

TTAB

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Date of Deposit January 4, 2006

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Kathleen A. Nimrichter
Kathleen A. Nimrichter

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

In re the matter of Royal Mouldings Limited
Application No. 76/597,758
for "EVER DRY"
Published in Official Gazette
of September 6, 2005 at TM 836

Ever-Dry Marketing & Management, Inc.)
)
Opposer,)
)
vs.)
)
Royal Mouldings Limited)
)
Applicant.)

Opposition No.

NOTICE OF OPPOSITION

BOX TTAB FEE
Commissioner For Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

01/09/2006 6741062 0000051 76597750
01 FC:6402 300.00 CP

Sir:

Everdry Marketing & Management, Inc., a corporation of the State of Ohio,
located and doing business at 365 East Highland Road, Macedonia, Ohio 44056
believes that it will be damaged by registration of the trademark shown in Serial No.



78/233,663 filed on April 3, 2003 by the applicant identified above, and hereby opposes same.

As grounds of opposition, it is alleged that:

1. Opposer, Everdry Marketing & Management, Inc. (hereinafter "Everdry"), is now and has for a number of years been engaged in residential basement waterproofing. Everdry is one of the most successful waterproofing franchisors in the United States.

2. Everdry adopted and began using the trademark EVER-DRY on September 1, 1984 in connection with basement waterproofing services and commenced use of the mark in commerce on September 1, 1984. Everdry obtained Registration No. 1,412,615 for the mark EVER-DRY on October 7, 1986. A copy of this registration is enclosed as Exhibit A hereto. Everdry also obtained Registration No. 1,803,438 for the mark EVERDRY on November 9, 1993. A copy is enclosed as Exhibit B hereto. Moreover, Everdry, on April 25, 1995 obtained Registration No. 1,891,372 for the mark IT'S NOT DRY 'TIL ITS EVERDRY. A copy is enclosed as Exhibit C hereto.

3. Everdry also maintains a website at the internet address www.everdry.com. Enclosed herewith as Exhibit D is a printout of the home page of the Everdry website.

4. By virtue of its efforts and the expenditure of considerable sums for promotional activities, and by virtue of the long-standing use of the EVERDRY mark for services and products, opposer Everdry has gained for its above-identified EVERDRY mark a most valuable reputation. Since 1983, Everdry has provided full service waterproofing to more than 70,000 customers.

5. One of the products sold by Everdry is a plastic paneling for building walls sold under the mark COVEPLATE, Registration No. 2,120,074 (Exhibit E hereto). However, on information and belief for a number of years Everdry has stamped into the material of the COVEPLATE product the mark EVERDRY. Thus, the EVERDRY mark is used in close association with plastic paneling for building walls.

6. Applicant, Royal Mouldings Limited (hereinafter "Royal"), filed trademark application Serial No. 76/597,758 on June 17, 2004 for the designation EVER DRY for the following goods: non-metal decorative mouldings and decorative trim for use with garage walls, namely, beaded board, base board, brick mould, door jams and trim; cellular vinyl PVC decorative mouldings for use with bathrooms, pools, spas, decking, porches, windows, doors and kitchens in International Class 19. The application was published in the Official Gazette of September 6, 2005 on page TM 836 for opposition. A copy is enclosed as Exhibit F. On information and belief, this is an intent-to-use application. In contrast, Everdry has used its mark for more than two decades.

7. Everdry has obtained a ninety day extension of time to file a Notice of Opposition against Royal's mark. The ninety days is set to expire on January 4, 2006.

8. The goods recited in Royal's trademark application for EVER DRY and Everdry's COVEPLATE paneling are closely related. Opposer Everdry has developed an exceedingly valuable good will in respect to its EVERDRY family of marks covered by the aforesaid registrations. Also, the EVERDRY mark currently appears on Everdry's COVEPLATE paneling material.

9. The goods proposed to be sold by Royal under its EVER DRY mark and the paneling sold by Everdry are substantially similar. Accordingly, a consumer who is

aware of the EVERDRY mark from the marketplace is likely to be confused, mistaken or deceived into believing that any paneling offered for sale by Royal under its EVER DRY mark is associated with the goods and services provided by Everdry under its EVERDRY family of marks.

10. If applicant Royal is permitted to use and register his EVER DRY mark for the goods specified in the application herein opposed, confusion in the trade, resulting in damage and injury to opposer Everdry would result by reason of the similarity between applicant's mark and the opposer's marks. Persons familiar with opposer's marks would be likely to buy applicant's goods as and for a product made and sold by the opposer. Any such confusion in the trade inevitably would result in loss of sales to the opposer. Furthermore, any defect, objection or fault found with applicant's products marketed under its EVER DRY mark would necessarily reflect upon and seriously injure the reputation which the opposer has established for its products and services merchandised under its EVERDRY marks.

