

ESTTA Tracking number: **ESTTA44627**

Filing date: **09/09/2005**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Undercover Systems, Inc.		
Entity	Corporation	Citizenship	Georgia
Address	751 Casteel Road Powder Springs, GA 30127 UNITED STATES		

Attorney information	George M. Thomas, Jennifer M. Gruber Thomas, Kayden, Horstemeyer & Risley, LLP 100 Galleria Parkway, N.W. Suite 1750 Atlanta, GA 30339 UNITED STATES jennifer.gruber@tkhr.com, Trademarks@tkhr.com, shannon.tucker@tkhr.com Phone: 770-933-9500		
-----------------------------	---	--	--

Applicant Information

Application No	76546387	Publication date	09/06/2005
Opposition Filing Date	09/09/2005	Opposition Period Ends	10/06/2005
Applicant	DECKS UNDER COVER, INC. 4031-C FAMBROUGH COURT POWDER SPRINGS, GA 30127 UNITED STATES		

Goods/Services Affected by Opposition

Class 006. First Use: 20030401 First Use In Commerce: 20030401

All goods and services in the class are opposed, namely: Metal building panels attached under a deck that direct water away from the area under the deck, to provide a dry area under the deck

Attachments	Notice of Opposition.pdf (8 pages)
--------------------	--------------------------------------

Signature	/Jennifer M. Gruber/
------------------	----------------------

Name	Jennifer M. Gruber
-------------	--------------------

Date	09/09/2005
-------------	------------

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

In Re Application of:)	
)	
Decks Under Cover, Inc.)	TM Attorney: Sophia Sujin Kim
)	
Serial No.: 76/546,387)	Law Office: 106
)	
Filed: 09/22/2003)	International Class: 006
)	
Mark: DECKS UNDER COVER)	Published for Opposition: 09/06/2005

Undercover Systems, Inc.,

Opposer,

v.

Opposition No.: _____
(To be Assigned)

Decks Under Cover, Inc.

Applicant.

Attorney Docket No.: 11961-7010

NOTICE OF OPPOSITION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

Undercover Systems, Inc., 751 Casteel Road, Powder Springs, Georgia, 30127, a Georgia Corporation (hereinafter "Opposer"), believes it will be damaged by registration of the mark show in trademark application Serial No. 76/546,387, filed September 22, 2003 and published for opposition on September 6, 2005, and hereby opposes said application.

As grounds for opposition, it is alleged that:

1. Applicant seeks to register the mark DECKS UNDER COVER to identify “metal building panels attached under a deck that direct water away from the area under the deck, to provide a dry area under the deck,” in International Class 006; as evidenced by the publication of said mark in the September 6, 2005 issue of the *Official Gazette*. Upon information and belief, Applicant offers, promotes, distributes, or intends to offer, promote and distribute the goods identified in its application through Applicant’s business.

2. Since at least as early as September 1996, Opposer has been engaged in the business of constructing roof structures under decks of buildings under its mark UNDERCOVER SYSTEMS.

3. Opposer owns United States Registration No. 2,956,509 issued May 31, 2005 for the mark UNDERCOVER SYSTEMS covering “construction of roof structures under decks of buildings.” Opposer’s foregoing registration is valid and subsisting, and in full force and effect. A copy of the registration is attached as Exhibit “A.”

4. In addition to its registration for UNDERCOVER SYSTEMS, Opposer uses the mark UNDERCOVER SYSTEMS significantly throughout its promotional activities for its construction business.

5. Since at least as early as September, 1996, Opposer has extensively, continuously and without interruption, used its UNDERCOVER SYSTEMS trademark in publicizing and promoting its construction services in interstate commerce. By reason of Opposer’s activities over an extended period of time, Opposer’s mark has become well known to the relevant public as identifying and distinguishing Opposer, Opposer’s business, and Opposer’s construction services from those of others. Opposer, through great expense and quality control, has created an association among the relevant public between its UNDERCOVER SYSTEMS mark and

Opposer's business and has built up, and is the owner of, substantial goodwill in the mark UNDERCOVER SYSTEMS for certain construction services.

6. Applicant filed its use based application for DECKS UNDER COVER on September 22, 2003, claiming a first use date of April 1, 2003 – both dates being several years after Opposer had already begun using UNDERCOVER SYSTEMS in publicizing and promoting its construction services and providing its construction services in interstate commerce.

7. Opposer's mark, UNDERCOVER SYSTEMS, contains the identical dominant component UNDERCOVER and is confusingly similar in terms of appearance, connotation and commercial impression. Consumers are likely to focus on the UNDERCOVER portion of Applicant's mark and thereby mistakenly associate DECKS UNDER COVER with the Opposer.

8. The goods identified in the application are identical or substantially related to Opposer's services insofar as sub-deck construction goods and services are concerned. Opposer uses its UNDERCOVER SYSTEMS mark on or in connection with construction services related to those goods recited in the application.

