

# **EXHIBIT A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Schluter Systems L.P.	)	
Serial No.:	85/253,308	)	
Filed:	September 19, 2011	)	
Mark:	Color Mark: ORANGE	)	<b>DECLARATION</b>
Examiner:	Hanno Rittner	)	<b>OF JOHN BRIDGE</b>
Law Office:	117	)	
Docket No.:	2460-009	)	

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I, John Bridge, hereby state that I am an independent, professional tile installer. I worked full time as a tile installer for about 40 years, and I am now semi-retired. I am also the author of the book *Tile Your World*, which is an instructional book in the field of tile setting and installation. In addition, I am also president of John Bridge & Associates LLC, which operates the *John Bridge Tile Forums*, which are available on the website [www.johnbridge.com](http://www.johnbridge.com). The forums on this website include a forum whereon professional and do-it-yourself tile installers write to ask and answer questions about installing tile.

In my role as a professional tile installer and as president of John Bridge & Associates, LLC, I regularly use products in the nature of waterproofing and drainage membranes. In addition, I come into contact on a regular, nearly daily, basis with tile installers from all around the U.S. I am familiar with numerous different waterproofing and drainage membranes used in connection with tile installation. In particular, I am familiar with the waterproofing and drainage membranes manufactured by Schluter Systems L.P. (hereinafter "Schluter").

Schluter's products are always colored orange and Schluter's marketing materials for its

products always include a substantial amount of the color orange. Upon seeing any waterproofing or drainage membranes in the color orange, I understand that the product is manufactured by Schluter. The numerous tile installers that I come into contact with also likewise recognize that the color orange on waterproofing and drainage membranes is an indicator of source. Many individuals participating in my online forum often request and refer to Schluter's waterproofing and drainage membranes as the "orange" product. Whenever people ask about the "orange" product, I understand that the person is referring to Schluter's orange colored waterproofing and drainage membranes.

Similarly, other participants in the forum also understand that the person is referring to Schluter's orange colored waterproofing and drainage membranes. This is evidence by the fact that whenever any person asks about the "orange" product in the forum, there is nearly always a reply wherein the responder indicates that the "orange" product is Schluter's product.

The color orange on waterproofing and drainage membranes to me indicates a trademark. The color orange serves no other purpose or function whatsoever on waterproofing and drainage membranes. These membranes are not visible after the tile is installed, and thus the color orange serves no aesthetic function. Moreover, there are no statutes, regulations, ordinances, codes or industry standards that regulate or standardize the use of the color orange on waterproofing and drainage membranes. The only purpose and use of the color orange on Schluter's product is to act as a trademark and indicate the source of the goods.

The color orange on waterproofing and drainage membranes indicates to me a unique and distinctive trademark when used in connection with such goods. I recognize the color orange as a trademark and as an indicator that Schluter is the source and origin of the goods used in connection with the color orange. In addition, I am familiar with and very knowledgeable about

products that compete with Schluter's waterproofing and drainage membranes, and I am not aware of any third parties, including major competitors of Schluter, who use the color orange on any competing products.

I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed at John P. Bridge on this 22<sup>nd</sup> day of Sept, 2011.

JOHN P. BRIDGE

Print Name/Title: Pres. John Bridge & Associates LLC  
John Bridge Tile Forums  
www.johnbridge.com/forum

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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		)	
Serial No.:	85/253,308	)	
		)	
Filed:	September 19, 2011	)	
		)	
Mark:	Color Mark: ORANGE	)	<b>DECLARATION</b>
		)	<b>OF CAROL SEYMOUR</b>
Examiner:	Hanno Rittner	)	
		)	
Law Office:	117	)	
		)	
Docket No.:	2460-009	)	
		)	

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I, Carol Seymour, hereby state that I currently work as a Customer Support Supervisor for Schluter Systems L.P. (hereinafter “Schluter”). I have worked in this position for over eight years. In my position, I oversee and manage Customer Support Specialists who are responsible for processing orders and providing customer support, including technical questions. I am in regular contact with customers and potential customers of Schluter. In addition, the Customer Support Specialists that I supervise report to me on a regular basis.

During the course of my employment, I have repeatedly heard customers refer to Schluter’s waterproofing and drainage membranes as the “orange stuff.” Furthermore, on a regular basis, I receive feedback from my team of Customer Support Specialists that customers regularly use the reference “orange stuff” to refer to Schluter’s waterproofing and drainage membranes. Based on my direct and indirect communication with consumers of waterproofing and drainage membranes, I have come to understand that such consumers associate the color orange on waterproofing and drainage membranes with Schluter.

