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

Proceeding	91255001
Party	Plaintiff Trigon Turf Sciences LLC
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Submission	Motion for Summary Judgment  <b>Yes</b> , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction.  The deadline for pretrial disclosures for the first testimony period as originally set or reset: <b>06/04/2021</b>
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Date	10/23/2020
Attachments	Opposer_Mot_Sum_Judgment.pdf(232549 bytes ) Tremblay Declaration_Part1.pdf(3374705 bytes ) Tremblay Declaration_Part2.pdf(4409900 bytes ) Tremblay Declaration_Part3.pdf(854816 bytes ) Tenirio_Declaration.pdf(1369740 bytes )



stylized image of a samurai, with a disclaimer of the word “TINES.” Opposer’s Samurai Design Mark registered as US Registration No. 5,600,255 on November 6, 2018.



Since at least as early as March 14, 2018, the filing date of Opposer’s registration application, Opposer has been continuously using Opposer’s Samurai Design Mark in commerce in the United States in connection with the sale of metal turf aeration tines. To date Opposer has offered and sold metal turf aeration tines to over one thousand customers throughout the United States from its primary place of business located in Miami, Florida.

Despite this fact, Applicant on October 10, 2019, filed an intent-to-use application for registration with the US Patent and Trademark Office (Serial No. 88/649,876) of the mark SAMURAI TINE (word) used in connection with metal turf aeration tines, which goods are identical with the goods offered by Opposer under Opposer’s Samurai Design Mark.<sup>1</sup> Opposer now seeks the refusal of registration of Applicant’s Mark in light of her clear priority of use.

As the evidence submitted herewith demonstrates, there is a strong likelihood of confusion between the Applicant’s SAMURAI TINE mark and Opposer’s Samurai Design Mark, in that (1) the Applicant’s SAMURAI TINE mark is legally identical to a prominent part of Opposer’s

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<sup>1</sup> Applicant began using the SAMURAI TINE mark in commerce thereafter. Tremblay Decl., ¶10.

Samurai Design Mark; (2) Applicant's goods identified in Serial No. 88/649,876 are identical to the goods listed in Opposer's Registration No. 5,600,255 and sold by Opposer under Opposer's Samurai Design Mark; (3) Applicant's goods are sold in identical channels of trade to an identical class of consumers as Opposer; and (4) actual confusion between Opposer and Applicant has occurred in the marketplace for the goods. Therefore, a likelihood of confusion exists between Applicant's SAMURAI TINE mark and Opposer's Samurai Design Mark.

Opposer has unambiguously established that no genuine issue of material fact exists regarding her standing and priority over Applicant's SAMURAI TINE mark, and therefore moves for summary judgment in the above-captioned opposition action.

#### **STATEMENT OF UNDISPUTED FACTS**

Opposer has been continuously offering for sale and selling metal turf aeration tines under Opposer's Samurai Design Mark since at least as early as March 14, 2018. Tremblay Decl., ¶¶6-8. Specifically, Opposer uses Opposer's Samurai Design Mark in commerce in the United States on and in connection with the marketing, offering for sale, and sale of metal turf aeration tines. Tremblay Decl., ¶5. Via Opposer's website ([www.ninjatines.com](http://www.ninjatines.com)), Opposer began marketing, offering for sale, and selling metal turf aeration tines to consumers throughout the United States at least as early as March 14, 2018. Tremblay Decl., ¶5. Since at least as early as March 14, 2018, Opposer has continually offered for sale and sold metal turf aeration tines via the website under Opposer's Samurai Design Mark. Tremblay Decl., ¶¶5-6.

During every year beginning at least as early as March 14, 2018, Opposer offered for sale and did sell metal turf aeration tines under Opposer's Samurai Design Mark. Tremblay Decl., ¶¶5-6. Opposer has expended a substantial sum of money promoting her tines under Opposer's Samurai Design Mark by way of advertising and other promotional efforts. Tremblay Decl., ¶9.

On October 10, 2019, Applicant filed an intent-to-use application to register with the USPTO Applicant's SAMURAI TINE (word) mark, which is legally identical to a prominent portion of Opposer's Samurai Design Mark. See Applicant's SAMURAI TINE (word) application serial no. 88/649,876 (the "Application") at Tremblay Decl., Exh. 4. Applicant filed an intent-to-use application, so Applicant's earliest date for purposes of priority is Applicant's application filing date, October 10, 2019. That date is more than a year later than the filing date of the application that matured into the Samurai Design Mark Registration. See the Registration at Tremblay Decl., Exh. 2.

The Application for the SAMURAI TINE mark lists the following goods:

**Int'l Class 006: Metal turf aeration tines.**

Applicant does not identify any limitations on the channels of trade or class of consumers in its description of goods. In fact, Applicant offers for sale metal turf aeration tines under Applicant's SAMURAI TINE mark through the same means as Opposer, i.e., through a website. Tremblay Decl., ¶12. And, both Opposer and Applicant sell their respective metal turf aeration tines directly to customers via their websites. Tremblay Decl., ¶12. At least two instances of actual confusion between Opposer and Applicant has occurred. Tenorio Decl., ¶¶4-9.

As set forth herein, this case is ripe for summary adjudication because there are no material issues of fact in dispute and the undisputed facts show that, as a matter of well-settled law: (1) Opposer has standing to bring this Opposition proceeding; (2) Opposer has priority of right over Applicant; (3) Opposer's Samurai Design Mark and Applicant's mark SAMURAI TINE (word) are confusingly similar; and (4) there is a strong likelihood of confusion between the Opposer's Samurai Design Mark and Applicant's mark SAMURAI TINE (word).

Accordingly, the Board should grant summary judgment in favor of Opposer and refuse registration of application serial no. 88/649,876.

## **ARGUMENT**

### **I. The Standard for Summary Judgment**

Summary judgment is proper where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also T.B.M.P. § 528.01. To overcome a Rule 56 motion for summary judgment, the non-moving party must proffer evidence sufficient to demonstrate the existence of a genuine dispute as to a material fact. Fed. R. Civ. P. 56(c). In other words, the non-moving party must demonstrate that on the entirety of the record, a reasonable jury could resolve a factual matter in favor of the non-movant. See *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987).

The purpose of a summary judgment motion is to promote judicial economy; namely, to avoid an unnecessary trial where, as here, more evidence than already is available could not reasonably be expected to change the result in the case. T.B.M.P. § 528.01; see *University Book Store v. University of Wisc. Bd. of Regents*, 33 U.S.P.Q.2d 1385 (T.T.A.B. 1994). Thus, as a general rule, the resolution of Board proceedings by means of summary judgment is to be encouraged (*Id.*; see also *Sweats Fashions*, 833 F.2d at 1562 ("summary judgment may no longer be regarded as a disfavored procedural shortcut")), and the Board should grant summary judgment where a full trial is "unnecessary because the essential facts necessary to decision of the issue can be adequately developed by less costly procedures, as contemplated by the FRCP rules here involved, with a net benefit to society." *Exxon Corp. v. National Foodline Corp.*, 579 F.2d 1244, 1246 (C.C.P.A. 1978) (quoted in *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 262 (Fed. Cir. 1984)).

In order to sustain this opposition action under section 2(d) of the Lanham Act, Opposer must show that Applicant's SAMURAI TINE mark:

Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive[.]

15 U.S.C. § 1052(d). Simply put, in order to prevail on this summary judgment motion, Opposer must show that no genuine issue of material fact exists with respect to (1) Opposer's standing to bring this opposition proceeding; (2) Opposer's priority over Applicant in Opposer's Samurai Design Mark as a prior user; and (3) the likelihood of confusion between Opposer's Samurai Design Mark and Applicant's SAMURAI TINE mark.

Opposer is entitled to summary judgment, as a matter of law, because there is no genuine issue of material fact before the Board with respect to Opposer's standing and priority over Applicant's SAMURAI TINE mark. First, Opposer's standing is clear based upon the fact that Applicant and Opposer are competitors with respect to metal turf aeration tines, and Opposer's Registration is of record. See Opposer's Complaint, Exh. A; Tremblay Decl., Exh. 2 and ¶12. Second, Opposer has conclusively established prior use of the Samurai Design Mark without abandonment. Third, a likelihood of confusion clearly exists between Opposer's Samurai Design Mark and Applicant's SAMURAI TINE mark, as it is unquestionable that: (1) the two marks are legally identical in appearance, sound, connotation, and commercial impression; (2) the two marks are used in connection with identical goods; (3) the channels of trade are identical; (4) the purchasers are the same; and (5) actual confusion exists. Therefore, summary judgment is appropriate in Opposer's favor and the Board should refuse registration of Application Serial No. 88/649,876.

## **II. There is No Question as to Standing**

Opposer owns US Trademark Registration No. 5,600,255 for the Samurai Design Mark,

registered on November 6, 2018, in connection with metal turf aeration tines in class 6. Opposer's Registration is of record. See Opposer's Complaint, Exh. A and Tremblay Declaration, Exh 2. Further, there is no question that Applicant and Opposer are competitors with respect to the sale of metal turf aeration tines. Tremblay Decl. at ¶12. Under such circumstances, Opposer's standing is established beyond question. See *United Global Media Group, Inc. v. Bonnie Tseng*, Opposition No. 91200786 ("Because opposer has properly made of record one of its pleaded registrations . . . opposer has established its standing.") (citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) and *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982)); *Hunter Industries, Inc. v. The Toro Company*, Opposition No. 91203612 (where opposer and applicant are competitors in the relevant market, and opposer has used her mark, opposer has standing to bring opposition proceeding).

### **III. There is No Genuine Issue of Material Fact Regarding Opposer's Priority Over Applicant's SAMURAI TINE Mark**

Opposer has produced an abundance of incontrovertible evidence that clearly establishes her proprietary rights in the Samurai Design Mark. Opposer used the Samurai Design Mark in connection with the sale of metal turf aeration tines at least as early as March 14, 2018. See Tremblay Decl., ¶¶5-6. Opposer has proffered considerable evidence clearly demonstrating her continuous use of the Samurai Design Mark in connection with the sale of metal turf aeration tines including: (1) sales reports of Opposer's continued sales; and (2) evidence of marketing metal turf aeration tines under the Samurai Design Mark. See Tremblay Decl., Exhs. 1 and 3. This, along with Opposer's testimonial evidence in the Tremblay Declaration, illustrates Opposer's continuous commercial use of the Samurai Design Mark since at least as early as March 14, 2018. See Tremblay Decl., ¶¶5-6.



It is irrefutable that Opposer's continuous and unabandoned use of the Samurai Design Mark in commerce demonstrates priority of right over Applicant. Applicant filed an intent-to-use registration application for the mark SAMURAI TINE on October 10, 2019. Applicant's constructive use date is more than a year later than Opposer's use of the Samurai Design Mark at least as early as March 14, 2018. Therefore, no genuine issue of material fact exists with regard to the issue of Opposer's priority.

#### **IV. Opposer's Samurai Design Mark is Inherently Distinctive and Deserving of the Utmost Protection**

The strength of a mark is identified based on its placement in one of four categories: arbitrary or fanciful; suggestive; descriptive; or generic. See *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976), *modified on other gds.*, 189 U.S.P.Q. 769 (2d Cir. 1976), *overruled on other gds. by*, *New York Racing Ass 'n v. Perlmutter Publ'g*, 959 F. Supp. 578 (N.D.N.Y. 1997). Arbitrary, fanciful and suggestive marks are inherently distinctive and thus are protectable upon commercial use without a showing of secondary meaning. See *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992).

