

ESTTA Tracking number: **ESTTA1002967**

Filing date: **09/18/2019**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Conwed Plastics LLC		
Entity	Limited liability company	Citizenship	Delaware
Address	760 29th Avenue SE, Num. 770 Minneapolis, MN 55414 UNITED STATES		

Attorney information	Michael D. Hobbs, Jr. Troutman Sanders LLP 600 Peachtree Street NE, Suite 3000 Atlanta, GA 30308 UNITED STATES trademarks@troutman.com, michael.hobbs@troutman.com, kaitlyn.haase@troutman.com, kristina.woodruff@troutman.com 404-885-3000
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Applicant Information

Application No	88091934	Publication date	08/20/2019
Opposition Filing Date	09/18/2019	Opposition Period Ends	09/19/2019
Applicant	CDC Fab Co. 1445 Holland Rd. Maumee, OH 43537 UNITED STATES		

Goods/Services Affected by Opposition

Class 017. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Acoustical insulation barrier panels; Acoustical insulation for buildings; Acoustical panels for buildings; Acoustical tiles; Architectural acoustic products, namely, sound absorbers and diffusers; Architectural acoustic products, namely, sound absorbers and diffusers in the form of decorative display panels composed primarily of non-metal materials which function to control sound
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	913944	Application Date	03/30/1970
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Registration Date	06/08/1971	Foreign Priority Date	NONE
Word Mark	CONWED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 024. First use: First Use: 1967/02/02 First Use In Commerce: 1967/02/02 PLASTIC NETTING FOR GENERAL USE IN INDUSTRY INCLUDING SPRING INSULATOR FOR CUSHION CONSTRUCTIONS, MATTRESSES, AND BOX SPRINGS; REINFORCEMENT FOR WOVEN AND NON-WOVEN FABRICS AND PAPER INCLUDING REINFORCEMENT FOR CARPETS AND CARPET UNDERLAYER; WALNUT AND MACADAMIA NUT COLLECTION NET; RODENT AND BIRD PROTECTION NETS OVEROR AROUND TREES; [DECORATIVE AND FUNCTIONAL SCREENING;] EROSION CONTROL NET;WRAPPING FOR COOLER PADS; LEAF COLLECTION NET; AND THE LIKE		

U.S. Registration No.	1689058	Application Date	07/15/1991
Registration Date	05/26/1992	Foreign Priority Date	NONE
Word Mark	CONWED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 019. First use: First Use: 1986/12/00 First Use In Commerce: 1986/12/00 non-metal fencing in the nature of plastic netting		

U.S. Registration No.	1079687	Application Date	01/14/1974
Registration Date	12/20/1977	Foreign Priority Date	NONE
Word Mark	CONWED		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 011. First use: First Use: 1970/02/24 First Use In Commerce: 1970/02/24 FILTRATION NETTING AND TUBING</p> <p>Class 017. First use: First Use: 1973/03/13 First Use In Commerce: 1973/03/13 PLASTIC NETTING AND TUBING FOR GENERAL MANUFACTURING USE; PLASTIC TUBING FOR GENERAL USE AS SUCH; PLASTIC SCRIM FOR REINFORCEMENT OF PAPER, FILMS AND NONWOVENS</p> <p>Class 019. First use: First Use: 1969/06/13 First Use In Commerce: 1969/06/13 GUTTER GUARDS AND FENCING NET</p> <p>Class 020. First use: First Use: 1968/05/10 First Use In Commerce: 1968/05/10 PLASTIC SPRING INSULATORS FOR MATTRESSES AND CUSHIONS; PLASTIC CLOSURES</p> <p>Class 022. First use: First Use: 1973/07/09 First Use In Commerce: 1973/07/09 PLASTIC NETTING FOR MATERIAL HANDLING; FOOD HANDLING NETTING; TENTS; TARPAULINS; EROSION CONTROL NETTING FOR USE AS A REINFORCING MATERIAL FOR GROWING AND TRANSPLANTING GRASS</p>		