11. Based upon the foregoing, a registration of Royal's EVER DRY designation as depicted in Application Serial No. 76/597,758 filed on June 17, 2004 on the Principal Register of the U.S. Patent and trademark Office will cause injury and damage to Everdry.

WHEREFORE, Everdry requests that the registration of Royal's mark EVER DRY, Application Serial No. 76/597,758, be denied and that this opposition be sustained.


The petition fee required by Section 2.6(a)(17) is enclosed. Payment for the filing of this Notice of Opposition is authorized to be charged to a Credit Card. The

appropriate form PTO-2038 is enclosed for this purpose. **If the Credit Card is unable to be charged, please charge any and all fees or credit any overpayment to Deposit Account No. 06-0308.**

Respectfully submitted,

EVERDRY MARKETING & MANAGEMENT, INC.

4 Jan 2006
Date


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Attorneys for Opposer

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Int. Cl.: 37

Prior U.S. Cl.: 103

United States Patent and Trademark Office

Reg. No. 1,412,615

Registered Oct. 7, 1986

**SERVICE MARK
PRINCIPAL REGISTER**

EVER-DRY

EVER-DRY WATERPROOFING, INC. (OHIO
CORPORATION)
365 EAST HIGHLAND ROAD
MACEDONIA, OH 44056

FIRST USE 9-1-1984; IN COMMERCE
9-9-1984.

SER. NO. 544,672, FILED 6-24-1985.

FOR: BASEMENT WATERPROOFING SERV-
ICES, IN CLASS 37 (U.S. CL. 103).

MARGERY A. TIERNEY, EXAMINING ATTOR-
NEY

EXHIBIT A

Int. Cl.: 40



Prior U.S. Cl.: 106

Reg. No. 1,803,438

United States Patent and Trademark Office Registered Nov. 9, 1993

**SERVICE MARK
PRINCIPAL REGISTER**

EVERDRY

OHIO STATE WATERPROOFING, INC. (OHIO
CORPORATION)
365 EAST HIGHLAND ROAD
MACEDONIA, OH 44056

FOR: BASEMENT AND BELOW GRADE WA-
TERPROOFING SERVICES, IN CLASS 40 (U.S.
CL. 106).

FIRST USE 9-1-1984; IN COMMERCE
9-9-1984.
OWNER OF U.S. REG. NO. 1,412,615.

SER. NO. 74-367,726, FILED 3-15-1993.

ALICE SUE CARRUTHERS, EXAMINING AT-
TORNEY

EXHIBIT B

Int. Cl.: 37

Prior U.S. Cl.: 103

United States Patent and Trademark Office

Reg. No. 1,891,372

Registered Apr. 25, 1995

**SERVICE MARK
PRINCIPAL REGISTER**

IT'S NOT DRY 'TIL IT'S EVERDRY

OHIO STATE WATERPROOFING, INC. (OHIO
CORPORATION)
365 EAST HIGHLAND ROAD
MACEDONIA, OH 44056

FOR: ASSOCIATION WITH BASEMENT AND
BELOW GRADE WATERPROOFING SERV-
ICES, IN CLASS 37 (U.S. CL. 103).

FIRST USE 0-0-1991; IN COMMERCE
0-0-1991.
OWNER OF U.S. REG. NOS. 1,412,615 AND
1,803,438.

SER. NO. 74-510,795, FILED 4-11-1994.

JYLL A. SMITH, EXAMINING ATTORNEY

EXHIBIT C



It's not dry till it's...
EVERDRY

home

AMERICA'S BASEMENT WATERPROOFING EXPERT

EverDry Waterproofing is the nation's leading residential basement waterproofing contractor. Since 1983, EverDry has provided full-service waterproofing to more than 70,000 satisfied customers.

THE INDUSTRY LEADER

EverDry Professionals take a personal, one-on-one approach in dealing with homeowners to help them understand their options for creating a safe, dry and livable space in their basements.

ADDING HOME EQUIPMENT

- Select From Below:
- ▶ Explore Waterproofing
 - ▶ Explore EverDry
 - ▶ Free Info
 - ▶ Locations
 - ▶ FAQ's
 - ▶ Specials and Discounts
 - ▶ Explore Opportunities



PROBLEM SOLVERS

Click these links for solutions to some common household problems: musty odors and cracked walls.

To start solving your basement waterproofing problems today, begin below

Name:

Home Phone Number:



1-800-EVERDRY

EverDry Site Map

EverDry Marketing and Management Inc. 2006 - All Rights Reserved.

