

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

IN RE : ECOLOGICAL FIBERS, INC. 

Serial No. : 76/465,422

01-02-2004

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

Published in
Official Gazette : June 10, 2003

For : ULTIMA

_____)	
GEORGIA-PACIFIC CORPORATION)	Attorney Docket No. 33370
)	
Opposer,)	
)	
vs.)	Opposition No. 91158195
)	Serial No. 76/465,422
ECOLOGICAL FIBERS, INC.)	
)	
Applicant.)	
_____)	

ANSWER OF APPLICANT

The Applicant, ECOLOGICAL FIBERS, INC., reserving all benefits and advantages of exceptions which can, or may be taken as errors, insufficiencies, uncertainties or imperfections in the Notice of Opposition of Opposer, GEORGIA-PACIFIC CORPORATION, answers the Notice of Opposition as follows:

FIRST UNNUMBERED PARAGRAPH

In response to the first unnumbered paragraph of the Notice of Opposition, the Applicant denies that the Opposer will be damaged by the registration of the mark "ULTIMA", Serial No. 76/465,422.

NUMBERED PARAGRAPHS

Applicant responds to the numbered paragraphs of the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and, therefore, denies the same.

2. The Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations that Opposer is one of the world's leading manufacturers and distributors of tissue, pulp, paper, packaging, building products and related chemicals or that Georgia-Pacific Corporation employs more than 60,000 people at 400 facilities in the United States, Canada and eleven countries, and therefore, denies the same. Applicant notes the Opposer makes no claim that it sells any paper cover material with a clear protective top coat for scuff

and soil resistance for game boards, boxes, photo albums, slipcases, picture frames, looseleaf or files.

3. Applicant admits that Ecological Fibers, Inc. is a Massachusetts corporation with its principal place of business at 40 Pioneer Drive, Lunenburg, Massachusetts 01462-1663, and has applied to register the ULTIMA mark (Serial No. 76/465,422) with the United States Patent and Trademark Office for paper cover material with a clear protective top coat for scuff and soil resistance for game boards, boxes, photo albums, slipcases, picture frames, looseleaf or files.

4. Applicant is without knowledge or information sufficient to form a belief as to the allegation of paragraph 4 of the Notice of Opposition that since at least as early as May 17, 1988, Opposer has continuously used the ULTIMA mark in connection with a variety of goods and services associated with Opposer's and, therefore, denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 5 of the Notice of Opposition that Opposer owns several federal registrations for marks comprised of the formative ULTIMA mark, including:

<u>MARK</u>	<u>REG. NUMBER</u>	<u>GOODS/SERVICES</u>	<u>DATE FIRST USE</u>
ULTIMA	1,708,054	Paper towels	05/17/1988
ULTIMA	1,664,672	Soap	03/09/1990
ULTIMA	1,678,450	Bath tissue	08/25/1989

(These marks collectively are referred to herein as the "ULTIMA Marks".) and therefore, denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the allegation of paragraph 6 of the Notice of Opposition that Opposer's ULTIMA Marks have been validly and continuously used by Opposer since the date of first use set forth in the above-referenced registrations and the ULTIMA Marks have not been abandoned and, therefore, denies the same.

7. Applicant denies the allegations of paragraph 7 of the Notice of Opposition.

8. The Opposer's Notice of Opposition did not include any paragraphs numbered 8 or 9 and the next paragraph is numbered 10 and Applicant denies the allegations of paragraph 10 of the Notice of Opposition.

9. Applicant admits the allegations of paragraph 11 of the Notice of Opposition.

10. Applicant admits the allegations of paragraph 12 of the Notice of Opposition.

11. Applicant denies the allegations of paragraph 13 of the Notice of Opposition that Opposer will be damaged by the registration of Applicant's mark because:

- (a) The Applicant's goods and Opposer's goods are not similar, related or not traded in the same channels of trade or industry.
- (b) The Applicant's goods are sold to sophisticated purchasers who know the difference between paper towels, soaps and bath tissues as opposed to paper cover material with a clear protective top coat for scuff and soil resistance for game boards, boxes, photo albums, slipcases, picture frames, looseleaf or files;
- (c) The United States Patent and Trademark Office has passed Applicant's mark to publication; and

(d) There are a number of other marks which use the term "ULTIMA" as part of their marks which shows that "ULTIMA" is a weak mark, and entitled to little protection.

