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

Proceeding	91181708
Party	Defendant RITTAL RES Electronic Systems GmbH & Co . KG
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

I.R.C.A. SPA INDUSTRIA RESISTENZE)	
ED AFFINI,)	
)	
Opposer,)	
)	
v.)	
)	Opposition No. 91181708
RITTAL RES ELECTRONIC SYSTEMS)	Serial No. 79/024632
GMBH & CO. KG,)	
)	Mark: RITCA
Applicant.)	Published: September 4, 2007
)	
)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, RITTAL RES Electronic Systems GmbH & Co. KG, by his attorneys hereby responds to the allegations set forth in the Notice of Opposition filed by Opposer, I.R.C.A. SpA Industria Resistenze Corazzate ed Affini, as follows:

COUNT ONE

1. Applicant admits the allegations set forth in Paragraph 1.
2. Applicant admits the allegations set forth in Paragraph 2.
3. The allegations set forth in Paragraph 3 of the Notice of Opposition are denied.
4. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition, and therefore, denies said allegations. Applicant admits that the United States Patent and Trademark Office TESS database and Assignment database indicate ownership by Opposer of the trademark registrations identified in Paragraph 4 of the Notice of Opposition. However, without discovery, Applicant cannot

ascertain whether the registrations are “valid, subsisting, and in full force and effect,” and therefore, denies the remaining allegations in Paragraph 5 of the Notice of Opposition.

5. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition, and therefore, denies said allegations.

6. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition, and therefore, denies said allegations.

7. The allegations set forth in Paragraph 7 of the Notice of Opposition are denied.

8. Applicant admits in the course of their business the Applicant’s products include “electrical equipment” and “heating equipment.” Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition regarding whether Opposer’s products include “electrical resistors” and “heating equipment”, and therefore, denies said allegations. The allegation set forth in Paragraph 8 stating “consumers are likely to view Applicant’s product as Opposer’s product or a line extension of Opposer’s product marketed under a confusingly similar mark” is denied.

9. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 9 of the Notice of Opposition, and therefore, denies said allegations.

10. Applicant admits that if it is granted a registration, it would serve as prima facie exclusive right to use the mark “RITCA” on the goods identified in Application Serial No. 79/024632, but denies the remainder of the allegations set forth in Paragraph 10 of the Notice of Opposition.

11. The allegations set forth in Paragraph 11 of the Notice of Opposition are denied.

12. The allegations set forth in Paragraph 12 of the Notice of Opposition are denied.

13. The allegations set forth in Paragraph 13 of the Notice of Opposition are denied.

14. The allegations set forth in Paragraph 14 of the Notice of Opposition are denied.

AFFIRMATIVE DEFENSES

15. As a first and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's marks are weak due to the fact that numerous third party registrations and applications for registration exist for marks containing the term "RICA," including "RICA," by itself or joined with additional words. Therefore, Opposer's marks should be entitled to a limited scope of protection.

16. As a second and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that no likelihood of confusion, mistake or deception exists between Applicant's mark and Opposer's marks. Any similarity, if at all, among Applicant's mark and Opposer's marks are in the term "RICA," which has been registered by numerous third parties; thus Opposer cannot base any similarity solely on the term "RICA."

17. As a third and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant's mark is not confusingly similar in appearance, sound or commercial meaning to Opposer's marks, especially in light of the fact that "RICA" is Spanish for "rich" and "RITCA" has no apparent meaning.

18. As a fourth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant's mark is not confusingly similar to Opposer's marks because the respective marks used in connection with each party's respective goods and services, including promotional material and packaging, are sufficiently distinct.

19. As a fifth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that marks containing the term "RICA" or "RICH" alone or with additional wording, are commonly registered and used by many third-parties for similar products and services in similar channels of commerce and cannot be exclusively claimed as owned or for use by Opposer.

20. As a sixth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Opposer's marks are not distinctive to Opposer.

21. As a seventh and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant's use of Applicant's mark has not diluted, blurred or tarnished Opposer's marks, reputation or good will, and Opposer has not shown any injury to Opposer's business reputation or quality of goods or services relating thereto.

22. As an eighth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that there is no likelihood of confusion because the United States Patent and Trademark Office did not cite Opposer's marks as a bar or refusal to registration of Applicant's mark after considering the reality of the marks existing simultaneously in the marketplace.

23. As a ninth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant adopted and created its mark in good faith and without any intent to confuse or deceive the public.

24. As a tenth and separate affirmative defense, Applicant is informed and believes, and

on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant's use of Applicant's mark has not interfered with or damaged Opposer in any manner.

25. As an eleventh and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of laches.

26. As a twelfth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by reason of its own unclean hands.

27. As a thirteenth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of estoppel.

28. As a fourteenth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of acquiescence.

29. As a fifteenth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of waiver.

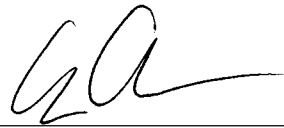
30. There may be additional affirmative defenses to the claims alleged by Opposer that are currently unknown to Applicant. Therefore, Applicant reserves the right to amend its Answer to allege additional affirmative defenses in the event discovery of additional information indicates they are appropriate.

WHEREFORE, Applicant requests that the present Notice of Opposition be dismissed with prejudice.

Respectfully Submitted,

Dated as of: October 30, 2008

By: _____



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PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** has been served on Allison J. Gonzales, Attorney for Opposer, on October 30, 2008, via First Class U.S. Mail, postage prepaid to:

Allison J. Gonzales
Hamre, Schumann, Mueller & Larson P.C.
P.O. Box 2902
Minneapolis, MN 55402


Jessica Torres