

TTAB

HAIL STORM PRODUCTS LLC
188 Green Meadow Court
Gunter, TX 75058
(469) 583-3432
Fax (469) 532-2820

Michael A. Siciliano
Principal and Co-Founder
michael@hailstormproducts.com

Mailed: May 4, 2013

Opposition No. 91209962
Serial No. 85631068

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Interlocutory Attorney: ELIZABETH A DUNN
P.O. Box 1451
Alexandria, VA 22313-1451

Dowco, Inc.
v.
Siciliano, Michael A.

Katrina G. Hull
Michael Best & Friedrich LLP
100 E. Wisconsin Ave., Ste. 3300
Milwaukee, WI 53202
mkeipdocket@michaelbest.com, kg Hull@michaelbest.com,
bjsmith@michaelbest.com

This is a response to the Dowco, Inc. opposition of the trademark granted to me by the USPTO for the name Hail Guardian in Class 038.

I will address the 22 paragraph letter of opposition one by one:

Paragraph 1) I don't disagree with any of this information regarding Dowco's trademarks in class 012.

2) I don't disagree with any of this information regarding Dowco's trademarks in class 012.

3) I don't disagree with any of this information regarding Dowco's trademarks in class 012.

4) I don't disagree with any of this information regarding Dowco's trademarks in class 012.

5) I don't use the name Guardian or any variation thereof on any vehicle cover product (class 012), so I don't understand the point of this paragraph.



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6) Not sure of the relevance of this paragraph in that I don't use the name Guardian or any variation thereof on any vehicle cover product (class 012). Although I will note that the domain Dowco-inc.com, registered 16 years ago, per alexa.com, has a global website ranking of 11,570,175, whereas hailprotector.com registered just 6 months ago, has a global website ranking of 1,494,822 and has spent less than \$3,000 in the past 6 months in advertising. So, I would say the comment "Dowco has expended a great deal of time, effort and money in the promotion and advertisement" is a significant exaggeration and a misleading statement to the USPTO. A pattern we see continue as the paragraphs continue.

7) I don't disagree with any of this information regarding Dowco's trademarks in class 012. However, I believe it's important at this point to note that Dowco does not own the word Guardian across all trademark classes.

8) I don't disagree that I filed for trademark in class 012 for the name Hail Guardian. None of the information provided by a search of existing trademarks gave me reason to believe that I would be infringing on an existing trademark in class 012.

9) I don't disagree that the USPTO refused registration of Hail Guardian in class 012 due to existing trademarks held by Dowco, Inc. But will add that while the USPTO trademark process allows 6 months for the applicant to respond to the refusal, I instead decided to simply cancel the class 012 and class 022 trademark registration requests 20 days after the refusal, on October 1, 2012. Eventhough we felt we had good cause to respond to the refusal due to Dowco not being in the automotive cover business and due to the word Hail not being given descriptive value, we cancelled the requests for trademark because we had an upcoming television show featuring our young company scheduled to air in November 2012 and we didn't need this distraction. See Exhibit A.

10) I don't disagree that I contacted Chuck Webster at Dowco on September 15th, but the oversimplification and misleading comment to the USPTO that I asked Dowco for an investment should be explained well in attached Exhibit B.

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11) As you will see in attached Exhibits B and C, the hailguardian.com domain name was stated clearly in the initial email and Mr. Webster certainly sounds appreciative of me contacting him about a potential business deal.

12) I don't disagree that Dowco's attorney sent me a cease letter on September 19th. And again, while I was within my rights to respond to the USPTO refusal, in Exhibit D you will see I contacted Chuck Webster again after getting the letter from the attorney and in Exhibit E you will see that I cancelled trademark requests for Hail Guardian in classes 012 and 022 just 12 days after the cease letter. Not a court order. Merely a cease letter on something that I still felt we had grounds to respond to the USPTO on.