12. Applicant denies the allegations contained in paragraph 14 of the Notice of Opposition.

13. Applicant denies the allegation contained in paragraph 15 of the Notice of Opposition.

14. No response is required to paragraph 16 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

In further response to the Notice of Opposition and as affirmative defenses, Applicant alleges as follows:

(1) Upon information and belief Opposer will not be damaged in any way by Applicant's use and registration of its mark.

(2) Opposer's mark is a "weak" mark having little or no trademark significance because there are other trademarks on the

Principal Register which include the word "ULTIMA" for goods in the same International Class 16, including the following marks:

<u>MARK</u>	<u>REG. NO.</u>	<u>INT. CLASS</u>	<u>GOODS/SERVICES</u>
COVERLUXE ULTIMA	2,769,067	16	Coated paper embossed to simulate leather, primarily for covering books, boxes and stationery products.
ULTIMA HORA	2,746,047	16	Newspapers, namely, a Spanish language newspaper dealing with news items.
ULTIMA ONE	2,570,992	16	Printed package labels.
ULTIMA	2,283,121	16	Presentation Easels.
RAGAZZA A LA ULTIMA	1,913,265	16	Magazines about women's interests including fashion and beauty.
ULTIMA ULTIMATE PRESERVATION	1,884,927	16	Plastic photographic negative and slide preserver pages and binders therefor.
ULTIMA	1,854,149	16	Fictional books.

(3) Applicant's goods are different from Opposer's goods because Applicant believes that paper towels, soap or bath tissue are not used as paper cover material with a clear protective top coat for scuff and soil resistance for game boards, boxes, photo albums, slipcases, picture frames, looseleaf or files, and, therefore, there is no basis for confusion by the sophisticated customers who buy these products.

(4) Applicant's trademark has been approved for registration by the United States Patent and Trademark Office.

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(5) Opposer has made no allegation that Opposer offers paper cover material with a clear protective top coat for scuff and soil resistance for game boards, boxes, photo albums, slipcases, picture frames, looseleaf or files.

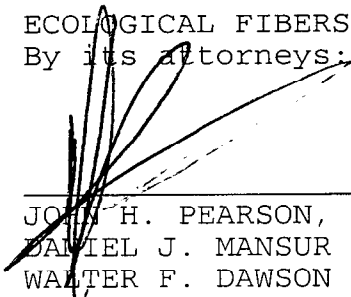
(6) Upon information and belief Opposer will not be damaged in any way by Applicant's use and registration of its mark because the types of customers that purchase Applicant's products are very sophisticated and price conscious, and they shop the marketplace for best price, payment terms, and warranties as their main focus. Such sophisticated customers are not influenced by trademarks or more importantly not confused by trademarks.

(7) The Notice of Opposition fails to state a claim upon which relief can be granted.

WHEREFORE, Applicant prays that judgment be granted in its favor, declaring that Opposer is not entitled to the relief prayed for, that the Notice of Opposition be dismissed with costs and attorneys fees to Applicant and that Applicant be granted such other and further relief as the Board deems just and proper.

Respectfully submitted,


ECOLOGICAL FIBERS, INC.
By its attorneys:



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached ANSWER OF APPLICANT has been served on the Opposer, GEORGIA-PACIFIC CORPORATION, by mailing a copy thereof, first class, postage prepaid to its attorneys, Emily K. Breslin, Esq., Georgia-Pacific Corporation, 133 Peachtree Street, N.E., Atlanta, Georgia 30303 and to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513 via First Class Mail on December 30, 2003.



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December 30, 2003

United States Department of Commerce
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

01-02-2004

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

Re: Georgia Pacific Corporation
vs. Ecological Fibers, Inc.
Trademark Entitled "ULTIMA"
Opposition No. 91158195
Our Reference: 33370

Dear Sir/Madam,

We enclose herewith for filing the following:

1. Answer of Applicant; and
2. Return Postcard.

Kindly please stamp the enclosed postcard and return
the same to us for our files.

Thank you.

Very truly yours,
PEARSON & PEARSON
By

DANIEL J. MANSUR

DJM:jf

Enclosure

HT:P:\DATA\ECOLOGIC\33370\LETTER\TTAB.LTR