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Exhibits

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

In the matter of Serial No. 76/253,979

Published in the Official Gazette on June 4, 2002

Morris National, Inc.)
)
Opposer,)
)
v.)
)
LifeMax, LLC,)
)
Applicant.)

OPPOSITION NO.



07-01-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

TRADEMARK TRIAL AND APPEAL BOARD
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I hereby certify that this correspondence is being deposited by Express Mail, Label No. EL 948552308 US, in a postage pre-paid, with the United States Postal Service in an envelope addressed to: Assistant Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on the date set forth below.

June 28, 2002
Date of Signature and
Mail Deposit

By Thomas I. Rozsa
Thomas I. Rozsa
Registration No. 29,210
Attorney for Opposer

NOTICE OF OPPOSITION

This is in the matter of an application for registration on the Principal Register of LifeMax, LLC, an Ohio corporation, whose principal business address is 251 Gardfield Road, Suite 200, Aurora, Ohio 44202, for the trademark "THIN MINTS". The application bears U.S. Serial No. 76/253,979 filed on May 8, 2001. The mark was published in the Official Gazette of June 4, 2002.

ROZSA & CHEN LLP
ATTORNEYS AT LAW
15910 VENTURA BOULEVARD, SUITE 1601
ENCINO, CALIFORNIA 91436-2815
TELEPHONE (818) 783-0990

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1 Opposer, Morris National, Inc., a corporation organized and existing under the
2 laws of the State of California, and doing business at 760 McKeever Avenue
3 Azusa, California 91702 (hereafter "Opposer"), believes that it will be damaged by
4 registration of the mark "THIN MINTS", Application Serial No. 76/253,979 filed on
5 May 8, 2001 by LifeMax, LLC, an Ohio corporation (hereafter "Applicant"), and
6 published for opposition in the Official Gazette of June 4, 2002, and hereby opposes
7 same.
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9 The grounds for this opposition are as follows:

10 1. Opposer is, and since as early as February 26, 2001, has continuously used in
11 interstate commerce the trademark "VERYSPECIAL THIN MINTS" for use in
12 conjunction with the sale of candy. Attached hereto as Exhibit "1" is a true and correct
13 copy of the entire trademark application and drawing filed by Opposer to protect the
14 trademark "VERYSPECIAL THIN MINTS". Attached hereto as Exhibit "2" is a copy of
15 the filing receipt for the Opposer's application, showing that the application was filed on
16 October 23, 2001. Attached hereto as Exhibit "3" is a copy of the packaging which was
17 submitted as part of the application showing use of the trademark "VERYSPECIAL
18 THIN MINTS". Attached hereto as Exhibit "4" is a copy of an Office Action from the
19 United States Patent and Trademark Office mailed on January 15, 2002 wherein the
20 Trademark Attorney is rejecting the Opposer's trademark application for
21 "VERYSPECIAL THIN MINTS" based upon the trademark application of Applicant for
22 "THIN MINTS", for use in conjunction with MINTS, CANDY, AND CHEWING GUM
23 CONTAINING APPETITE SUPPRESSANTS. Therefore, based on the actions of the
24 Trademark Office, there is a likelihood of confusion between Opposer's trademark for
25 "VERYSPECIAL THIN MINTS" for use in conjunction with the sale of candy and the
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1 Applicant's pending application Serial No. 76/253,979 for "THIN MINTS" for use in
2 conjunction with MINTS, CANDY, AND CHEWING GUM CONTAINING APPETITE
3 SUPPRESSANTS.

4 2. The date of first use in California and in interstate commerce of Opposer's
5 trademark "VERYSPECIAL THIN MINTS" is February 26, 2001. The Applicant's
6 application for "THIN MINTS" was filed on a bona fide intent to use and no statement of
7 use has been filed as yet. Therefore, Opposer's date of first use of its trademark
8 "VERYSPECIAL THIN MINTS" substantially predates Applicant's use of its trademark
9 "THIN MINTS".
10

11 3. Opposer has spent substantial sums of money to enhance the reputation of its
12 trademark "VERYSPECIAL THIN MINTS" and has continuously sold in interstate
13 commerce since February 26, 2001 CANDY bearing the trademark "VERYSPECIAL
14 THIN MINTS".
15

