

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

In the Matter of Trademark Application
Serial NO. 76/429569 for "CEMCO"
Published in the Official
Gazette on July 27, 2004

The Wellmark Company, L.L.C.)
)
 Opposer,)
)
 v.) Opposition No.:
)
Cemco S.A.)
)
 Applicant.)

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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

The Wellmark Company, L.L.C. (hereinafter referred to as "Opposer"), a limited liability company organized and existing under the laws of the State of Oklahoma, with its business offices located at 1903 South East 29th Street, Oklahoma City, Oklahoma 73129, believes that it will be damaged by registration of the mark shown in Application Serial No. 76/429,569 in International Class 09 and International Class 011 filed July 10, 2002 by CEMCO S.A. (hereinafter referred to as "Applicant"), and hereby opposes such

registration pursuant to a previously filed extension of time to oppose.

As grounds of Opposition, it is alleged that:

1. Applicant seeks registration on the Principal Register the mark "CEMCO" in International Class 09 for valves and pressure regulators for liquified petroleum gas and natural gas namely, pneumatic and electrical level control, safety valves, chemical pumps, liquid level indicators, back pressure valves, globe valves, switches; valves for controlling the on-off flow through the cylinder or gas supply to a gas appliance, back check valves, and in International Class 011 for gas valves for domestic and industrial appliances. Applicant applied for the referenced mark via an intent-to-use application filed July 10, 2002. The mark was published for opposition July 7, 2004, in the Official Gazette. Opposer filed and the Board approved an extension of time to oppose Applicant's mark until November 24, 2004. Opposer filed with Applicant's consent, and the Board approved another extension of time to oppose Applicant's mark until January 23, 2005. This Notice of Opposition is timely filed.

2. Custom Engineering Manufacturing Corp. ("Cemco") was established in the early 1960's in Tulsa, Oklahoma and was engaged in the manufacturing and sale of valves and various accessory products for the petroleum and petrochemical industries. These products were sold under the mark "CEMCO." Cemco was the owner of

Registration No. 958,851 registered May, 15, 1973, in International Class 06 for back pressure valves and globe valves, in International Class 07 for piston pumps, and in International Class 09 for liquid level control systems.

3. In 1998, Opposer acquired the assets of Cemco, including its registered and common law rights in the mark "CEMCO." Since acquiring Cemco's assets, Opposer has continuously used the mark "CEMCO" to identify and designate its goods and to distinguish such goods from those of others. Since Opposer's initial use of the mark in 1998, Opposer has continuously used, advertised, promoted and offered its goods for sale, under its mark, to the public through various trade channels in interstate commerce, with the result that customers have come to know and recognize Opposer's mark, and associate such mark with Opposer. Opposer unintentionally failed to renew Registration No. 958,851 in 2003. As such, Registration No. 958,851 is now expired.

4. By virtue of Opposer's extensive use of the mark and by virtue of the excellence of its goods, Opposer has gained a most valuable reputation for its above-identified mark.

5. The opposed goods of Applicant and the goods of Opposer, offered under the trademark "CEMCO" are identical and/or substantially similar and/or related.

6. Applicant's mark, as applied to the goods set forth in the application and herein opposed, so resembles Opposer's mark

that it is likely to cause confusion, mistake and/or deception.

7. If Applicant is permitted to use and register its mark for its goods, as specified in the application herein opposed, confusion in trade will result by reason of the similarity between Applicant's mark and Opposer's mark, thereby causing damage and injury to Opposer. Persons familiar with Opposer's mark would likely purchase Applicant's goods believing that such goods are being sold, offered for sale, associated with or sponsored by Opposer. Any such confusion in the trade would inevitably result in loss of sales to Opposer. Furthermore, any defect, objection or fault found in Applicant's goods marketed under its mark would necessarily reflect upon and seriously injure the reputation Opposer has established for its goods, which are sold under its mark.

8. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the application Serial No. 76/429,569 be rejected, and that the mark therein sought for the services therein specified in International Class 09 and 011 be denied and refused.

The prescribed fee of \$600.00 required in connection with the filing of this opposition is being paid via credit card. Any

further fees may be charged to said credit card.

Respectfully submitted,



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Attorneys for Opposer

CERTIFICATE OF EXPRESS MAILING

"Express Mail" mailing number EV336512296US

Date Of Deposit: January 24, 2005

I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, P.O. Box 1451 Alexandria, Virginia 22313-1451.

Nicholas D. Rouse

Name of Depositor



Signature of Depositor

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