

10-28-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

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

In the Matter of Trademark Application Serial No.: 76/299,299
Filed: August 15, 2001
For the Mark: **THE WING & DESIGN**
Published in the Official Gazette: July 30, 2002

02 NOV -6 AM 9:30
TMO/TM MAIL RCPDT

TYCO Healthcare Group LP, **Opposer**
(A Delaware Corporation)
15 Hampshire Street
Mansfield Massachusetts 02048

v.

Joal Peugeot and William Kaulfuss Partnership, **Applicant**
(An Illinois General Partnership)
7 Robin Hood Lane
Northfield, IL 60093

Opposition No.

Notice of Opposition

BOX TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

11/04/2002 TSMITH 00000021 76299299
01 FC:6402 300.00 GP

Dear Sir:

In the matter of the application for registration of the mark THE WING & DESIGN for urination device consisting of a paper funnel which receives a flow of urine as excreted by a woman and diverts the flow toward a waste sink; the funnel folds and is disposable, in International Class 10, Serial No. 76/299,299 filed August 15, 2001 by Joal Peugeot and William Kaulfuss Partnership, and published for opposition on Page TM 415 of the Official Gazette for July 30, 2002. Opposer, Tyco Healthcare Group LP believes that it would be damaged by such registration, and hereby opposes the registration of Applicant's mark.

The grounds for the opposition are as follows:

1. Opposer, Tyco Healthcare Group LP, is a Delaware corporation. Opposer has a business at 15 Hampshire Street, Mansfield, Massachusetts 02048.
2. Opposer is in the business of manufacturing, distribution and servicing products including medical devices and disposable medical products, bulk analgesic pharmaceuticals, respiratory care, wound care, surgical instrumentation, adult incontinence and imaging products.

3. Among other registrations, Opposer owns:
- (a) U.S. Registration No. 1,381,208, registered on February 4, 1986 for the mark **WINGS** for disposable contoured incontinence briefs, in International Class 10. U.S. Registration No. 1,381,208 is based on a first use *anywhere* date of June 27, 1985 and a first use *in commerce* date of June 27, 1985.
 - (b) U.S. Registration No. 1,471,342, registered on January 5, 1988 for the mark **WINGS PM** for bedding underpads for use by those suffering from incontinence, in International Class 10. U.S. Registration No. 1,471,342 is based on a first use *anywhere* date of October 10, 1986 and a first use *in commerce* date of October 10, 1986.
 - (c) U.S. Registration No. 1,662,163, registered on October 29, 1991 for the mark **WINGS** for non-medicated moisture barrier cream; and personal cleansing wipes, in International Class 3. U.S. Registration No. 1,662,163 is based on a first use *anywhere* date of July 29, 1989 and a first use *in commerce* date of July 29, 1989.
 - (d) U.S. Registration No. 1,733,981, registered on November 17, 1992 for the mark **WINGS MAXIMA AND DESIGN** for disposable bedding underpads for use by those suffering from incontinence, in International Class 10. U.S. Registration No. 1,733,981 is based on a first use *anywhere* date of April 30, 1990 and a first use *in commerce* date of April 30, 1990.
 - (e) U.S. Registration No. 1,907,037, registered on July 25, 1995 for the mark **WINGS** for incontinent garments, namely incontinent briefs and pads and elastic strap belts for use with disposable incontinent pads, in International Class 5. U.S. Registration No. 1,907,037 is based on a first use *anywhere* date of June 27, 1985 and a first use *in commerce* date of June 27, 1985.
 - (f) U.S. Registration No. 1,979,779, registered on June 11, 1996 for the mark **WINGS AIRFLOW** for incontinent care products, namely bedding underpads, in International Class 10. U.S. Registration No. 1,979,779 is based on a first use *anywhere* date of October 10, 1995 and a first use *in commerce* date of October 10, 1995.
 - (g) U.S. Registration No. 2,508,481, registered on November 20, 2001 for the mark **FLEXI-WINGS** for feminine hygiene products, namely, maxi pads and mini pads, in International Class 5. U.S. Registration No. 2,508,481 is based on a first use *anywhere* date of 1999 and a first use *in commerce* date of 1999.
4. Among other applications, Opposer owns:

