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

In the Matter of Application Serial No. 78-182,657
filed November 7, 2002 for the mark HABIDECOR
Published in the Official Gazette of June 17, 2003

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HABIDECOR-INDUSTRIA TEXTIL PARA	:	
HABITACAO, S.A., a/k/a HABIDECOR, S.A.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
HABIDECOR USA, INC.,	:	
	:	
Applicant.	:	
-----X	:	

OPPOSITION

HABIDECOR-INDUSTRIA TEXTIL PARA HABITACAO, S.A. a/k/a HABIDECOR, S.A. (hereinafter "Opposer."), a corporation organized and existing under the laws of Portugal, located and doing business at Zona Industrial de Mundao, Viseu, Portugal, believes that it will be damaged by registration of the mark shown in the above-mentioned application serial No. 78-182,657 and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer was founded in 1979. Since that time, Opposer has manufactured and sold high-quality bath and accent rugs under the mark "HABIDECOR".
2. Long prior to filing date of application serial No.78-182,657, not later than 1990, Opposer first introduced its high-quality bath and accent rugs to the United States. It initially sold its rugs at trade shows and exhibitions in the United States, including the Bath, Bed and Linen Show in New York City in 1990, 1991 and 1992, the Bath, Bed, Linen, Curtain and

09/04/2008TTAB

Drapery Show in San Francisco in 1990 and the Heimtextil America exhibition in Atlanta in 1992.

3. Applicant was incorporated on or about December 30, 1994 for the sole purpose of distributing Opposer's products in the United States. A true and correct copy of Applicant's certificate of incorporation is attached hereto as Exhibit A.

4. Habidecor, S.A. continued to promote the sales of its bath and accent rugs in the United States even after the formation of Habidecor USA, Inc. For many years, Habidecor, S.A. has paid for the cost of marketing, advertising and website development promoting the "HABIDECOR" trademark in the United States. Some of these expenses were reimbursed to applicant and some of them were paid directly to vendors by Opposer.

5. The trademark "HABIDECOR" has become associated with the high-quality bath and accent rugs manufactured and sold throughout the world, including in the United States, by Opposer and has come to identify a single source of the goods to which said mark has been applied, that source being Opposer, and the aforesaid mark has come to function as a guarantee of the quality of the goods to which it is applied.

6. Opposer is the true owner of the "HABIDECOR" trademark, both by virtue of its prior use of the "HABIDECOR" trademark in foreign commerce with the U.S. and interstate commerce in the U.S. and because all use of said mark by Applicant inured to the benefit of Opposer which controls the nature and quality of the goods sold under said mark.

7. The goods to which Opposer's mark have been and are being applied and those to which Applicant's mark is applied are sold to the same class of customers and are sold in the same types of business outlets. Accordingly, it is likely that when Applicant's mark is applied to its rugs, confusion or mistake among purchaser's will be caused and such purchasers will be deceived into believing that Applicant's goods emanate from Opposer.

8. Because of the confusion, mistake or deception which is likely to result from the concurrent use by Opposer of its trademark, on the one hand, and Applicant of the identical mark, on the other hand, in connection with the same products, Opposer's business and

09/04/2003TTAB

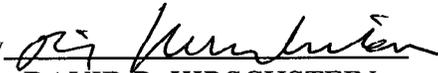
reputation and its rights in the aforesaid trademark "HABIDECOR" will be impaired by registration of the mark published.

9. On March 28, 2003, Opposer and its president commenced a lawsuit against Applicant in the United States District Court for the District of New Jersey entitled Carlos Abreu and Habidecor, S.A. vs. Celso de Lemos Esteves, et al., Civil Action No. 03-1361 (SRC). In this lawsuit, which is still pending, Opposer asked the court to enjoin the registration of the "HABIDECOR" trademark by Applicant., or, in the alternative, to order the Director of the Office of the United States Patent and Trademark Office to cancel or revoke any such registration in favor of Applicant, and to register the "HABIDECOR" trademark in the name of Opposer pursuant to 15 U.S.C. §1119, and to award Opposer damages sustained by reason of Applicant's attempted fraudulent registration of the "HABIDECOR" trademark in its own name pursuant to 15 U.S.C. §1120.

