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

Proceeding	91230220
Party	Defendant B&B Hardware, Inc.
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Submission	Answer
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Date	10/27/2016
Attachments	Answer to Notice of Opposition 1.pdf(1117643 bytes ) Answer to Notice of Opposition 2.pdf(1046631 bytes ) Answer to Notice of Opposition 3.pdf(2651336 bytes ) Answer to Notice of Opposition 4.pdf(327342 bytes )



Hargis now comes before the Board claiming fraud and mere descriptiveness in an effort to prevent B&B from (re)registration of its "SEALTIGHT" trademark. These claims are meritless. The district court decision in 2016 regarding fraud in obtaining incontestability is clear error as demonstrated in B&B's JNOV's *See Applicant's Exhibit A.* and is not preclusive in this matter. (A decision on the JNOV's is still pending with the district court), and the mere descriptiveness claim is precluded by the 2003 and 2007 TTAB decisions, and the 2016 finding of the district court that Hargis is guilty of trademark infringement.

Hargis has no legitimate grounds for this opposition proceeding. First, B&B Hardware, Inc. is undisputedly the Senior user of the trademark "SEALTIGHT". Second, the 2003 TTAB decision acknowledged that the timeframe for Hargis to bring a descriptiveness claim had already tolled. Therefore, it was not a proper ground to be brought before the district court in 2000 and the merely descriptive claim cannot stand. Regardless, the trademark "SEALTIGHT" is suggestive not merely descriptive. Third, B&B owned the registration of the mark "SEALTIGHT" for over 20 years and much of that time it was an incontestable trademark on the principal register, therefore inherent distinctiveness must be assumed. Additionally, Opposer is guilty of likelihood of confusion, Trademark Infringement, False Designation of Origin, and Unfair Competition Under Federal Law.

In the present opposition proceeding Hargis Industries, LP is in essence asking this Board to promote consumer confusion by denying the (re)registration of B&B Hardware, Inc. "SEALTIGHT" trademark. In light of the aforesaid, Applicant, B&B Hardware, Inc., ("Applicant" or "B&B") generally denies Hargis Industries, LP

("Opposer" or "Hargis") assertion numbers 1-63 as they lack standing in, and/or relevance to an opposition proceeding before the TTAB. The above notwithstanding, Applicant hereby respectfully replies as follows to the numbered assertions that Opposer proffered as grounds for opposition as set forth in Opposer's Notice of Opposition.

1. Admitted. Applicant admits that Opposer's product can be classified as self-piercing and self-drilling metal screws and that these screws have been sold for use in metal and post-frame buildings under the name "Sealtite Building Fasteners" for over 20 years, and that it is a leader in that market.

Denied. Applicant denies any implication that the metal and post-frame market is the only market where the Opposer's products are used, that said fasteners were exclusively sold through "Sealtite Building Fasteners", or that the Opposer had the right to use the "SEALTITE" name in that or any other manner or market. Additionally, Opposer continually fails to mention that like the Applicant's products, the bulk of Opposer's products are also self-sealing fasteners.

2. Admitted. Applicant admits that B&B Hardware, Inc. is a California Corporation that uses the name "SEALTIGHT" in the fastener market throughout the entire United States in conjunction with its self-sealing fastener products.

3. Admitted. Applicant admits that Larry Bogatz registered the mark "SEALTIGHT" for use by B&B to promote its Sealtight Fastener product line, and that the mark "SEALTIGHT" was placed on the Principal Register October 12, 1993.

4. Admitted. Applicant admits that in 1990 Larry Bogatz registered the mark "SEALTIGHT" for use by B&B to promote its Sealtight Fastener product line, and that

the "SEALTIGHT" Registration No. 1,797,509 was officially assigned to B&B Hardware, Inc., in August, 1999.

5. Admitted. Applicant admits that B&B didn't receive notification of renewal from their attorneys, and therefore failed to file a section 8 declaration. As a result B&B's "SEALTIGHT" Registration No. 1,797,509 was cancelled.

Denied. Applicant denies that the date of cancellation was October 13, 2013. Upon information and belief the official date of cancellation was February 29, 2016. *See Applicant's Exhibit B.*

6. Denied. Applicant denies Opposer's recitation of events and any implication of lack of forthrightness.

Admitted. Applicant admits that based upon information and belief the "SEALTIGHT" registration was cancelled on February 29, 2016. *See Applicant's Exhibit B.*

7. Admitted.

8. Denied. Applicant denies the contention that Hargis or Hargis' council actually attempted to contact B&B.

Admitted. Applicant admits that on March 5, 1997 Hargis filed a petition to cancel B&B's "SEALTIGHT" trademark on the grounds of abandonment.

9. Admitted.

10. Denied. Applicant denies Opposer's recitation of events.

Admitted. Applicant admits that it filed a complaint against Hargis in June, 1998 and trademark infringement was an element of said complaint.

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