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02-19-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #76

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

VIA EXPRESS MAIL - LABEL NO. EL775012103US

ULTRADEC, INC.)

Opposer,)

vs.)

MENARD, INC.)

Applicant)

Opposition No.:

Mark: ULTRADECK

Serial No.: 76/001,506

Published: October 23, 2001

NOTICE OF OPPOSITION

ULTRADEC, INC. (hereinafter "Opposer"), a corporation organized and existing under the laws of the State of Missouri, believes that it will be damaged by registration of the mark shown in Application Serial No. 76/001,506, filed March 15, 2000 in Class 19 (Non-metallic building materials), by MENARD, INC. of Eau Claire, Wisconsin (hereinafter "Applicant"), and hereby opposes the same. As grounds of opposition, Opposer alleges and states as follows:

1. The Applicant has filed an Intent To Use application seeking registration of ULTRADECK as a trademark, for non-metallic boards and planks used in connection with residential deck and dock construction, in International Class 19 as evidenced by the publication of this mark in the October 23, 2001 issue of the Official Gazette.

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2. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the term "ULTRADEC" as a trademark for floor coatings. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, or to cause mistake, or to deceive.

3. Opposer is the applicant under In-Use Trademark Application, Serial No. 76/224,801, for the mark ULTRADEC for Specialty chemical coatings, namely custom seamless interior floor systems comprised of moisture-cured urethane, urethane elastomers, epoxy, acrylic and polyester coatings, in International Class 2, with a date of first use on May 31, 1987 as shown in the records of the U.S. Patent & Trademark Office. Action on said application was formally suspended by the Trademark Attorney on January 17, 2002, pending the disposition of Applicant's Application Serial No. 76/001,506. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's mark previously used in the United States as to be likely to cause confusion, or to cause mistake, or to deceive.

4. Opposer is the successor in interest to Trademark Registration No. 850,084 (now inadvertently expired), for the mark ULTRADEC for Floor coating, namely, two-component base coats and finish coats, registered June 4, 1968, date of first use, in commerce which Congress may regulate, November 9, 1966.

5. Opposer, and its predecessor in interest, since November, 1966, has been and is now, using the mark ULTRADEC in connection with the sale of floor coatings. Said use

has been valid and continuous since said date of first use and has not been abandoned. The mark ULTRADEC is symbolic of extensive goodwill built up by Opposer through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's mark previously used in the United States as to be likely to cause confusion, or to cause mistake, or to deceive.

6. Opposer timely filed three (3) Requests for Extension of Time to Oppose (11/01/2001, 12/26/2001, 01/22/2002), extending the time within which to file this Notice of Opposition up to and including February 20, 2002.

WHEREFORE, Opposer asks that its opposition to Intent-To-Use Application Serial No. 76/001,506 be sustained and that registration of the term ULTRADECK for the goods set forth therein be refused.

Opposer hereby appoints Michael A. Thorne, I. Edward Marquette, Richard P. Stitt, Dianne Smith-Misemer, Bryan P. Stanley, and Rebecca S. Stroder of the firm SPENCER FANE BRITT & BROWNE LLP as its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Please direct all correspondence to the law firm of Spencer Fane Britt & Browne LLP, 120 South Central Ave., Fifth Floor, St. Louis, MO 63105, Attention: Michael A. Thorne.


A duplicate copy of this Notice of Opposition and the fee required in §2.6(a)(17) are enclosed herewith.

Respectfully submitted,

ULTRADEC, INC.
Opposer

By: SPENCER FANE BRITT & BROWNE LLP

Dated 2/19/2002



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ATTORNEYS FOR OPPOSER



SPENCER FANE

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ATTORNEYS & COUNSELORS AT LAW

02-19-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #76

February 19, 2002

Via Express Mail - Label No. EL 775012103 US

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

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Re: **Notice of Opposition to Trademark Application Serial No. 76/001506 for the Mark ULTRADECK**
Our File No. 5006428-0001

Dear Sir:

Enclosed herewith is a Notice of Opposition to Trademark Application Serial No. 76/001506 for the mark ULTRADECK. Also enclosed are a check for \$300.00 to cover the filing fee and a stamped return postcard to acknowledge receipt.

On this 19th day of February, 2002, I hereby certify that this Notice of Opposition is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to: Box TTAB/FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Michael A. Thorne
Michael A. Thorne, Attorney for Opposer

2/19/2002
Date

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