

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

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Paper No.

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Gilbert E. Silva d.b.a. GES Industries Corporation
v.
Professional Drywallers, Inc.

Opposition No. 111,922
to application Serial No. 75/180,787
filed on October 15, 1996

Gilbert E. Silva, *Pro se*.

Ronald Todd, President of Professional Drywallers, Inc.,
Pro se.

Before Simms, Bucher and Holtzman, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Gilbert E. Silva has opposed the application of
Professional Drywallers, Inc., to register the mark
ERASE-A-HOLE for "handheld drywall plaster applicator
stick used to fill holes and cracks in drywall, wood,

block, stucco and other cementitious materials,"¹ in International Class 19.

In the notice of opposition, opposer asserts use of the mark PLUG-A-HOLE, in connection with its kits for repairing holes in walls and doors, since 1992 and use in commerce since 1993. Opposer also pleads ownership of Registration No. 2,074,605, issued June 24, 1997 on the Supplemental Register, covering this mark for "wall and door repair kit comprised of disks made of fiberboard for use in repairing holes." Finally, opposer asserts that applicant's mark ERASE-A-HOLE as used in connection with applicant's goods so resembles opposer's previously used and registered mark PLUG-A-HOLE, as to be likely to cause confusion, to cause mistake or to deceive.

In its answer, applicant has denied the essential allegations of the notice of opposition. As "affirmative defenses," applicant asserts that opposer has failed to state a claim, that there is no likelihood of confusion, that opposer will not be damaged by this registration, and that applicant will be injured by granting opposer's notice of opposition.

¹ Application Serial Number 75/180,787, filed on October 15, 1996, based upon applicant's claim of use in commerce as of November 15, 1993.

Beyond the pleadings and the file wrapper of the involved application, the record in this opposition is sparse indeed. Although opposer has claimed ownership of a subsisting Federal registration of its mark, and clearly wanted to rely upon the registration in this *inter partes* proceeding before the Board, the registration was never made of record. See 37 CFR §2.122(d) and TBMP §703.02(a). There appears to have been no testimony by any witnesses (See 37 CFR §2.123(e) and TBMP §713.08) and no notices of reliance (See e.g., 37 CFR §2.122) or any other form of evidence. In fact, although opposer has submitted something called "Enumerated Grounds for Notice of Opposition" with its own exhibits, this has no evidentiary value. In short, the parties appear to have conducted no trial at all.

Accordingly, because opposer has failed properly to make its Federal trademark registration of record and has not provided any other evidence consistent with the Federal Rules of Civil Procedure or the Trademark Rules needed to meet its burden of proof on the factors relevant to the issue of likelihood of confusion, this case is dismissed with prejudice.

Decision: The opposition is dismissed.