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

Proceeding	91177061
Party	Defendant Kinsella, Jason Kinsella, Jason 63 via pico plaza san clemente, CA 92672
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Opposition No. 91177061

In The Matter of Application Serial No. 78/940,651

THE GLIDDEN COMPANY Opposer,	)	MARK: rhinoultra
	)	CLASS: 01
vs.	)	GOODS: Adhesives for general industrial use
Kinsella, Jason INDIVIDUAL Applicant	)	FILED: June 30, 2006

ANSWER TO NOTICE OF OPPOSITION

Jason Kinsella ("Applicant"), by and through counsel, states as follows in answer to the Notice of Opposition filed by The Glidden Company ("Opposer") in the captioned proceeding relating to Application Serial No. 78/940,651 (the "Application"):

In response to the first unnumbered paragraph of the Notice of Opposition, Applicant denies that Opposer will be damaged by registration of the mark set forth in the Application ("Applicant's Mark").

Applicant answers the numbered paragraphs of the Notice of Opposition as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies the same.

2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of Paragraph 2 and therefore denies the same. Applicant admits that the filing and first use dates as stated in the Notice of Opposition reflect the dates stated in Exhibit "A." Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in the second sentence of Paragraph 2, as well as the truth of the dates as stated in Exhibit "A," and therefore denies the same.

3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of Paragraph 3 and therefore denies the same. Applicant admits that the filing and first use dates in the Notice of Opposition reflect the dates stated in Exhibit "B." Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of Paragraph 3, as well as the truth of the dates as stated in Exhibit "B," and therefore denies the same.

4. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 4 and therefore denies the same.

5. Applicant admits the allegations set forth in the first three sentences of Paragraph 5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in the forth sentence of Paragraph 5 and therefore denies the same. Applicant admits that consumers will be confused by Opposer's use of Applicant's mark. Applicant denies all other allegations set forth in the fifth sentence of Paragraph 5.

6. Applicant denies the specific allegations set forth in Paragraph 6, but admits that confusion will be likely if Opposer is allowed to use Applicant's rhino brand as its trademark.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 7 and therefore denies the same.

8. Applicant admits the allegations set forth in the first sentence of Paragraph 8 to the extent that "confusion would be caused to purchasers and consumers of the products by reason of the similarity between Applicant's...trademark and Opposer's trademark...and by reason of the similarity and relatedness of products used, manufactured or sold by Opposer and Applicant, and identified by said respective marks." Applicant denies the allegation that Applicant's mark is an intent-to-use trademark. Applicant denies all other allegations set forth in Paragraph 8.

9. Applicant denies the allegations set forth in Paragraph 9.

10. Applicant denies the allegations set forth in Paragraph 10.

11. Applicant denies the allegations set forth in Paragraph 11.

Applicant denies all allegations set forth in COUNT I and COUNT II, set forth in Opposer's Notice of Opposition.

Applicant further denies that Opposer is entitled to the relief which it seeks. In all other respects, to the extent that any allegation in the Notice of Opposition has not been specifically admitted herein, such allegation is hereby denied.

AFFIRMATIVE DEFENSES

1. Applicant is the owner of the "Rhino" family of trademarks. These include:

- "RHINO GLUE" (S/N 78/916312) for adhesives for household purposes. First Use date at least as early as: June 29, 2001;
- "RHINOFIX" (Reg. No. 3093841) for adhesives for stationery or household purposes. First Use Date at least as early as March 17, 2004.
- "rhino fix glue" (S/N 78/938162) for adhesives for general industrial use. First Use date at least as early as: March 17, 2004;
- "rhinoultra" (S/N 78/940651) for adhesives for household purposes First Use date at least as early as: November 6, 2005;
- "rhinoultra" (S/N 78/940651) for adhesives for general industrial use. First Use date at least as early as: November 6, 2005;
- Rhino Glue logo (S/N 77/182,369) for adhesives for household, commercial and industrial use. First Use date at least as early as: November 6, 2005;
- "rhinomax" (S/N 78/940590) for adhesives for general industrial use. First Use date at least as early as: January 13, 2006; and
- "Rhino Max Glue" (S/N 77/127723) for adhesives for general industrial use. First Use date at least as early as: January 13, 2006.