Opposer's Samurai Design Mark is, by its very nature, afforded the highest degree of protection from infringement because it is an arbitrary mark. *Accuride International, Inc. v. Accuride Corp.*, 871 F.2d 1531, 1536 (9th Cir. 1989) ("The strength of a trademark [...] is largely determined by its position on a continuum stretching from arbitrary marks to descriptive marks. Arbitrary and fanciful marks are strong, while suggestive and descriptive marks are weak." (internal citations omitted)). An arbitrary mark is a mark "that does not directly describe the qualities of a product to which it applies..." *Clinique Labs., Inc. v. Dep Corp.*, 945 F. Supp. 547, 551 (S.D.N.Y. 1996) (finding CLINIQUE to be an arbitrary mark with regard to cosmetics). Here,

the Samurai Design Mark is undeniably arbitrary as it does not directly describe the qualities of the metal turf aeration tines provided by Opposer and has no connection to the goods whatsoever. The mark overall connotes and gives the impression of a Japanese warrior. Tremblay Decl., ¶4. Therefore, Opposer's Samurai Design Mark is properly classified as an arbitrary mark.

**V. A Clear Likelihood of Confusion Exists Between the Opposer's Samurai Design Mark and the Applicant's SAMURAI TINE Mark**

Opposer has unequivocally met her burden of proving that there is a likelihood of confusion between Opposer's Samurai Design Mark and Applicant's SAMURAI TINE (word) mark, and that no genuine issue of material fact exists with regard thereto.

The applicable test for likelihood of confusion was articulated in the case *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973). Although there is no mechanical test for determining the likelihood of confusion between two marks, the *du Pont* decision provides a host of factors to be weighed and considered in testing for likelihood of confusion. *Id.* at 1361. While none of these factors are more important than the other in the likelihood of confusion determination; from case to case, each factor may play a dominant role. *Id.* at 1361-62; see also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). In this cancellation action, an analysis of the *du Pont* factors compels the conclusion that there is a likelihood of confusion between Opposer's Samurai Design Mark and Applicant's SAMURAI TINE mark.

The *du Pont* factors, to be weighed and considered in a likelihood of confusion analysis under Section 2(d) of the Lanham Act, are:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
2. The similarity or dissimilarity and nature of the goods or

services as described in an application or registration or in connection with which a prior mark is in use.

3. The similarity or dissimilarity of established, likely-to-continue trade channels.
4. The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
5. The fame of the prior mark (sales, advertising, length of use).
6. The number and nature of similar marks in use on similar goods.
7. The nature and extent of any actual confusion.
8. The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
9. The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
10. The market interface between applicant and the owner of a prior mark.
11. The extent to which applicant has a right to exclude others from use of its mark on its goods.
12. The extent of potential confusion, i.e., whether de minimis or substantial.
13. Any other established fact probative of the effect of use.

*du Pont*, 476 F.2d at 1361.

This Board should assign the most weight to *du Pont* factors 1-4 and 7 due to the identical nature of the goods, channels of trade, class of consumers; actual confusion; and confusingly similar marks used by the Opposer and Applicant. Here, it is clear that a likelihood of confusion exists between the two marks.

**a. The Goods Are Identical**

As a matter of law, the analysis of the similarity of the parties' goods is confined to the

four corners of their respective applications and registrations.

The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade, or the class of purchasers to which sales of goods are directed.

*Octocom Sys., Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937,942 (Fed. Cir. 1990).

Here, Opposer's Samurai Design Mark is used in connection with "metal turf aeration tines." Applicant filed its Application with the intention to use its SAMURAI TINE mark in connection with "metal turf aeration tines." Because the goods recited in the Registration and Application are identical, there is no dispute that the second *du Pont* factor weighs heavily in favor of a finding of likelihood of confusion.

**b. Trade Channels Are Presumed Identical**

The third *du Pont* factor requires the Board to analyze the similarity or dissimilarity of established, likely-to-continue trade channels. Here, "[b]ecause the goods are legally identical, they must be presumed to travel in the same channels of trade." *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002) ("absent restrictions in the application and registration, [related] goods and services are presumed to travel in the same channels of trade to the same class of purchasers"). See also *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade, the Board was entitled to rely on this legal presumption in determining likelihood of confusion). Thus, there is no dispute that the third *du Pont* factor weighs heavily in favor of a finding of likelihood of confusion.

**c. Identical Goods are Presumed Sold to the Same Class of Purchasers**

The fourth *du Pont* factor requires the Board to analyze the conditions under which and buyers to whom sales are made. Here, because the goods are legally identical, they also must be presumed to be sold to the same class of purchasers. *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002) (“absent restrictions in the application and registration, [related] goods and services are presumed to travel in the same channels of trade to the same class of purchasers”). See also *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

Moreover, the applicable standard of care for a likelihood-of-confusion analysis is that of the least sophisticated consumer. *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014) (affirming that TTAB properly considered all potential investors for recited services, which included sophisticated investors, but that precedent requires consumer care for likelihood-of-confusion decision to be based “on the least sophisticated potential purchasers”); *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004).

Thus, there is no dispute that the fourth *du Pont* factor also weighs heavily in favor of finding a likelihood of confusion.

**d. The Marks are Confusingly Similar**

The first *du Pont* factor requires the Board to analyze the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535

(TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987). In comparing the marks, we are mindful that “[w]hen marks would appear on virtually identical goods ..., the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Est. Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Prods. Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods or services offered under the respective marks is likely to result. *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d* unpublished, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

“Likelihood of confusion often has been found where the entirety of one mark is incorporated within another.” *Hunter Industries, Inc. v. The Toro Company*, Opposition No. 91203612 (*citing In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (applicant’s mark ML is similar to registrant’s mark ML MARK LEES); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (THE LILLY as a mark for women’s dresses is likely to be confused with LILLI ANN for women’s apparel including dresses); *In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (CAREER IMAGE for women’s

clothing stores and women's clothing likely to cause confusion with CREST CAREER IMAGES for uniforms including items of women's clothing)). Such is the case here.

Applicant's SAMURAI TINE mark includes as its most prominent and only<sup>2</sup> feature the word "SAMURAI." Opposer's mark includes a legally identical feature, i.e., an image of a samurai. *See In re Rolf Nilsson AB*, 230 USPQ 141, 142 (TTAB 1986) ("[A] picture and the word that describes that picture are given the same significance in determining likelihood of confusion.") (*citing In re Serac, Inc.*, 218 USPQ 340, 341 (TTAB 1983)). Thus, because Opposer's Samurai Design Mark legally encompasses the entirety of Applicant's mark, the marks are confusingly similar and lead the Board to a finding of likelihood of confusion.

Moreover, because the marks are in large measure identical, the marks are likely to engender the same connotation and overall commercial impression when considered in connection with identical goods. *In re i.am.symbollic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd* 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017). Opposer's mark refers to a Ninja and a Samurai. Applicant's mark refers to a Samurai. The overall connotation and commercial impression of the marks is identical, i.e., that of a Japanese warrior.

Accordingly, the first *du Pont* factor weighs heavily in favor of a finding of likelihood of confusion.

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<sup>2</sup> Applicant's mark includes the word "tine" and Opposer's mark includes the legally identical word "tines". In each instance, the word is disclaimed, and thus entitled to little weight in the overall likelihood of confusion analysis. *Janice Cahajla v. Tail-Waggers of Hilton Head, Inc.*, Opposition No. 91177475 (disclaimed words are very descriptive terms that would not be a significant factor in distinguishing marks) (*citing Cunningham*, 55 USPQ2d at 1846, *quoting In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985) ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion'"). *See also In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) ("Because ALE has nominal commercial significance, the Board properly accorded the term less weight in assessing the similarity of the marks under DuPont. As a generic term, ALE simply delineates a class of goods").

**e. Actual Confusion Exists in the Marketplace**

The seventh *du Pont* factor requires the Board to analyze the nature and extent of any actual confusion in the marketplace for the goods. Since Applicant began using its mark, at least two instances of actual confusion can be shown here. First, on April 22, 2020, a customer mistook Applicant as the source of Opposer's Ninja brand metal turf aeration tines. Tenorio Decl., ¶¶4-9 and Exh. 1. Second, on May 19, 2020, a customer again mistook Applicant as the source of Opposer's Ninja brand metal turf aeration tines. Tenorio Decl., ¶¶10-15 and Exh. 2.

Any evidence of actual confusion is relevant and should be carefully considered. Evidence of actual confusion is normally very persuasive evidence of likelihood of confusion. *Exxon Corp. v. Texas Motor Exchange, Inc.*, 628 F.2d 500, 208 USPQ 384, 389 (5th Cir. 1980) ("The best evidence of likelihood of confusion is provided by evidence of actual confusion"). Here, there are direct statements by members of the purchasing public that they believed that Applicant provided Opposer's Ninja brand tines. Tenorio Decl., ¶7 and ¶13 and Exhs. 1-2. Such evidence of confusion as to the source of the goods weighs very heavily in favor of a finding of likelihood of confusion.

**f. Five *du Pont* Factors Weigh Heavily in Opposer's Favor**

Analysis of these five determining *du Pont* factors is so compelling that no genuine issue of material fact exists with respect to the likelihood of confusion between Opposer's Samurai Design Mark and Applicant's SAMURAI TINE mark.

**CONCLUSION**

Opposer has standing and priority of right over Applicant. Opposer's continuous commercial use of the Mark since at least as early as March 14, 2018 – more than a year prior to Applicant's admitted constructive date of first use of October 10, 2019 – unequivocally establishes



that no genuine issue of material fact exists with respect to Opposer's priority over Applicant's mark as a prior user. Additionally, there is no dispute that a likelihood of confusion exists between the parties' marks. Indeed, Respondent has not proffered, and cannot proffer, any evidence to refute these assertions. All of *du Pont* factors 1-4 and 7 weigh heavily in favor of a finding of likelihood of confusion. Because of this, no reasonable fact-finder could resolve this matter in favor of Applicant. Thus, Opposer is entitled to summary judgment as a matter of law.

For the foregoing reasons, it is submitted that good grounds exist for granting Opposer's motion for summary judgment, and such action is hereby requested.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing

**OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

has been duly served by emailing a copy to:

BLAKE P. HURT  
TUGGLE DUGGINS P.A.  
100 N. GREENE STREET, SUITE 600  
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ATTORNEY FOR APPLICANT

on October 23, 2020.

/s/Joseph A. Uradnik





5. Exhibit 1 to this Declaration is a true and correct copy of pages from my business website, [www.ninjatines.com](http://www.ninjatines.com). The website has been online advertising the sale of metal turf aeration tines using the SAMURAI DESIGN MARK mark continuously since at least as early as March 14, 2018, which is the filing date of the application that matured into Registration No. 5,600,255 for the Samurai Design Mark. See the '255 Registration at Exhibit 2, a true and correct copy of the Trademark Status & Document Retrieval (TSDR) information for the '255 Registration.

6. Since at least as early as March 14, 2018, Opposer has been continuously offering for sale and selling metal turf aeration tines under the Samurai Design Mark. Exhibit 3 is a collection of true and correct copies of Opposer sales reports for metal turf aeration tines in March of each year from 2018 to present, with customer name and pricing information redacted.

7. I have marketed metal turf aeration tines directly to customers via my website, and in person using sales flyers and videos. Customers may purchase metal turf aeration tines via my website or through one of Opposer's sales representatives.