	SOD; FEATHER CONTROL NETTING FOR POULTRY AND TURKEY TRUCKS; RODENT CONTROL AND BIRD CONTROL NETTING FOR CROP PROTECTION; PLASTIC NETTING FOR THE COLLECTION AND HARVESTING OF FRUITS AND NUTS; PLASTIC BAGS; PLASTIC SCREENING NET Class 027. First use: First Use: 1969/04/29 First Use In Commerce: 1969/04/29 REINFORCING AND STRUCTURAL SUPPORT NETTING FOR CARPETS, RUGS, MATS, MATTING, CARPET UNDERLAYMENT, FLOOR COVERINGS AND FOR TEXTILE ARTICLES
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Attachments	Conwed Plastics LLC v CDC Fab Co- TTAB - Notice of Opposition.pdf(512300 bytes)
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Signature	/Kaitlyn A. Haase/
Name	Kaitlyn A. Haase
Date	09/18/2019

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

CONWED PLASTICS LLC)	
)	
Opposer,)	Application Serial No. 88091934
)	
v.)	Mark: CONWED
)	
CDC FAB CO.)	Opposition No. _____
)	
<u>Applicant.</u>)	

NOTICE OF OPPOSITION

Opposer Conwed Plastics LLC (“Opposer”), for its Notice of Opposition against Application Serial No. 88091934 for the mark CONWED, filed by CDC Fab Co. (“Applicant”), believes that it will be damaged by and thus opposes registration of the mark that is the subject matter of Application Serial No. 88091934. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a Delaware limited liability company with a principal place of business located at 760 29th Avenue SE, Num. 770, Minneapolis, Minnesota 55414.
2. Opposer is the leading plastic netting manufacturer in the world. Headquartered in Minneapolis, Minnesota, Opposer has five manufacturing locations on two continents and a global distribution network. Opposer has more than fifty years of experience developing netting solutions to help its customers improve their products and provides essential performance functionalities in a wide range of industries, including, but not limited to, the building and construction industry. Opposer also provides products to the consumer products, agriculture, automotive, filtration, hygiene, and medical industries.
3. Applicant is identified as an Ohio corporation with a principal address located at 1445 Holland Road, Maumee, Ohio 43537.

4. Application No. 88091934 was published in the U.S. Patent and Trademark Office's ("PTO") *Official Gazette* on August 20, 2019. This Notice of Opposition is timely filed.

5. Opposer is the owner of three (3) incontestable U.S. federal trademark registrations for CONWED as well as the common law rights thereto, including, but not limited to, the following (hereinafter, collectively, "Opposer's Marks"):

Mark	Country	Registration No.	Class	Goods/Services	Date of First Use
CONWED	United States	0913944	42	plastic netting for general use in industry including spring insulator for cushion constructions, mattresses, and box springs; reinforcement for woven and non-woven fabrics and paper including reinforcement for carpets and carpet underlayer; walnut and macadamia nut collection net; rodent and bird protection nets over or around trees; [decorative and functional screening;] erosion control net; wrapping for cooler pads; leaf collection net; and the like.	02/02/1967
CONWED	United States	1689058	19	non-metal fencing in the nature of plastic netting	12/00/1986
CONWED	United States	1079687	11	filtration netting and tubing	02/24/1970
			17	plastic netting and tubing for general manufacturing use; plastic tubing for general use as such; plastic scrim for reinforcement of paper, films and nonwovens	03/13/1973
			19	gutter guards and fencing net	06/13/1969
			20	plastic spring insulators for mattresses and cushions; plastic closures	05/10/1968
			22	plastic netting for material handling; food handling netting; tents; tarpaulins; erosion control netting for use as a reinforcing material for growing and transplanting grass sod; feather control netting for poultry and	07/09/1973

	turkey trucks; rodent control and bird control netting for crop protection; plastic netting for the collection and harvesting of fruits and nuts; plastic bags; plastic screening net	
27	reinforcing and structural support netting for carpets, rugs, mats, matting, carpet underlayment, floor coverings and for textile articles	04/29/1969

6. True and correct copies of printouts from the U.S. Patent and Trademark Office TEAS website showing the status of the registrations for Opposer’s Marks are attached as **Exhibit A**.

7. Since at least as early as 1967, Opposer has continuously and exclusively used Opposer’s Marks in connection with its various netting and fencing products.

8. Although there was a false media report of cessation of use, in fact, Opposer has never ceased using Opposer’s Marks for its netting and fencing products.

