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

Proceeding	91217729
Party	Defendant Test Rite Products Corporation
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Submission	Answer
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Date	09/15/2014
Attachments	Answer to Notice of Opposition (9-15-2014).pdf(158475 bytes )

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

In the Matter of U.S. Application Serial No. 85/034,116  
Mark: DURAMAX

<b>AUTOZONE PARTS, INC.</b>	)	
	)	
<b>Opposer,</b>	)	
<b>v.</b>	)	<b>Opposition No. 91217729</b>
	)	
<b>TEST RITE PRODUCTS CORPORATION</b>	)	
	)	
<b>Applicant.</b>	)	
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**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

Applicant Test Rite Products Corporation (“Applicant”), for its answer to the Notice of Opposition filed by AutoZone Parts, Inc. (“Opposer”) against the application for registration of the mark “DURAMAX”, Serial No. 85/034,116, filed on May 10, 2010, and published in the Official Gazette on April 8, 2014, pleads and avers as follows:

1. In response to Paragraph 1 of the Notice of Opposition, Applicant is without sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.
2. In response to Paragraph 2 of the Notice of Opposition, Applicant is without sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.
3. In response to Paragraph 3 of the Notice of Opposition, Applicant is without sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.
4. In response to Paragraph 4 of the Notice of Opposition, Applicant is without

sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.

5. In response to Paragraph 5 of the Notice of Opposition, Applicant is without sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.

6. In response to Paragraph 6 of the Notice of Opposition, Applicant is without sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.

7. In response to Paragraph 7 of the Notice of Opposition, Applicant is without sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.

8. In response to Paragraph 8 of the Notice of Opposition, Applicant is without sufficient information or knowledge concerning the allegations to form a belief as to the truth of the allegations and, therefore, denies the allegations.

9. In response to Paragraph 9 of the Notice of Opposition, Applicant admits the allegations contained therein.

10. In response to Paragraph 10 of the Notice of Opposition, Applicant admits that, by subsequent amendments entered on and after December 27, 2010, the current description and class designation of goods for the Application appear as listed in Paragraph 10.

11. In response to Paragraph 11 of the Notice of Opposition, Applicant denies all allegations contained therein.

12. In response to Paragraph 12 of the Notice of Opposition, Applicant denies all allegations contained therein.

13. In response to Paragraph 13 of the Notice of Opposition, Applicant denies all allegations contained therein.

14. In response to Paragraph 14 of the Notice of Opposition, Applicant denies all allegations contained therein.

**AFFIRMATIVE DEFENSES**

Applicant submits the following affirmative defenses to the Notice of Opposition:

**FIRST AFFIRMATIVE DEFENSE**

**(LACK OF STANDING)**

1. Opposer has not been and will not be damaged by Applicant's registration of the DURAMAX mark in the classes and goods covered and, therefore, Opposer lacks standing to oppose registration of the mark.

**SECOND AFFIRMATIVE DEFENSE**

**(FAILURE TO STATE A CLAIM)**

2. Opposer's Notice of Opposition fails to state a claim upon which relief may be granted, including, without limitation, on the grounds that Applicant's DURAMAX trademark is not likely to be confused with Opposer's DURALAST trademarks.

**THIRD AFFIRMATIVE DEFENSE**

**(ESTOPPEL)**

3. Opposer is estopped from opposing Applicant's trademark application for DURAMAX.

**FOURTH AFFIRMATIVE DEFENSE**

**(WAIVER)**

4. Opposer has waived any right to Applicant's trademark application for DURAMAX.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board dismiss the Opposer's Notice of Opposition with prejudice and permit the registration of Applicant's

proposed mark in Application Serial No. 85/034,116 in the United States Patent and Trademark Office.

Respectfully submitted,

DATE: September 15, 2014

**LKP GLOBAL LAW LLP**

By: \_\_\_\_\_



Victor T. Fu  
Attorneys for Applicant,  
Test Rite Products Corporation

**CERTIFICATE OF ELECTONIC FILING & SERVICE**

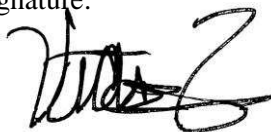
I hereby certify that the enclosed APPLICANT'S ANSWER TO NOTICE OF OPPOSITION is being submitted to the Trademark Trial and Appeal Board via electronic means by filing with the Electronic Systems for Trademark Trial and Appeal on September 15, 2014. A true and correct copy is also being deposited with the United States Postal Service under 37 CFR § 1.10 on the date indicated below and is addressed to the following:

David J. Stewart, Esq.  
Uly S. Gunn, Esq.  
Alston & Bird, LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309  
Attorneys for Opposer Autozone Parts, Inc.

Dated:

September 15, 2014

Signature:



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Victor T. Fu