8. At all times during my business operations, since at least as early as March 14, 2018, I have used the Samurai Design Mark in connection with metal turf aeration tines, and I have never abandoned the Samurai Design Mark.

9. I have expended a substantial sum of money promoting metal turf aeration tines under the Samurai Design Mark by way of advertising and other promotional efforts.

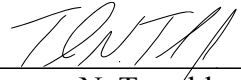
10. Applicant filed an intent-to-use application serial no. 88/649,876 to register the mark SAMURAI TINE (word) on October 10, 2019. See Exhibit 4, which is a true and correct copy of the TSDR information for the '876 application. Beginning sometime thereafter, Applicant has used its mark in commerce.

11. The '876 application and the '255 Registration recite identical goods: metal turf aeration tines.

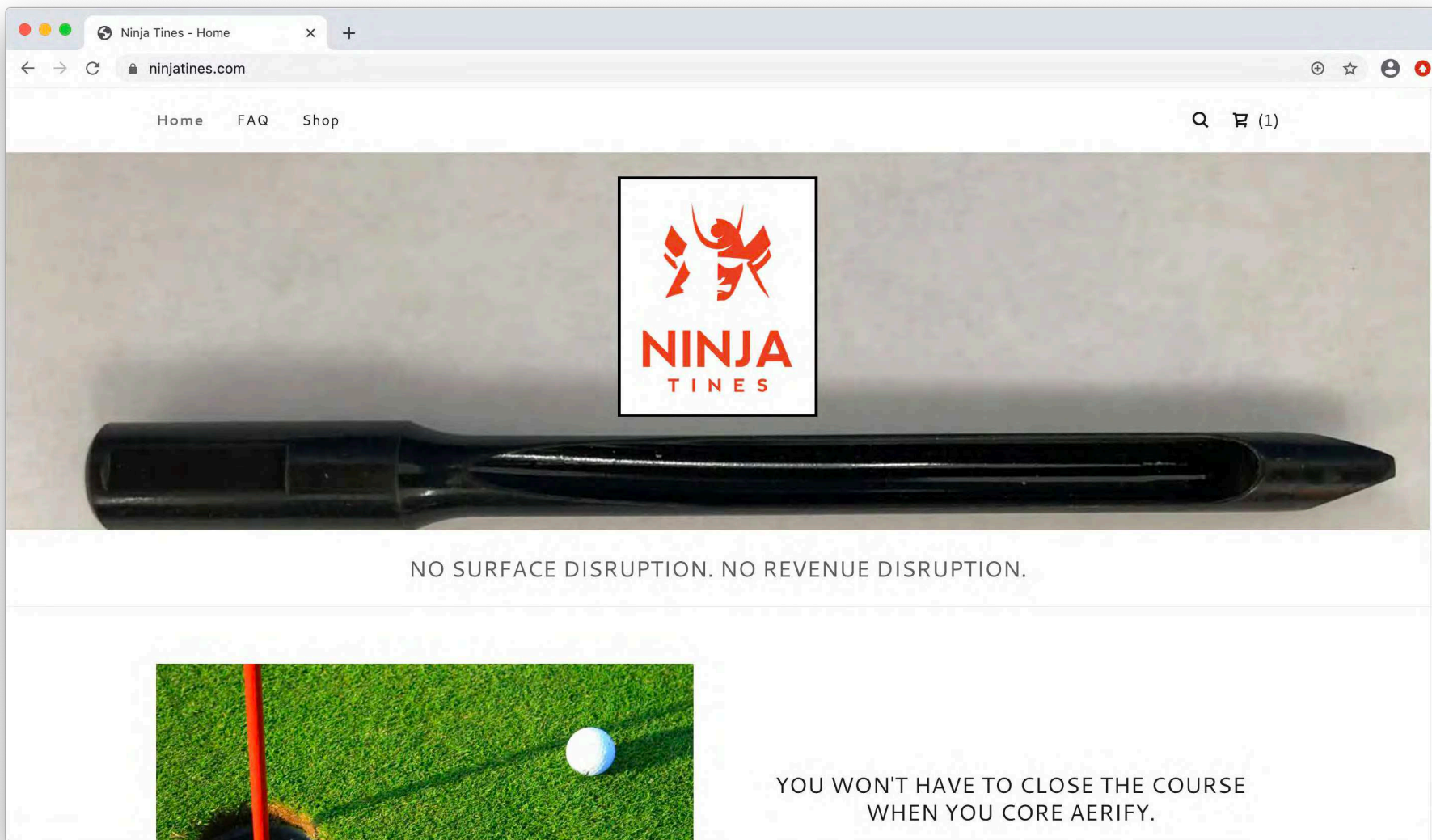
12. Applicant and Opposer are competitors that market and sell metal turf aeration tines the same way (e.g., via a website and personal sales calls) to the same class of purchasers (e.g., superintendents at golf courses). Both Applicant and Opposer also make use of sales flyers and videos in promoting their respective products.

13. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Date: Oct 23, 2020

Signed:   
Thomas N. Tremblay, Jr.

## EXHIBIT 1





YOU WON'T HAVE TO CLOSE THE COURSE  
WHEN YOU CORE AERIFY.

NO MORE DISCOUNTED GREEN FEES.

