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

Proceeding	91161375
Party	Defendant Kimberton Enterprises, Inc. Kimberton Enterprises, Inc. 336 Cold Stream Road Kimberton, PA 19442
Correspondence Address	Mindy Ellis Schwartz, Esquire Pepper Hamilton LLP 3000 Two Logan Square/18th & Arch St. PHILADELPHIA, PA 19103-2799 UNITED STATES schwartzme@pepperlaw.com, kearneyc@pepperlaw.com, wrightp@pepperlaw.com
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Date	01/18/2006
Attachments	rubberkote_req to amend.pdf (3 pages)

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

BFS DIVERSIFIED PRODUCTS, LLC	:	
	:	
v.	:	Opposition No. 91161375
	:	
	:	Serial No. 76/513202
KIMBERTON ENTERPRISES, INC.	:	
	:	
Applicant.	:	

APPLICANT’S MOTION TO AMEND APPLICATION

Applicant, Kimberton Enterprises, Inc. (hereinafter “Applicant”), through its attorneys Pepper Hamilton LLP, hereby submits the following Motion to Amend Application in connection with the above-captioned opposition proceeding.

1. On April 21, 2003, Applicant applied for registration of its mark RUBBERKOTE (Serial No. 76/513,202) for “elastomeric roof coating system, namely elastomeric exterior coating primer, elastomeric base coat and elastomeric top coat” in International Class 19. The trademark was published in the Official Gazette on December 2, 2003.
2. On March 30, 2004, BFS Diversified Products, LLC (“Opposer”) filed a notice of opposition which was instituted by the Trademark Trial and Appeal Board on July 22, 2004.
3. Most recently, on January 5, 2006, Applicant filed a Motion for Suspension for Settlement with Consent, requesting that this proceeding be suspended for 180 days.
4. After several months of negotiations, Applicant and Opposer have agreed upon the terms of a Settlement Agreement (the “Agreement”), which will be executed and become effective after the present Motion to Amend Application has been granted and the amendment has been entered by the United States Patent and Trademark Office.

5. In accordance with the terms of the Agreement, and pursuant to 37 C.F.R. Section 2.133, Applicant hereby seeks to amend its mark from RUBBERKOTE to HENRY RUBBERKOTE. The United States Patent and Trademark Office Examining Attorney assigned to the application, Joanna M. Dukovic, has indicated that she will accept this amendment. However, Ms. Dukovic will not take any action until the Board approves this motion and forwards it to her, consistent with the standard practices of the Trademark Trial and Appeals Board and the Patent and Trademark Office.

6. Upon the amendment to Applicant's mark as requested herein, and pursuant to the terms of the anticipated Agreement, Opposer will not oppose Applicant's application.

WHEREFORE, in an effort to amicably resolve this proceeding, Applicant Kimberton Enterprises, Inc. respectfully requests that the Board approve this amendment and forward the approved Motion to the Examining Attorney.

Respectfully submitted,



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Dated: 1/18/06


Attorneys for Applicant
KIMBERTON ENTERPRISES, INC.

CERTIFICATES OF SERVICE AND MAILING

I certify that on January 18, 2006, I caused a true and correct copy of the foregoing Motion to Amend Application on behalf of Applicant, Kimberton Enterprises, Inc., to be served via United States Postal Service first-class mail, postage prepaid, upon the following:

Geoffrey M. McNutt, Esquire
Finnegan, Henderson, Farabow,
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Attorney for Opposer



Cara M. Kearney