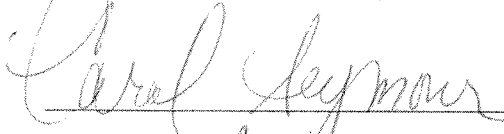
The color orange is unique to Schluter’s waterproofing and drainage membranes, and

Schluter does not use any color other than orange in connection with these products.

Furthermore, I am not aware of any competing products that are produced in the color orange.

I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed at Plattsburgh, New York on this 4<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
Print Name CAROL Seymour

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No.:	85/253,308	)	
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Filed:	September 19, 2011	)	
		)	
Mark:	Color Mark: ORANGE	)	<b>DECLARATION</b>
		)	<b>OF CJ MADONNA</b>
Examiner:	Hanno Rittner	)	
		)	
Law Office:	117	)	
		)	
Docket No.:	2460-009	)	
		)	

I, C. J. Madonna, hereby state that I currently work as general counsel for Schluter Systems L.P. (hereinafter "Schluter"), and I have worked in this position for over three years. I am authorized to execute this declaration on behalf of Schluter. In my position, I am familiar with the general management of Schluter. I am also familiar with the operations and affairs of this company. In addition, I am familiar with Applicant's waterproofing and drainage membranes for use in connection with tile installations, which are identified in the above referenced trademark application.

I declare the following:

- The color orange does not serve any purpose in the tile industry, other than as a trademark, as used on the Applicant's goods. The color orange does not serve any purpose for visual inspection or any other type of inspection.
- The color orange is not a natural by-product of the manufacturing process of the Applicant's goods. The color orange is added to the Applicant's goods during the manufacturing process. More specifically, color is added in the form of a masterbatch during the extrusion process. The color is only added for purposes of giving the product an orange color. Adding the color orange to Applicant's product does not result in either an expedited or more economical manufacturing process.
- Applicant advertises extensively its orange colored waterproofing and drainage membranes. More specifically, Applicant advertises on its website and by placing ads on the internet on third party websites. In addition Applicant places ads in tile, flooring and construction magazines and other publications such as trade journals. Further, Applicant regularly advertises at industry tradeshows throughout the U.S.

Since 2006, Applicant has invested a substantial amount of money in advertising its orange waterproofing and drainage membranes within the U.S. Applicant's marketing expenses for the relevant products since 2006 are listed below:

2006- \$1,044,168.08  
2007- \$1,296,834.82  
2008- \$1,762,553.35  
2009- \$1,724,590.31  
2010- \$1,917,828.12  
2011- \$1,926,795.15  
Total- \$7,247,355.21.

In addition, sales of Applicant's orange waterproofing and drainage membranes are substantial and have increased over the past five plus years. Specifically, Applicant's U.S. sales of the relevant product total \$77,652,222.79 from Jan. 1, 2005 – Nov. 14, 2008. Applicant's U.S. sales of the relevant product total \$115,406,747.99 from Nov. 15, 2008 – Oct. 4, 2011.

- Applicant has been doing business in the tile industry since 1975, and is not aware of any statutes, regulations, ordinances, codes or industry standards that require, regulate and/or standardize the use of the color orange on the goods.
- Applicant is not aware of any relevance of the color orange in the tile industry. Except as indicated in the paragraph below, Applicant is not aware of any third parties, including Applicant's competitors, who use the color orange on products similar to or competing with those of the Applicant. In the event that any third party or competitor of the Applicant adopts the color orange on related goods, Applicant will consider such use an infringement of its trademark rights and the goodwill Applicant has acquired in the color orange as used on Applicant's goods.

With respect to the "Dal-Seal", the product is produced by the Nobel Company as a private label for DAL Tile, a tile and ceramic company, which also distributes tile-setting materials along with its tiles, including Schluter products. Nobel Company produces a waterproofing membrane Nobel Seal that is blue in color. Applicant only recently became aware that the Dal Seal product is a shade of orange. Upon information and belief, Applicant submits that the orange colored Dal Seal product entered the relevant market only after Applicant had penetrated the market with its orange waterproofing and drainage membrane products. Applicant considers such use of the color orange by the Nobel Company an infringement of Applicant's trademark rights in the color orange.