9. By virtue of over fifty years of use and extensive advertising, promotion, and sale of the goods identified by Opposer’s Marks, in its global distribution network as well as on its parent corporation’s website <https://www.swmintl.com>, Opposer’s Marks are well-known by the public and within the building and construction industries, recognized and relied upon as identifying Opposer’s goods and as distinguishing them from the goods of others, and have come to represent and symbolize extremely valuable nationwide common law and federal trademark rights and goodwill belonging exclusively to Opposer.

10. Applicant is the owner of Application Serial No. 88091934 for the mark CONWED filed with the PTO on August 24, 2018 for “Acoustical insulation barrier panels; Acoustical insulation for buildings; Acoustical panels for buildings; Acoustical tiles; Architectural acoustic products, namely, sound absorbers and diffusers; Architectural acoustic

products, namely, sound absorbers and diffusers in the form of decorative display panels composed primarily of non-metal materials which function to control sound” (“Applicant’s Mark”).

11. Applicant’s Mark was filed on an intent-to-use basis pursuant to Section 1(b) of the Trademark Act, making its priority in the USPTO the date of filing of the application, August 24, 2018.

12. A true and correct copy of the printout from the U.S. Patent and Trademark Office TEAS website showing the current status of the Applicant’s Mark is attached as **Exhibit B**.

13. Opposer has continuously and exclusively used Opposer’s Marks in interstate commerce in the United States and in the ordinary course of trade for services originating from Opposer long prior to Applicant’s priority filing date for Applicant’s Mark with the PTO, which was filed on an intent-to-use basis.

14. Applicant’s priority in the Applicant’s Mark is junior to the Opposer’s priority in the Opposer’s Marks.

15. Applicant’s Mark is identical in appearance, sound, and connotation to Opposer’s Marks, namely, CONWED.

16. Opposer’s Marks are used in connection with netting for erosion control, netting for buildings and building construction projects, fencing for building infrastructure products, as well as other uses related to the construction of buildings.

17. Applicant’s Mark is also used in connection with the construction of buildings, namely, for the insulation placed inside buildings during the construction process to dampen sound.

18. Applicant’s Mark, CONWED, is used on goods that are similar and/or closely related to those offered by Opposer using Opposer’s Marks.

19. Applicant's Mark as set forth in Application Serial No. 88091934 is without limitation as to the customers to whom it advertises, promotes or sells products.

20. Products using the Applicant's Mark and products using the Opposer's Marks are both sold for use in the building and construction industries.

21. Applicant's Mark, CONWED, is confusingly similar to Opposer's Marks, CONWED.

22. Opposer has not consented to the use of or application for Applicant's Mark.

CLAIM FOR RELIEF—TRADEMARK INFRINGEMENT

23. All previous paragraphs are incorporated as though fully set forth herein.

24. Opposer's Marks have been continuously used in commerce since a date prior to any date upon which Applicant may rely.

25. Applicant's Mark is identical visually, aurally, and in commercial impression to Opposer's Marks.

26. The insulation products offered under Applicant's Mark are highly related to the netting and fencing products offered under Opposer's Marks because they are both used for construction, building, and infrastructure projects for physical structures.

27. The similarity between Applicant and Opposer's products is increased as the netting and fencing products offered under Opposer's Marks are often used to serve insulation-related functions. Specifically, Opposer's netting is commonly used to form insulation sheathing boards used in homes and buildings that function as protective covers to increase thermal performance as well as to create radiant barriers in homes and buildings that help reduce summer heat gain and winter heat loss. Opposer's netting is also commonly used to hold insulation securely in place inside a home or building and to prevent unwanted pests from building nests within a home or building's insulation.

28. Upon information and belief, the insulation products intended to be offered under Applicant's Mark will be or have been offered to many of the same customers or types of customers to whom Opposer's goods are offered under Opposer's Marks.

29. Upon information and belief, the insulation products intended to be offered under Applicant's Mark will be or are offered in the same channels of trade as the goods offered by Opposer under Opposer's Marks.