13) The USPTO granted trademark in class 038, for alerting, for Hail Guardian. Hail Guardian will be an eventual stand alone alert service product offered by my company. The webpage at www.hailguardian.com says exactly that. Please see Exhibit E. No mention of vehicle covers is made at all. Additionally, the webpage forward to our corporate website at www.hailstormproducts.com which is clearly not related to Dowco Inc. The user then has to click an icon with the Hail Protector logo, again not related to or in conflict with Dowco, in order to find out information about the Hail Protector system which, not that it matters, but is only shown on automobiles. Dowco doesn't offer automobile covers. I mention this because in the Trademark Manual for Examining procedures, dated April 2013, section **1207.01 Likelihood of Confusion**, it states:

"[T]he question is not whether people will confuse the marks, but rather whether the marks will confuse people into believing that the goods they identify emanate from the same source."

The chance that someone will be confused on whether they are looking at Dowco products or not looking at Dowco products is less than extremely low.

14) I don't disagree that the design portion of our logos are the same, aside from color. However the design of our logo was never in conflict with Dowco's trademarks.

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15) Hail Guardian is a stand alone alert service which has an issued trademark in class 038. Dowco has no trademarks in class 038. Hail Protector is a system that includes both a HAIL PROTECTOR alert service and a HAIL PROTECTOR cover device. Please see Exhibit F.

16) Our cover is called HAIL PROTECTOR and doesn't use the word Guardian. The Dowco attorney is trying to confuse the USPTO.

17) Hail Guardian is a stand alone alert service in class 038. Hail Guardian is not a cover of any kind. Hail Protector is a car cover and a cover which may eventually be applied to motorcycles, boats and other assets exposed to the elements.

18) I have no idea what this paragraph means.

19) All email addressed used by myself and my company use the domain hailstormproducts.com.

20) Hail Guardian is a stand alone alert service under granted trademark by the USPTO in class 038. Dowco does not offer an alert service, nor does it have any trademarks in class 038. There is no confusion.

21) Dowco and their attorney are going to have to prove that the Hail Guardian alert service being a part of a company of an entirely different name that offers a protective cover under another entirely different name, will be a source of injury and damage to Dowco. There are 264 different products with the word Guardian in them at Walmart alone, in 20 different departments. Hail Guardian alert service is no more likely than any of those products to cause injury or damage to Dowco. See exhibit G.

22) Dowco doesn't have the power to grant permission for trademarks in class 038. USPTO grants permission for trademarks.

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Michael A. Siciliano

Principal and Co-Founder

michael@hailstormproducts.com

In summary, let me just say that this law firm has been harassing me for the past 8 months now. I cancelled my requests for trademark in classes 012 and 022 in less than a month, even though I had 6 months to respond to the refusal. I changed the name of my company. I changed the name of my core product. And my secondary stand alone product has nothing to do with covers of any kind. My company is a start up which has still yet to sell a single product. Has yet to derive a single dollar of revenue. This harassment does nothing but inhibit small business. Dowco and their attorney speak as though they are Coca-Cola. Google "Guardian Covers". I went 35 pages deep on google and found nothing on Dowco, Guardian Covers, Guardian Weatherall, and nothing on Hail Guardian.

Google "Hail Protector" and you will go 20 pages deep before our tiny no revenue company isn't dominating every page of results. Just Google the word "hail" and you'll find our tiny no revenue company on the 2nd or 3rd page of results, depending on the day.

Dowco should concentrate on executing their business model instead of trying to execute my company, my time and the time of the USPTO. Michael Best and Associates should make better judgments on what is in the best interest of their client and not what is in the best interest of their law firm.