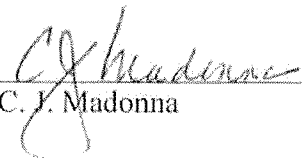
- Applicant does not manufacture or sell its waterproofing or drainage membranes in any color other than orange.
- During the course of my employment, I have repeatedly heard and seen customers refer



to Schluter's waterproofing and drainage membranes as the "orange stuff." Moreover, in the tile industry, references to the orange product or "orange stuff" are known to refer to Schluter's waterproofing and drainage membranes.

I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed at Plattsburgh, New York on this 10th day of October, 2011.

  
C. J. Madonna

**ICC-ES PMG Listing****PMG-1059**

Reissued: January 1, 2011

*This listing is subject to re-examination in one year.***www.icc-es.org/pmg | (800) 423-6587 | (562) 699-0543***A Subsidiary of the International Code Council®*CSI: DIVISION: 22 — PLUMBING  
Section: 22 40 00—Shower Pan LinersDIVISION: 09 — FINISHES  
Section: 09 30 00—Tile Setting Materials and Accessories  
Section: 09 30 00—Tile Underlayment and Waterproofing

Product: NobleSeal® TS, NobleSeal® CIS, NobleSeal® SIS, Noble Deck™, NobleFlex® and ProBase™

Listee: Noble Company  
P.O. Box 350  
Grand Haven, MI 94917  
[www.noblecompany.com](http://www.noblecompany.com)

## Additional Listee:

Dal-Tile International, Inc.  
7834 C.F. Hawn Freeway  
Dallas, Texas 75217-0130

## Compliance with the following codes:

2006 *International Residential Code*® (IRC)  
2006 *International Plumbing Code*® (IPC)  
2006 *Uniform Plumbing Code*\* (UPC)  
2009 *International Residential Code*® (IRC)  
2009 *International Plumbing Code*® (IPC)  
2009 *Uniform Plumbing Code*\* (UPC)

\**Uniform Plumbing Code* is a copyrighted publication of the International Association of Plumbing and Mechanical Officials,  
50001 East Philadelphia Street, Ontario, California 91761.

## Compliance with the following standard:

ANSI A 118.10, Specification for Load Bearing, Bonded, Waterproof Membranes for Thin-Set Ceramic Tile and Dimension Stone Installation.

AC 115 Acceptance Criteria For Waterproof Membranes For Flooring And Shower Sub-Pan Lining (Editorially revised August 2008)

## Identification:

NobleSeal® TS, NobleSeal® CIS, NobleSeal® SIS, Noble Deck™, NobleFlex® and ProBase™ described in this listing must be identified by a stamp bearing the manufacturer's name (Noble

Company), the product name (TS, CIS, SIS, Deck, Noble Flex, ProBase) and the ICC-ES PMG listing mark.

**Installation:**

NobleSeal® TS, NobleSeal® CIS, NobleSeal® SIS, Noble Deck™, NobleFlex® and ProBase™ must be installed in accordance with the manufacturer's published instructions and the applicable code(s).

Ceramic tile must comply with ANSI A137.1.

Drains must have a clamping ring with open weep holes in accordance with ANSI A112.21.1 or have a current ICC-ES PMG listing.

**Models:** NobleSeal® TS: Composite sheet membrane made from chlorinated polyethylene (CPE), an inherently flexible synthetic elastomer, with fabric laminated to both sides. The product has a nominal thickness of 30 mils [0.030 inch (0.76 mm)] and complies with ANSI A118.10.

NobleSeal® CIS: Same as NobleSeal® TS.

NobleSeal® SIS: Composite sheet membrane made from chlorinated polyethylene (CPE), an inherently flexible synthetic elastomer, with fabric laminated to both sides. The product has a nominal thickness of 50 mils [0.050 inch (1.25 mm)] and complies with ANSI A118.10.

Noble Deck™: Composite sheet membrane made from chlorinated polyethylene (CPE), an inherently flexible synthetic elastomer, with fabric laminated to both sides. The product has a nominal thickness of 40 mils [0.040 inch (1.02 mm)] and complies with ANSI A118.10.

NobleFlex® Drain Flashing: Composite sheet membrane made from chlorinated polyethylene (CPE), an inherently flexible synthetic elastomer, with fabric laminated to both sides. The product has a nominal thickness of 40 mils [0.040 inch (1.02 mm)] and complies with ANSI A118.10.