WHEREFORE, Opposer demands judgment sustaining this opposition and adjudging that the Applicant is not entitled to the registration of the trademark for which it has made application serial No. 78-182,657.

Respectfully submitted,

KIRSCHSTEIN, KIRSCHSTEIN,
OTTINGER & ISRAEL, P.C.
Attorneys for Opposer
489 Fifth Avenue
New York, New York 10017-6105
(212) 697-3750

By 
DAVID B. KIRSCHSTEIN,
Reg. No. 17244

Dated: New York, New York
August 12, 2003

00/04/2003TAP

CERTIFICATE OF MAILING

I hereby certify that the foregoing Opposition is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, this 12th day of August, 2003.



DAVID B. KIRSCHSTEIN

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New Jersey Department of State
Division of Commercial Recording
Certificate of Incorporation, Profit
(Title 14A:2-7 New Jersey Business Corporation Act
For Use by Domestic Profit Corporations)

C-100 Rev. 12/93

DEC 30 1994

This is to Certify that, there is hereby organized a corporation under and by virtue of the above noted statute of the New Jersey Statutes.

1. Name of Corporation: Habidecor USA, Inc.
2. The purpose for which this corporation is organized is (are) to engage in any activity within the purposes for which corporations may be organized under N.J.S.A. 14A 1-1 et seq.:
3. Registered Agent: Katie Johnston-Hill
4. Registered Office: 37 Slayback Drive
Princeton Junction, NJ 08550
5. The aggregate number of shares which the corporation shall have authority to issue is:
10,000 \$1 par value
6. If applicable, set forth the designation of each class and series of shares, the number in each, and a statement of the relative rights, preferences and limitations.
N/A
7. If applicable, set forth a statement of any authority vested in the board to divide the shares into classes or series or both and to determine or change their designation number, relative rights, preferences and limitations.
N/A
8. The first Board of Directors shall consist of 2 Directors (minimum of one).

Name	Street Address	City	State	Zip
Celso Delemos	Zona Industrial de Mundao	P-3500	Viseu, Portugal	
Carlos Abreu	Zona Industrial de Mundao	P-3500	Viseu, Portugal	
9. Name and Address of Incorporator(s):

Name	Street Address	City	State	Zip
Patrick A. Alia	826 Alexander Road	Princeton	NJ	08540
10. The duration of the corporation is: Perpetual
11. Other provisions: None

In Witness whereof, each individual incorporator being over eighteen years of age has signed this certificate, or if the Incorporator is a corporation has caused this Certificate to be signed by its duly authorized officers this 30 day of December 19 94

Signature: Patrick A. Alia Signature: _____
Signature: _____ Signature: _____

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KIRSCHSTEIN, OTTINGER, ISRAEL & SCHIFFMILLER, P.C.

ATTORNEYS AT LAW
PATENT, TRADEMARK AND COPYRIGHT CAUSES

489 FIFTH AVENUE
NEW YORK, N.Y. 10017-6105
(212) 697-3750
FACSIMILE: (212) 949-1690

MORRIS KIRSCHSTEIN
(1918-1978)
BERTRAM OTTINGER
(1937-1986)

DAVID B. KIRSCHSTEIN
ALAN ISRAEL
MARTIN W. SCHIFFMILLER
LISA A. PIERONI

WRITER'S E-MAIL: DBK@KIRSCHSTEINLAW.COM

August 12, 2003

BOX TTAB
FEE

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

Attention: Clerk

Re: Trademark: HABIDECOR
Ser. No.: 78-182,657
Published: June 17, 2003
Applicant: Habidecor USA
Class: 27

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Dear Sir or Madam:

Enclosed herewith please find the original and two copies of an Opposition to registration of the above application filed on behalf of our client, HABIDECOR-INDUSTRIA TEXTIL PARA HABITACAO, S.A., a/k/a HABIDECOR S.A. Also enclosed is our check in the amount of \$300 to cover the filing fee with respect thereto. Please file the same.

If any additional fees are required, it is respectfully requested that they be charged to the undersigned's Deposit Account, No. 11-1145.

Very truly yours,

DAVID B. KIRSCHSTEIN

DBK:dge
enclosures

cc: Bruce Schoenberg, Esq.



08-15-2003