Sincerely,



Michael A. Siciliano

469-583-3432

michael@hailstormproducts.com

Exhibit A

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85631068
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (012)(class deleted)	
GOODS AND/OR SERVICES SECTION (022)(class deleted)	
GOODS AND/OR SERVICES SECTION (038)(no change)	
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use hail apart from the mark as shown.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Michael Siciliano/
SIGNATORY'S NAME	Michael Siciliano
SIGNATORY'S POSITION	Principal
SIGNATORY'S PHONE NUMBER	4695833432
DATE SIGNED	10/01/2012
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Oct 01 16:27:49 EDT 2012
TEAS STAMP	USPTO/ROA-72.48.94.34-201 21001162749913361-8563106 8-49055fadd45f8afe93db18c ac66ea60-N/A-N/A-20121001 160618501530

2

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **85631068** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant hereby deletes the following class of goods/services from the application.

Class 012 for Fitted covers for boats and marine vehicles; Fitted covers for vehicles

Applicant hereby deletes the following class of goods/services from the application.

Class 022 for Unfitted covers for boats and marine vehicles; Unfitted vehicle covers

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use hail apart from the mark as shown.

SIGNATURE(S)

Response Signature

Signature: /Michael Siciliano/ Date: 10/01/2012

Signatory's Name: Michael Siciliano

Signatory's Position: Principal

Signatory's Phone Number: 4695833432

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 85631068

Internet Transmission Date: Mon Oct 01 16:27:49 EDT 2012

TEAS Stamp: USPTO/ROA-72.48.94.34-201210011627499133

61-85631068-49055fadd45f8afe93db18cac66e

a60-N/A-N/A-20121001160618501530

EXHIBIT B

- Compose Message
- Inbox
- Sent
- Message detail
- Archived
- Trash

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Did you know?

You can purchase additional InMail credits with just a few clicks?

Get More InMails

Sent Messages Sent Invitations

Reply All Forward Archive Delete

Dowco Inc and Hail Guardian LLC

Michael Siciliano · President, HAIL STORM PRODUCTS developer of The HAIL PROTECTOR™, the only AUTO HAIL PROTECTION SYSTEM

InMail Feedback: ☆☆☆☆

To: Chuck Webster Jr.

Category: Business deal

Status: Responded

Date: September 14, 2012

Mr. Webster,

Our company will be featured on The History Channel series 'Invention USA' in Dec 2012 on our own 30 min segment (filming complete). Hail Guardian is the worlds only truly hail protective car cover, includes an early warning alert mobile app and also serves as a traditional car cover.

We've been developing Hail Guardian for 4 yrs and are ready to go to market. We came upon Dowco because we filed for trademark on 'Hail Guardian' and the USPTO noted a conflict because of your 'Guardian' products in the cover market. But that's not the reason why we're contacting you.

I googled 'Guardian Covers' and it led me to Dowco. As I looked at your product line, I got to thinking. Since Dowco isn't presently in the car cover market, working together would be a very good idea for both of us.

Viewership estimates are over 2M on initial airing + reruns + shown in 100 countries. In this link, http://www.hailguardian.com/news/ you'll find 2 recent interviews in key parts of the country plagued by damaging hail. We have an easy time getting this exposure because of the need for the Hail Guardian solution.

We are in need of a relatively small angel or corporate investment or partnership in order to go to market. We have strong leadership, 3 patents filed including our core utility patent which includes motorcycles, boats, etc. We have a quick path to cash flow positive, our technology and COGS provide a steep barrier to entry by would be competitors and Hail Guardian will immediately disrupt the existing 200k car covers sold every year in the USA.

Would you be open to having a conversation about working together? Dowco Inc's existing products would benefit upon initial airing of the tv series. Imagine the benefit to Dowco by exposure to 2M viewers on initial airing + reruns + 100 countries. 30 mins of tv ads costs millions.

Do hope you will give this some thought. No harm in having a conversation, right? Thanks in advance. -Michael Siciliano

Exhibit C



Compose Message

Inbox

Message detail

Sent

Archived

Trash

LinkedIn Premium

Did you know?

You can purchase

Messages

Invitations

Reply Forward Archive Delete Report Spam

RE: Dowco Inc and Hail Guardian LLC

Chuck Webster Jr. - Owner, DOWCO Inc.