- (a) U.S. Application Serial No. 75/649,192 filed on March 3, 1999 for the mark **WINGS MAXIMA** for a house mark for a full line of incontinence products, namely, incontinence garments, undergarment liners and shields, diapers, disposable and nondisposable briefs, incontinent pads, and incontinent pants, in International Class 5; and a house mark for a full line of incontinence products, namely, disposable bedding, disposable sheets, and disposable bedding underpads, in International Class 10. U.S. Application Serial No. 75/649,192 is based on a first use *anywhere* date of July 1, 1993 and a first use *in commerce* date of July 1, 1993.
- (b) U.S. Application Serial No. 78/084,291 filed on September 18, 2001 for the mark **WINGS HL** for disposable absorbent garments, namely, adult diapers, in International Class 5. U.S. Application Serial No. 78/084,291 was published for opposition on July 30, 2002.

5. Upon information and belief, Applicant, Joal Peugeot and William Kaulfuss Partnership, is an Illinois partnership.

6. Upon information and belief, Applicant has a business mailing address at 7 Robin Hood Lane, Northfield, IL 60093.

7. Applicant is the listed owner of U.S. Application Serial No. 76/299,299 for the mark THE WING & DESIGN filed on August 15, 2001 for "urination device consisting of a paper funnel which receives a flow of urine as excreted by a woman and diverts the flow toward a waste sink; the funnel folds and is disposable," in International Class 10. Applicant filed U.S. Application Serial No. 76/299,299 based on Applicant's alleged intent to use the mark. U.S. Application Serial No. 76/299,299 was published for opposition on July 30, 2002.

8. There is no issue as to priority of use. Opposer's first dates of use of June 27, 1985 and July 29, 1989 for **WINGS**; October 10, 1986 for **WINGS PM**; April 30, 1990 for **WINGS MAXIMA AND DESIGN**; October 10, 1995 for **WINGS AIRFLOW**; July 1, 1993 for the house mark **WINGS MAXIMA**; and 1999 for **FLEXI-WINGS** (hereinafter referred to as "THE MARKS"), precede the proposed use by Applicant of the THE WING & DESIGN mark, for which use has not yet been alleged by Applicant.

9. Opposer has used THE MARKS in the United States since the dates indicated above. Because of Opposer's long, continuous and exclusive use of THE MARKS, Opposer is entitled to more than the usual level of protection.

10. Opposer has expended considerable effort and expense in promoting THE MARKS and the goods provided under THE MARKS. The result of this is that the purchasing public has come to know, rely upon, and recognize the products and services of Opposer by THE MARKS. Opposer has established exceedingly valuable goodwill in THE MARKS.

11. Registration of the mark THE WING & DESIGN in connection with Applicant's goods is likely to cause confusion or is likely to deceive purchasers as to the source or sponsorship of such goods or services as a result of the confusing similarity between THE MARKS and Applicant's mark THE WING & DESIGN.

12. If Applicant is permitted to register the THE WING & DESIGN mark which Opposer opposes and, thereby, obtain the *prima facie* exclusive right to use in commerce the mark THE WING & DESIGN, confusion in the trade is likely to result from any concurrent use of THE MARKS and the mark of Applicant, all to the detriment of Opposer who has expended considerable sums and effort in promoting THE MARKS.

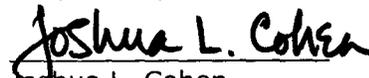
13. If Applicant is permitted to register the THE WING & DESIGN mark which Opposer opposes and, thereby, obtain the *prima facie* exclusive right to use in commerce the mark THE WING & DESIGN, dilution of THE MARKS is likely to result from any concurrent use, all to the detriment of Opposer who has expended considerable sums and effort in promoting THE MARKS.