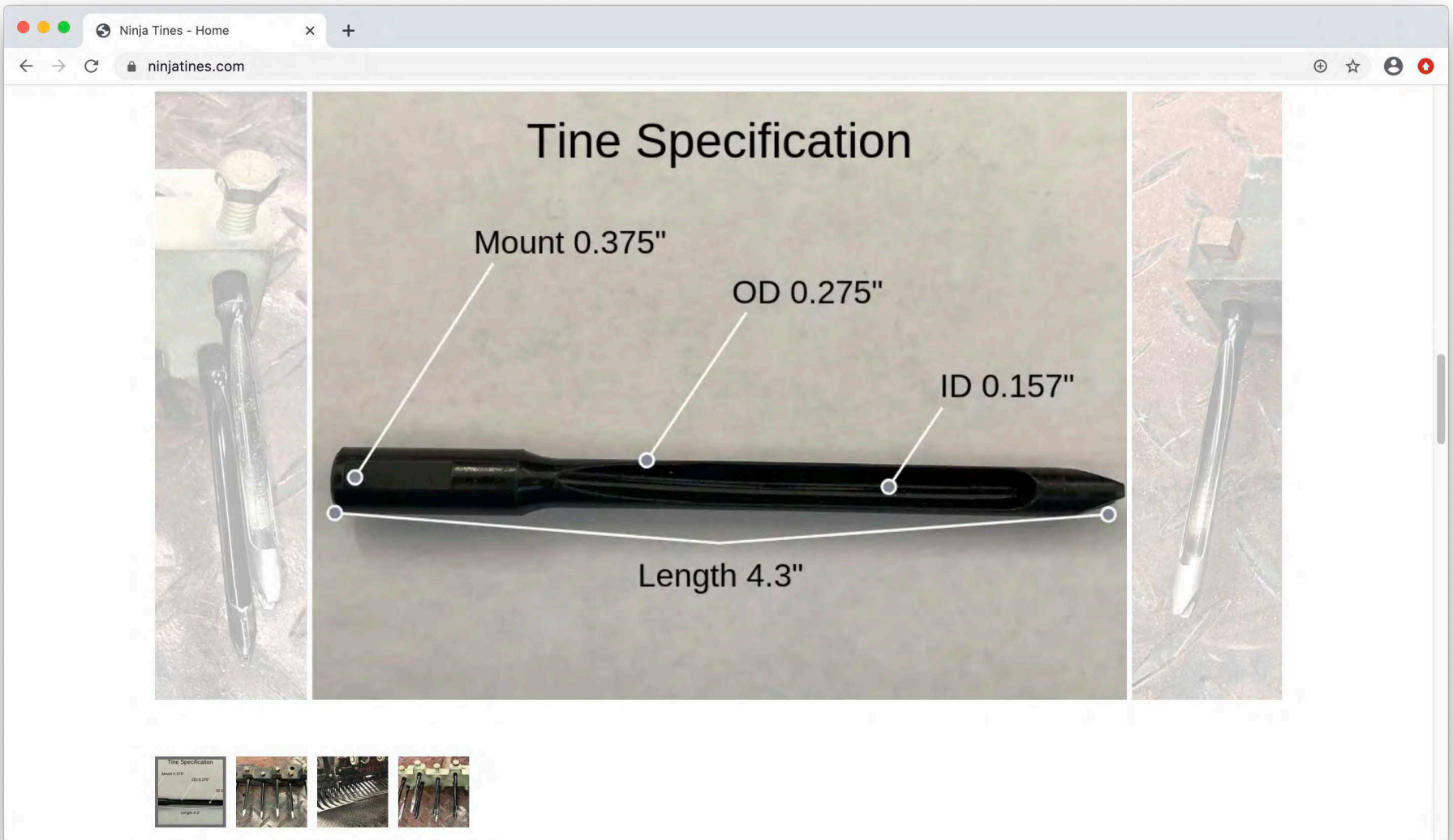


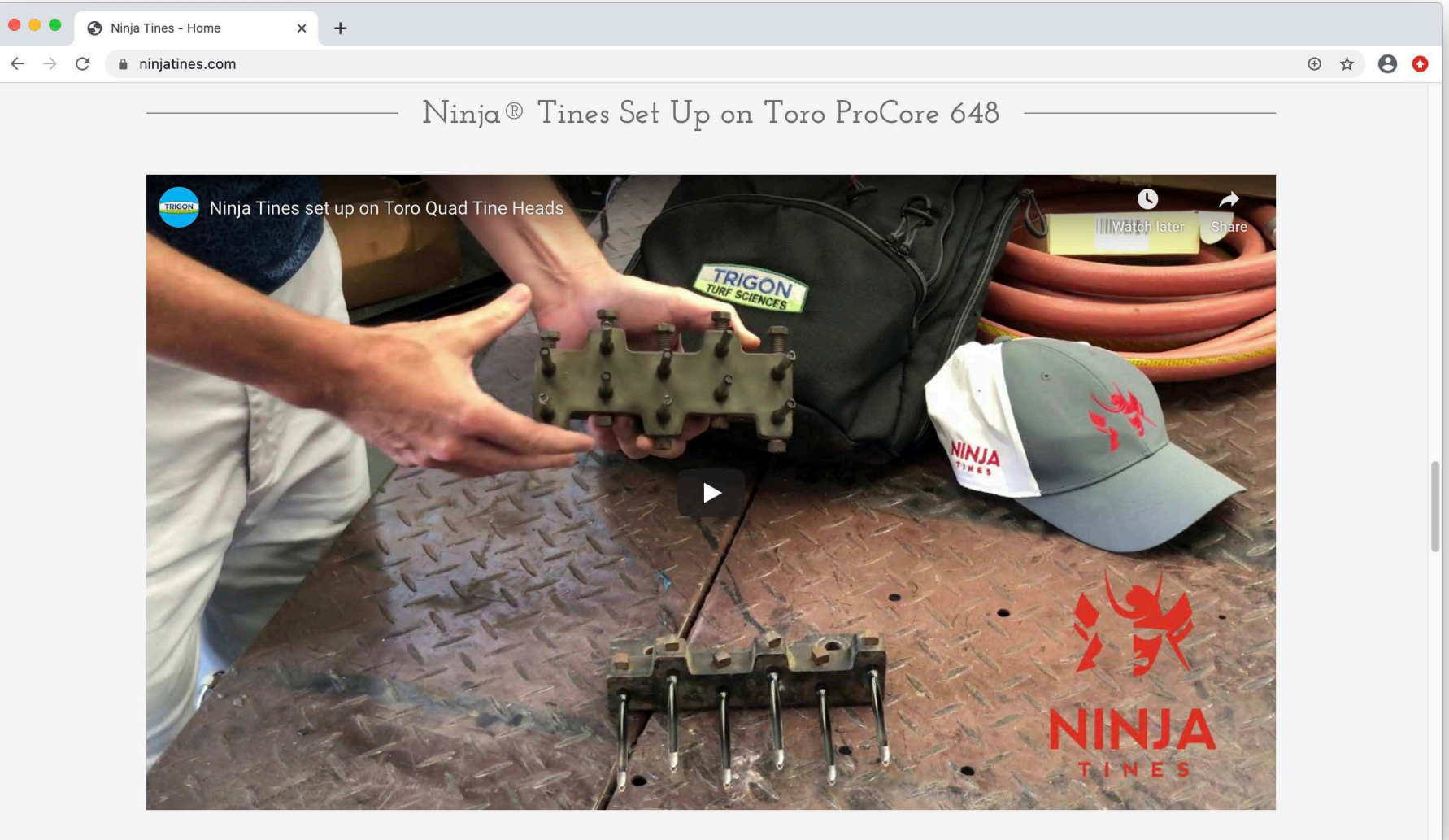
WATCH THE NINJA® TINES IN ACTION

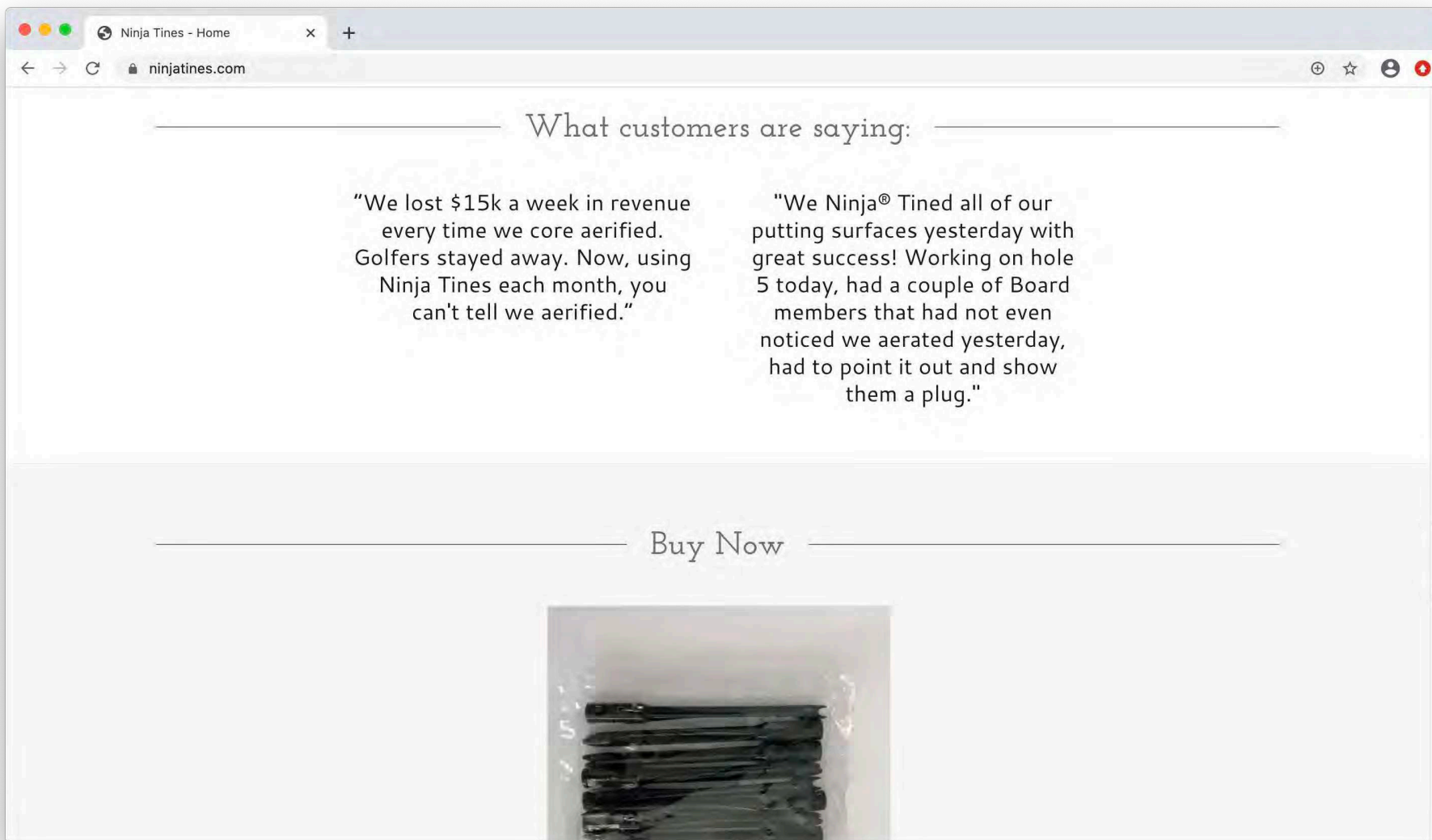


WATCH THE NINJA® TINES IN ACTION

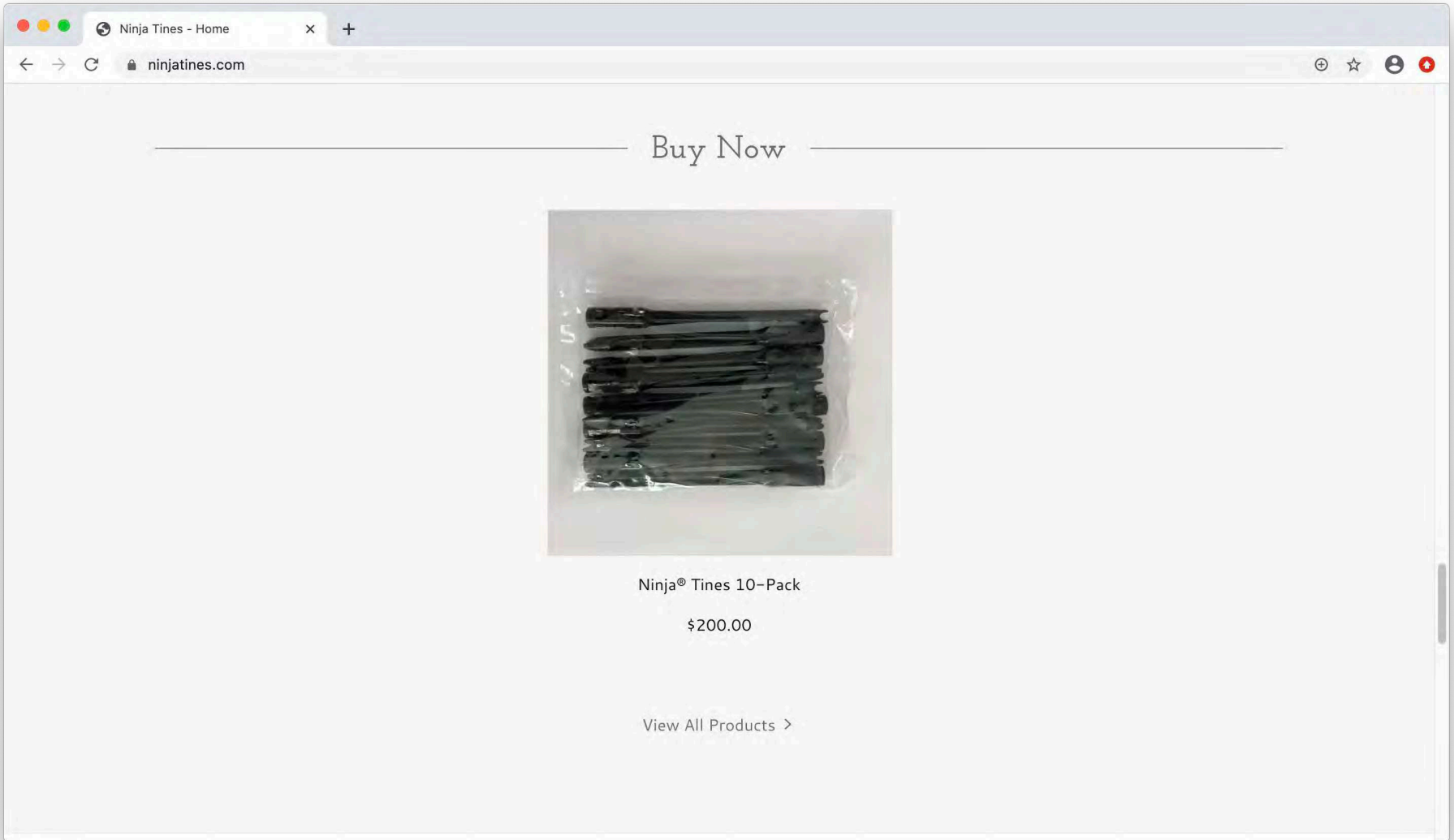


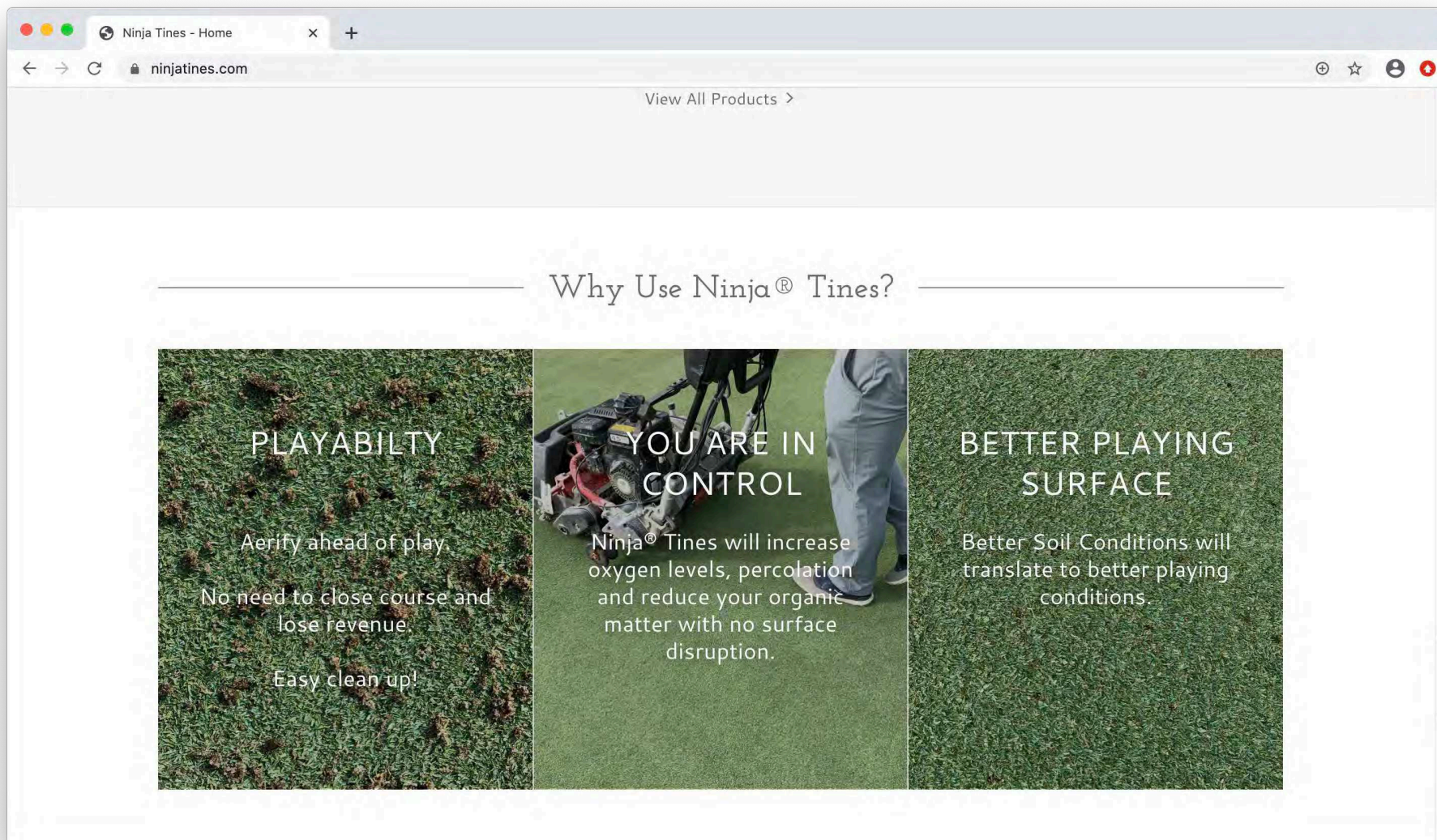












Ninja Tines - Home

ninjatines.com

⊕ ☆ 👤 🔴

Contact Us

Drop us a line!