The first use dates for every mark in Applicant's "Rhino" family of trademarks, including the trademark in Application Serial No. 78/940,651, predate those of the marks on which Opposer basis its Notice of Opposition. Specifically, the first use date stated by Opposer for its

"Rhino Ultra Glue" and "Rhino Ultra" marks is February 24, 2006. Thus, Opposer is the junior user and is not entitled to the relief sought.

2. Because the first use date of Applicant's mark predates that of Opposer's marks, Opposer expressly admits through the allegations set forth in its Notice of Opposition that its marks will result (and have resulted) in consumer confusion and damage to Applicant.

3. Based on information and belief, prior to filing the Notice of Opposition, Opposer had actual knowledge of Applicant's prior use of the mark at issue. Therefore, Opposer's filing of the Notice of Opposition is in bad faith.

4. Opposer's claims for relief are barred by the doctrine of unclean hands because Opposer had actual notice of Applicant's use of its "Rhino" family of trademarks before it used and filed applications for its "Rhino Ultra" and "Rhino Ultra Glue" marks.

Opposer is a large company with many resources. It admits as much in its Opposition wherein it states, "Opposer is a well known manufacturer and seller of various paint, coating, adhesive, caulk and sealant products for industrial, commercial, and consumer use through various channels including its own stores which sell all types of painting accessories throughout the country." See Paragraph 1. With all of its resources and experience, Opposer must have researched the word "Rhino" for glue before it invested substantial sums into marketing and labeling its products with the Rhino name.

Even the most cursory search for "Rhino" and "glue" on the Internet results in Applicant's website, which is www.**rhinoglue**.com. Applicant has owned this website since at least June 2001. The website was active and functional substantially before Opposer alleges it first started using its rhino mark in February 2006. From these facts one will certainly infer that that Opposer knew of Applicant's use of the "Rhino" family of marks prior to its use, and discovery will certainly prove that Opposer began using its marks in bad faith, assuming that with its greater resources it could simply squeeze Applicant out of the marketplace.

As another example of Opposer's unclean hands, Applicant expressly alerted Opposer of Applicant's prior use of the "Rhino" family of trademarks. On a July 21, 2006, Applicant sent

Opposer an email stating: "Is it true you guys are coming out with a glue called Rhino Ultra Glue? If so we might have a trademark infringement on our adhesive trademark."

Without regard for Applicant's rights in the "RHINO GLUE," "Rhino Fix Glue" and "rhinoultra" brands, and only *3 days* after his email, on July 24, 2006 Opposer filed a trademark application to register "rhino ultra glue." On July 28, 2006 Opposer filed an application to register its Rhino Ultra Glue logo. And on August 4, 2006, Opposer filed an application to register "rhino ultra." The implications of Opposer's tactics are apparent and Opposer should be denied relief.

5. Opposer's claims for relief are barred by the doctrine of laches.

6. Applicant presently has insufficient knowledge or information upon which to form a belief as to whether Applicant may have other, yet unstated, affirmative defenses available. Therefore, Applicant reserves the right to assert additional affirmative defenses in the event that discovery indicates that they would be appropriate.

WHEREFORE, Applicant prays for relief as follows:

1. That the Opposition be dismissed with prejudice;

2. That Applicant be awarded reasonable costs and attorneys' fees; and

3. That Applicant be awarded such other and further relief as the Trademark Trial and Appeal Board deems just and proper.

DATED: June 1, 2007

LEWITT, HACKMAN, SHAPIRO,
MARSHALL & HARLAN

By: _____
NICHOLAS KANTER
Attorneys for Jason Kinsella, Applicant

Certificate of Service

I hereby certify that a copy of the foregoing Answer to Opposition No. 91177061 was mailed first-class mail prepaid, to The Glidden Company, attention Kenneth Stachel, Esq., 15885 West Sprague Road, Strongsville, OH 44136, this 1st day of June, 2007.

DATED: June 1, 2007

LEWITT, HACKMAN, SHAPIRO,
MARSHALL & HARLAN

By: _____
NICHOLAS KANTER
Attorneys for Jason Kinsella, Applicant