

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

Atty. Ref. No.: 0174010.0905

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S-T-N HOLDINGS, INC.,

Opposer,

VS.

DIETRICH INDUSTRIES, INC.,

Applicant.

-----X

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Attn.: BOX TTAB NO FEE

Opposition No.: 91164617
Appl. Ser. No: 76/543,913

"EXPRESS MAIL" Label No.: ED156673805US	
I hereby certify that this paper or fee is being deposited with the United Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 2.198 on the date indicated below and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451	
<i>Patricia Mack</i>	
Signature	Patricia Mack
Printed Name	
May 2, 2005	
Date	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Dietrich Industries, Inc., by its undersigned attorneys, hereby answers the allegations set forth in the Notice of Opposition (the "Opposition") as follows:

1. The averments contained in paragraph 1 of the Opposition are admitted.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 2 of the Opposition and for that reason denies each and every averment therein.
3. As to the averment that "Applicant applied to register C & Design by filing an intent-to-use application on August 29, 2003" contained in paragraph 3 of the Opposition, the averment is admitted. As to the remaining averments contained in paragraph 3



05-02-2005

of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments and for that reason denies each and every averment therein.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 4 of the Opposition and for that reason denies each and every averment therein; however, a review of the relevant filing receipts for Opposer's trademark applications attached to the Opposition appears to verify the averments contained in paragraph 4 of the Opposition.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 5 of the Opposition and for that reason denies each and every averment therein.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 6 of the Opposition and for that reason denies each and every averment therein.

7. The averments contained in paragraph 7 of the Opposition constitute legal conclusions to which no response is required. To the extent a response may be required, said averments are denied.

8. The averments contained in paragraph 8 of the Opposition constitute legal conclusions to which no response is required. To the extent a response may be required, said averments are denied.

AFFIRMATIVE DEFENSES

In further answer to the Opposition, Applicant asserts that:

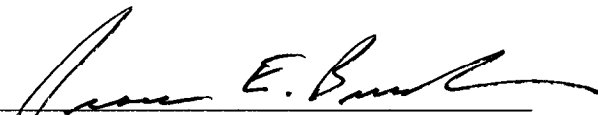
9. Opposer has failed to state a claim, in whole or in part, upon which relief may be granted.
10. Opposer has failed to allege facts sufficient to establish a likelihood of confusion, mistake or deception between Applicant's mark and Opposer's alleged OSMO-C-TRUSS and C-TRUSS marks.
11. There is no likelihood of confusion, mistake, or deception between Applicant's mark and Opposer's alleged OSMO-C-TRUSS and C-TRUSS marks.
12. There is no likelihood of confusion, mistake, or deception between Applicant's mark and Opposer's alleged OSMO-C-TRUSS and C-TRUSS marks as applied to the parties' respective goods.
13. Opposer's alleged C-TRUSS mark is generic as applied to Opposer's goods.
14. Opposer's alleged OSMO-C-TRUSS and C-TRUSS marks are descriptive as applied to Opposer's goods.
15. Opposer has never used its alleged C-TRUSS mark as a trademark.
16. Opposer will not be damaged in any way by the registration of Applicant's mark.

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IN CONCLUSION, Applicant prays that the Opposition be dismissed in its entirety, that a Notice of Allowance be issued, and that Applicant be granted such additional relief as the Trademark Trial and Appeal Board may find to be warranted under the circumstances.

Respectfully submitted,

Dated: May 2, 2005

By 

Charles M. Tea III, Esq.
Jesse E. Busch, Esq.

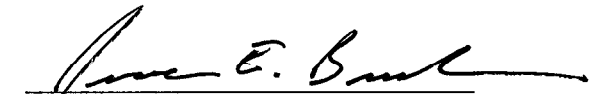
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Attorneys for Applicant Dietrich Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Answer to Notice of Opposition was served this second (2nd) day of May 2005, via first class mail, upon the following counsel of record:

Kenneth D. Suzan
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203-2391



Jesse E. Busch