Name

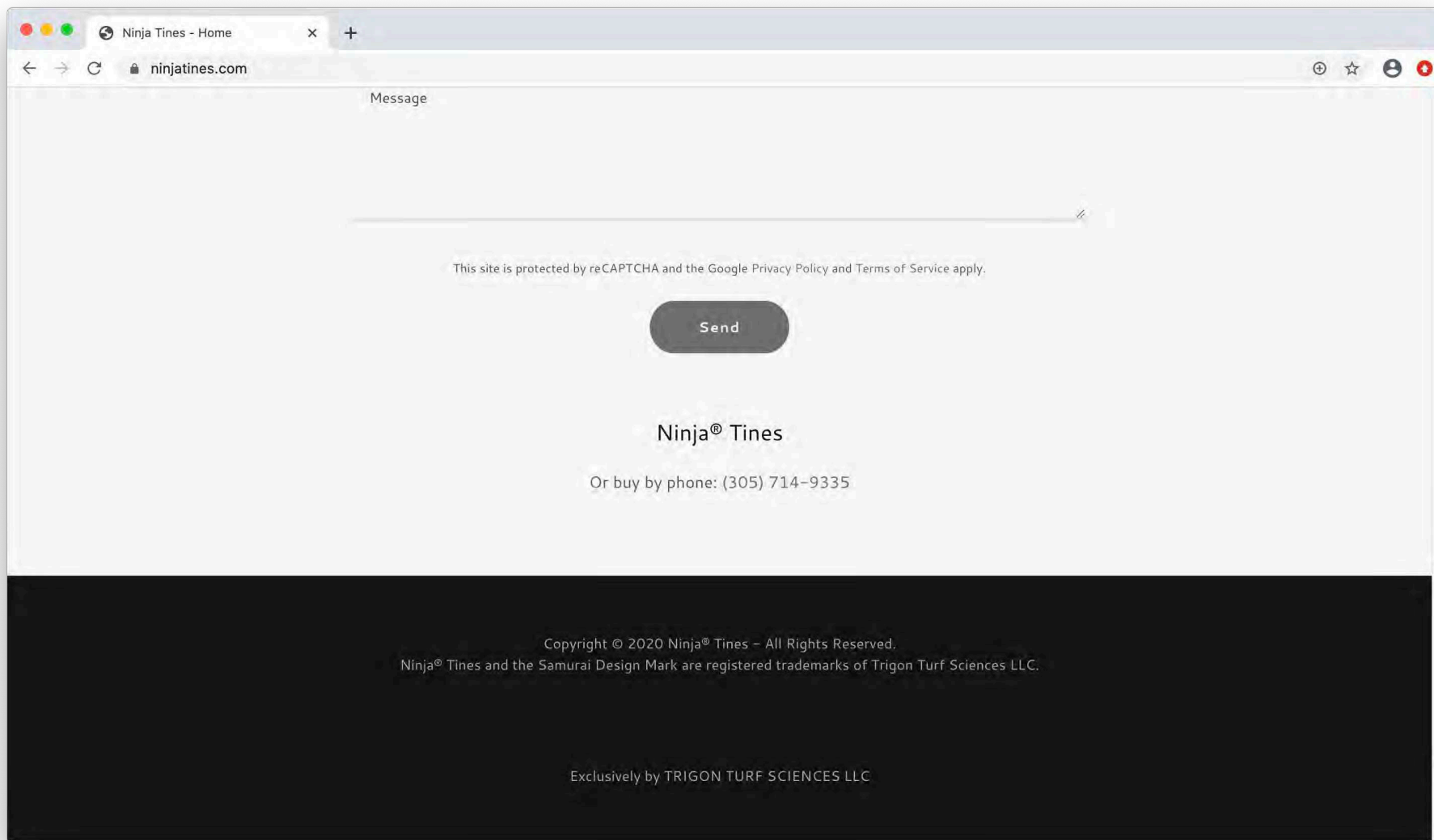
Email\*

Message

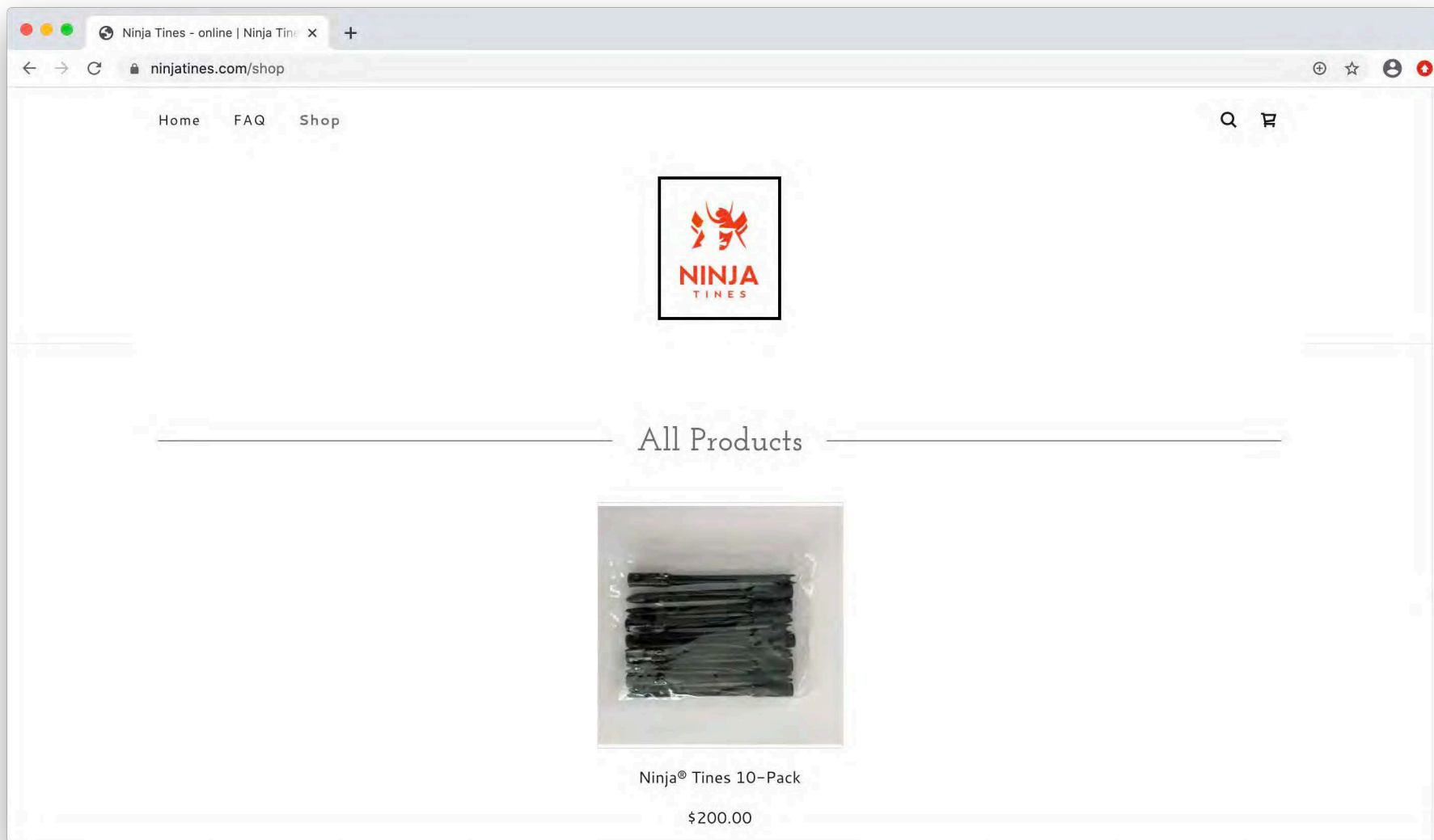
This site is protected by reCAPTCHA and the Google Privacy Policy and Terms of Service apply.