16 4. Opposer has been using, advertising and promoting its trademark
17 "VERYSPECIAL THIN MINTS" continuously in interstate commerce since February
18 26, 2001. Such active use, advertising and promotion of its trademark "VERYSPECIAL
19 THIN MINTS" has enabled Opposer to develop a recognition within the consuming
20 public that CANDY sold under the trademark "VERYSPECIAL THIN MINTS"
21 originates with Opposer and has created a valuable goodwill in this mark for Opposer.
22

23 5. Applicant filed Application Serial No. 76/253,979 on May 8, 2001 for the
24 mark "THIN MINTS" for use in conjunction with MINTS, CANDY, AND CHEWING
25 GUM CONTAINING APPETITE SUPPRESSANTS. The application was filed based
26 on a bona fide intent to use. Therefore, Opposer has a very substantial priority of use of
27 its trademark "VERYSPECIAL THIN MINTS" over the pending application for "THIN
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1 MINTS” opposed herein which the Trademark Office considers to be confusingly
2 similar.

3 6. The goods as published in the Official Gazette for Application 76/253,979
4 MINTS, CANDY, AND CHEWING GUM CONTAINING APPETITE
5 SUPPRESSANTS. On information and belief, the goods sold by Applicant are intended
6 to be offered through the same channels of trade of commerce and to the same class of
7 purchasers as the goods offered for sale by Opposer under Opposer’s trademark
8 “VERYSPECIAL THIN MINTS”.

9
10 7. Applicant’s use, and if allowed registration, of its “THIN MINTS” mark will
11 result in the presumption in the purchasing public’s mind that there is a connection with
12 Opposer because of the widespread fame and reputation of Opposer’s mark. Because of
13 the similarities in appearance, phonetics and connotation between Opposer’s mark and
14 the Applicant’s mark “THIN MINTS” and because of the nature of all of the goods sold
15 by Opposer under its mark relative to the goods recited by Applicant, the trade and
16 purchasing public will likely be confused, mistaken and/or deceived, and will believe that
17 Applicant’s goods emanate from or in some way are associated or connected with, or
18 sponsored, authorized or warranted by Opposer, all to Opposer’s detriment. Therefore,
19 Opposer will be damaged if Applicant is granted its registration as requested.

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22 8. The use by Opposer of the trademark “VERYSPECIAL THIN MINTS” long
23 predates the use of Applicant’s mark “THIN MINTS”.

24 9. Therefore, Opposer will be seriously damaged by allowance of Applicant’s
25 trademark “THIN MINTS” because it would create a likelihood of confusion in the
26 minds of the consuming public and further dilute and substantially detract from the
27 Opposer’s fine quality, high reputation trademark and would frustrate Opposer’s extensive
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ROZSA & CHEN LLP
ATTORNEYS AT LAW
15910 VENTURA BOULEVARD, SUITE 1601
ENCINO, CALIFORNIA 91436-2815
TELEPHONE (818) 783-0990

1 efforts in merchandising its "VERYSPÉCIAL THIN MINTS" trademark throughout the
2 United States and throughout the world.

3 WHEREFORE, Opposer requests that registration of the "THIN MINTS" mark of
4 Applicant, Serial No. 76/253,979, in International Class 5 be denied and this opposition
5 be sustained.
6

7 A check for the proscribed fee of \$300.00 for the one class as required in
8 connection with the filing of this opposition is enclosed herewith, together with three
9 executed original copies of this Notice of Opposition. If this check is unacceptable or
10 insufficient, or if the Commissioner of Patents and Trademarks should determine that any
11 additional fees are due in connection with this Notice of Opposition, then the
12 Commissioner of Patents and Trademarks is hereby authorized to charge my Deposit
13 Account No. 18-2222 for any such appropriate fee.
14

15 Respectfully submitted,

16 Morris National, Inc.
17 By its attorney,

18 Date: June 28, 2002

Thomas I. Rozsa
19 Thomas I. Rozsa
20 Registration No. 29,210
21 Attorney for Opposer
22 Morris National, Inc.
15910 Ventura Boulevard, Suite 1601
Encino, California 91436
(818) 783-0990

23 Enclosures: Exhibits 1-4
24 Check for \$300.00
25 Three original copies of the Notice of Opposition
26

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