

ESTTA Tracking number: **ESTTA103680**

Filing date: **10/11/2006**

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	Architectural Systems, Inc.		
Entity	Corporation	Citizenship	New York
Address	150 W. 25th Street Eight Floor New York, NY 10001 UNITED STATES		

Attorney information	Sonia E. Lopez Gonzalez, Esq. Mirsky & Block, PLLC 303 South Broadway Suite 222 Tarrytown, NY 10591 UNITED STATES sonia@mirskyblock.com Phone:9143324700		
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Applicant Information

Application No	78654111	Publication date	09/12/2006
Opposition Filing Date	10/11/2006	Opposition Period Ends	10/12/2006
Applicant	Eventscape Inc. 4 Bestobell Road Toronto, Ontario, M8W 4H3 CANADA		

Goods/Services Affected by Opposition

Class 040. First Use: 2004/06/01 First Use In Commerce: 2004/08/01
All goods and services in the class are opposed, namely: Custom manufacture of framed fabric displays for use in architectural retail, exhibits, and events

Attachments	Notice of Opposition.pdf (22 pages)(665124 bytes)
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Signature	/Sonia E. Lopez Gonzalez/
Name	Sonia E. Lopez Gonzalez, Esq.
Date	10/11/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ARCHITECTURAL SYSTEMS, INC.

Opposer,

v.

EVENTSCAPE INC.

Applicant

Opposition No.:

NOTICE OF OPPOSITION

Application Serial No.: 78654111

Filing Date: June 20, 2005

Publication Date: September 12, 2006

Architectural Systems, Inc. (“Opposer”) believes that it will be damaged by the registration of the mark CREATE WHAT’S NEXT (“Applicant’s Mark”) Serial No.: 78654111 (the “Application”) for “custom manufacture of framed fabric displays for use in architectural retail, exhibits, and events,” and hereby opposes the Application. As grounds for its opposition, Opposer alleges as follows:

I. PARTIES

1. Opposer is a New York Corporation having its place of business at 150 W. 25th Street, Eight Floor, New York, New York 10001.
2. On information and belief, Eventscape Inc. (“Applicant”) is Canadian corporation having its place of business at 4 Bestobell Road, Toronto, Ontario, Canada M8W4H3.

II. OPPOSER’S MARK, GOODS AND SERVICES

3. Opposer’s Mark consists of the words “WHAT’S NEXT” (“Opposer’s Mark”) in standard characters without claim to any particular font, size or color.

4. Opposer's Mark is used in connection with distributorship and retail store services featuring architectural interior finishing products; namely, wood, vinyl, stone and bamboo flooring products; hand-crafted acrylic and vinyl surface covering products; wood, glass and metal wall covering products; and wood, glass and metal ceiling covering products.
5. Opposer's Mark was first used anywhere and in commerce on March 24, 2004.
6. On February 4, 2005, Opposer filed an application based on intent to use for its mark.
7. Opposer's Mark was registered in the Principal Register of the United States Patent and Trademark Office ("USPTO") on April 11, 2006, with Registration Number 3,079, 109. A copy of the Certificate of Registration is attached as Exhibit A.

III. APPLICANT'S MARK SERVICES

8. On June 20, 2005, Applicant filed an application for registration on the Principal Register of the UPSTO based on the use of its mark in commerce.
9. Applicant's Mark was published in the Official Gazette on September 12, 2006.
10. The goods listed in the application are "custom manufacture of framed fabric displays for use in architectural retail, exhibits, and events" ("Applicant's Goods").

IV. CORRESPONDENCE HISTORY

10. On or about July 20, 2006, Opposer became aware of Applicant's use of the mark "Create What's Next" upon review of an advertising in an architectural trade magazine, a copy of which is attached as Exhibit B.
11. On July 27, 2006, Opposer sent a Cease and Desist letter to the Applicant's president Gareth Brennam, notifying Applicant of the existence of Opposer Registration, protesting

Applicant's use of the mark "Create What's Next" and demanding the Applicant and any of its affiliated entities or agents cease and desist from using the mark "Create What's Next" or any mark confusingly similar with any services related to the custom manufacture of framed fabric displays for use in architectural retail, exhibits and events. A copy of the letter is attached as Exhibit C.

12. As of the date of this document, no response has been received from the Applicant regarding Opposer demands stated in the Cease and Desist letter.

V. CLAIMS

A. LIKELIHOOD OF CONFUSION

13. Opposer's Mark is distinctive of Opposer's Goods and Services.

14. For each of the services listed on Opposer's Certificate of Registration of the Opposer's Mark, Opposer has continuously used Opposer's Mark in connection with Opposer's Services since the first use date claimed in such registration.

15. Opposer has not abandoned Opposer's Mark in connection with any of Opposer's Services.

16. As a result of its extensive use and promotion of Opposer's Mark the mark has developed substantial goodwill and is a strong mark.

17. Opposer's Mark and Applicant's Mark - WHAT'S NEXT and CREATE WHAT'S NEXT- use the words WHAT'S NEXT, which make the marks very similar in appearance, sound and connotation. The slight difference at the beginning portion of the Applicant's Mark does not differentiate the connotation and overall impression of the marks. The similarity between the marks is likely to create confusion for the consumer as to the source of origin of the good and service related to the subject marks.

