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

Proceeding	91232746
Party	Defendant RGF Environmental Group, Inc.
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Date	08/17/2018
Attachments	3859-157 - NOTICE OF RELIANCE.pdf(621536 bytes )

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

Triatomic Environmental, Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91232746
	)	
RGF Environmental Group, Inc.,	)	
	)	
Applicant.	)	

**APPLICANT’S NOTICE OF RELIANCE UNDER RULE 2.120(k)(3)(i)**

Applicant, RGF Environmental Group, Inc., hereby notifies Opposer, Triatomic Environmental, Inc., of its reliance upon the following discovery responses:

EXHIBIT A: Opposer’s Answers and Objections to Applicant’s First Set of Interrogatories (Non-Confidential); and

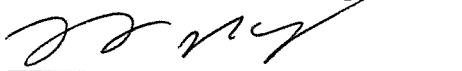
EXHIBIT B: Opposer’s Answers and Objections to Applicant’s First Set of Requests for Admissions.

Applicant will rely on these responses to prove the weakness of Opposer’s pleaded mark, the sophistication of relevant purchasers and the lack of likelihood of confusion between the marks at issue.

Respectfully submitted,

RGF Environmental Group, Inc.,

By:



Martin M. Zoltick  
Leo M. Loughlin  
Davide F. Schiavetti  
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Attorneys for Opposer

August 17, 2018

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **APPLICANT'S NOTICE OF RELIANCE UNDER RULE 2.120(k)(3)(i)** has been served, by email, this 17th day of August, 2018 on the following counsel of record:

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Lisa M. Locke

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

TRIATOMIC ENVIRONMENTAL, INC.

Opposer,

v.

RGF ENVIRONMENTAL GROUP, INC.

Applicant.

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Opposition No. 91232746  
Mark: UPCO-QR  
Serial No. 87/115,085

**OPPOSER'S ANSWERS AND OBJECTIONS TO  
APPLICANT'S FIRST SET OF INTERROGATORIES**

In accordance with the provisions of 37 C.F.R. § 2.120 and Fed. R. Civ. P. 33, Opposer TRIATOMIC ENVIRONMENTAL, INC. ("Opposer") hereby responds to Applicant RGF ENVIRONMENTAL GROUP, INC.'s ("Applicant") First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

Specific objections to the Interrogatories are made on an individual basis in Opposer's answers below. In addition to those specific objections, Opposer objects generally as follows:

1. Opposer objects to each and every interrogatory to the extent that they seek information, documents and/or things protected from discovery by the attorney-client privilege or the work product doctrine, or both. A specific objection stated below on the grounds of attorney-client privilege and work product in no way limits the generality of this objection. Nothing contained in this response is intended to be nor should be considered a waiver of attorney-client privilege, work product protection, trade secret privilege, the right of privacy, or any other applicable privilege or doctrine. To the extent that any interrogatory may be construed as calling for disclosure of information, documents and/or things protected by such privileges or doctrines, a continuing objection to each and every such interrogatory is hereby imposed.
2. Opposer objects to each and every interrogatory to the extent that they seek information not within Opposer's possession, custody and/or control.
3. Opposer objects to the interrogatories to the extent that they are unreasonable, unnecessary or overly broad.

4. Opposer objects to the interrogatories to the extent they require it to conduct anything other than a reasonable inquiry into the documents or information sought.

5. Opposer objects to the interrogatories to the extent they seek discovery of information or documents already known or available to Applicant or in Applicant's possession, information or documents that are in the public domain, or information or documents that are as readily accessible to Applicant as to Opposer. To the extent the response to an interrogatory can be ascertained or derived from documents or information in Applicant's possession, custody, or control, or from documents or information that are publicly available, the development of that response is significantly more convenient, less burdensome and/or less expensive than it is for Opposer and Applicant should bear that burden.

6. Opposer objects to any interrogatory that seeks documents or information that Opposer is required to maintain in confidence pursuant to an agreement or understanding with a third party or that otherwise are protected under contractual, constitutional, statutory, and/or common law rights of confidentiality or privacy. Opposer also objects to the extent that any interrogatory seeks documents or information that Opposer is not required or permitted to disclose under the terms of any applicable court order, protective order, or confidentiality stipulation. Without limiting the foregoing, Opposer objects to any and all interrogatories that seek production of documents or information containing confidential, private, or personal information relating to any past, present, or future employee of Opposer or its past, present, or future parents, affiliates, subsidiaries, predecessors, successors or assigns.

7. Opposer objects to the interrogatories, including the Definitions as set forth herein and instructions, to the extent they are vague, overbroad, unduly burdensome, not relevant to the claims or defenses of any party, not reasonably calculated to lead to the discovery of admissible evidence, unreasonably cumulative or duplicative, and/or without temporal limitations.

