ESTTA Tracking number:

ESTTA735377 03/23/2016

Filing date:

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

| Proceeding | 91225007 |
|---------------------------|--|
| Party | Defendant Delves, Neil, Giufre, Kevin |
| Correspondence Address | MATTHEW H SWYERS 344 MAPLE AVE W # 151 VIENNA, VA 22180-5612 mswyers@thetrademarkcompany.com |
| Submission | Motion to Amend Application |
| Filer's Name | Matthew H. Swyers, Esq. |
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| Signature | /Matthew H. Swyers/ |
| Date | 03/23/2016 |
| Attachments | Motion to Amend.pdf(181765 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE The Trademark Trial and Appeal Board

Serial No. 86/376,134

For the mark Second was

NeverWet LLC,

Opposer,

Opposition No. 91225007 VS.

Neil Delves & Kevin Giufre,

Applicants.

MOTION TO AMEND U.S. APPLICATION NO. 86/376,134 WITH CONSENT

COMES NOW the Applicants, Neil Delves & Kevin Giufre (hereinafter "Applicants"), by counsel, and pursuant to 37 C.F.R. § 2.133(a) and TBMP § 514 et. seq., moves the Trademark Trial and Appeal Board for an order restricting the Applicants' identification of goods and services and amending the description of the mark in the subject U.S. Application No.



Applicant proposes that the Board issue an order restricting the Applicant's identification of goods and services as follows:

Current: Waterproofing of basements; Waterproofing of basements to

prepare them to be finished.

Proposed: Waterproofing of basements; Waterproofing of basements to

> prepare them to be finished; all of the foregoing limited to professional service involving the construction and installation of

internal and external draining systems.

Applicant proposes the Board issue an order amending Applicant's description of the mark as follows:

Current:

NEVERWET BASEMENT WATERPROOFING (Design, see mark attached).

The literal element of the mark consists of NEVERWET BASEMENT WATERPROOFING.

The mark consists of the word "NEVERWET" above "BASEMENT WATERPROOFING". "NEVERWET" is in all-caps and outlined in a thick, black line with a white fill for "NEVER" and a light blue fill for "WET" with a black-lined red strike-out line crossing from the top left of "WET" down to the bottom right. Above "WET" is a stylized roof with a thick black outline, a chimney outline on the right and a white fill. "BASEMENT WATERPROOFING" is in a smaller, red text with a capital "B".

Proposed:

NEVER WET BASEMENT WATERPROOFING (Please find special form drawing attached).

The literal element of the mark consists of NEVER WET BASEMENT WATERPROOFING.

The color(s) black, red, white, and light blue is/are claimed as a feature of the mark. The mark consists of the words "NEVER WET" above "BASEMENT WATERPROOFING". "NEVER WET" is in all-caps and outlined in a thick, black line with a white fill for "NEVER" and a light blue fill for "WET" with a black-lined red strike-out line crossing from the top left of "WET" down to the bottom right. Above "WET" is a stylized roof with a thick black outline, a chimney outline on the right and a white fill. "BASEMENT WATERPROOFING" is in a smaller, red text with a capital "B".

The Applicants' proposed amendments to U.S. Application Serial No. 86/376,134, as seen herein above, to restrict the identification of goods and services and to amend Applicants' description of the mark is proper according to 37 C.F.R. § 2.71 and 37 C.F.R. § 2.72 as it merely limits those goods and services found in the original identification and it does not materially alter the mark. In view of the foregoing, approval of the amendment by the Board pursuant to 37 C.F.R. § 2.133(a) is believed appropriate. Opposer, NeverWet LLC has provided its consent to the instant amendments to Applicants' Mark as evidenced by Counsel for Opposer's signature below.

Respectfully submitted this 23rd day of March, 2016.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
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Counsel for Applicants

SEEN AND CONSENTED TO BY:

/Grace Han Stanton/

Grace Han Stanton
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
Counsel for Opposer
Date: March 23, 2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE The Trademark Trial and Appeal Board

Serial No. 86/376,134

For the mark Basement waterproofing

NeverWet LLC, :

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Opposer,

vs. : Opposition No. 91225007

Neil Delves & Kevin Giufre, :

Applicants. :

CERTIFICATE OF SERVICE

I hereby certify that I have this the 23rd day of March, 2016 served a true copy of the forgoing upon Opposer's attorney of record, via email at pctrademarks@perkinscoie.com, pursuant to the parties' agreement to accept service by email for this motion.

/Matthew H. Swyers/ Matthew H. Swyers

Original Mark:



Proposed Mark:



