

Exhibits

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

MAG INSTRUMENT, INC.,

Opposition No. _____

Opposer,

Application Serial No.: 76/466,372

v.

Filing Date: November 4, 2002

Publication Date: July 22, 2003

CLARITI EYEWEAR, INC.

Trademark: **MAGAIR**

International Class: 9

Applicant.

NOTICE OF OPPOSITION



Box TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

08-22-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #11

Dear Madam/Sir:

Mag Instrument, Inc. ("Mag Instrument"), a California corporation located and doing business at 1635 South Sacramento Avenue, Ontario, California 91761, believes that it will be damaged by registration of the mark shown in Serial No. 76/466,372 and, through its attorneys,

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LAI- 2060509v1 CERTIFICATE OF MAILING
(37 C.F.R. § 1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to Commissioner for Trademarks, 2900 Crystal drive, Arlington, VA 22202-3513

EV 301124415 US
Express Mail Label No.

Deborah Futrowsky
Name of Person Mailing Paper

August 21, 2003
Date of Deposit

Signature of Person Mailing Paper

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hereby opposes the same. Mag Instrument opposes registration of this mark in all classes for which Applicant has applied which, upon information and belief, is only International Class 9.

On information and belief, Application Serial No. 76/466,372 (for the name "MAGAIR" for eyewear, namely, eyeglasses, sunglasses, frames, sunlens clip-ons, and eyeshades, and parts therefor, in International Class 9) was filed on November 4, 2002 by Clariti Eyewear, Inc. ("Applicant"), a California corporation doing business at 14565 Valley View Avenue, Suite V, Santa Fe Springs, California 90670. It was published for Opposition in the Official Gazette on July 22, 2003.

As grounds of opposition, it is alleged that:

1. Since at least as early as January 9, 1992, Mag Instrument has been using the trademark MAG[®] in connection with its manufacture, advertising, and sale of flashlights. Mag Instrument is the owner of United States Trademark Registration No. 1,975,632 for MAG[®] which is in full force and effect, and which has become incontestable. A copy of that registration is attached hereto as **Exhibit A** and is incorporated herein by reference.

2. In addition to the MAG[®] trademark, Mag Instrument has engaged in a deliberate effort to develop a family of marks incorporating "MAG" (collectively the "MAG Family Marks"). In accordance with its efforts, Mag Instrument has obtained registrations on the following marks:

	TRADEMARK	UNITED STATES REG. NO.
1.	MAG INSTRUMENT	1,715,086
2.	MAG-NUM STAR	1,245,187
3.	MAG-LITE and circumferential design	1,655,486

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4. Mag Instrument has manufactured, marketed, and advertised its flashlights and related products so that the public associates them with the idea of extraordinary design, materials, workmanship, and reliability. In furtherance of that goal, Mag Instrument usually displays its products and the associated trademarks in its advertising and promotional presentations. At frequent trade shows, Mag Instrument prominently displays many of the MAG Family Marks, including the MAG[®] trademark, in conjunction with the "Mag Instrument" trade name on a booth where its products are exhibited. Mag Instrument distributes full-color brochures that depict and describe its entire line of flashlights and related accessories. In addition, many of the MAG Family Marks, including the MAG[®] trademark, appear on the packaging and containers for the flashlights and/or related accessories and/or on the flashlights themselves. Mag Instrument has spent millions of dollars in advertising and promoting its flashlights and related products.

5. As a result of Mag Instrument's continuous use and promotion of the MAG Family Marks, including the MAG[®] trademark, as well as the distinctiveness of the marks, the purchasing public has come to associate the MAG Family Marks, including the MAG[®] trademark, with Mag Instrument as the source and sponsor thereof.

6. Mag Instrument's MAG-LITE[®] flashlight and other flashlights and accessories bearing the MAG Family Marks have developed a reputation of high quality. For example, Mag Instrument's MAG-LITE[®] flashlight and other flashlights have earned a superb reputation among police officers, firemen, and other emergency response professionals, as well as among mountaineers, explorers, sportsmen, campers, and others who require the finest flashlights available. Mag Instrument's flashlight products are sold in quantity to police and fire departments and other civil-defense agencies. They are also advertised on television, in

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sports/outdoor magazines, and by high-quality catalogue houses. They are sold at retail through various stores, including sporting goods stores, police equipment stores, hardware stores, and mass merchandisers.

7. The Applicant has applied to register "MAGAIR" for eyewear, namely, eyeglasses, sunglasses, frames, sunlens clip-ons, and eyeshades, and parts therefor in International Class 9.

8. Mag Instrument has used its MAG[®] trademark, as well as many of its other Mag Family Marks, on flashlights and/or related accessories well before November 4, 2002 -- the date the Applicant filed its application for "MAGAIR" for eyewear, namely, eyeglasses, sunglasses, frames, sunlens clip-ons, and eyeshades, and parts therefor.

9. In view of the similarity of the respective marks, Applicant's use of "MAGAIR" so resembles Mag Instrument's registered marks and Mag Instrument's use of its marks as to be likely to cause confusion, or to cause mistake, or to deceive.

10. The MAG Family Marks are distinctive and are famous marks. Applicant's use of "MAGAIR," as well as its filing of a trademark application for "MAGAIR," occurred subsequent to the MAG Family Marks becoming famous. Registration and use of Applicant's mark have caused and will cause dilution of the distinctive quality of the MAG Family Marks. If Applicant is permitted to use and register its mark, Mag Instrument will suffer injury to the value of the MAG Family Marks, its product identity, control over its goodwill and reputation, and ability to move into new markets.

In view of the above, Applicant is not entitled to Federal registration of its alleged mark in that Applicant's proposed use is likely to cause confusion, or to cause mistake, or to deceive.

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Further, Applicant's alleged mark dilutes the distinctive quality of the famous MAG Family Marks.

WHEREFORE, Mag Instrument prays that said Application Serial No. 76/466,372 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Mag Instrument.

This Notice of Opposition is being submitted, as required by 37 C.F.R. §§2.101 - 12.107, in duplicate. The appropriate fee under 37 C.F.R. §2.6 is also submitted herewith. Please direct all future correspondence to the undersigned.

Respectfully submitted,

JONES DAY

Dated: August 21, 2003

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