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

In the Matter of Application Serial No. 75/831,337: RED AND BLACK COLOR

Published in the Official Gazette of October 1, 2002 at TM 356

In International Class 7

S-B POWER TOOL CORPORATION, )

Opposer, )

v. )

MILWAUKEE ELECTRIC TOOL CORPORATION, )

Applicant. )

10-23-2002  
U.S. Patent & TMO/trademark Mail Rcpt Dt. #22

Opposition No. \_\_\_\_\_

TRADEMARK TRIAL AND APPEAL BOARD  
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NOTICE OF OPPOSITION

S-B Power Tool Corporation, a Delaware corporation with its principal place of business in Chicago, Illinois, believes that it will be damaged by registration of the mark shown in Application Serial No. 75/831,337, and hereby opposes the same.

As grounds for the opposition it is alleged:

1. Opposer has for many years been engaged in the manufacture, distribution, advertising and sale of a wide variety of electric power tools, including driver/drills.
2. Opposer and applicant are engaged in direct competition in the manufacture and sale of electric power tools.
3. For many years, and since long prior to the filing date of Application Serial No. 75/831,337 and date of first use claimed in that application, opposer and other manufacturers of electric power tools have used the colors red and black as ornamentation on electric power tools.

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CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10  
"Express Mail" Mailing Label No. EL393132367US Date of Deposit: October 23, 2002

I hereby certify that Trademark Application Under 15 U.S.C. § 1051(b) is being deposited with the United States Postal Service as "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to BOX TTAB FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

*Michelle Quere*

4. Opposer is currently manufacturing, selling, advertising and promoting electric power tools bearing the colors red and black.

5. For many years, applicant has not been the exclusive user of the colors red and black for electric power tools, since opposer and others have used those colors as ornamentation on electric power tools.

6. The colors red and black do not serve as a trademark for opposer, applicant or others, but serve as ornamentation on electric power tools emanating from different companies.

7. On information and belief, applicant did not use the colors red and black in connection with the goods identified in Application Serial No. 75/831,337, prior to September 1996, the date of first use claimed in that application.

8. Opposer and others are entitled to use the colors red and black in connection with their electric power tools, and registration to applicant of those colors would be inconsistent with the right of opposer and others to continue their aforesaid use.

WHEREFORE, opposer prays that its opposition be sustained and registration of Application Serial No. 75/831,337 be refused.

Opposer has submitted the requisite filing fee in the amount of \$300.00.

Please address all correspondence to Raymond I. Geraldson, Jr. and Joseph N. Welch II at Pattishall, McAuliffe, Newbury, Hilliard & Geraldson, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

PATTISHALL, McAULIFFE, NEWBURY,  
HILLIARD & GERALDSON

By: 

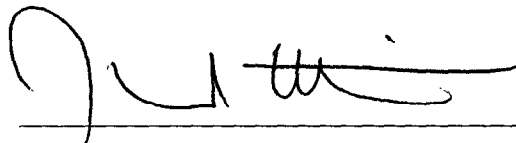
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Peter D. Murray, Cooper & Dunham LLP, 1185 Avenue of the Americas, New York, New York 10036, and William Raman, Thompson & Knight, 98 San Jacinto Blvd., Suite 1200, Austin, Texas by first class mail, on this 23<sup>rd</sup> day of October, 2002.



A handwritten signature in black ink, appearing to read "J. L. Williams", is written above a horizontal line.