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

Proceeding	91188948
Party	Defendant Beazer Homes Holdings Corp.
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Date	03/30/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WEYERHAEUSER COMPANY,)	
WEYERHAEUSER REAL ESTATE)	
COMPANY, PARDEE HOMES,)	
TRENDMAKER HOMES, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91188948
)	
BEAZER HOMES HOLDINGS CORP.)	Serial No.: 77/443152
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Applicant, Beazer Homes Holdings Corp. (“Applicant”), answers the Notice of Opposition filed by Weyerhaeuser Company, Weyerhaeuser Real Estate Company, Pardee Homes, Trendmaker Homes, Inc. (“Opposers”) as follows:

Applicant denies that Opposers will be damaged by registration of Applicant’s mark Serial No. 77/443152 for the mark ESMART HOMES as claimed in the preamble to the Notice of Opposition.

1. On information and belief, Beazer Homes Holdings Corp. is a Delaware corporation having a place of business at 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328 (hereinafter “Applicant”).

ANSWER: Applicant admits the allegations contained in Paragraph No. 1 of the Notice of Opposition.

2. Weyerhaeuser Real Estate Company is wholly owned by Weyerhaeuser Company. Weyerhaeuser Real Estate Company (hereafter “WRECO”) is the parent company of Trendmaker Homes, Inc. (hereafter “TMI”). WRECO is also the parent company of Pardee Homes (“Pardee”).

ANSWER: Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 2 of the Notice of Opposition and therefore denies the same.

3. Continuously, since long prior to any date upon which Applicant can rely, Opposers have used the marks EARTHSMART, SMARTCENTER GARAGE, SMARTCONSTRUCTION, SMARTSUITE, SMART TOUCHES, and LIVING SMART in association with residential construction services and building construction services.

ANSWER: Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 3 of the Notice of Opposition and therefore denies the same.

4. Pardee is the owner of U.S. Trademark Registration No. 3,058,763 for the mark EARTHSMART for residential building construction services. Said registration issued February 14, 2006, sets forth a date of first use of January 1, 2002, and is valid and subsisting.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that Pardee is the owner of U.S. Registration No. 3,058,763 for the mark EARTHSMART for residential building construction services and that the registration issued on February 14, 2006 and that such registration claims a date of first use of January 1, 2002. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 4 of the Notice of Opposition and therefore denies the same.

5. Pardee is the owner of U.S. Trademark Registration No. 3,057,277 for the mark EARTHSMART and Design for residential construction services. Said registration issued February 7, 2006, sets forth a date of first use of January 1, 2002, and is valid and subsisting.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that Pardee is the owner of U.S. Registration No. 3,057,2773 for the mark EARTHSMART and Design for residential construction services and that the registration

issued on February 7, 2006 and that such registration claims a date of first use of January 1, 2002. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 5 of the Notice of Opposition and therefore denies the same.

6. TMI is the owner of U.S. Trademark Registration No. 2,562,855 for the mark SMARTCENTER GARAGE for residential construction services, namely, providing customized garage design features in new homes. Said registration issued April 23, 2002, and is valid, subsisting, and incontestable.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that TMI is the owner of U.S. Registration No. 2,562,855 for the mark SMARTCENTER GARAGE for residential construction services namely, providing customized garage design features in new homes and that the registration issued on April 23, 2002. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 6 of the Notice of Opposition and therefore denies the same.

7. TMI is the owner of U.S. Trademark Registration No. 2,436,665 for the mark SMARTCONSTRUCTION for residential construction services, namely, providing custom roof and exterior siding and paint design features in new homes. Said registration issued March 1, 2001, and is valid, subsisting, and incontestable.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that TMI is the owner of U.S. Registration No. 2,436,665 for the mark SMARTCONSTRUCTION for residential construction services, namely, providing custom room and exterior siding and paint design features in new homes and that the registration issued on March 1, 2001. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 7 of the Notice of Opposition and therefore denies the same.

8. TMI is the owner of U.S. Trademark Registration No. 2,461,428 for the mark SMARTSUITE for residential construction services, namely, providing custom design features for the master bedroom and bathroom. Said registration issued June 19, 2001, and is valid and subsisting.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that TMI is the owner of U.S. Registration No. 2,461,428 for the mark SMARTSUITE for residential construction services, namely, providing custom design features for the master bedroom and bathroom and that the registration issued on June 19, 2001. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 8 of the Notice of Opposition and therefore denies the same.