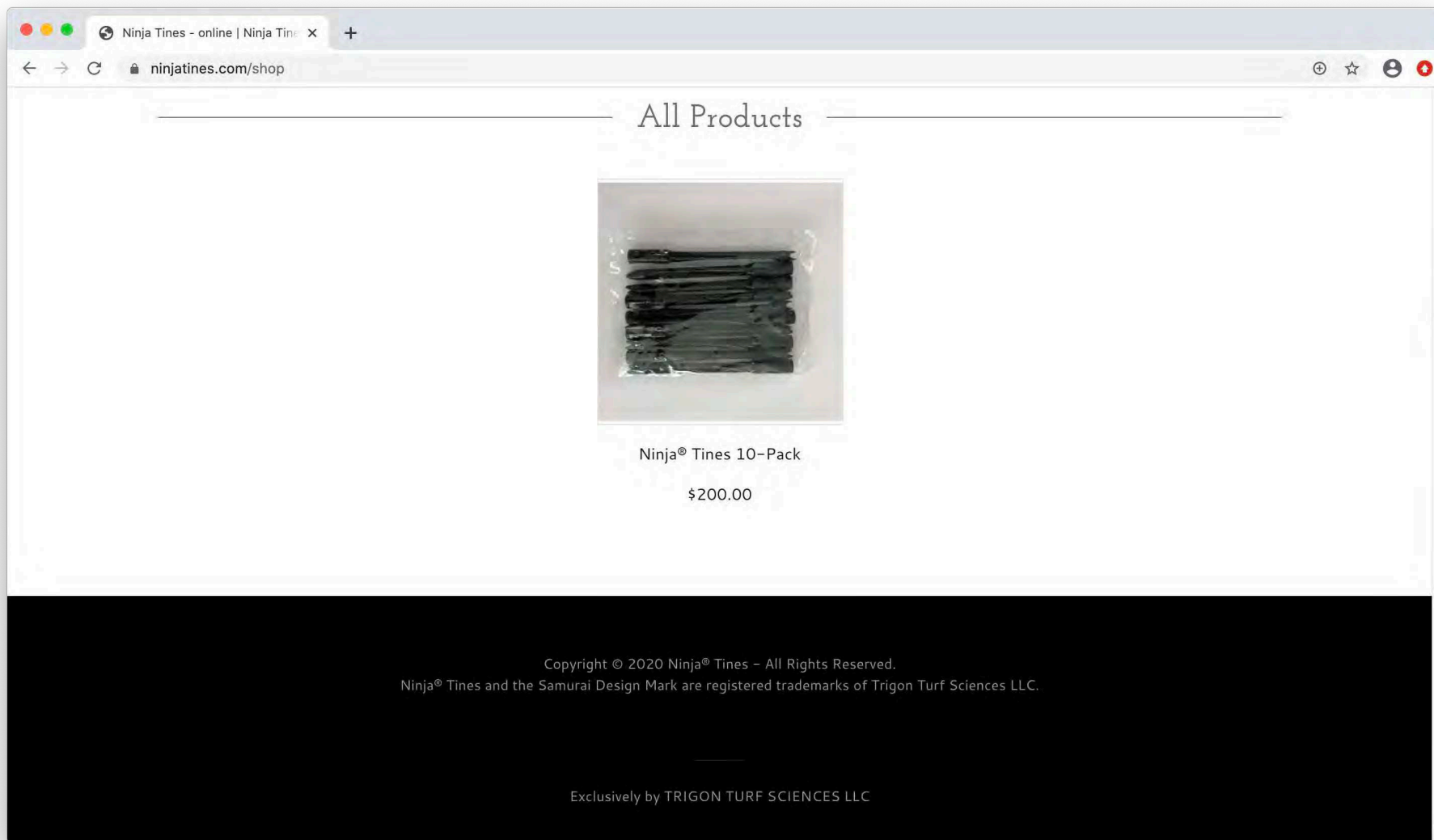
Send

Ninja® Tines











Ninja Tines - online | Ninja Tines

ninjatines.com/shop/ols/products/ninja-tines-10-pack

HomeFAQShop



[< All Products](#)



Ninja® Tines 10-Pack

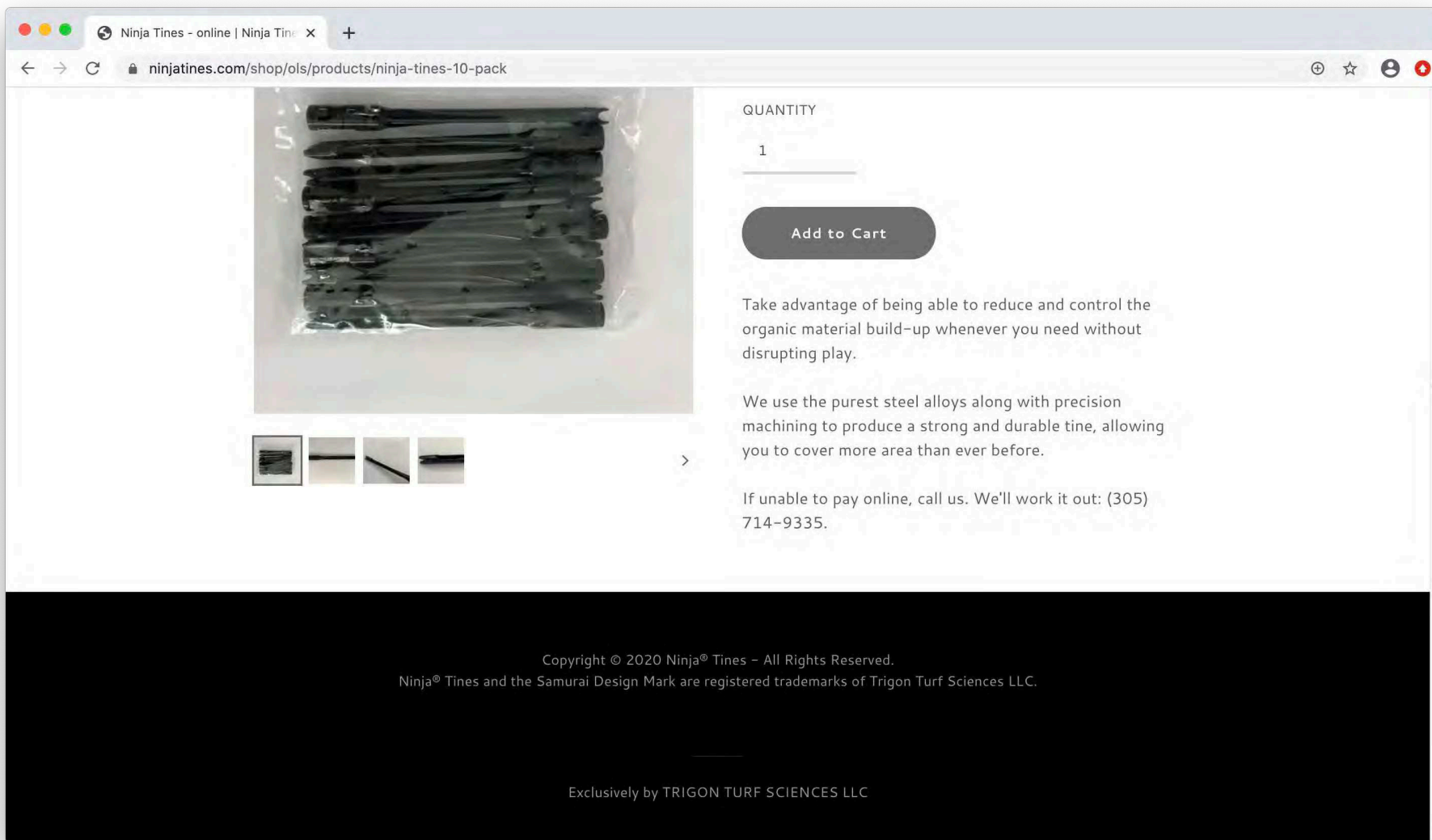
\$200.00

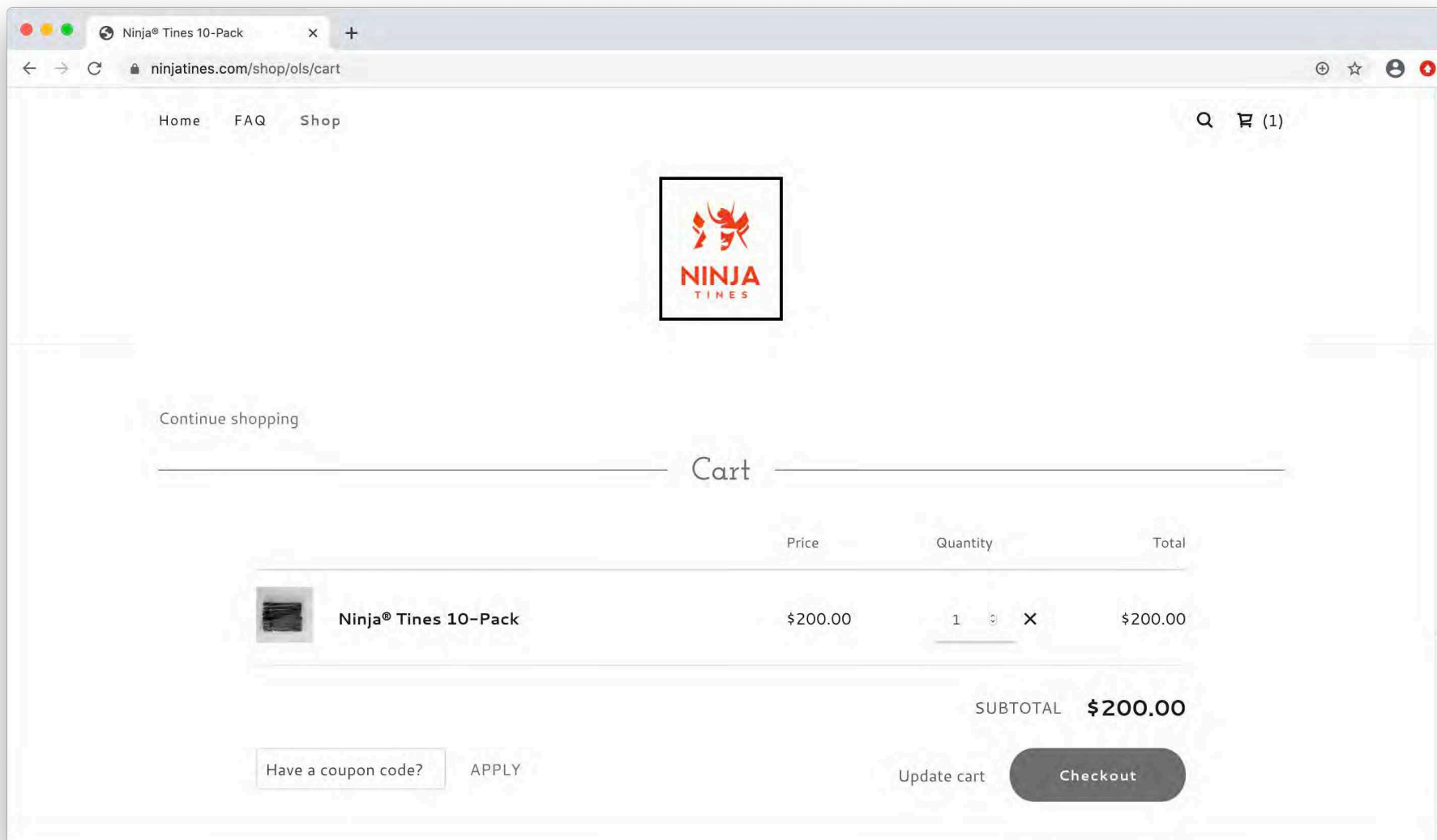
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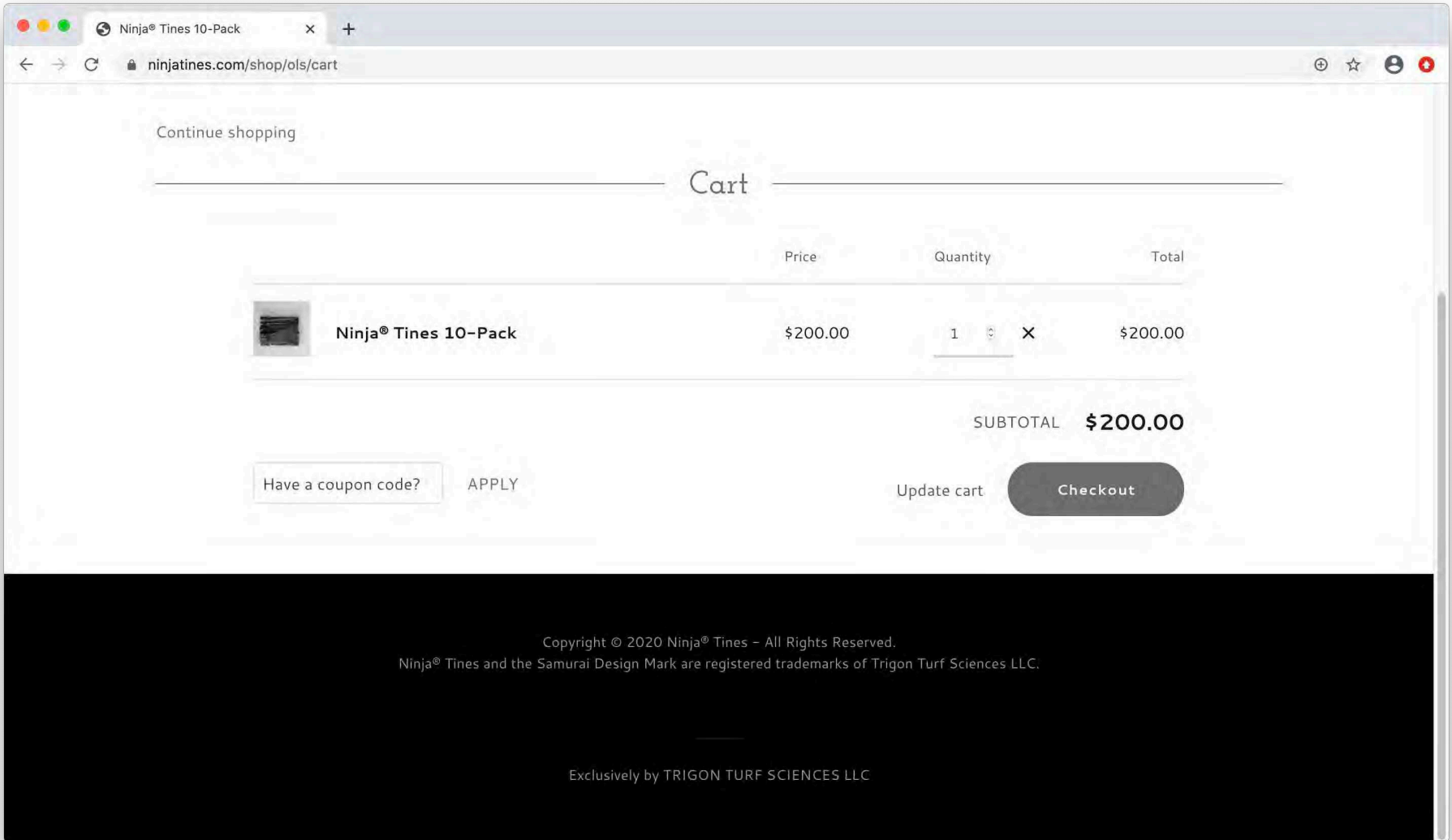
1

