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

Proceeding	91184081
Party	Defendant Roger Nelson Chipman
Correspondence Address	Alicia D. Gaddy Dungan & Associates, P.A. One Rankin Avenue, Third Floor Asheville, NC 28801 UNITED STATES agaddy@dunganlaw.com
Submission	Answer
Filer's Name	/ Alicia Gaddy/
Filer's e-mail	agaddy@dunganlaw.com
Signature	/ Alicia Gaddy/
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Attachments	Opposition Answer.pdf (5 pages)(180152 bytes)

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

In the Matter of Application Serial No.: 78/882,634
For the Mark: SHOO-FLY DRAGONEYE
Published in the Official Gazette on: January 15, 2008

Charles F. Hudson, Jr.,)	
)	Opposition No. 91184081
Opposer,)	
)	RESPONSE TO NOTICE
v.)	OF OPPOSITION
)	
Roger Nelson Chipman,)	
)	
Applicant.)	

NOW COMES Applicant Roger Nelson Chipman (hereinafter "Applicant"), by and through undersigned counsel, and responds to Opposer's Notice of Opposition as follows:

Answers to Individual Allegations:

With regard to Opposer's introductory paragraph(s), Applicant is without sufficient knowledge or information to admit to deny the Opposer's allegations regarding his address, and Applicant therefore denies any such allegations. Applicant further denies that Opposer will be damaged by registration of Applicant's mark SHOO-FLY DRAGONEYE ("Applicant's Mark,") U.S. Serial No. 78/882,634. Except as expressly admitted, all allegations in Opposer's introductory paragraph(s) are denied.

1. Admit.
2. Admitted that Applicant filed its application for U.S. Serial No. 78/882,634 under Section 1(b) intent to use. Admitted that no allegation of use had been filed as of the date that Opposed filed its Notice of Opposition.

3(a)(sic). Admitted that Opposer filed his application to register his alleged mark SHOO-FLY (word mark) on or about March 29, 2007, U.S. Serial No. 77/143,869, and that the Opposer stated in his application for registration that he has used the alleged mark SHOO-FLY in commerce on or in connection with "Insecticides for use in equine and bovine environments," International Class 5, as well as "Insecticide dispensing systems for animal environments, namely equine and bovine," International Class 7, and claimed in such application a date of first use of October 8, 1982. Except as expressly admitted, all allegations in Opposer's paragraph 3(a) are denied.

3(b)(sic). Admitted that Opposer filed his application to register his alleged mark SHOO-FLY (stylized) on or about March 30, 2007, U.S. Serial No. 77/144,541, and that the Opposer stated in his application for registration that he has used the alleged mark SHOO-FLY in commerce on or in connection with "Insecticides for use in equine and bovine environments," International Class 5, as well as "Insecticide dispensing systems for animal environments, namely equine and bovine," International Class 7, and claimed in such application a date of first use of October 8, 1982. Except as expressly admitted, all allegations in Opposer's paragraph 3(b) are denied.

4. Applicant is without knowledge to admit or deny Opposer's allegations regarding his date of first use, and these allegations are therefore denied.

5. Applicant does not have sufficient information to either admit or deny the allegations contained in Opposer's paragraph 5, and any such allegations are therefore hereby denied.

6. Applicant does not have sufficient information to either admit or deny the allegations contained in Opposer's paragraph 6, and any such allegations are therefore hereby denied.

7. Denied.

8. It is admitted that office actions issued by the U.S. Patent and Trademark Office, including those cited in Opposer's paragraph 8, speak for themselves. Except as expressly admitted, all allegations in Opposer's paragraph 8 are denied.

9. Denied.

10. It is admitted that Registration of U.S. Serial No. 78/882,634 would give Applicant prima facie exclusive right to use Applicant's Mark with respect to International Class 20, "plastic garden globes containing predatory insects for repelling other insects." Except as expressly admitted, all allegations in Opposer's paragraph 9 are denied.

First Affirmative Defense and Motion to Dismiss:

Opposer's Notice of Opposition fails to state any claim upon which relief can be granted pursuant to the Federal Rules of Civil Procedure, Rule 12(b)(6).

Second Affirmative Defense:

Applicant states as an affirmative defense that Opposer's Notice of Opposition is barred by laches, waiver, and estoppel.

Third Affirmative Defense

Applicant further states as an affirmative defense that Opposer failed to apply for registration of his alleged marks prior to Applicant's application for registration of Applicant's Mark, and further that Opposer failed to apply for registration of his alleged marks until nearly 26 years subsequent to his alleged first use of such alleged marks.


Additional Affirmative Defenses:

Applicant further states that he reserves any additional affirmative defense(s) which may be revealed during discovery or upon receipt of additional information from the Opposer.

WHEREFORE, for all of the above-stated reasons, Applicant prays that this matter be dismissed in its entirety, and that Applicant's Mark be allowed to be registered by the U.S. Patent and Trademark Office.

Dated: July 23, 2008

The Dungan Law Firm, P.A.


By: Alicia D. Gaddy
N.C. Bar No.: 35288
Attorneys for Applicant
One Rankin Ave., Third Floor
Asheville, NC 28801
Phone: (828) 254-4778
Fax: (828)- 254-6646
Email: agaddy@dunganlaw.com

CERTIFICATE OF TRANSMITTAL AND SERVICE:

I hereby certify that a copy of the attached "Response to Notice of Opposition" was filed via ESTTA on July 23, 2008 and that a true copy thereof was also served upon opposing counsel via first class mail as of July 23, 2008 at the address listed below.

Mr. Douglas Massinger
Massinger Law Offices
887 NE 100 St.
Ocala, FL 34479


Alicia D. Gaddy