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

_____	:	
ExxonMobil Oil Corporation	:	
	:	
Opposer,	:	
	:	Opposition No. _____
v.	:	(Opposition to registration of
	:	U.S. Trademark Application
Old World Industries, Inc.,	:	Serial No. 76/384,366)
	:	
Applicant.	:	
_____	:	



The Honorable Commissioner
of Patent and Trademarks
Arlington, Virginia 22202

01-15-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #01

NOTICE OF OPPOSITION

Dear Sir:

In the matter of Application Serial No. 76/384,366 for the mark **PEGASUS** (hereinafter, "Applicant's PEGASUS Mark") for "Polyethylene glycols used in the manufacture of ointments, lotions, creams and other cosmetics, polyurethanes and other polymers, and dyes and printing inks" (hereinafter, "Applicant's Goods"), filed on February 28, 2002, by Old World Industries, Inc. (hereinafter "Applicant"), and published in the Official Gazette of September 17, 2002; ExxonMobil Oil Corporation, a corporation doing business at 5959 Las Colinas Boulevard, Irving,

Texas (hereinafter "Opposer") believes it will be damaged by registration of the mark in the above-captioned application, and hereby opposes the registration of said mark.

As grounds for this opposition, Opposer declares as follows:

BACKGROUND

1. Opposer and its predecessors in interest are world-famous sources of a wide variety of goods and services that have been offered under and by reference to the marks MOBIL and a flying horse design, which goods and services include chemicals and plastics.

2. Opposer is a well-known source of products highly related to, or used as substitutes for, the Applicant's Goods, such as polyethylene, various polymers, and replacements for glycol derivatives such as oxygenated fluids, including alkyl esters, that may be used in products such as inks and fragrances, as shown in the excerpts from Opposer's website appended hereto as Attachment A.

3. Opposer is the owner of well-known trademarks and service marks consisting of stylized depictions of a flying horse which Opposer and members of the consuming public refer to as "Pegasus" or "Pegasus logo" (hereinafter collectively "Opposer's Pegasus Logo Marks").

4. Attached hereto and incorporated herein by reference as Attachment B are depictions of Opposer's Pegasus Logo Marks taken from Opposer's website which demonstrate some of Opposer's present use of the designations "Pegasus" and "Pegasus logo" to identify its flying horse design marks.

5. Attached hereto and incorporated herein by reference as Attachment C are depictions of Opposer's Pegasus Logo Marks taken from Opposer's 1985-1986 Retail Sales Aids catalogs which demonstrate that Opposer has referred to its flying horse design marks as either "Pegasus" or "Pegasus logo" for many years.

6. Opposer has utilized Opposer's Pegasus Logo Marks in their present form in commerce on and in connection with a wide variety of products and services since at least as early as 1965, and in other forms since at least as early as 1911.

7. Opposer is the owner of the following valid and subsisting U.S. Patent and Trademark Office registrations for Opposer's Pegasus Logo Marks in various forms: U.S. Trademark Registration Nos. 340,261, 355,206, 640,356, 1,182,239, 1,265,803, 1,461,344, 1,461,345, 1,530,962, 1,551,312, 1,720,826, 2,078,949 and 2,093,103. Most of said registrations are now incontestable pursuant to the provisions of Section 15 of the Trademark Act (as amended). 15 U.S.C. §1065.

8. Opposer's use of its Pegasus Logo Marks has long been recognized as equivalent to use of the word-mark PEGASUS and this fact has been confirmed by the courts. *Mobil Oil Corp. v. Pegasus Petroleum Corp.*, 818 F.2d 254 (2d Cir. 1987).

9. In addition to use and registration of Opposer's Pegasus Logo Marks, Opposer has also used and registered the word-mark PEGASUS, alone and in combination with other words or a flying horse design (hereinafter collectively "PEGASUS Word Marks"). One of Opposer's PEGASUS Word Marks is the subject of Registration No. 287,746, for PEGASUS and Flying Horse Design, for "lubricating oils", registered February 21, 1931. Said registration is now incontestable pursuant to the provisions of Section 15 of the Trademark Act (as amended). 15 U.S.C. §1065.

10. Prior to February 28, 2002 (Applicant's priority date herein), Opposer utilized Opposer's Pegasus Logo Marks and PEGASUS Word Marks in commerce on and in connection with at least the following products and services: carbonated and non-carbonated soft drinks, convenience store services, cups, mugs, sports bottles, coasters, drinking glassware, carrying bags, clocks, clothing, flying discs, gasoline, golf clubs, golf bags, greases, key chains, lapel pins, letter openers, oils, paints, pens, playing cards, pocket knives, printed publications, toys, travel guides, umbrellas, wrist watches, automotive repair and maintenance services, automotive service station services, credit card services, and the sponsorship of race cars and of sporting events (hereinafter, "Opposer's Goods and Services").

11. Opposer has made substantial expenditures in promoting and advertising Opposer's Goods and Services under Opposer's Pegasus Logo Marks and PEGASUS Word Marks, and Opposer's Pegasus Logo Marks and PEGASUS Word Marks have acquired fame as indicators of the source of Opposer's Goods and Services as the result said expenditures and Opposer's long use.

