylights, storm doors and windows, window film and hardware related thereto, in Int'l Class 35
KEEP SAFE GLASS (stylized)	2,602,297	July 30, 2002	Installation, maintenance and repair of windows, doors and glass, in Int'l Class 37
KEEP SAFE GLASS (stylized)	2,636,609	October 15, 2002	Retail store services and online store services featuring windows, doors, skylights, storm doors and windows, window film and hardware related thereto, in Int'l Class 35

6. Upon information and belief, at the time that each of the above-referenced KEEP SAFE Registrations was issued, the KEEP SAFE Mark shown in each such Registration, when used on or in connection with Solutia's goods and/or services identified in each such Registration, was merely descriptive of the qualities or characteristics of such goods or services. In addition, and upon further information and belief, at the time that each of the above-referenced KEEP SAFE Registrations was issued, the KEEP SAFE Mark

shown therein had not become distinctive of Solutia's goods and services in commerce. Also, upon information and belief, the KEEP SAFE Mark shown in each of the above-referenced KEEP SAFE Registrations is, at the present time, merely descriptive of the qualities or characteristics of the goods and services identified therein, and at present has not become distinctive of Solutia's goods and services in commerce.

7. Pursuant to Sections 2(e)(1) and 2(f) of the Lanham Act, 15 U.S.C. § 1052(e)(1), (f), Solutia was not entitled to registration of the above-referenced KEEP SAFE Marks at the time such KEEP SAFE Registrations issued, and is not now entitled to continued registration of such Marks.

8. JELD-WEN possesses an equal right to use the terms "keep safe" and "keepsafe" descriptively in connection with JELD-WEN's offering of window and glass products, and related products and services. Solutia's continued maintenance of the KEEP SAFE Registrations is therefore inconsistent with JELD-WEN's equal right to use the term "keepsafe" descriptively on similar goods and services.

9. In addition, Solutia's has relied on the existence and validity of its KEEP SAFE Registrations in an attempt to preclude registration of JELD-WEN's KEEP CLEAN Mark as shown in the '197 Application.

10. As a result of the foregoing, JELD-WEN believes that it is, and will continue to be, damaged by continued registration of the KEEP SAFE Marks as shown in the KEEP SAFE Registrations.

WHEREFORE, JELD-WEN prays:

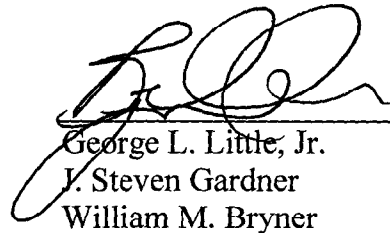
1. That Registration Nos. 2,150,082; 2,168,828; 2,369,263; 2,487,353; 2,533,835; 2,562,496; 2,586,376; 2,602,297; and 2,636,609 be cancelled in their entireties;

2. That the Solutia's Notice of Opposition be dismissed in its entirety and with prejudice; and

3. That registration of the KEEPCLEAN Mark shown in the '197 Application be allowed.

A duplicate copy of this First Amended Answer and Counterclaim, as well as the required fees in connection with JELD-WEN's Counterclaim, are enclosed herewith. Please charge any deficiency or refund in the filing fee to Deposit Account No. 16-1435.

Respectfully submitted, this the 11th day of April, 2003.



George L. Little, Jr.
J. Steven Gardner
William M. Bryner

Attorneys for Applicant
JELD-WEN, INC.

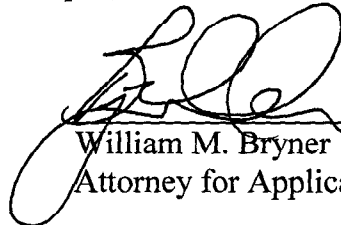
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Winston-Salem, North Carolina 27101
Telephone: (336) 607-7300

CERTIFICATE OF SERVICE

I, William M. Bryner, hereby certify that on this date I served the foregoing APPLICANT'S FIRST AMENDED ANSWER AND COUNTERCLAIMS upon counsel for Opposer by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows

John E. McKie
Ladas & Parry
224 S. Michigan Ave., Suite 1200
Chicago, IL 60604

This the 11TH day of April, 2003.



William M. Bryner
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