ProBase™: A waterproof shower base sloped 1/4 inch per foot and ready to be tiled. ProBase™ consists of polypropylene honeycomb covered with Noble Deck™.

**Conditions of Listing:**

1. Application is limited to ceramic tile and dimension stone installations on floors, and as shower sub-pans or lining.
2. Outside the scope of this listing are control joints greater than 1/8 inch (3 mm), and structural cracks and expansion joints with vertical differential movement used with NobleSeal® TS, NobleSeal® CIS, NobleSeal® SIS, Noble Deck™, NobleFlex® or ProBase™ membranes.
3. Noble Company's NobleSeal® TS, NobleSeal® CIS, NobleSeal® SIS, Noble Deck™, NobleFlex® and ProBase™ membranes are manufactured in Baton Rouge, Louisiana, under a quality control program with annual surveillance inspections by ICC-ES.

**MODEL IDENTIFICATION FOR ADDITIONAL LISTEE MODELS**

<b>NOBLE COMPANY PRODUCTS (LISTED MODELS)</b>	<b>DAL-TILE (ADDITIONAL LISTEE) EQUIVALENT MODELS</b>
NobleSeal® TS	Dal-Seal TS
NobleSeal® CIS	Dal-Seal CIS
NobleSeal® SIS	Dal-Sound
Noble Deck™	NA
NobleFlex®	NA
ProBase™	NA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Schluter Systems L.P.	)	
Serial No.:	85/253,308	)	
Filed:	September 19, 2011	)	
Mark:	Color Mark: ORANGE	)	<b>DISTRIBUTOR DECLARATION</b>
Examiner:	Hanno Rittner	)	
Law Office:	117	)	
Docket No.:	2460-009	)	

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I, Leonard Goldwasser hereby state that I currently work as a distributor of products used in the flooring industry, namely tile and related items for installing tile. I have worked as a distributor in this field for about 20+ years, and I am familiar with tile installation products including waterproofing and drainage membranes. I come into contact with tile installers and other consumers of tile installation products on a daily basis. During a typical month, I sell waterproofing and drainage membranes to about 2000 customers.

I have sold or been responsible for the sale of waterproofing and drainage membranes manufactured by Schluter Systems L.P. (hereinafter "Schluter"). Schluter's products are always colored orange and Schluter's marketing materials for its products always include a substantial amount of the color orange. Upon seeing any waterproofing or drainage membranes in the color orange, I understand that the product is manufactured by Schluter. My customers likewise recognize that the color orange on waterproofing and drainage membranes is an indicator of source. My customers will often request and refer to Schluter's waterproofing and drainage membranes as the "orange" product. Whenever customers request the "orange" product, I

understand that the customer is referring to Schluter's orange colored waterproofing and drainage membranes.

The color orange on waterproofing and drainage membranes indicates to me a unique and distinctive trademark when used in connection with such goods. I recognize the color orange as a trademark and as an indicator that Schluter is the source and origin of the goods used in connection with the color orange. In addition, I am not aware of any third parties, including major competitors of Schluter, who use the color orange on any competing products.

I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed at Baltimore, Md on this 28 day of September 2011.

Leonard A. Goldheim

Print Name/Title: Leonard A. Goldheim  
Vice President - purchasing

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Schluter Systems L.P.	)	
Serial No.:	83/253,308	)	
Filed:	September 19, 2011	)	
Mark:	Color Mark, ORANGE	)	<b>DISTRIBUTOR DECLARATION</b>
Examiner:	Danica Rütner	)	
Law Office:	117	)	
Docket No.:	24603009	)	

I, Bruce Bovus, hereby state that I currently work as a distributor of products used in the flooring industry, namely tile and related items for installing tile. I have worked as a distributor in this field for about 34 years, and I am familiar with tile installation products including waterproofing and drainage membranes. I come into contact with tile installers and other consumers of tile installation products on a daily basis. During a typical month, I sell waterproofing and drainage membranes to about 900 customers.

I have sold or been responsible for the sale of waterproofing and drainage membranes manufactured by Schluter Systems L.P. (hereinafter "Schluter"). Schluter's products are always colored orange and Schluter's marketing materials for its products always include a substantial amount of the color orange. Upon seeing any waterproofing or drainage membranes of the color orange, I understand that the product is manufactured by Schluter. My customers likewise recognize that the color orange on waterproofing and drainage membranes is an indicator of source. My customers will often request and refer to Schluter's waterproofing and drainage membranes as the "orange" product. Whenever customers request the "orange" product, I

understand that the customer is referring to Schlüter's orange colored waterproofing and drainage membranes.