EXHIBIT D

Int. Cl.: 19

Prior U.S. Cls.: 1, 12, 33 and 50

Reg. No. 2,120,074

United States Patent and Trademark Office

Registered Dec. 9, 1997

TRADEMARK
PRINCIPAL REGISTER

COVEPLATE

OHIO STATE WATERPROOFING, INC. (OHIO
CORPORATION)
365 EAST HIGHLAND ROAD
CLEVELAND, OH 44056

FIRST USE 2-0-1978; IN COMMERCE
2-0-1978.

SER. NO. 75-249,460, FILED 2-28-1997.

FOR: PLASTIC PANELING FOR BUILDING
WALLS, IN CLASS 19 (U.S. CLS. 1, 12, 33 AND
50).

SUSANA MIRABALLES TUCCILLO, EXAMIN-
ING ATTORNEY

EXHIBIT E

CLASS 19—(Continued).

SN 76-585,112. DELTA REFRACTORIES, INC., KATY, TX. FILED 4-5-2004.

DELTA HC

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR REFRACTORY BLOCKS, BRICKS, CONCRETE, FURNACE LININGS, MORTARS, AND SHAPES (U.S. CLS. 1, 12, 33 AND 50).

FIRST USE 2-16-2004; IN COMMERCE 2-16-2004. DAVID MURRAY, EXAMINING ATTORNEY

SN 76-592,224. HEARTLAND BUILDING PRODUCTS, INC., BOONESVILLE, MS. FILED 5-14-2004.

THE HEARTLAND COLLECTION

OWNER OF U.S. REG. NOS. 1,417,463, 1,447,504 AND OTHERS.

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

FOR NON-METALLIC WINDOWS AND DOORS AND PARTS THEREFORE (U.S. CLS. 1, 12, 33 AND 50). MICHAEL WEBSTER, EXAMINING ATTORNEY

SN 76-597,758. ROYAL MOULDINGS LIMITED, MARION, VA. FILED 6-17-2004.

EVER DRY

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

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

FOR NON-METAL DECORATIVE MOULDINGS AND DECORATIVE TRIM FOR USE WITH GARAGE WALLS, NAMELY, BEADED BOARD, BASE BOARD, BRICK MOULD, DOOR JAMS AND TRIM; CELLULAR VINYL PVC DECORATIVE MOULDINGS FOR USE WITH BATHROOMS, POOLS, SPAS, DECKING, PORCHES, WINDOWS, DOORS AND KITCHENS (U.S. CLS. 1, 12, 33 AND 50).

JOHN GARTNER, EXAMINING ATTORNEY

CLASS 19—(Continued).

SN 76-608,211. HYAMS, CHRISTOPHER A., EL CAJON, CA. FILED 8-23-2004.

DW DOTS

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

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

FOR POLYURETHANE HALF DOLLAR-SIZED FOOT-TACTILE DETECTABLE-WARNING SAFETY-BUTTON INSTALLED AS AN ARRAY ON WALKWAYS FOR PEDESTRIAN SAFETY PURPOSES (U.S. CLS. 1, 12, 33 AND 50).

FIRST USE 6-10-2004; IN COMMERCE 6-10-2004. KARLA PERKINS, EXAMINING ATTORNEY

SN 76-613,854. WALLING, JEFFREY L., VIRGINIA BEACH, VA. FILED 9-27-2004.

QUANTUM SLEEPER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR NON-METAL PRE-FABRICATED SAFEROOM INCLUDING A SECURITY SYSTEM DESIGNED FOR PROTECTION IN VARIOUS HOSTILE ENVIRONMENTS OR EVENTS, SOLD AS A UNIT (U.S. CLS. 1, 12, 33 AND 50).

SCOTT BALDWIN, EXAMINING ATTORNEY

SN 76-623,700. CON/SPAN BRIDGE SYSTEMS LTD., DAYTON, OH. FILED 12-8-2004.

ECOSPAN

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR PRECAST CONCRETE CULVERT AND BRIDGE SECTIONS (U.S. CLS. 1, 12, 33 AND 50).

DEZMONA MIZELLE, EXAMINING ATTORNEY

CLASS 19—(Continued)

SN 76-623,728. THE NORPANY INC., DUNDEE, ONT. FILED 12-9-2004.

PIL

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR NON-METAL PILLS (U.S. CLS. 1, 12, 33 AND 50).

LAURIE MAYES, EXAMINING ATTORNEY

SN 76-623,815. TOUCH BEAVERTON, OR. FILED 12-8-2004.

DORO

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR NONMETAL DORIS (U.S. CLS. 1, 12, 33 AND 50).

NORA BUCHANAN, EXAMINING ATTORNEY