8. Opposer objects to the extent that any request implies the existence of facts or circumstances not of record or that do not exist, and to the extent that any request assumes a legal conclusion. By responding, Opposer does not admit any factual or legal assumptions contained in any request.

9. Opposer objects to any interrogatory to the extent that it is premature and requires the disclosure of information prior to the agreed-upon date set forth in the applicable Scheduling Order.

10. Opposer objects to the interrogatories to the extent that they purport to impose obligations beyond the requirements of the Federal Rules of Civil Procedure.

11. Opposer objects to the definition of "Opposer", "you" and "your" as employed in these interrogatories as being overly broad and referring to parties who are not Opposer or otherwise under Opposer's control for purposes of responding to these interrogatories.

12. Opposer hereby specifically incorporates each of the foregoing general objections into each of the following Responses, whether or not they are specifically stated therein.

**INTERROGATORY NO. 1:**

State Opposer's date of first use in commerce for the mark APCO in connection with the goods identified in Registration No. 3,788,548, and the persons at Opposer who are familiar with this date.

**RESPONSE:**

June 1, 2009. Persons at Opposer familiar with this date of first use include:

- Chris Willette, President
- Ron Saunders, Vice President

**INTERROGATORY NO. 2:**

Identify any periods of non-use of Opposer's mark APCO in the United States from the date of first use to present.

**RESPONSE:**

None.

**INTERROGATORY NO. 3:**

State whether the mark APCO is an acronym and, if so, state what APCO stands for.

**RESPONSE:**

In current marketing materials APCO stands for advanced photocatalytic oxidation. In earlier marketing materials it stood for absorptive photocatalytic oxidation.

**INTERROGATORY NO. 4:**

Identify the person or persons in the employ or associated in any manner with Opposer most knowledgeable with respect to the following:

- (a) Opposer's consideration, selection, and adoption of the term APCO;
- (b) Opposer's use of the APCO mark;
- (c) Opposer's sales and advertising of the goods sold under Opposer's APCO mark.

**RESPONSE:**

Such persons include:

- Chris Willette – a & b
- Ron Saunders - c

**INTERROGATORY NO. 5:**

Identify any advertising firms employed by Opposer in connection with the use of its APCO mark.

**RESPONSE:**

Opposer objects to this Interrogatory as directed toward the discovery of Opposer's confidential and proprietary information. Subject to and notwithstanding this objection, Opposer advises that it does not use an advertising firm, but does its own marketing in-house. Responsive information as to a public relations agent who assists in preparing press releases will be designated as Confidential – Attorneys Eyes Only pursuant to the Standard Protective Order and provided separately.

**INTERROGATORY NO. 6:**

Identify any person or person(s) that drafts and/or handles marketing or advertisement for Opposer's APCO product.

**RESPONSE:**

Chris Willette

**INTERROGATORY NO. 7:**

Identify with particularity each type of product sold by Opposer in connection with the APCO trademark at any time in the United States.

**RESPONSE:**

APCO is the trademark for air purifier products installed in the ductwork of central air systems. Such products can be viewed at [www.freshaireuv.com/apco.html](http://www.freshaireuv.com/apco.html) and include:

- APCO
- APCO RT – designed for smaller ducts
- APCO MAG – designed for internal mounting using a magnet or screws
- APCO Rack System (TUV-C-APCO) – larger commercial product

**INTERROGATORY NO. 8:**

Identify representative samples of publications, catalogs, and broadcast advertisements (e.g., radio, television, internet website, email) authorized by or on behalf of Opposer, in which services under the APCO trademark have been, or are scheduled to be mentioned.

**RESPONSE:**

Opposer objects to this Interrogatory for being vague and ambiguous, as it is unclear what would constitute “[i]dentif[ying] representative samples” as part of a sufficient response. Opposer would entertain a clarification of this Interrogatory so that a complete response can be provided.

**INTERROGATORY NO. 9:**

Identify representative samples of trade shows, professional shows, professional meetings, seminars, conferences, and conventions where Opposer or someone on Opposer’s behalf has promoted or offered services, or is scheduled to promote or offer services under Opposer’s APCO mark.

**RESPONSE:**

Opposer objects to this Interrogatory for being vague and ambiguous, as it is unclear what would constitute “[i]dentif[ying] representative samples” as part of a sufficient response. Opposer would entertain a clarification of this Interrogatory so that a complete response can be provided.

**INTERROGATORY NO. 10:**

State the total dollar value of Opposer’s revenues in the United States associated with Opposer’s goods sold under the APCO mark for the goods listed in Registration No. 3,788,548 from the date of first use in this proceeding to the present.