18. Opposer's Services are distributorship and retail store services featuring architectural interior finishing products; namely, wood, vinyl, stone and bamboo flooring products; hand-crafted acrylic and vinyl surface covering products; wood, glass and metal wall covering products; and wood, glass and metal ceiling covering products

19. Applicant's goods are "custom manufacture of framed fabric displays for use in architectural retail, exhibits, and events"

20. Applicant's Mark so resembles Opposer's Mark, that when a consumer is confronted with the closely related goods and services of the parties, that consumer is likely to have the mistaken belief that the goods and services originate from the same source. In addition, Applicant's Mark is so similar to Opposer's mark that when used in connection with the Applicant's goods it may mistakenly suggest to a consumer an affiliation, connection or association of Applicant and Applicant's Goods with Opposer and Opposer's Goods and Services, with consequent injury to Opposer.

21. The registration of Applicant's Mark would prevent Opposer from exercising exclusive control over the goodwill and reputation associated with Opposer's Mark. Therefore, the registration of Applicant's Mark would damage and injure Opposer.

22. Opposer will also be damaged by registration of Applicant's Mark because such registration will support statutory rights for Applicant in violation and derogation of Opposer's prior, superior and exclusive rights in Opposer's Mark.

B. DILUTION

23. Opposer's Mark has become distinctive of the Opposer's Services since it was first used in commerce in March 2004.

24. Registration of Applicant's Mark is likely to lessen the capacity of Opposer's Mark to identify and distinguish Opposer's Service in the marketplace and is likely to dilute the strength of Opposer's Mark.

VI. REQUEST FOR RELIEF

WHEREFORE, Opposer request that the mark in Application Serial No. 7865411 be denied registration in class 40.

Dated: October 11, 2006

Respectfully submitted,
Mirsky & Block, PLLC

By: 

Sonia E. Lopez Gonzalez, Esq.
Attorney for Opposer
303 South Broadway, Suite 222
Tarrytown, New York 10591
Tel: (914) 332 4700
Fax: (914) 332 4847

EXHIBIT A

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".

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

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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.

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,079,109

Registered Apr. 11, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHAT'S NEXT

ARCHITECTURAL SYSTEMS, INC. (NEW YORK CORPORATION)
150 W. 25TH STREET, EIGHTH FLOOR
NEW YORK, NY 10001

FOR: DISTRIBUTORSHIP AND RETAIL STORE SERVICES FEATURING ARCHITECTURAL INTERIOR FINISHING PRODUCTS; NAMELY, WOOD, VINYL, STONE AND BAMBOO FLOORING PRODUCTS; HAND-CRAFTED ACRYLIC AND VINYL SURFACE COVERING PRODUCTS; WOOD, GLASS AND METAL WALL COVERING PRODUCTS; AND WOOD, GLASS AND METAL CEILING COVERING

PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-24-2004; IN COMMERCE 3-24-2004.

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

SER. NO. 78-560,498, FILED 2-4-2005.

DOMINICK J. SALEMI, EXAMINING ATTORNEY

RECORDATION OF TRADEMARK REGISTRATIONS WITH UNITED STATES CUSTOMS AND BORDER PROTECTION

Please note that U.S. Customs & Border Protection (CBP), a bureau of the Department of Homeland Security, maintains a trademark *recordation* system for marks registered at the United States Patent and Trademark Office. Parties who register their marks on the Principal Register may record these marks with CBP, to assist CPB in its efforts to prevent the importation of goods that infringe registered marks. The recordation database includes information regarding all recorded marks, including images of these marks. CBP officers who actively monitor imports to prevent the importation of goods bearing infringing registered marks can view the recordation database at each of the ports of entry where these officers work.

Information about how to obtain a recordation, and about CBP's Intellectual Property Rights border enforcement program, is available at CBP's web site, www.cbp.gov.

EXHIBIT B



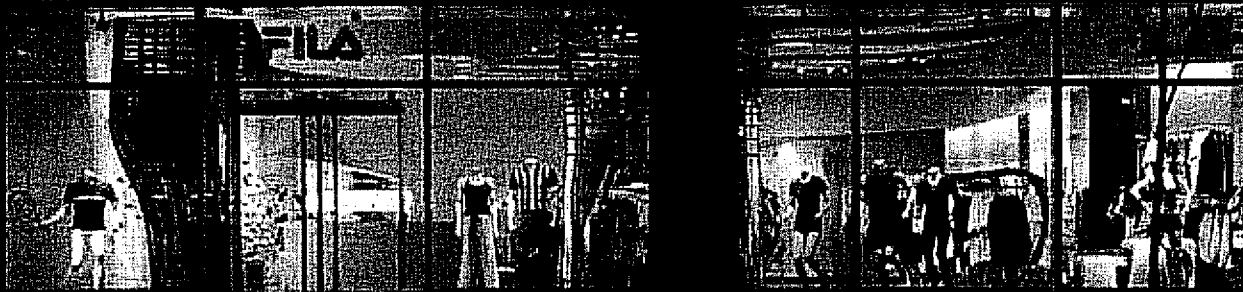
Image: George DeMott

create what's next

eventscape

Eventscape manufactures the chrome columns, one piece frame, fabric ceiling and double curved digitally printed curved faced wall.