14. Concurrent use of the THE WING & DESIGN mark by Applicant and THE MARKS by Opposer may result in irreparable damage to Opposer's reputation and goodwill, if the goods proposed to be offered by Applicant are inferior.

15. If Applicant obtains the registration being opposed, a cloud will be placed on Opposer's title in and to THE MARKS and on its right to enjoy free and exclusive use thereof in connection with the sale of its goods and services, all to the injury of Opposer.

WHEREFORE, Opposer, Tyco Healthcare Group LP, requests that the application for the mark THE WING & DESIGN, U.S. Application Serial No. 76/299,299, be rejected and that the registration of the mark THE WING & DESIGN be refused.

Respectfully submitted



Joshua L. Cohen
Attorney for Opposer

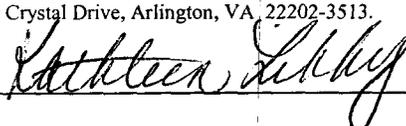
RatnerPrestia
P.O. Box 980
Valley Forge, PA. 19482
(610) 407-0700

Certificate of Mailing by Express Mail

Express Mail No.: EV 205 543 976 US

Date of Deposit: 10/28/02

I hereby certify that this paper and fee are being deposited, under 37 C.F.R. § 1.10, and with sufficient postage, using the "Express Mail Post Office to Addressee" service of the United States Postal Service on the date indicated above and that the deposit is addressed to: Box TTAB, FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA, 22202-3513.


Kathleen Libby



FILED
Ratner Prestia

Suite 301, One Westlakes, Berwyn
P.O. Box 980, Valley Forge, PA 19482-0980
(610) 407-0700

10-28-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

FILE TC03-901

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Opposition of: Joal Peugeot and William Kaulfuss Partnership

For Mark: THE WING & Design

Serial No.: 76/299,299

Filing Date: August 15, 2001

Registration No.: _____

Issue Date: _____

International Class(es): 10

BOX TTAB FEE

Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

SIR:

Transmitted herewith for filing is (are):

	<u>FEE</u>
<input type="checkbox"/> An Application for Registration	(\$325/Class) _____
<input type="checkbox"/> Application for Renewal and Declaration of Use:	
<input type="checkbox"/> Section 9 Renewal (\$400/Class)	_____
<input type="checkbox"/> Combined / Section 9&8	(\$500/Class) _____
<input type="checkbox"/> Declaration of Use:	
<input type="checkbox"/> Section 8 (\$100/Class)	_____
<input type="checkbox"/> Section 15 (\$200/Class)	_____
<input type="checkbox"/> Combined (\$300/Class)	_____
<input type="checkbox"/> Notice of Appeal (\$100/Class)	_____
<input type="checkbox"/> Amendment to Allege Use (\$100/Class)	_____
<input type="checkbox"/> Statement of Use (\$100/Class)	_____
<input type="checkbox"/> Extension of Time (\$150/Class)	_____
<input type="checkbox"/> Petition for Cancellation	(\$300/Class) _____
<input checked="" type="checkbox"/> Notice of Opposition	(\$300/Class) <u>300.00</u>
<input type="checkbox"/> Other: _____	_____

TOTAL CHARGES 300.00

The Assistant Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 18-0350. A duplicate copy of this fee sheet is enclosed.

Respectfully submitted,

Joshua L. Cohen
Joshua L. Cohen
Attorney of Record

Dated: October 28, 2002
Encl.

EXPRESS MAIL Mailing Label Number: EV 205 543 976 US
Date of Deposit: October 28, 2002

I hereby certify that this paper and fee are being deposited, under 37 C.F.R. § 1.10 and with sufficient postage, using the "Express Mail Post Office to Addressee" service of the United States Postal Service on the date indicated above and that the deposit is addressed to the Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202-3514.

Kathleen Libby
Kathleen Libby