30. Based on the similarity of the marks, goods, and types of customers, the use and registration of Applicant's Mark is likely to cause confusion in the minds of the purchasing public and to cause the purchasing public to assume that the goods identified by Applicant's Mark are sold by Opposer or that such products originate with or are in some way connected to Opposer, which they are not, in violation of 15 U.S.C. §§ 1052(d) and 1125(a).

31. Use and registration of Applicant's Mark will be injurious to Opposer in violation of Section 13 of the Trademark Act, 15 U.S.C. § 1063(a).

COUNT II—TRADEMARK DILUTION

32. All previous paragraphs are incorporated as though fully set forth herein.

33. Opposer's Marks are inherently distinctive.

34. Opposer's Marks have achieved substantial recognition and become well-known by and famous among the general public through over fifty years of use, which is long prior to Applicant's priority date of August 24, 2018.

35. The registration of Applicant's Mark is likely to dilute the distinctiveness of Opposer's Marks by blurring the considerable source-identifying power of Opposer's Marks.

36. The use and registration of Applicant's Mark is likely to dilute the distinctiveness of the Opposer's Marks in violation of 15 U.S.C. § 1125(c).

37. Use and registration of Applicant's Mark will be injurious to Opposer in violation of Section 13 of the Trademark Act, 15 U.S.C. § 1063(a).

WHEREFORE, Opposer believes that it will be damaged by the registration of Applicant's Mark and prays that Application No. 87837713 be refused, and that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

This 18th day of September 2019.

Respectfully submitted,

TROUTMAN SANDERS LLP

By: /Michael D. Hobbs, Jr./
Michael D. Hobbs, Jr., Esq.
Georgia Bar No. 358160
Kaitlyn A. Haase, Esq.
Georgia Bar No. 431935

ATTORNEYS FOR OPPOSER

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CERTIFICATE OF SERVICE

The foregoing was electronically filed with the Office, along with the correct fee.

This 18th day of September 2019.

Respectfully submitted,

TROUTMAN SANDERS LLP

By: /Kaitlyn A. Haase/
Kaitlyn A. Haase, Esq.
Georgia Bar No. 431935

ATTORNEY FOR OPPOSER

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kristina.woodruff@troutman.com

EXHIBIT A

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark CONWED
Goods and Services IC 024. US 042. G & S: PLASTIC NETTING FOR GENERAL USE IN INDUSTRY INCLUDING SPRING INSULATOR FOR CUSHION CONSTRUCTIONS, MATTRESSES, AND BOX SPRINGS; REINFORCEMENT FOR WOVEN AND NON-WOVEN FABRICS AND PAPER INCLUDING REINFORCEMENT FOR CARPETS AND CARPET UNDERLAYER; WALNUT AND MACADAMIA NUT COLLECTION NET; RODENT AND BIRD PROTECTION NETS OVER OR AROUND TREES; [DECORATIVE AND FUNCTIONAL SCREENING;] EROSION CONTROL NET; WRAPPING FOR COOLER PADS; LEAF COLLECTION NET; AND THE LIKE. FIRST USE: 19670202. FIRST USE IN COMMERCE: 19670202
Mark Drawing Code (1) TYPED DRAWING
Serial Number 72355354
Filing Date March 30, 1970
Current Basis 1A
Original Filing Basis 1A
Registration Number 0913944
Registration Date June 8, 1971
Owner (REGISTRANT) CONWED CORPORATION CORPORATION DELAWARE FIRST NATIONAL BANK BLDG. SAINT PAUL MINNESOTA 55101
(LAST LISTED OWNER) CONWED PLASTICS LLC LIMITED LIABILITY COMPANY DELAWARE 1300 Godward St. NE, Suite 5000 Minneapolis MINNESOTA 55413
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Jennifer C. Debrow
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110618.
Renewal 3RD RENEWAL 20110618
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark CONWED
Goods and Services IC 019. US 012. G & S: non-metal fencing in the nature of plastic netting. FIRST USE: 19861200. FIRST USE IN COMMERCE: 19861200
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74184779
Filing Date July 15, 1991
Current Basis 1A
Original Filing Basis 1A
Published for Opposition March 3, 1992
Registration Number 1689058
Registration Date May 26, 1992
Owner (REGISTRANT) LEUCADIA, INC. CORPORATION NEW YORK 315 Park Avenue New York NEW YORK 10010
(LAST LISTED OWNER) CONWED PLASTICS LLC LIMITED LIABILITY COMPANY DELAWARE 2810 WEEKS AVENUE, S.E. MINNEAPOLIS MINNESOTA 55414
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Jennifer C. Debrow
Prior Registrations 0843526;0905636;0913944;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20120604.
Renewal 2ND RENEWAL 20120604
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark

CONWED

Goods and Services

IC 011. US 031 042. G & S: FILTRATION NETTING AND TUBING. FIRST USE: 19700224. FIRST USE IN COMMERCE: 19700224

IC 017. US 042. G & S: PLASTIC NETTING AND TUBING FOR GENERAL MANUFACTURING USE; PLASTIC TUBING FOR GENERAL USE AS SUCH; PLASTIC SCRIM FOR REINFORCEMENT OF PAPER, FILMS AND NONWOVENS. FIRST USE: 19730313. FIRST USE IN COMMERCE: 19730313

IC 019. US 042. G & S: GUTTER GUARDS AND FENCING NET. FIRST USE: 19690613. FIRST USE IN COMMERCE: 19690613

IC 020. US 042. G & S: PLASTIC SPRING INSULATORS FOR MATTRESSES AND CUSHIONS; PLASTIC CLOSURES. FIRST USE: 19680510. FIRST USE IN COMMERCE: 19680510

IC 022. US 002 022 042. G & S: PLASTIC NETTING FOR MATERIAL HANDLING; FOOD HANDLING NETTING; TENTS; TARPULINS; EROSION CONTROL NETTING FOR USE AS A REINFORCING MATERIAL FOR GROWING AND TRANSPLANTING GRASS SOD; FEATHER CONTROL NETTING FOR POULTRY AND TURKEY TRUCKS; RODENT CONTROL AND BIRD CONTROL NETTING FOR CROP PROTECTION; PLASTIC NETTING FOR THE COLLECTION AND HARVESTING OF FRUITS AND NUTS; PLASTIC BAGS; PLASTIC SCREENING NET. FIRST USE: 19730709. FIRST USE IN COMMERCE: 19730709

IC 027. US 042. G & S: REINFORCING AND STRUCTURAL SUPPORT NETTING FOR CARPETS, RUGS, MATS, MATTING, CARPET UNDERLAYMENT, FLOOR COVERINGS AND FOR TEXTILE ARTICLES. FIRST USE: 19690429. FIRST USE IN COMMERCE: 19690429

Mark**Drawing Code**

(1) TYPED DRAWING

Serial Number

73010813

Filing Date

January 14, 1974

Current Basis

1A

Original Filing Basis

1A

Registration Number

1079687

Registration Date

December 20, 1977

Owner

(REGISTRANT) Conwed Corporation CORPORATION DELAWARE 332 MINNESOTA ST. St. Paul MINNESOTA 55101

(LAST LISTED OWNER) CONWED PLASTICS LLC LIMITED LIABILITY COMPANY DELAWARE 2810 WEEKS AVENUE, S.E. MINNEAPOLIS MINNESOTA 55414

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record

Jennifer C. Debrow

Prior Registrations

0845288;0913944;AND OTHERS

Type of Mark

TRADEMARK

Register

PRINCIPAL

Affidavit Text

SECT 15, SECT 8 (6-YR), SECTION 8(10-YR) 20180623.

Renewal

3RD RENEWAL 20180623

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EXHIBIT B

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CONWED

Word Mark CONWED
Goods and Services IC 017. US 001 005 012 013 035 050. G & S: Acoustical insulation barrier panels; Acoustical insulation for buildings; Acoustical panels for buildings; Acoustical tiles; Architectural acoustic products, namely, sound absorbers and diffusers; Architectural acoustic products, namely, sound absorbers and diffusers in the form of decorative display panels composed primarily of non-metal materials which function to control sound
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 88091934
Filing Date August 24, 2018
Current Basis 1B
Original Filing Basis 1B
Published for Opposition August 20, 2019
Owner (APPLICANT) CDC Fab Co. CORPORATION OHIO 1445 Holland Rd. Maumee OHIO 43537
Attorney of Record Michael E. Dockins
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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