**RESPONSE:**

Opposer objects to this Interrogatory as directed toward the discovery of Opposer’s confidential and proprietary information. Responsive information will be designated as Confidential – Attorneys Eyes Only pursuant to the Standard Protective Order and provided separately.

**INTERROGATORY NO. 11:**

State the total advertising and promotional expenditures in dollars in the United States by or on behalf of Opposer relating to the promotion of APCO mark.

**RESPONSE:**

Opposer objects to this Interrogatory as directed toward the discovery of Opposer’s confidential and proprietary information. Responsive information will be designated as Confidential – Attorneys Eyes Only pursuant to the Standard Protective Order and provided separately.



**INTERROGATORY NO. 12:**

Describe when and by what means Opposer first became aware of (a) Applicant; (b) Applicant's UPCO-QR mark; and (c) Applicant's use of any mark or designation consisting of or including the term "PCO", not identified in (b).

**RESPONSE:**

- a) Opposer has been aware of Applicant since Opposer's inception in 2001.
- b) Opposer first became aware of Applicant's UPCO-QR mark in approximately August or September 2016.
- c) Opposer first became aware of other product designations including the term "PCO" in approximately November 2011.

**INTERROGATORY NO. 13:**

State whether the term "PCO" has a meaning in the indoor air quality industry and, if so, the meaning of PCO.

**RESPONSE:**

PCO stands for photocatalytic oxidation.

**INTERROGATORY NO. 14:**

State whether Opposer is aware of third party use of the term PCO in the indoor air quality industry and, if so, identify all such use.

**RESPONSE:**

Opposer objects to this Interrogatory for being unduly burdensome to the extent it requires Opposer to identify "all such use" in the indoor air quality industry, for which Opposer is under no duty to inquire. Subject to and notwithstanding the foregoing objection, Opposer advises that it is generally aware of third party use of the term PCO in the indoor air quality industry.

**INTERROGATORY NO. 15:**

State whether Opposer performed a trademark search prior to filing Application Serial No. 77/728,928.

**RESPONSE:**

Opposer performed a search in April 2009, prior to filing the Application on May 5,

2009.

**INTERROGATORY NO. 16:**

Identify with particularity the types of purchasers to whom Opposer promotes, or intends to promote, its goods under the APCO mark.

**RESPONSE:**

For residential applications, purchasers include wholesalers, who sell to contractors, who sell to end users through the contiguous U.S.

For commercial applications, purchasers include wholesalers who sell to contractors, or contractors directly, who then sell to building owners in the contiguous U.S.

**INTERROGATORY NO. 17:**

Describe with particularity the channels of trade currently employed, and/or reasonably likely to be employed, in connection with the sale of any of Opposer's goods sold under Opposer's APCO mark.

**RESPONSE:**

See the Response to Interrogatory No. 16 above.

**INTERROGATORY NO. 18:**

Identify all facts which reflect, refer to, relate to, evidence or concern any and all instances of actual confusion, potential confusion, mistake or deception known to Opposer as to the source, origin, sponsorship or association as between its use or proposed use of the APCO mark and Applicant's use of UPCO-QR in the United States.

**RESPONSE:**

Opposer is generally aware of there being confusion with AirZone in Oldsmar, Florida between goods bearing the APCO and UPCO-QR marks.

**INTERROGATORY NO. 19:**

Identify those persons who had more than a clerical role in the answering of the foregoing interrogatories or in any search for documents in connection with said interrogatories or the Applicant's First Set of Requests for Production of Documents.

**RESPONSE:**

Chris Willette

**INTERROGATORY NO. 20:**

Identify any other pending legal proceeding(s) in which the Opposer is currently a party presently and state whether Opposer is the defendant or plaintiff in any such proceeding.

**RESPONSE:**

Opposer is currently a party to the action styled *RGF Environmental Group, Inc. v. Triatomic Environmental, Inc., et al.*, Case No. 502015CA011535 in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida. Opposer is a Defendant and Counterclaimant in the action.

Respectfully submitted,

/s/ Brian M. Taillon  
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*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Answers to Applicant's First Set of Interrogatories was served via e-mail on September 29, 2017, to counsel for Applicant:

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*Attorneys for Applicant*

/s/ Brian M. Taillon  
Brian M. Taillon

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

TRIATOMIC ENVIRONMENTAL, INC.

Opposer,

v.

RGF ENVIRONMENTAL GROUP, INC.

Applicant.

