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

Proceeding	91194504
Party	Defendant Cimarron Lumber and Supply Company
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Date	05/24/2010
Attachments	Answer.pdf ( 5 pages )(170368 bytes )

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

In the Matter of United States Trademark Application:

Mark: Sutherland Lumber Company

Application No.: 77/784,368

Class No.: 035

**SUTHERLAND CENTENNIAL LUMBER  
CO. LLC, SUTHERLAND BUILDING  
MATERIALS CENTERS, LP, and  
SUTHERLANDS WEST TEXAS, INC.**

**Opposers,**

**v.**

**CIMARRON LUMBER AND SUPPLY**

**Applicant.**

**OPPOSITION NO.: 91194504**

**Mark: SUTHERLAND LUMBER  
COMPANY**

**Filing Date: July 19, 2009**

**Serial No.: 77/784,368**

**Publication Date: December 15, 2009**

**ANSWER**

**ANSWER AND AFFIRMATIVE DEFENSES**

**TO NOTICE OF OPPOSITION**

Applicant Cimarron Lumber and Supply Company, (a Partnership) (hereafter "Applicant"), by and through its undersigned counsel, pursuant to 37 C.F.R. 2.106 and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") Rules 310 and 311, hereby submits its Answer and Affirmative Defenses to Opposer Sutherland Centennial Lumber Co. LLC, Sutherland Building Materials Centers, LP, and Sutherlands West Texas, Inc. ("Opposers") Notice of Opposition related to United States Trademark Application No. 77/784368 for the mark SUTHERLAND LUMBER COMPANY ("Applicant's Mark") in International Class 035.

## ANSWER TO NOTICE OF OPPOSITION

1. Denied.

2. Applicant or through its predecessors have operated and continue to operate lumber yards throughout the United States under the trade names “Sutherlands,” “Sutherlands Lumber Company,” or other variations. Applicant further is without sufficient information to admit or deny the allegations of use by the Opposers for certain trade names listed in paragraph 2 and therefore denies the same. Applicant further denies any allegations of paragraph 2 not admitted.

3. Applicant is without sufficient information to admit or deny the allegations of paragraph 3 and therefore denies the same.

4. Applicant admits it did provide certain limited services to the Opposers including certain general tax, accounting, HR administrative and IT services, but denies responsibility for any management services for the Opposers related to store operations. Applicant further denies any allegations of paragraph 4 not admitted.

5. Applicant is without sufficient information to admit or deny the allegations of paragraph 5 and therefore denies the same.

6. Applicant is without sufficient information to admit or deny the allegations of paragraph 6 and therefore denies the same.

7. Applicant is without sufficient information to admit or deny the allegations of paragraph 7 and therefore denies the same.

8. Applicant is without sufficient information to admit or deny the allegations of paragraph 8 and therefore denies the same.

9. Applicant is without sufficient information to admit or deny the allegations of paragraph 9 and therefore denies the same.

10. Applicant is without sufficient information to admit or deny the allegations of paragraph 10 and therefore denies the same.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

### **AFFIRMATIVE DEFENSES**

In addition to the answers provided above, Applicant asserts the following affirmative defenses in response to Opposers' Notice of Opposition.

1. Opposers' Notice of Opposition fails to state a claim upon which relief can be granted because, *inter alia*, Opposers' Notice of Opposition does not allege any proper grounds for opposition of Applicant's Mark.

2. Opposers' claims are barred by equitable principles, including waiver, unclean hands, laches, acquiescence, and estoppel.

3. Applicant owns trademarks SUTHERLANDS (Registration No. 3,635,248), SUTHERLANDS PRO (Registration No. 3,638,652), SUTHERLANDS EXPRESS (Registration No. 2,501,549), and SUTHERLANDS CENTRAL (Registration No. 1,823,940).

4. Applicant reserves the right to supplement or otherwise add to its affirmative defenses of which it may become aware through discovery or otherwise.

**PRAYER FOR RELIEF**

WHEREFORE, Applicant Cimarron Lumber and Supply Company, (a Partnership) having fully responded to Opposers Sutherland Centennial Lumber Co. LLC, Sutherland Building Materials Centers, LP, and Sutherlands West Texas, Inc. Notice of Opposition and setting forth its affirmative defenses thereto, prays that the Board enter judgment in favor of Applicant and against Opposer and dismiss Opposers' Notice of Opposition with prejudice.

By: /Michael A. Williamson/  
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## CERTIFICATE OF MAILING

I hereby certify that a true complete copy of the foregoing Notice of Appearance has been served on counsel of record by mailing said copy on May, 24, 2010, via First Class Mail, postage prepaid to:

Sean T. Bradley  
Erickson, Kernell, Derusseau & Kleypas, LLC  
800 West 47<sup>th</sup> Street, Suite 401  
Kansas City, Missouri 64112  
Tel.: (816) 753-6777  
Fax.: (816) 753-6888

via e-mail at and United States first class mail, postage prepaid, on May 24, 2010.

By: /Michael A. Williamson/  
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