Add to Cart

Take advantage of being able to reduce and control the organic material build-up whenever you need without disrupting play.







## EXHIBIT 2

# United States of America

United States Patent and Trademark Office



**Reg. No. 5,600,255**

**Registered Nov. 06, 2018**

**Int. Cl.: 6**

**Trademark**

**Principal Register**

Trigon Turf Sciences LLC (FLORIDA LIMITED LIABILITY COMPANY)  
9490 Sw 148 Street  
Miami, FLORIDA 33176

CLASS 6: Metal turf aeration tines

FIRST USE 1-31-2018; IN COMMERCE 1-31-2018

The mark consists of the words "NINJA TINES" below a stylized image of a samurai.

No claim is made to the exclusive right to use the following apart from the mark as shown:  
"TINES"

SER. NO. 87-833,315, FILED 03-14-2018



*Andrei Iancu*

Director of the United States  
Patent and Trademark Office



## REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

### Requirements in the First Ten Years\*

#### What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

### Requirements in Successive Ten-Year Periods\*

#### What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

### Grace Period Filings\*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.



**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

**BULK DATA:** Since May 7 at 12 a.m., the TSDR Application Programming Interface (API) has not included all information. Images of trademark registration certificates issued since July 2016 and some office actions are absent in the API. Customers who need to retrieve a copy of a registration certificate or an office action should download it directly from the TSDR documents tab.

**INTERMITTENT SYSTEM ISSUES:** Due to high-volume usage, you may experience intermittent issues on the Trademark Status and Document Retrieval (TSDR) system between 6 – 8 a.m. ET. Refreshing your web browser should resolve the issue. If you still need assistance accessing a document, email [teas@uspto.gov](mailto:teas@uspto.gov) and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS	DOCUMENTS	MAINTENANCE	<a href="#">Back to Search</a>	Print
<b>Generated on:</b> This page was generated by TSDR on 2020-04-01 09:56:16 EDT				
<b>Mark:</b> NINJA TINES				
				
<b>US Serial Number:</b>	87833315	<b>Application Filing Date:</b>	Mar. 14, 2018	
<b>US Registration Number:</b>	5600255	<b>Registration Date:</b>	Nov. 06, 2018	
<b>Filed as TEAS RF:</b>	Yes	<b>Currently TEAS RF:</b>	Yes	
<b>Register:</b>	Principal			
<b>Mark Type:</b>	Trademark			
<b>TM5 Common Status Descriptor:</b>	 LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the C			
<b>Status:</b>	Registered. The registration date is used to determine when post-registration maintenance documents a			
<b>Status Date:</b>	Nov. 06, 2018			
<b>Publication Date:</b>	Aug. 21, 2018			
<b>▼ Mark Information</b> <span>▲ Collapse All</span>				
<b>Mark Literal Elements:</b>	NINJA TINES			
<b>Standard Character Claim:</b>	No			
<b>Mark Drawing Type:</b>	3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)			



Privacy - Terms

<b>Description of Mark:</b>	The mark consists of the words "NINJA TINES" below a stylized image of a samurai.		
<b>Color(s) Claimed:</b>	Color is not claimed as a feature of the mark.		
<b>Disclaimer:</b>	"TINES"		
<b>Design Search Code(s):</b>	02.01.31 - Men, stylized, including men depicted in caricature form		

**Goods and Services**

**Note:**  
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

<b>For:</b>	Metal turf aeration tines		
<b>International Class(es):</b>	006 - Primary Class	<b>U.S Class(es):</b>	002, 012, 013, 014
<b>Class Status:</b>	ACTIVE		
<b>Basis:</b>	1(a)		
<b>First Use:</b>	Jan. 31, 2018	<b>Use in Commerce:</b>	Jan. 31, 2018

**Basis Information (Case Level)**

<b>Filed Use:</b>	Yes	<b>Currently Use:</b>	Yes
<b>Filed ITU:</b>	No	<b>Currently ITU:</b>	No
<b>Filed 44D:</b>	No	<b>Currently 44E:</b>	No
<b>Filed 44E:</b>	No	<b>Currently 66A:</b>	No
<b>Filed 66A:</b>	No	<b>Currently No Basis:</b>	No
<b>Filed No Basis:</b>	No		

**Current Owner(s) Information**

<b>Owner Name:</b>	Trigon Turf Sciences LLC		
<b>Owner Address:</b>	9490 SW 148 Street Miami, FLORIDA UNITED STATES 33176		
<b>Legal Entity Type:</b>	LIMITED LIABILITY COMPANY	<b>State or Country Where Organized:</b>	FLORIDA

**Attorney/Correspondence Information**

**Attorney of Record**

<b>Attorney Name:</b>	Joseph A. Uradnik	<b>Docket Number:</b>	TRIG61-01012
<b>Attorney Primary Email Address:</b>	<a href="mailto:joe@iplawspot.com">joe@iplawspot.com</a>	<b>Attorney Email Authorized:</b>	Yes
<b>Correspondent</b>			
<b>Correspondent Name/Address:</b>	JOSEPH A. URADNIK URADNIK LAW FIRM PC PO BOX 525 GRAND RAPIDS, MINNESOTA UNITED STATES 55744		
<b>Phone:</b>	612-865-9449	<b>Fax:</b>	763-322-9797
<b>Correspondent e-mail:</b>	<a href="mailto:joe@iplawspot.com">joe@iplawspot.com</a>	<b>Correspondent e-mail Authorized:</b>	Yes
<b>Domestic Representative - Not Found</b>			
<b>▼ Prosecution History</b>			
<b>Date</b>	<b>Description</b>	<b>Proceeding Number</b>	
Nov. 06, 2018	REGISTERED-PRINCIPAL REGISTER		
Aug. 21, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED		
Aug. 21, 2018	PUBLISHED FOR OPPOSITION		
Aug. 01, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED		
Jul. 13, 2018	ASSIGNED TO LIE	73296	
Jun. 26, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER		
Jun. 26, 2018	EXAMINER'S AMENDMENT ENTERED	88888	
Jun. 26, 2018	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328	
Jun. 26, 2018	EXAMINERS AMENDMENT E-MAILED	6328	
Jun. 26, 2018	EXAMINERS AMENDMENT -WRITTEN	92559	
Jun. 25, 2018	ASSIGNED TO EXAMINER	92559	
Mar. 21, 2018	NOTICE OF DESIGN SEARCH CODE E-MAILED		
Mar. 20, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM		
Mar. 17, 2018	NEW APPLICATION ENTERED IN TRAM		
<b>▼ TM Staff and Location Information</b>			
<b>TM Staff Information - None</b>			
<b>File Location</b>			
<b>Current Location:</b>	PUBLICATION AND ISSUE SECTION	<b>Date in Location:</b>	Nov. 06, 2018

▲ **Assignment Abstract Of Title Information - None recorded**

▲ **Proceedings - None recorded**

## EXHIBIT 3

**Trigon Turf Sciences, LLC**  
**Sales by Item Detail**

Date	Num	Name Phone #	Name E-Mail	Memo	Name	Qty	U/M	Sales Price	Amount
3/5/18	T180305			Ninja Aeration Tines		12.00			
3/6/18	4316513			Ninja Aeration Tines		3.00			
3/6/18	4316512			Ninja Aeration Tines		2.00			
3/6/18	4316516			Ninja Aeration Tines		3.00			
3/7/18	431663			Ninja Aeration Tines		2.00			
3/7/18	431664			Ninja Aeration Tines		3.00			
3/8/18	431675			Ninja Aeration Tines		3.00			
3/9/18	431681			Ninja Aeration Tines		12.00			
3/12/18	431712			Ninja Aeration Tines		8.00			
3/12/18	R956578462			Ninja Aeration Tines		3.00			
3/12/18	R785608236			Ninja Aeration Tines		7.00			
3/12/18	R496872484			Ninja Aeration Tines		4.00			
3/14/18	431733			Ninja Aeration Tines		1.00			
3/19/18	431783A			Ninja Aeration Tines		2.50			
3/19/18	431785			Ninja Aeration Tines		3.00			
3/19/18	431787			Ninja Aeration Tines		4.00			
3/19/18	431781			Ninja Aeration Tines		3.00			
3/19/18	431786			Ninja Aeration Tines		10.00			
3/19/18	431784			Ninja Aeration Tines		0.00			
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3/19/18	431782			Ninja Aeration Tines		4.00			
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3/26/18	431855			Ninja Aeration Tines		6.00			
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3/29/19	435534			Ninja Aeration Tines		12.00			
3/29/19	4355313			Ninja Aeration Tines		3.00			

**Trigon Turf Sciences, LLC**  
**Sales by Item Detail**

Date	Num	Name Phone #	Name E-Mail	Memo	Name	Qty	U/M	Sales Price	Amount
3/29/19	435531			Ninja Aeration Tines		4.00			
3/29/19	435535			Ninja Aeration Tines		3.00			
3/29/19	4355314			Ninja Aeration Tines		7.00			
3/2/20	438921			Ninja Aeration Tines		36.00			
3/2/20	4389212			Ninja Aeration Tines		6.00			
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3/4/20	4389410			Ninja Aeration Tines		60.00			
3/4/20	4389412			Ninja Aeration Tines		4.00			
3/4/20	438946			Ninja Aeration Tines		4.00			
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3/16/20	229617			Ninja Aeration Tines		6.00			
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3/16/20	439062			Ninja Aeration Tines		6.00			
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3/31/20	439213			Ninja Aeration Tines		6.00			
3/31/20	439212			Ninja Aeration Tines		36.00			



## EXHIBIT 4

For assistance with TSDR, email [teas@uspto.gov](mailto:teas@uspto.gov) and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

## STATUS

## DOCUMENTS

[Back to Search](#)[Print](#)

**Generated on:** This page was generated by TSDR on 2020-05-20 09:29:22 EDT

**Mark:** SAMURAI TINE

# SAMURAI TINE

**US Serial Number:** 88649876

**Application Filing Date:** Oct. 10, 2019

**Filed as TEAS RF:** Yes

**Currently TEAS RF:** Yes

**Register:** Principal

**Mark Type:** Trademark

**TM5 Common Status  
Descriptor:**



LIVE/APPLICATION/Opposition Pending

The pending trademark application has been examined by the Office and was published for opposition, at which time one or more oppositions were filed but they have not yet been decided.