---

Opposition No. 91232746  
Mark: UPCO-QR  
Serial No. 87/115,085

**OPPOSER’S ANSWERS AND OBJECTIONS TO  
APPLICANT’S FIRST SET OF REQUESTS FOR ADMISSIONS**

In accordance with the provisions of 37 C.F.R. § 2.120 and Fed. R. Civ. P. 36, Opposer TRIATOMIC ENVIRONMENTAL, INC. (“Opposer”) hereby responds to Applicant RGF ENVIRONMENTAL GROUP, INC.’s (“Applicant”) First Set of Requests for Admissions to Opposer as follows:

**GENERAL OBJECTIONS**

Specific objections to the requests are made on an individual basis in Opposer’s answers below. In addition to those specific objections, Opposer objects generally as follows:

1. Opposer objects to Applicant’s Requests to the extent they seek information, documents and/or things of a confidential or proprietary nature to Opposer or to others to whom Opposer is under an obligation of confidentiality.

2. Opposer objects to each and every request to the extent that they seek information, documents and/or things protected from discovery by the attorney-client privilege or the work product doctrine, or both. A specific objection stated below on the grounds of attorney-client privilege and work product in no way limits the generality of this objection. Nothing contained in this response is intended to be nor should be considered a waiver of attorney-client privilege, work product protection, trade secret privilege, the right of privacy, or any other applicable privilege or doctrine. To the extent that any request may be construed as calling for disclosure of information, documents and/or things protected by such privileges or doctrines, a continuing objection to each and every such request is hereby imposed.

3. Opposer objects to each and every request to the extent that they seek information not within Opposer's possession, custody and/or control.

4. Opposer objects to the requests to the extent that they are unreasonable, unnecessary or overly broad.

5. Opposer objects to the requests to the extent they require it to conduct anything other than a reasonable inquiry into the documents or information sought.

6. Opposer objects to the requests to the extent they seek discovery of information or documents already known or available to Applicant or in Applicant's possession, information or documents that are in the public domain, or information or documents that are as readily accessible to Applicant as to Opposer. To the extent the response to a request can be ascertained or derived from documents or information in Applicant's possession, custody, or control, or from documents or information that are publicly available, the development of that response is significantly more convenient, less burdensome and/or less expensive than it is for Opposer and Applicant should bear that burden.

7. Opposer objects to the requests, including the definitions and instructions as set forth in Applicant's First Set of Interrogatories and incorporated therein, to the extent they are vague, overbroad, unduly burdensome, not relevant to the claims or defenses of any party, not reasonably calculated to lead to the discovery of admissible evidence, unreasonably cumulative or duplicative, and/or without temporal limitations.

8. In providing specific responses, Opposer expressly reserves and does not waive (a) any objection as to competence, relevance, materiality or admissibility of documents, things and/or subject matter; (b) any objection as to scope, vagueness and/or ambiguity; or (c) any right to object on any grounds to the use of said documents, things and/or information contained therein in any subsequent proceeding, including the trial of this or any other action.

9. Opposer objects to the extent that any request implies the existence of facts or circumstances not of record or that do not exist, and to the extent that any request assumes a legal conclusion. By responding, Opposer does not admit any factual or legal assumptions contained in any request.

10. Opposer objects to any request to the extent that it is premature and requires the disclosure of information prior to the agreed-upon date set forth in the applicable Scheduling Order.

11. Opposer objects to the requests to the extent that they purport to impose obligations beyond the requirements of the Federal Rules of Civil Procedure.

12. Opposer hereby specifically incorporates each of the foregoing general objections into each of the following Responses, whether or not they are specifically stated therein.

## **REQUESTS FOR ADMISSION**

### **REQUEST NO. 1:**

Admit that “PCO” in Opposer’s APCO mark is an acronym for “photo catalytic oxidation”.

### **RESPONSE:**

Admitted.

### **REQUEST NO. 2:**

Admit that “PCO” in the indoor air quality industry is a term used to refer to “photo catalytic oxidation”.

### **RESPONSE:**

Admitted.

### **REQUEST NO. 3:**

Admit that third parties in the indoor air quality industry use the term “PCO” to refer to “photo catalytic oxidation”.

### **RESPONSE:**

Admitted.

### **REQUEST NO. 4:**

Admit that Opposer and Applicant are parties in a pending lawsuit in Florida.

### **RESPONSE:**

Admitted.

### **REQUEST NO. 5:**

For the lawsuit referenced in Request No. 4, admit that Opposer is the Defendant in this lawsuit.

**RESPONSE:**

Admitted that Opposer is the Defendant and the Counterclaimant in the lawsuit.

Respectfully submitted,

/s/ Brian M. Taillon  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Answers to Applicant's First Set of Requests for Admissions was served via e-mail on September 29, 2017, to counsel for Applicant:

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