The color orange on waterproofing and drainage membranes indicates to me a unique and distinctive trademark when used in connection with such goods. I recognize the color orange as a trademark and as an indicator that Schlüter is the source and origin of the goods used in connection with the color orange. In addition, I am not aware of any third parties, including major competitors of Schlüter, who use the color orange on any competing products.

I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed at Bruce T. Bovas on this 30 day of September 2011

Print Name Title Bruce T. Bovas / VP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Schluter Systems L.P.	)	
Serial No.:	85/253.308	)	
Filed:	September 19, 2011	)	
Mark:	Color Mark: ORANGE	)	<b>DISTRIBUTOR DECLARATION</b>
Examiner:	Hanno Rittner	)	
Law Office:	117	)	
Docket No.:	2460-009	)	

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I, Tom Bashore, hereby state that I currently work as a distributor of products used in the flooring industry, namely tile and related items for installing tile. I have worked as a distributor in this field for about 25 years, and I am familiar with tile installation products including waterproofing and drainage membranes. I come into contact with tile installers and other consumers of tile installation products on a daily basis. During a typical month, I sell waterproofing and drainage membranes to about 50-100 customers.

I have sold or been responsible for the sale of waterproofing and drainage membranes manufactured by Schluter Systems L.P. (hereinafter "Schluter"). Schluter's products are always colored orange and Schluter's marketing materials for its products always include a substantial amount of the color orange. Upon seeing any waterproofing or drainage membranes in the color orange, I understand that the product is manufactured by Schluter. My customers likewise recognize that the color orange on waterproofing and drainage membranes is an indicator of source. My customers will often request and refer to Schluter's waterproofing and drainage membranes as the "orange" product. Whenever customers request the "orange" product, I




understand that the customer is referring to Schluter's orange colored waterproofing and drainage membranes.

The color orange on waterproofing and drainage membranes indicates to me a unique and distinctive trademark when used in connection with such goods. I recognize the color orange as a trademark and as an indicator that Schluter is the source and origin of the goods used in connection with the color orange. In addition, I am not aware of any third parties, including major competitors of Schluter, who use the color orange on any competing products.

I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed at Warrington, Pa on this 26 day of September, 2011.

  
Print Name/Title: THOMAS J. BASORE

DIRECTOR, SALES AND MARKETING

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Schluter Systems L.P. )  
Serial No.: 85/253,308 )  
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Mark: Color Mark: ORANGE )  
Examiner: Hanno Rittner )  
Law Office: 117 )  
Docket No.: 2460-009 )

**DISTRIBUTOR  
DECLARATION**

I, Thomas Claybrook hereby state that I currently work as a distributor of products used in the flooring industry, namely tile and related items for installing tile. I have worked as a distributor in this field for about 30 years, and I am familiar with tile installation products including waterproofing and drainage membranes. I come into contact with tile installers and other consumers of tile installation products on a daily basis. During a typical month, I sell waterproofing and drainage membranes to about 30 customers.

I have sold or been responsible for the sale of waterproofing and drainage membranes manufactured by Schluter Systems L.P. (hereinafter "Schluter"). Schluter's products are always colored orange and Schluter's marketing materials for its products always include a substantial amount of the color orange. Upon seeing any waterproofing or drainage membranes in the color orange, I understand that the product is manufactured by Schluter. My customers likewise recognize that the color orange on waterproofing and drainage membranes is an indicator of source. My customers will often request and refer to Schluter's waterproofing and drainage membranes as the "orange" product. Whenever customers request the "orange" product, I

understand that the customer is referring to Schluter's orange colored waterproofing and drainage membranes.

The color orange on waterproofing and drainage membranes indicates to me a unique and distinctive trademark when used in connection with such goods. I recognize the color orange as a trademark and as an indicator that Schluter is the source and origin of the goods used in connection with the color orange. In addition, I am not aware of any third parties, including major competitors of Schluter, who use the color orange on any competing products.

I further state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed at Thomas W. Claybrook on this 6 day of September 2011.

Thomas Claybrook  
Print Name/Title: CERAMIC Product MANAGER