

ESTTA Tracking number: **ESTTA139423**

Filing date: **05/08/2007**

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	IAQ, Inc.		
Entity	Corporation	Citizenship	Georgia
Address	5555 Oakbrook Parkway Suite 660 Atlanta, GA 30093 UNITED STATES		

Attorney information	Thomas R. Noel, Esq. Noel & Gyorgy LLP 50 South Main Street Providence, RI 02903 UNITED STATES tnoel@lawnoel.com Phone:401-272-7400
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Applicant Information

Application No	76664541	Publication date	04/10/2007
Opposition Filing Date	05/08/2007	Opposition Period Ends	05/10/2007
Applicant	ADVANCED CLEANING AND ENVIRONMENTAL SERVICES, INC. 2826 FORSYTH ROAD UNIT 300 WINTER PARK, FL 32792 UNITED STATES		

Goods/Services Affected by Opposition

Class 037. All goods and seVICES in the class are opposed, namely: AIR DUCT CLEANING SERVICES
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1720661	Application Date	01/21/1992
Registration Date	09/29/1992	Foreign Priority Date	NONE
Word Mark	DUCT DOCTOR		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1990/09/28 First Use In Commerce: 1990/09/28 cleaning ducts for heating and air conditioning systems

Attachments	Opposition 5.8.07.pdf (8 pages)(219289 bytes)
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Signature	/Thomas R. Noel/
Name	Thomas R. Noel, Esq.
Date	05/08/2007

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

In the matter of Application Serial No. 76/664,541, filed August 14, 2006
Published in the Official Gazette on April 10, 2007
For the mark AIR DUCK DOCTOR

IAQ, INC.,
Opposer,

v.

Opposition No.: _____

ADVANCED CLEANING AND
ENVIRONMENTAL SERVICES, INC.,
Applicant

NOTICE OF OPPOSITION

To the Assistant Commissioner for Trademarks:

IAQ, Inc., a corporation organized and existing under the laws of the State of Georgia, whose principal address is 5555 Oakbrook Parkway, Atlanta, Georgia (“IAQ” or “Opposer”) believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for Opposition are as follows:

1. IAQ is a franchisor of ventilation duct cleaning businesses that operate under the mark DUCT DOCTOR. IAQ currently has more than fifty (50) franchises nationwide.
2. IAQ franchisees provide air duct cleaning and maintenance services to business, industrial, government, and individual clients, and provide such services at educational, health care, and government buildings, at military facilities, and at private residences.

3. In connection with its national business operations, IAQ (itself or through its predecessor) has continuously used in interstate commerce the DUCT DOCTOR mark since September, 1990.

4. On January 21, 1992, IAQ's predecessor duly filed and applied for registration of the words "Duct Doctor" with the United States Patent and Trademark Office. The mark DUCT DOCTOR was registered on the Principal Register of the United States Patent and Trademark Office, Reg. No. 1,720,661, on September 29, 1992 (the "DUCT DOCTOR Mark"). The DUCT DOCTOR Mark was granted for use in connection with "Cleaning ducts for heating and air conditioning systems," in Class 35.

5. IAQ is the owner by assignment of all rights in and to the DUCT DOCTOR Mark. The registration was renewed, in the name of IAQ, Inc., in January, 2003.

6. The DUCT DOCTOR federal trademark registration is valid, subsisting and has become incontestable pursuant to Section 15 of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1065. A true and accurate copy of a printout from the United States Patent and Trademark Office's Trademark Electronic Search System evidencing the registration is attached hereto as *Exhibit A*.

7. In approximately 1997, IAQ registered the Internet domain name "ductdoctor.com," and thereafter posted at that URL an Internet website accessible to the world by way of the World Wide Web. Opposer's website contains and utilizes, among other features, the DUCT DOCTOR Mark and depicts the DUCT DOCTOR Mark used on, among other implements of Opposer's trade, a custom-built service vehicle.

8. IAQ expends substantial sums of money each year advertising and promoting its business through and by way of the careful use of its DUCT DOCTOR Mark throughout

the United States. IAQ permits its franchisees to use the DUCT DOCTOR Mark in connection with the operation of their businesses under carefully controlled conditions and only pursuant to the terms of a written license.