9. TMI is the owner of U.S. Trademark Registration No. 2,436,664 for the mark SMARTTOUCHES for residential construction services, namely, providing custom interior design features in new homes. Said registration issued March 20, 2001, and is valid, subsisting, and incontestable.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that TMI is the owner of U.S. Registration No. 2,436,664 for the mark SMARTTOUCHES for residential construction services, namely, providing custom interior design features in new homes and that the registration issued on March 20, 2001. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 9 of the Notice of Opposition and therefore denies the same.

10. Pardee is the owner of U.S. Trademark Registration No. 2,631,476 for the mark LIVING SMART for building construction services, real estate development services. Said registration issued October 8, 2002, and is valid, subsisting, and incontestable.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that Pardee is the owner of U.S. Registration No. 2,631,476 for the mark

LIVING SMART for building construction services, namely, providing custom room and exterior siding and paint design features in new homes and that the registration issued on October 8, 2002. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 10 of the Notice of Opposition and therefore denies the same.

11. Pardee is the owner of U.S. Trademark Registration No. 2,631,473 for the mark LIVING SMART and Design for building construction services, real estate development services. Said registration issued October 8, 2002, and is valid, subsisting, and incontestable.

ANSWER: Applicant admits that the United States Patent and Trademark TARR records show that Pardee is the owner of U.S. Registration No. 2,631,473 for the mark LIVING SMART and Design for building construction services, real estate development services and that the registration issued on October 8, 2002. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph No. 11 of the Notice of Opposition and therefore denies the same.

12. Opposers will be damaged by the registration sought by Applicant insofar as the registration will be *prima facie* evidence of the validity of the registration, Applicant's ownership of the mark claimed by Application Serial No. 77/443,152, and Applicant's exclusive right to use the mark claimed by Application Serial No. 77/443,152, when, in fact, Applicant is not entitled to such rights by virtue of Opposers' prior rights in the marks EARTHSMART, SMARTCENTER GARAGE, SMARTCONSTRUCTION, SMARTSUITE, SMART TOUCHES, and LIVING SMART for residential construction services and building construction services sold, promoted and provided in the same channels of trade in which the services claimed by Application Serial No. 77/443,152 would be sold, promoted and provided.

ANSWER: Applicant admits that its registration would be *prima facie* evidence of the validity of the registration and Applicant's exclusive right to use the mark claimed by Application Serial No. 77/443,152. Applicant denies that it is not entitled to such

rights. Applicant denies the remaining allegations contained in Paragraph No. 12 of the Notice of Opposition.

13. The mark claimed by Application Serial No. 77/443,152, when used by Applicant in association with the services claimed by said application so resembles Opposer's marks EARTHSMART, SMARTCENTER GARAGE, SMARTCONSTRUCTION, SMARTSUITE, SMART TOUCHES, and LIVING SMART as to be likely to cause confusion, or to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

ANSWER: Applicant denies the allegations contained in Paragraph No. 13 of the Notice of Opposition.

14. Based upon the foregoing, registration of the mark shown by U.S. Application Serial No. 77/443,152 is likely to cause injury and damage to Opposers.

ANSWER: Applicant denies the allegations contained in Paragraph No. 14 of the Notice of Opposition.

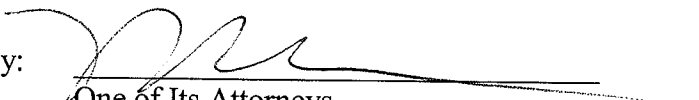
WHEREFORE, Applicant prays that the Notice of Opposition be dismissed and that its Application be approved for registration.

Dated: March 30, 2009

Respectfully submitted,

BEAZER HOMES HOLDINGS CORP.

By:


One of Its Attorneys

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CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being electronically transmitted, in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trial and Appeals (ESTTA) on March 30, 2009.

By: 

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on counsel for Opposer, Weyerhaeuser Company by mailing by U.S. Mail, postage prepaid, said copy on March 30, 2009 to:

Cindy L. Caditz, Esq.
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By: 