

ESTTA Tracking number: **ESTTA179750**

Filing date: **12/10/2007**

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	SalVitalie
Granted to Date of previous extension	12/09/2007
Address	6 South Linden Avenue # 9 South San Francisco, CA 94080 UNITED STATES

Correspondence information	Susan Marsillo, Esq. Attorney Feldman Gale, P. A. One Biscayne Tower, 30th Floor 2 South Biscayne Blvd. Miami, FL 33131 UNITED STATES Trademarks@FeldmanGale.com Phone:305/358-5001
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**Applicant Information**

Application No	76657886	Publication date	06/12/2007
Opposition Filing Date	12/10/2007	Opposition Period Ends	12/09/2007
Applicant	911 Restoration Enterprise, Inc. 15127 Califa Street Van Nuys, CA 91411 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 037. First Use: 2003/03/08 First Use In Commerce: 2003/03/08 All goods and services in the class are opposed, namely: CONSTRUCTION SERVICES, NAMELY BUILDING RESTORATION AND RESTORATION OF BUILDINGS AFTER FIRE DAMAGE
Class 040. First Use: 2003/03/08 First Use In Commerce: 2003/03/08 All goods and services in the class are opposed, namely: MOLD REMEDIATION

**Grounds for Opposition**

The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
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Attachments	Notice of Opposition for 911 RESTORATION.pdf ( 4 pages )(26527 bytes )
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**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by Overnight Courier on this date.

Signature	/sm/
Name	Susan Marsillo, Esq.
Date	12/10/2007

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

Sal Vitalie,	)	In the Matter of Application Serial No.:
	)	76/657,886
Opposer,	)	
	)	
v.	)	Mark: 911 RESTORATION
	)	
911 Restoration Enterprise, Inc.,	)	
	)	
Applicant.	)	
	)	
	)	

**NOTICE OF OPPOSITION**

Opposer, Sal Vitalie (“Opposer”), individually, residing at 6 South Linden Avenue, # 9, So. San Francisco, California 94080, believes that he would be damaged by registration of the mark 911 RESTORATION, Serial No. 76/657,886, filed by 911 Restoration Enterprise, Inc. (“Applicant”), published in the Official Gazette on June 12, 2007 (“Opposed Application”), and hereby opposes registration of same.

As grounds for the opposition, Sal Vitalie alleges as follows:

1. On or about April 5, 2006, Applicant filed a use-based application for the mark 911 RESTORATION in International Class 37 in connection with “construction services, namely building restoration and restoration of buildings after fire damage” and in International Class 40 in connection with “mold remediation,” as amended, herein opposed.

2. On or about March 7, 2007, Applicant disclaimed the word “RESTORATION,” thereby agreeing to obtain exclusive rights to use “911” in connection with “construction services, namely building restoration and restoration of buildings after fire damage” and “mold remediation.”

3. Opposer believes that Applicant's mark is deceptively misdescriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1) in connection with Applicant's services and would be damaged by registration of the mark 911 RESTORATION for use in connection with "construction services, namely building restoration and restoration of buildings after fire damage" and "mold remediation."

4. Opposer is engaged in the sale of the same or related services and Opposer has an interest in using the term in its business.

5. Applicant's mark, when used on or in connection with the services of Applicant deceptively misdescribes them because the use of the mark 911 RESTORATION in connection with "construction services, namely building restoration and restoration of buildings after fire damage" and "mold remediation" is not the type of emergency related to the use of the term "911."

6. The three digit number "911" is commonly used by the public to report emergencies, namely, a situation that poses an inherent danger or threat to life or limb.

7. It is nationally-recognized as the number to dial to report an emergency, since the late 1930's, when it was first introduced in the United States.

8. Thus, Consumers are likely to believe the misrepresentation and Applicant should not be permitted to register the phrase 911 RESTORATION for use in connection with the services identified in the application.

9. Because of the deceptively misdescriptive nature of the mark 911 RESTORATION, Applicant's use of 911 RESTORATION in connection with "construction services, namely

building restoration and restoration of buildings after fire damage” and “mold remediation” deceptively misrepresents the services and consumers are likely to believe the misrepresentation. Therefore, Applicant’s mark is not entitled to registration pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

WHEREFORE, Opposer respectfully requests that this Notice of Opposition be granted and that Application Serial No. 76/657,886 be denied registration and that the Honorable Trademark Trial and Appeal Board grant such other and further relief as it may deem just in the circumstances.

Dated: December 10, 2007

Respectfully submitted,

Sal Vitalie, individually

By:                     /sm/                      
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Susan Marsillo, Florida Bar No.: 0975745  
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