9. Opposer's unique duct cleaning system utilizes marked, proprietary trucks and cleaning equipment and instructs and requires the use of methods that meet or exceed standards of the National Institute of Safety and Health ("NIOSH") and the industry-standard National Air Duct Cleaners Association ("NADCA"). IAQ offers its franchisees the benefit of use of its valuable trademark and its proven business system, and all IAQ franchisees are required to display and operate under the DUCT DOCTOR Mark.

10. By reason of its extensive and continuous promotion and use of the DUCT DOCTOR Mark, as well as the wide distribution of goods and services bearing these marks, the facilities management industry and the public at large have come to recognize the DUCT DOCTOR Mark as signifying IAQ and its operations. Accordingly, IAQ has generated extensive goodwill in connection with the offering of goods and services under its DUCT DOCTOR Mark, and the DUCT DOCTOR Mark is an extremely valuable commercial asset.

11. By virtue of the long history of IAQ's use of the DUCT DOCTOR Mark, the wide distribution, advertising, and promotion of IAQ's DUCT DOCTOR branded services, the DUCT DOCTOR Mark has become famous throughout the United States to both the facilities management industry and the public at large. The DUCT DOCTOR Mark is universally recognized and relied on as identifying IAQ as the sole source of its goods and services and as distinguishing them from the goods and services of others.

12. Notwithstanding IAQ's longstanding rights in and to the DUCT DOCTOR Mark, on or about August 14, 2006, sixteen years after first use of the DUCT DOCTOR

Mark in commerce, Applicant filed an intent-to-use application for registration of the mark AIR DUCK DOCTOR, for use in connection with “air duct cleaning services,” in Class 37. Applicant’s application was assigned Serial No. 76/664,541 and the mark was published for opposition in the Official Gazette on April 10, 2007.

13. The words “DUCK” and “DUCT” are more than phonetically similar; to the average listener, they are nearly indistinguishable. The use of the words “DUCK DOCTOR” creates a likelihood of confusion with the DUCT DOCTOR Mark and IAQ’s business.

14. The similarity of Applicant’s proposed AIR DUCK DOCTOR registration and the similarity of Applicant’s goods and services to those of the Opposer suggest that Applicant is planning to trade off the goodwill that Opposer has developed in its DUCT DOCTOR Mark. Accordingly, consumers will be likely to believe, falsely, that Applicant’s goods and services are authorized, sponsored or approved by Opposer or that Opposer is otherwise affiliated with Applicant, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a). Applicant’s registration and use of the AIR DUCK DOCTOR designation will greatly damage Opposer because this designation is confusingly similar to Opposer’s DUCT DOCTOR Mark, and Applicant’s use of the designation in connection with duct cleaning services is likely to cause confusion, deception, and/or mistake among the consuming public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Opposer will be further damaged by the registration sought by Applicant because the registration will dilute the distinctive and famous quality of the DUCT DOCTOR Mark in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer prays that this Opposition be sustained and that Applicant be denied registration of the mark contained in Serial No. 76/664,541 for the Class of goods


and services listed in the application.

All communication should be addressed to Opposer's legal counsel, Noel & Gyorgy LLP, at the below stated address.

Dated: Providence, Rhode Island
May 8, 2007

Respectfully Submitted,

NOEL & GYORGY LLP

By 
Thomas R. Noel, Esq.
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ATTORNEYS FOR OPPOSER
IAQ, INC.

EXHIBIT A



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List At: OR to record: **Record 5 out of 5**

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Typed Drawing

Word Mark DUCT DOCTOR
Goods and Services IC 035. US 101. G & S: cleaning ducts for heating and air conditioning systems. FIRST USE: 19900928. FIRST USE IN COMMERCE: 19900928
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 74238543
Filing Date January 21, 1992
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition July 7, 1992
Registration Number 1720661
Registration Date September 29, 1992
Owner (REGISTRANT) DUCT DOCTOR, INC. CORPORATION GEORGIA 1925 Spalding Drive Atlanta GEORGIA 30350
 (LAST LISTED OWNER) IAQ, INC. CORPORATION By change of name from GEORGIA 1925 SPALDING DRIVE ATLANTA GEORGIA 30350
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record WILLIAM BREWSTER
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DUCT" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030108.
Renewal 1ST RENEWAL 20030108
Live/Dead Indicator LIVE

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ATLANTA, GEORGIA 30350**Correspondent:**JONES & ASKEW LLP
ROGER T. FROST, ESQ.
37TH FLOOR, 191 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30303

Search Results as of: 05/08/2007 02:02 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350, v.2.0.1
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