9. Upon information and belief, all of the goods identified in the application will be distributed and promoted through Applicant's construction business or in connection with its construction business. These are the exact same channels through which Opposer's mark and related services are offered and promoted. The application and recitation of goods identified therein does not restrict the marketing and trade channels through which Applicant's mark and related goods will be offered and promoted.

10. Use of, and registration by, Applicant of DECKS UNDER COVER for Applicant's goods would cause confusion or mistake, or will deceive consumers erroneously into

the belief that Applicant's goods are in fact related or associated with the services offered by Opposer, or are authorized or sponsored by, or otherwise connected with the business of Opposer. Any fault or defect found in Applicant's goods would reflect upon and injure the reputation that Opposer has established in its UNDERCOVER SYSTEMS mark and the services offered in connection therewith. The use of DECKS UNDER COVER by Applicant would allow Applicant to reap the financial reputation-related reward associated with Opposer's services and misappropriate goodwill to Applicant that Opposer has established. Opposer would be injured in the provision, sale and distribution of Applicant's products, and in the conduct of its business.

11. The nature of Opposer's services and Applicant's goods identified in the application are identical. The parties offer their respective goods and services through identical channels of trade and to identical classes of customers. In fact, there is direct overlap in the parties' trade and marketing channels in geographic territories. The result of the parties' promotion and use of confusingly similar marks in association with identical goods and services, in the identical marketing and trade channels, and provision of goods and services to the same customers is an increase in the likelihood that purchasers, and prospective purchasers, will mistakenly associate the marks, and believe that the goods and services of the parties emanate from, or are sponsored by or otherwise connected with a single source.

WHEREFORE, Opposer prays that this Opposition be sustained, that Application Serial No. 76/546,387 hereby be refused and no registration be issued to Applicant thereon, and for such other and further relief as may be deemed appropriate.

This 9th day of September, 2005.

Respectfully submitted,

UNDERCOVER SYSTEMS, INC.

/s/ Jennifer M. Gruber

George M. Thomas, Reg. No. 22,260

Jennifer M. Gruber, Reg. No. 42,601

Thomas, Kayden, Horstemeyer

& Riskey, LLP

100 Galleria Parkway, N.W.

Suite 1750

Atlanta, Georgia 30339

(770) 933-9500

Counsel for Opposer

011961-7010
00270493

Int. Cl.: 37

Prior U.S. Cls.: 100, 103 and 106

United States Patent and Trademark Office

Reg. No. 2,956,509

Registered May 31, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

UNDERCOVER SYSTEMS

UNDERCOVER SYSTEMS, INC. (GEORGIA CORPORATION)
751 CASTEEL ROAD
POWDER SPRINGS, GA 30127

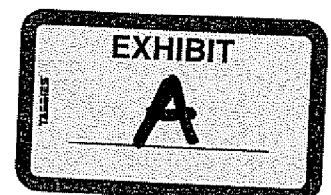
NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SYSTEMS", APART FROM THE
MARK AS SHOWN.

FOR: CONSTRUCTION OF ROOF STRUCTURES
UNDER DECKS OF BUILDINGS, IN CLASS 37 (U.S.
CLS. 100, 103 AND 106).

SER. NO. 76-513,457, FILED 5-12-2003.

FIRST USE 9-0-1996; IN COMMERCE 9-0-1996.

MARY BOAGNI, EXAMINING ATTORNEY



The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)



A handwritten signature in black ink, reading "Jon W. I. Dudas". The signature is written in a cursive style with a large, prominent "J" and "D".

Director of the United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

Requirements in the First Ten Years*

What and When to File:

- First Filing: A Declaration of Continued Use (or Excusable Non-use), filed between the 5th and 6th years after the registration date. (See 15 U.S.C. §1058; 37 C.F.R. §2.161.)
- Second Filing: A Declaration of Continued Use (or Excusable Non-use) **and** an Application for Renewal, filed between the 9th and 10th years after the registration date. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

Requirements in Successive Ten-Year Periods*

What and When to File:

- A Declaration of Continued Use (or Excusable Non-use) **and** an Application for Renewal, filed between each 9th and 10th-year period after the date when the first ten-year period ends. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

Grace Period Filings*

There is a six-month grace period for filing the documents listed above, with payment of an additional fee.

The U.S. Patent and Trademark Office (USPTO) will **NOT** send you any future notice or reminder of these filing requirements. Therefore, you should contact the USPTO approximately one year prior to the deadlines set forth above to determine the requirements and fees for submission of the required filings.

NOTE: Electronic forms for the above documents, as well as information regarding current filing requirements and fees, are available online at the USPTO web site:

www.uspto.gov

**YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT
FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE
SPECIFIED TIME PERIODS.**

*Exception for the Extensions of Protection under the Madrid Protocol:

The holder of an international registration with an extension of protection to the United States must file, under slightly different time periods, a Declaration of Continued Use (or Excusable Non-use) at the USPTO. See 15 U.S.C. §1141k; 37 C.F.R. §7.36. The renewal of an international registration, however, must be filed at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol. See 15 U.S.C. §1141j; 37 C.F.R. §7.41.