

TTAB

9536-OPP



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

OCR PRODUCTS, INC.,

Opposer,

v.

MIDWEST PADDING, L.L.C.,

Applicant.



01-22-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Opposition No. _____

NOTICE OF OPPOSITION

In the matter of Application Serial No. 76/390,663 filed by Midwest Padding, L.L.C. ("Applicant") on April 2, 2002, and published in the Official Gazette on September 24, 2002, at page TM 570, OCR Products, Inc. ("Opposer"), an Ohio corporation, having its principal place of business at 190 Northfield Road, Bedford, Ohio 44146, believes that it will be damaged by registration of the mark shown in that application and, therefore, opposes it. The time to file a Notice of Opposition has been extended to January 22, 2003.

The grounds for this opposition are:

01/30/2003 KGIBBONS 00000006 76390663

1. Applicant has applied for registration of the mark NATURSTONE

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("Applicant's mark") in connection with non-metal floor tiles ("Applicant's goods") in

Class 19, as evidenced by the publication of Application Serial No. 76/390,663 in the Official Gazette on September 24, 2002, at page TM 570.

2. Applicant filed Application Serial No. 76/390,663 on April 2, 2002, claiming a bona fide intention to use Applicant's mark in commerce for Applicant's goods.

3. Since at least as early as February 1991, long prior to the filing date of Application Serial No. 76/390,663, and, on information and belief, long prior to any use of Applicant's mark, Opposer, its predecessors in interest, and its licensee, Ohio Concrete Resurfacing, Inc., have continuously used the trademark NATURE STONE ("Opposer's mark") for floor coverings made from a blend of natural stone and epoxy and for concrete floor resurfacing services.

4. Opposer's mark is registered in connection with concrete floor resurfacing services under Registration No. 1,996,449 ("Opposer's registration"), which was issued on August 27, 1996, long prior to the filing date of Application Serial No. 76/390,663, and, on information and belief, long prior to any use of Applicant's mark. Opposer's registration is incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065. A certified copy of Opposer's registration showing status and title will be filed in due course.

5. On information and belief, Applicant's goods are likely to be sold and advertised to the same purchasers as Opposer's goods and services.

6. On information and belief, Applicant's goods and Opposer's goods and services are likely to be sold and advertised in the same or overlapping trade channels.

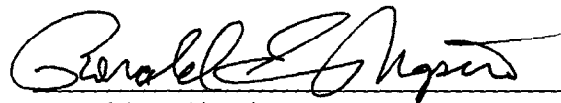
7. On information and belief, in view of the foregoing, Applicant's mark so closely resembles Opposer's mark that the use and registration of Applicant's mark are likely to cause confusion, mistake, and deception, and are, thereby, likely to damage Opposer.

WHEREFORE, Opposer prays that this opposition be sustained.

This Notice of Opposition is being filed in duplicate and is accompanied by the required fee. The Commissioner is authorized to charge any deficiency in the fee to Deposit Account No. 22-0585.

Respectfully submitted,

January 22, 2003



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