**Status:** An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

**Status Date:** Apr. 01, 2020

**Publication Date:** Feb. 25, 2020

## Mark Information

**Mark Literal Elements:** SAMURAI TINE

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

**Disclaimer:** "TINE"

## Goods and Services

[Privacy - Terms](#)

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Metal turf aeration tines

**International Class(es):** 006 - Primary Class

**U.S Class(es):** 002, 012, 013, 014, 023, 025, 050

**Class Status:** ACTIVE

**Basis:** 1(b)

### Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** No

**Filed ITU:** Yes

**Currently ITU:** Yes

**Filed 44D:** No

**Currently 44E:** No

**Filed 44E:** No

**Currently 66A:** No

**Filed 66A:** No

**Currently No Basis:** No

**Filed No Basis:** No

### Current Owner(s) Information

**Owner Name:** JRM, Inc.

**Owner Address:** 8491 North NC Highway 150  
Clemmons, NORTH CAROLINA UNITED STATES 27012

**Legal Entity Type:** CORPORATION

**State or Country Where  
Organized:** NORTH CAROLINA

### Attorney/Correspondence Information

#### Attorney of Record

**Attorney Name:** Blake P. Hurt

**Docket Number:** 957110-8

**Attorney Primary Email** [bhurt@tuggleduggins.com](mailto:bhurt@tuggleduggins.com)

**Attorney Email Authorized:** Yes

**Address:**

[Privacy - Terms](#)

**Correspondent**

**Correspondent** BLAKE P. HURT  
**Name/Address:** TUGGLE DUGGINS P.A.  
 100 N. GREENE STREET, SUITE 600  
 GREENSBORO 27401

**Phone:** 336-271-5229

**Fax:** 336-274-6590

**Correspondent e-mail:** [bhurt@tuggleduggins.com](mailto:bhurt@tuggleduggins.com)  
[pdillon@tuggleduggins.com](mailto:pdillon@tuggleduggins.com)

**Correspondent e-mail** Yes  
**Authorized:**

**Domestic Representative - Not Found****Prosecution History**

Date	Description	Proceeding Number
Apr. 01, 2020	OPPOSITION INSTITUTED NO. 999999	255001
Mar. 23, 2020	EXTENSION OF TIME TO OPPOSE RECEIVED	
Feb. 25, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 25, 2020	PUBLISHED FOR OPPOSITION	
Feb. 05, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 21, 2020	ASSIGNED TO LIE	70633
Jan. 15, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 15, 2020	EXAMINER'S AMENDMENT ENTERED	88888
Jan. 15, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jan. 15, 2020	EXAMINERS AMENDMENT E-MAILED	6328
Jan. 15, 2020	EXAMINERS AMENDMENT -WRITTEN	78322
Jan. 15, 2020	ASSIGNED TO EXAMINER	78322
Oct. 16, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

**TM Staff and Location Information****TM Staff Information**

**TM Attorney:** SHANOSKI, JOANNA MARIE

**Law Office Assigned:** LAW OFFICE 104

**File Location**

[Privacy - Terms](#)

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 21, 2020

**Assignment Abstract Of Title Information - None recorded****Proceedings****Summary**

Party type

Proceeding type

Number of Proceedings: 2

**Type of Proceeding: Opposition**Proceeding Number: [91255001](#)

Filing Date: Apr 01, 2020

Status: Suspended

Status Date: May 12, 2020

Interlocutory Attorney: ANDREW P BAXLEY

**Defendant**

Name: JRM, Inc.

Correspondent Address: BLAKE P. HURT  
TUGGLE DUGGINS P.A.  
100 N. GREENE STREET, SUITE 600  
GREENSBORO NC , 27401

Correspondent e-mail: [bhurt@tuggleduggins.com](mailto:bhurt@tuggleduggins.com) , [pdillon@tuggleduggins.com](mailto:pdillon@tuggleduggins.com)**Associated marks**

Mark	Application Status	Serial Number	Registration Number
SAMURAI TINE	Opposition Pending	<a href="#">88649876</a>	

**Plaintiff(s)**

Name: Trigon Turf Sciences LLC

Correspondent Address: JOSEPH A. URADNIK  
URADNIK LAW FIRM PC  
P.O. BOX 525  
GRAND RAPIDS MN UNITED STATES , 55744

Correspondent e-mail: [joe@iplawspot.com](mailto:joe@iplawspot.com)**Associated marks**[Privacy - Terms](#)

Mark	Application Status	Serial Number	Registration Number
NINJA TINES	Registered	<a href="#">87833315</a>	<a href="#">5600255</a>
<b>Prosecution History</b>			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Apr 01, 2020	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 01, 2020	May 11, 2020
3	INSTITUTED	Apr 01, 2020	
4	ANSWER AND COUNTERCLAIM ( FEE)	May 11, 2020	
5	P MOT TO DISMISS COUNTERCLAIM: FRCP 12(B)	May 12, 2020	
<b>Type of Proceeding: Extension of Time</b>			
Proceeding Number: <a href="#">88649876</a>		Filing Date: Mar 23, 2020	
Status: Extension of Time to Oppose Filed		Status Date: Mar 23, 2020	
Interlocutory Attorney:			
<b>Defendant</b>			
Name: JRM, Inc.			
Correspondent Address: BLAKE P. HURT TUGGLE DUGGINS P.A. 100 N. GREENE STREET, SUITE 600 GREENSBORO NC , 27401			
Correspondent e-mail: <a href="mailto:bhurt@tuggleduggins.com">bhurt@tuggleduggins.com</a> , <a href="mailto:pdillon@tuggleduggins.com">pdillon@tuggleduggins.com</a>			
<b>Associated marks</b>			
Mark	Application Status	Serial Number	Registration Number
SAMURAI TINE	Opposition Pending	<a href="#">88649876</a>	
<b>Potential Opposer(s)</b>			
Name: Trigon Turf Sciences LLC			
Correspondent Address: JOSEPH A. URADNIK URADNIK LAW FIRM PC P.O. BOX 525 GRAND RAPIDS MN UNITED STATES , 55744			
Correspondent e-mail: <a href="mailto:joe@iplawspot.com">joe@iplawspot.com</a>			

**Associated marks**

Mark		Application Status	Serial Number	Registration Number
Prosecution History				
Entry Number	History Text		Date	Due Date
1	FIRST 30-DAY REQUEST TO EXT TIME TO OPPOSE		Mar 23, 2020	
2	EXT GRANTED		Mar 23, 2020	





6. I then asked Mr. Harris if he had used NINJA tines. Mr. Harris responded "Yes sir! Love them."

7. I then asked Mr. Harris where he obtained the NINJA tines. His response was "JRM I believe."

8. I then corrected the confusion and told Mr. Harris that JRM does not sell NINJA tines. I provided Mr. Harris with the website [www.ninjatines.com](http://www.ninjatines.com).

9. A true and correct copy of my Twitter discussion with Mr. Harris on April 22, 2020, is attached to this Declaration as Exhibit 1.

10. The week of May 18, 2020, I communicated via Twitter with Mr. Graham Wieja, who used the Twitter account @andersonscreek. Mr. Wieja is the Golf Course Superintendant at Andersons Creek Golf Club.

11. Mr. Wieja had followed @ninjatines on Twitter. I thanked Mr. Wieja for the follow.

12. I then asked Mr. Wieja if he had used NINJA tines. Mr. Wieja responded that he "soon will!"

13. I then asked Mr. Wieja where he obtained the NINJA tines. His response was "via JRM I believe."

14. I then corrected the confusion and told Mr. Wieja that JRM does not sell genuine NINJA tines. I provided Mr. Wieja with the price for genuine NINJA tines.

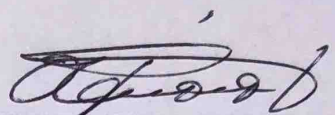
15. A true and correct copy of my Twitter discussion with Mr. Wieja the week of May 18, 2020, is attached to this Declaration as Exhibit 2.

16. I have personal knowledge of all the facts and circumstances contained in this declaration, and I submit this declaration in support of Opposer's Motion for Summary Judgment

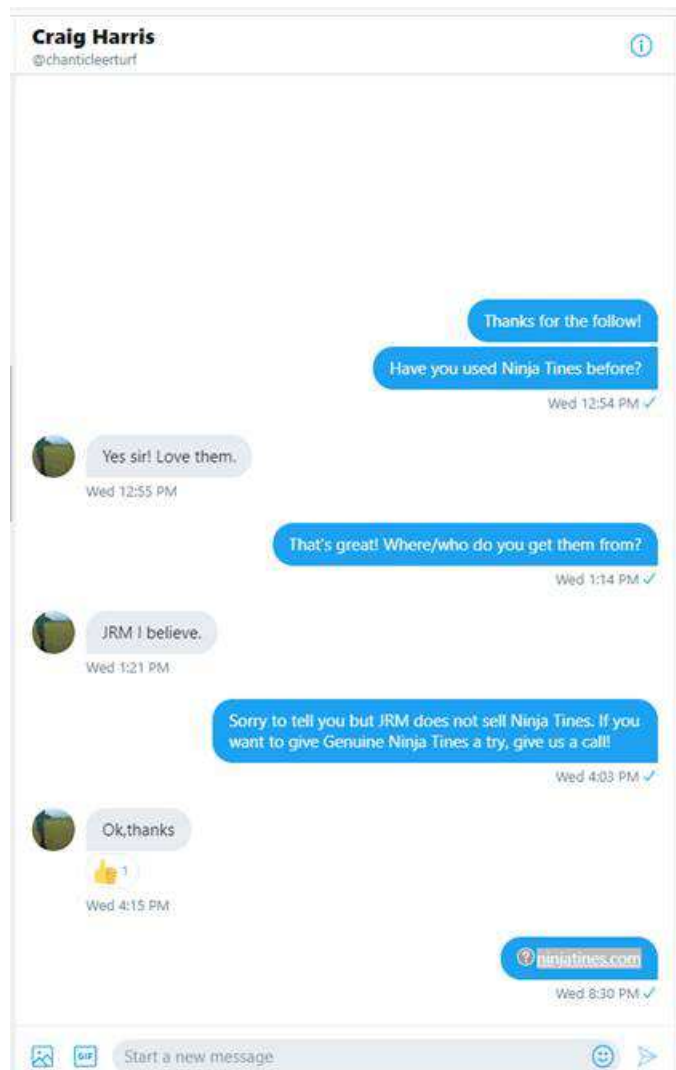
seeking to refuse registration of the mark SAMURAI TINE (word) owned by JRM, Inc. ("Applicant").

17. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Date: 6/12/20

Signed:   
Oscar Tenorio

# EXHIBIT 1



# EXHIBIT 2

