

ESTTA Tracking number: **ESTTA1235340**

Filing date: **09/13/2022**

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

Proceeding no.	91277760
Party	Defendant Covert Manufacturing, Inc.
Correspondence address	TERRENCE H. LINK II ROETZEL AND ANDRESS, LPA 222 S MAIN ST AKRON, OH 44308 UNITED STATES Primary email: tlink@ralaw.com 330-849-6755
Submission	Answer
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Signature	/Terrence H. Link II/
Date	09/13/2022
Attachments	COVERTanswer.pdf(117485 bytes )



2. Respondent admits the allegations contained in Paragraph 2 of the Notice of Petition for Opposition.

3. Respondent admits the allegations contained in Paragraph 3 of the Notice of Petition for Opposition.

4. Respondent admits Mr. Covert has worked in the tooling industry in Ohio for more than 30 years, but denies all remaining allegations contained in Paragraph 4 of the Notice of Petition for Opposition.

5. Respondent admits the allegations contained in Paragraph 5 of the Notice of Petition for Opposition.

6. Respondent repeats its answers to Paragraphs 1-5 of the Notice of Petition for Opposition as if rewritten herein. Further answering, Respondent denies all allegations in Paragraph 6 of the Notice of Petition for Opposition.

7. Respondent denies all allegations contained in Paragraph 7 of the Notice of Petition for Opposition.

8. Respondent admits that it is an Ohio corporation with a principal place of business at 328 East Street, Galion, Ohio 44833.

9. Respondent admits that it filed a trademark application on August 4, 2021, for the COVERT Mark. Respondent further states that such application speaks for itself. Respondent denies all remaining allegations contained in Paragraph 9 of the Notice of Petition for Opposition.

10. Respondent admits the allegations contained in Paragraph 10 of the Notice of Petition for Opposition.

11. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice of Petition for Opposition and therefore denies all such allegations.

12. Respondent denies all allegations contained in Paragraph 12 of the Notice of Petition for Opposition.

13. Respondent admits only that “Covert” is in fact the surname of Respondent’s founder, Donald Covert Sr. and Petitioner Donald Covert, Jr. Answering further, Respondent denies all remaining allegations contained in Paragraph 13 of the Notice of Petition for Opposition.

14. Respondent denies all allegations contained in Paragraph 14 of the Notice of Petition for Opposition.

15. Respondent denies all allegations contained in Paragraph 15 of the Notice of Petition for Opposition.

16. Respondent admits only that Donald Covert, Jr. shares the surname “Covert” with Respondent’s founder, Donald Covert, Sr. and that Petitioners compete against Respondent in the same industry. Answering further, Respondent denies all remaining allegations contained in Paragraph 16 of the Notice of Petition for Opposition, including without limitation, that Donald Covert, Jr. has an interest in using “Covert” in connection with his business.

17. Respondent denies all allegations contained in Paragraph 17 of the Notice of Petition for Opposition.

18. Respondent denies all allegations contained in the Notice of Petition for Opposition that are not expressly admitted to herein.

WHEREFORE, Respondent hereby respectfully requests that the Trademark Trial and Appeal Board enter judgment in its favor on all counts and deny all relief requested by Petitioners' Notice of Petition for Opposition No. 91277760.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**  
**FAILURE TO STATE A CLAIM**

19. Petitioners' Notice of Petition for Opposition fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**  
**LACHES AND WAIVER**

20. Petitioners' claims are barred by the Doctrines of Laches and/or Waiver.

**THIRD AFFIRMATIVE DEFENSE**  
**ESTOPPEL AND ACQUIESCENCE**

21. Petitioners' claims are barred by the Doctrines of Estoppel and/or Acquiescence.

**FOURTH AFFIRMATIVE DEFENSE**  
**UNCLEAN HANDS**

22. Petitioners' claims are barred by the Doctrine of Unclean Hands.

**FIFTH AFFIRMATIVE DEFENSE**  
**RARE SURNAME**

23. "Covert" is a rare surname.

**SIXTH AFFIRMATIVE DEFENSE**  
**OTHER RECOGNIZED MEANING**

24. "Covert" has a recognized meaning other than that of a surname.

**SEVENTH AFFIRMATIVE DEFENSE**  
**NO STRUCTURE OR PRONUNCIATION OF A SURNAME**

25. "Covert" does not have the structure or pronunciation of a surname.

**EIGHTH AFFIRMATIVE DEFENSE**  
**STYLIZED LETTERING**

26. Respondent's COVERT mark is also often depicted in distinctive, stylized lettering.

**NINTH AFFIRMATIVE DEFENSE**  
**ACQUIRED DISTINCTIVENESS**

27. Respondent's COVERT mark has acquired distinctiveness or secondary meaning.

**TENTH AFFIRMATIVE DEFENSE**  
**RESERVATION OF RIGHTS**

28. Respondent reserves the right to raise such additional defenses, affirmative defenses, and/or counterclaims as may be required, or as may become known, throughout discovery in this matter. Respondent has not knowingly waived any applicable affirmative defenses and reserves the right to seek leave to amend this Answer to assert those defenses.



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing “Answer and Affirmatives Defenses” was served upon attorneys for Petitioners, Michael Marrero, Ulmer & Berne, LLP, 312 Walnut Street, Suite 1400, Cincinnati, Ohio 45202, [mmarrero@ulmer.com](mailto:mmarrero@ulmer.com); Jocelyn C. Smith, Ulmer & Berne, LLP, 65 E. State Street, Suite 1100, Columbus, Ohio 43215-4213, [jcsmith@ulmer.com](mailto:jcsmith@ulmer.com); and Robert E. Chudakoff, Ulmer & Berne LLP, 1660 West Second Street, Suite 1100, Cleveland, Ohio 44113-1406, [rchudakoff@ulmer.com](mailto:rchudakoff@ulmer.com); on this 13<sup>th</sup> day of September, 2022.

/Terrence H. Link II/  
Attorney for Applicant