InMail Feedback: ☆☆☆☆☆

To: Michael Siciliano

Category: Business deal

Status: Responded

Date: September 15, 2012

Chuck Webster Jr. has accepted your InMail:

Hello Michael,

We will be back with you next week.

Thank you for taking the time to contact us.

Best Regards,

Chuck Webster Jr.

Exhibit D

- Compose Message
Inbox
Message detail
Sent
Archived
Trash

Messages Invitations
Reply Forward Archive Delete Report Spam

RE: Dowco Inc and Hail Guardian LLC

Michael Siciliano · President, HAIL STORM PRODUCTS developer of The HAIL PROTECTOR™, the only AUTO HAIL PROTECTION SYSTEM
InMail Feedback: ☆☆☆☆
To: Michael Siciliano Category: Business deal
Status: Viewed
Date: September 19, 2012

LinkedIn Premium

Did you know?
You can upgrade your account to get up to 25 InMails per month?

Upgrade Your Account

Hi Chuck,
I imagine you are aware that your legal representation, Michael Best & Friedrich LLP, sent us a cease letter today on Hail Guardian.

Wanted to make sure you know that our initial message below wasn't intended to come across as a request to Dowco to look past the response from the USPTO on our trademark filing. We didn't know until September 11, 2012 at 5:25pm that Dowco has similar trademarks. Roughly 2 days later, I contacted you after doing some research on Dowco's product line to see if you see the potential synergies of us working together as companies, entirely and not related to trademark issue. Meaning, we see great synergies of the companies working together based on your product line and our product line, not based on the similar names.

Anyway, just wanted to make sure you understood why we contacted you. Should we take it from the letter from your attorney that Dowco doesn't want to work with Hail Guardian from a business standpoint? We hope that's not the case, as it seems to make a lot of sense. But if that is the case, please let us know. Business is business, but given what we hope was seen as a forthcoming and genuine tone of our message to you, we were really taken aback by the tone of the attorney's letter and want to see if it's reflective of your feeling towards working together.

Thank you, Chuck. Look forward to your response. In either case, we do appreciate any efforts you made to review the idea.

Michael Siciliano
469-583-3432

Exhibit E



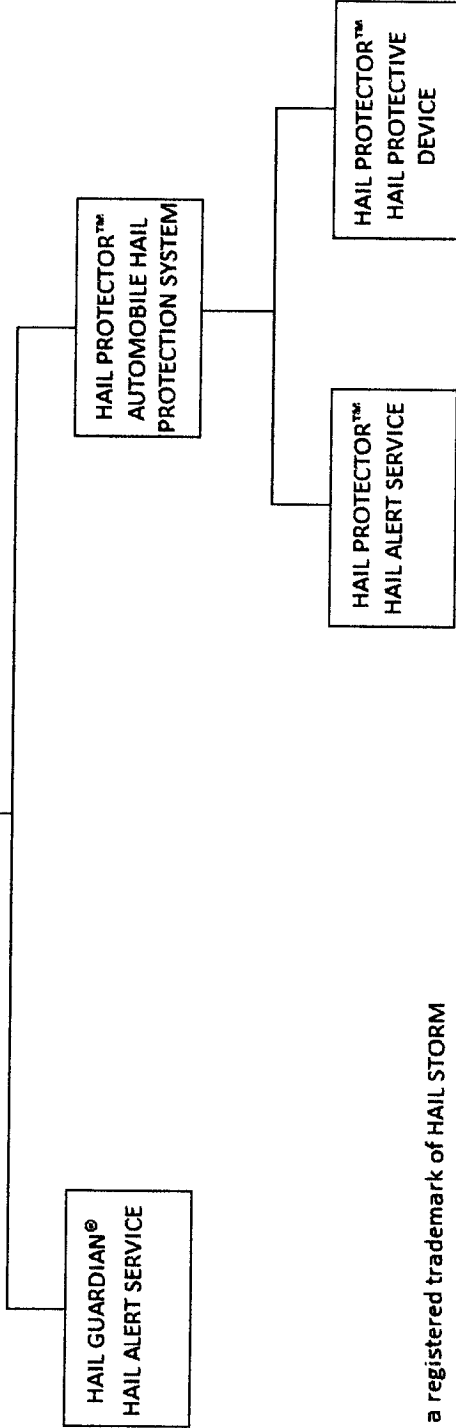
HAIL GUARDIAN® HAIL ALERT SERVICE is a service of HAIL STORM PRODUCTS LLC.