12. On information and belief, Applicant, either directly or through one or more subsidiaries, is a manufacturer and distributor of, *inter alia*, automotive products including anti-freeze, motor oil, window shield cleaner, de-icers and oil filters, and said automotive products constitute more than 50% of the business of Applicant.

13. On information and belief, in addition to being a source of automotive products, Applicant, either directly or through one or more subsidiaries, also manufactures and distributes industrial chemicals, including glycols, such as Applicant's Goods claimed in the application which is the subject of this opposition.

14. One of Applicant's customers is Opposer and/or its related companies, for whom Applicant has provided contract manufacturing of antifreeze.

15. One of Applicant's suppliers is Opposer and/or its related companies, from whom Applicant has purchased ethylene.

16. On information and belief, Applicant made no *bona fide* use of Applicant's PEGASUS Mark in commerce on or in connection with Applicant's Goods prior to February 28, 2002, the filing date of the subject application.

17. On information and belief, Opposer's rights in and to Opposer's Pegasus Logo Marks and PEGASUS Word Marks are superior to Applicant's rights in Applicant's PEGASUS Mark by virtue of Opposer's prior use and registration of Opposer's marks.

18. On information and belief, at some time after February 28, 2002, Applicant began to display the PEGASUS word mark at issue in this opposition proceeding both alone and in close proximity to a winged animal design, in one or more formats, including the following winged animal design format:



Some of Applicant's uses of the PEGASUS word mark in association with Applicant's winged animal design are appended hereto and incorporated herein by reference as Attachment D.

19. On information and belief, due to Opposer's long and substantial use of the Pegasus Logo Marks and PEGASUS Word Marks and due to the commercial relationships between the parties, Applicant and its related companies have long

known of Opposer's use and registration of the Pegasus Logo Marks and PEGASUS Word Marks and, at all times relevant to this opposition, Applicant has been on actual and constructive notice of the prior rights of Opposer in and to those marks.

20. Applicant's PEGASUS Mark is identical or confusingly similar to Opposer's famous Pegasus Logo Marks, which are commonly referred to by Opposer and members of the public as "Pegasus" or "Pegasus logo", and Opposer's PEGASUS Word Marks in terms of appearance, sound, meaning and/or overall commercial impression.

21. Applicant's Goods (polyethylene glycols) are highly related or complementary to some of Opposer's Goods and Services (including chemicals and plastics, and products made therefrom, produced or sold by Opposer; *cf.* Attachment A, hereto), and the conditions surrounding their marketing are such that they are likely to be encountered by some of the same purchasers under circumstances that are likely to give rise to the mistaken belief that the respective goods of Applicant and Opposer come from a common source.

22. Due to the inherently distinctive nature of Opposer's Pegasus Logo Marks and PEGASUS Word Marks and Opposer's long and substantial use Opposer's Pegasus Logo Marks and PEGASUS Word Marks, those marks have become famous as indicators of goods and service emanating from Opposer and are entitled to protection against the dilution which would result from registration of Applicant's PEGASUS Mark.

COUNT I
LIKELIHOOD OF CONFUSION

23. Opposer realleges and incorporates herein by reference the allegations made in paragraphs 1 through 22 above, as if set forth in their entirety herein.

24. In view of Opposer's prior use and registration of Opposer's Pegasus Logo Marks and PEGAUS Word Marks, the similarity between Applicant's PEGASUS Mark and Opposer's Pegasus Logo Marks and PEGASUS Word Marks, the manner in which Applicant uses Applicant's PEGASUS Mark, and the proximity between Applicant's Goods and Opposer's Goods and Services, the registration of Applicant's PEGASUS Mark for Applicant's Goods will injure Opposer by causing a likelihood of purchaser confusion, mistake or deception as to the source or sponsorship of the respective goods of Applicant and the goods and services of Opposer, to Opposer's damage, and in violation of the provisions of Sections 2(d) and 43(a) of the Trademark Act of 1946 (as amended). 15 U.S.C. Sections 1052 (d) and 1125(a).

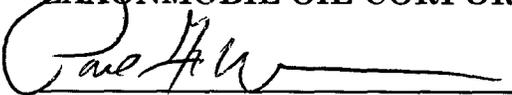
COUNT II:
DILUTION

25. Opposer realleges and incorporates herein by reference the allegations made in paragraphs 1 through 22 above, as if set forth in their entirety herein.

26. In view of the distinctiveness and fame of Opposer's Pegasus Logo Marks and PEGASUS Word Marks, the registration of Applicant's PEGASUS Mark for Applicant's Goods will injure Opposer by causing dilution of the distinctive quality of Opposer's Pegasus Logo Marks and PEGASUS Word Marks, to Opposer's damage and in violation of the provisions of Sections 2(g) and 43(c) of the Trademark Act of 1946 (as amended). 15 U.S.C. Sections 1052(g) and 1125(c).

WHEREFORE, Opposer prays that this Notice of Opposition be sustained and registration of Application Serial No. 76/384,366 be refused.

Respectfully submitted,
EXXONMOBIL OIL CORPORATION

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Date: 1/15/03

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