www.eventscape.net



1 416.231.8855 1 416.231.7225 info@eventscape.net

EXHIBIT C

MIRSKY & BLOCK, PLLC

ATTORNEYS AT LAW
303 SOUTH BROADWAY, SUITE 222
TARRYTOWN, NEW YORK 10591
914-332-4700 TEL
914-332-4847 FAX

ELLIS R. MIRSKY
RICHARD J. BLOCK*

SONIA E. LOPEZ GONZALEZ

* ADMITTED IN NY AND NJ

SONIA@MIRSKYBLOCK.COM

VIA FAX: 416 231 7225
PAGES: 8

July 27, 2006

Gareth Brennam
Eventscape Inc.
4 Bestobell Road
Toronto M8W 4H3
Canada

Re: Cease and Desist

Dear Mr. Brennam:

We represent Architectural Systems, Inc., ("ASI"), owner of the service mark WHAT'S NEXT®, which is registered with the United States Patent and Trademark Office ("USPTO") under Registration No. 3079109 for International Class 35. ASI has owned and used the service mark WHAT'S NEXT® since March 2004 in connection with distributorship and retail store services featuring architectural interior finishing products; namely, wood, vinyl, stone and bamboo flooring products; hand-crafted acrylic and vinyl surface covering products; wood, glass and metal wall coverings products; and wood, glass and metal ceiling covering products. ASI's federal registration has been in effect since April 2006. A copy of the Certificate of Registration of the service mark WHAT'S NEXT® is attached for your reference as Exhibit A.

We have been advised by our client that Eventscape Inc. ("Eventscape") is using the mark "CREATE WHAT'S NEXT" in connection with the custom manufacture of framed fabric displays for use in architectural retail, exhibits and events. Eventscape's use of the mark "CREATE WHAT'S NEXT" unfairly capitalizes on the goodwill and reputation embodied in ASI's service mark WHAT'S NEXT®. The public is likely to believe that your use of the mark "CREATE WHAT'S NEXT" is somehow authorized or sponsored by or is somehow affiliated with ASI's service mark.

This type of deceptive trade practice constitutes trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), a false designation of the original and false description under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). The Lanham Act provides numerous remedies for trademark infringement and dilution, including, but not limited to, preliminary and permanent injunctive relief, money damages, a defendant's profits, provisions for the destruction or confiscation of

MIRSKY & BLOCK, PLLC

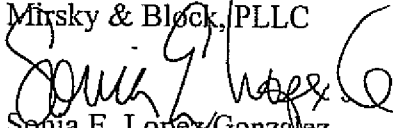
infringing products and promotional materials, and where intentional infringement is shown, attorneys' fees and possible treble money damages.

This letter is being sent to protest Eventscape's continued, unauthorized use of a mark that is confusingly similar to ASI's service mark WHAT'S NEXT®. We demand that Eventscape and any of its affiliated entities or agents CEASE and DESIST from using the mark "CREATE WHAT'S NEXT" or any mark confusingly similar to WHAT'S NEXT® on any products, advertisements, or in connection with any services related to the custom manufacture of framed fabric displays for use in architectural retail, exhibits and events.

We are aware that Eventscape is in the process of applying for registration of the mark "CREATE WHAT'S NEXT" with the USPTO. Please be advised that once the USPTO publishes the mark "CREATE WHAT'S NEXT" for opposition we intend to file a letter opposing its registration as it is confusingly similar to our registered mark WHAT'S NEXT ®.

ASI prefers to resolve this matter without taking legal action, but the service mark WHAT'S NEXT ® is of great value and importance to ASI and it is prepared to file a lawsuit if necessary to protect its trademark rights and business.

Eventscape may avoid legal action by having an authorized representative sign this letter where indicated below and return the signed letter to me on or before July 31, 2006. Should we not receive a positive response from you by August 4, 2006, we shall proceed with all steps necessary to protect our client's goodwill.

Very truly yours,
Mirsky & Block, PLLC

Sonia E. Lopez Gonzalez

The undersigned covenants to take the following actions immediately: (i) Eventscape Inc. and any of its affiliated entities or agents will immediately cease all use of the mark "CREATE WHAT'S NEXT" or any mark confusingly similar to WHAT'S NEXT®; and (ii) Eventscape Inc. and any of its affiliated entities or agents, agree to rescind and refrain from any further advertising bearing the mark " CREATE WHAT'S NEXT " or any mark confusingly similar to WHAT'S NEXT®.

AGREED TO AND ACCEPTED BY AS OF THE DATE OF THIS LETTER:

Eventscape Inc.

By: _____

Name: _____

Title: _____

MIRSKY & BLOCK, PLLC

/att: as stated

cc: Melissa Matlins
Marketing Director
Architectural Systems, Inc.
150 W. 25th Street, 8th Floor
New York, NY 10001
Fax: 212.206.1736

The United States of America



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Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

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