HAIL GUARDIAN® HAIL ALERT SERVICE is not yet available as a "stand alone" hail alert service.

Please visit www.hailstormproducts.com for information on our current product and hail alert service.

PRODUCT LINE UP
HAIL STORM PRODUCTS LLC
November 2012
Michael Siciliano,
Principal and Co-Founder

HAIL STORM
PRODUCTS LLC
a Texas company



HAIL GUARDIAN® is a registered trademark of HAIL STORM PRODUCTS LLC under International Trademark Class 038 (IC 038. US 100 101 104. G & S: Telecommunication services, namely, providing e-mail notification alerts via the internet)

Exhibit G

guardian - Walmart.com - Windows Internet Explorer

http://www.walmart.com/search/search-ng.do?tc=16_0&pref_stores=3771&Find=Find&clicked_tab_value=All&search_constraint=0&ss=false&tab_value=All&sear

Go to www.walmart.com Search Share More 20 Sign In

bing hp

guardian - Walmart.com Page Safety Tools

Search results for "guardian"

We found 264 results for "guardian" in All Departments

Search In: Matching Departments


- Books
- Movies & TV
- Home
- Electronics
- Home Improvement
- Video Games
- Health
- Pharmacy
- Party & Occasions
- Sports & Outdoors
- Gifts & Registry
- Toys
- Pets
- Grocery
- Jewelry
- Patrol & Garden
- Seasonal
- Beauty
- Baby
- Apparel

All Items (264) In-Store Pickup Online Items

Items 1 - 16 of 264 total: 16 32 Per Page List View Grid View

Sort by: Best Match

1 2 3 4 5 ... Next



High Tech Pet 30-Acre In-Ground Super Electronic Dog Fence - 1ct

★ ★ ★ ★


- Dogs 5 lbs and up
- Uses High Tech-Pets Pulsed Proportional Stimulus

Online

\$89.97

List Price: \$100.00
You save: \$10.02 (10%)

Free store pickup as soon as 10/5 with **Walmart** to store



Guardian: The Widescreen

Director: Andrew Davis
Release Date: 01/23/2007
Rating: PG-13
★ ★ ★ ★ ★

DVD, Rating: PG-13, Runtime: 139, Color, Buena Vista Home Entertainment, 01/23/2007

Online

\$9.86

List Price: \$19.72
You save: \$9.86 (50%)

Free store pickup as soon as 10/5 with **Walmart** to store

Done, but with errors on page

Internet | Protected Mode: On

1:46:54M
9/29/2011

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing Response to Opposition has been served on Plaintiff by sending the same by Federal Express to the Correspondent of Record:

Katrina G. Hull
Michael Best & Friedrich LLP
100 E. Wisconsin Ave., Ste. 3300
Milwaukee, WI 53202
414-271-6560

On the 4th day of May, 2013



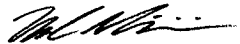
Michael A. Siciliano

CERTIFICATE OF MAILING

I hereby certify that the original of said document was sent by Federal Express to the USPTO to the Correspondent of Record:

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Interlocutory Attorney: ELIZABETH A DUNN
Madison East. Concourse Level Room C 55
600 Dulany Street
Alexandria, VA 22314
571-272-8500

On the 4th day of May, 2013



Michael A. Siciliano