

ESTTA Tracking number: **ESTTA389213**

Filing date: **01/19/2011**

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

Proceeding	91195628
Party	Defendant Energy Curtailment Specialists, Inc.
Correspondence Address	DARREN RIMER RIMER & MATHEWSON LLP 27281 LAS RAMBLAS SUITE 200 MISSION VIEJO, CA 92691 trademarks@rimermath.com
Submission	Answer
Filer's Name	Darren S. Rimer
Filer's e-mail	trademarks@rimermath.com
Signature	/Darren S. Rimer/
Date	01/19/2011
Attachments	Answer.pdf (6 pages)(485180 bytes)

Case **ENERG-004M**
Trademark Application

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Marshfield Utilities,)	Opposition No.: 91195628
)	
Opposer,)	Serial No.: 77/546,833
)	
vs.)	Mark: POWERPAY! NEW ENGLAND
)	
Energy Curtailment Specialists, Inc.,)	
)	
Applicant.)	
)	
_____)	

ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

Energy Curtailment Specialists, Inc. ("Applicant") hereby responds to and answers the Notice of Opposition filed by Opposer herein as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 1 of the Notice of Opposition, and therefore denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 2 of the Notice of Opposition, and therefore denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 4 of the Notice of Opposition, and therefore denies the same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 6 of the Notice of Opposition, and therefore denies the same.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 7 of the Notice of Opposition, and therefore denies the same.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 8 of the Notice of Opposition, and therefore denies the same.

However, Applicant asserts that such registration speaks for itself.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 9 of the Notice of Opposition, and therefore denies the same.

However, Applicant asserts that such registration speaks for itself.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 10 of the Notice of Opposition, and therefore denies the same.

However, Applicant asserts that such registration speaks for itself.

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 11 of the Notice of Opposition, and therefore denies the same.

However, Applicant asserts that such assignment records speak for themselves.

12. Applicant admits the allegations made in paragraph 12 of the Notice of Opposition .

13. Applicant admits that its application is an intent-to-use application, and that its filing date was August 14, 2008. Applicant otherwise lacks knowledge or information sufficient to form

a belief as to the truth of the remaining allegations made in paragraph 13 of the Notice of Opposition, and therefore denies the same.

14. Applicant admits the allegations made in paragraph 14 of the Notice of Opposition.

15. Applicant admits the allegations made in paragraph 15 of the Notice of Opposition.

16. In response to paragraph 16 of the Notice of Opposition, Applicant believes this is true. However, Applicant's investigation into the facts surrounding its use of the mark is ongoing.

17. Applicant denies the allegations made in paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations made in paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations made in paragraph 19 of the Notice of Opposition.

20. In response to paragraph 20 of the Notice of Opposition, Applicant believes this is true. However, Applicant's investigation into the facts surrounding its use of the mark is ongoing.

21. In response to paragraph 21 of the Notice of Opposition, Applicant believes this is true. However, Applicant's investigation into the facts surrounding its use of the mark is ongoing.

22. In response to paragraph 22 of the Notice of Opposition, Applicant believes this is true. However, Applicant's investigation into the facts surrounding its use of the mark is ongoing.

23. In response to paragraph 23 of the Notice of Opposition, Applicant believes this is true. However, Applicant's investigation into the facts surrounding its use of the mark is ongoing.

24. Applicant admits the allegations made in paragraph 24 of the Notice of Opposition.

25. Applicant admits the allegations made in paragraph 25 of the Notice of Opposition.

26. Applicant admits the allegations made in paragraph 26 of the Notice of Opposition.

27. Applicant admits the allegations made in paragraph 27 of the Notice of Opposition.

28. Applicant admits the allegations made in paragraph 28 of the Notice of Opposition.

29. Applicant admits the allegations made in paragraph 29 of the Notice of Opposition.

30. Applicant admits the allegations made in paragraph 30 of the Notice of Opposition.
31. Applicant admits the allegations made in paragraph 31 of the Notice of Opposition.
32. Applicant denies the allegations made in paragraph 32 of the Notice of Opposition.
33. Applicant denies the allegations made in paragraph 33 of the Notice of Opposition.
34. Applicant denies the allegations made in paragraph 34 of the Notice of Opposition.
35. Applicant denies the allegations made in paragraph 35 of the Notice of Opposition.
36. Applicant denies the allegations made in paragraph 36 of the Notice of Opposition.
37. Applicant denies the allegations made in paragraph 37 of the Notice of Opposition.
38. Applicant denies the allegations made in paragraph 38 of the Notice of Opposition.
39. Applicant denies the allegations made in paragraph 39 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

40. Opposer's Notice of Opposition fails to state grounds on which relief can be granted.

Second Affirmative Defense

41. Opposer is barred from relief by the Doctrine of Acquiescence.

Third Affirmative Defense

42. Opposer has failed to adequately maintain, police or enforce any trademark or proprietary rights it may once have had in its alleged trademarks.

Fourth Affirmative Defense

43. Opposer's pleaded marks are not inherently distinctive such that purchasers do not associate such marks with Opposer.

Fifth Affirmative Defense

44. Opposer's claims are barred because, even if Opposer does have priority of use over

its pleaded trademarks, there is no likelihood of confusion between Opposer's marks and Applicant's mark.

Sixth Affirmative Defense

45. Upon information and belief, there have been no instances of actual consumer confusion between Applicant's mark and the Opposer's pleaded marks.

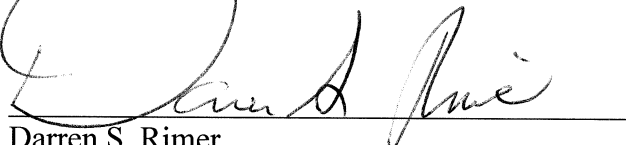
Seventh Affirmative Defense

46. There is no likelihood of confusion between the Applicant's mark and the Opposer's pleaded marks as the goods/services and trade channels of the parties are sufficiently different.

WHEREFORE, Applicant prays that the subject opposition proceeding be dismissed.

Respectfully submitted,

RIMER & MATHEWSON LLP



Darren S. Rimer
27281 Las Ramblas, Suite 200
Mission Viejo, CA 92691
(949) 367-1541
Counsel for Applicant

Dated: 1/19/11

By:

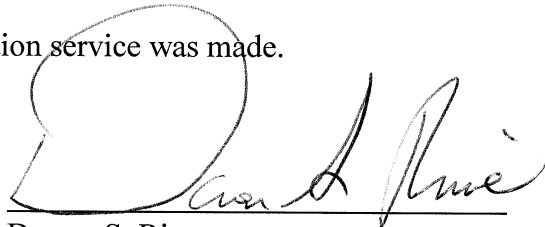
PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 27281 Las Ramblas, Suite 200, Mission Viejo, California 92691. On January 19, 2011, the attached **ANSWER TO NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Joseph W. Byrne
Boardman, Suhr, Curry & Field LLP
One South Pinckney Street, Fourth Floor
Madison, WI 53703

Executed on January 19, 2011 at Mission Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of RIMER & MATHEWSON LLP at whose direction service was made.



Darren S. Rimer