

2. Commencing nearly three quarters of a century ago, and prior to the filing date in the application opposed herein, Opposer, through its predecessor in interest and licensee, The Pep Boys Manny, Moe & Jack [said licensee and Opposer hereinafter sometimes collectively referred to as "Pep Boys"] has, and is now, engaged in the distribution, marketing, sale, advertising and promotion of a variety of vehicle parts and accessories as well as retail and wholesale store and automotive maintenance and repair services, throughout the United States.

3. Since prior to the filing date in the application opposed herein, Pep Boys has used the mark **FUTURA**, to identify and designate tires and various automotive accessories, and to distinguish those goods from the goods and services of others. Since Opposer's initial use of its **FUTURA** Mark, Opposer has continuously used, advertised, promoted and offered its goods under the **FUTURA** Mark to the public through various channels of trade in interstate commerce, with the result that customers have come to know and recognize Opposer's **FUTURA** Mark and to associate same with Opposer and/or the goods and services advertised, marketed, distributed, and/or sold by or on behalf of Opposer Pep Boys.

4. Opposer Pep Boys is the owner of, and will rely upon herein, the following U.S. trademark registrations:

REGISTRATION NO.	ISSUE DATE
2,454,578	May 29, 2001
1,582,462	February 13, 1990
778,767	October 20, 1964

Each of the registrations listed above operate as *prima facie* and/or conclusive evidence of Opposer's ownership of the marks set forth therein and exclusive right to use same in connection with the goods listed in those registrations. *See* 15 U.S.C. §§1065 and 1115(b).

5. Notwithstanding Pep Boys' prior rights in and to its aforesaid FUTURA Mark, upon information and belief, on April 27, 2001, Applicant filed an application for registration of the mark FUTURE. Said application was assigned Serial No. 76/247,198, and was published for opposition in the Official Gazette of July 1, 2003, at page TM 267, for "auctioneering services; wholesale and retail store services featuring namely, electronics, furniture, toys, games, appliances, clothing, shoes, food, beverages, music, novelties, art, movies, films, jewelry, televisions, plants, tools, sporting goods, kitchenware, health and beauty care supplies, automotive part and accessories, automobiles, aircraft, boats, candy, snacks, handbags, sunglasses, audio and video tapes; distributorship featuring namely, automobiles, boats, aircraft, electronics, food, medicine, beverages, home and office computer supplies, sporting goods, clothing, furniture, appliances, jewelry, automotive parts and accessories, films, movies, music, candy, snacks, books, sunglasses, toys, games."

6. The trademark sought to be registered by Applicant herein is identical to, and a colorable imitation of, and so resembles, Pep Boys's FUTURA Mark as to be likely, when used in connection with the services set forth in the opposed application, to cause confusion or mistake, or to deceive.

7. Upon information and belief, the services set forth in the opposed application are of the same general type as, and/or are similar and/or related to, the goods sold in connection with Pep

Boys' **FUTURA** Mark, and will or may be sold, offered for sale, advertised and/or promoted through the same and/or similar channels of trade and to the same general class of purchasers as Pep Boys' goods, services, stores and business.

8. Upon information and belief, Applicant had actual knowledge of Opposer's prior **FUTURA** Mark, and sought to trade off of the goodwill and reputation in said mark in adopting the **FUTURE** mark opposed herein.

9. Upon information and belief, if Applicant uses the opposed **FUTURE** mark in connection with the services set forth in the opposed application, the relevant purchasing public, as well as the public in general, are likely to be confused, mistaken or deceived as to the origin or sponsorship of the said services which are marketed and promoted under, or in connection with, the opposed mark sought to be registered by Applicant herein, and further, said persons are likely to be misled into believing that Applicant and/or Applicant's services emanate from, or in some way are, directly or indirectly, associated with or connected to Pep Boys and/or its **FUTURA** and/or other products and/or services, to the damage and detriment of Pep Boys, its **FUTURA** Mark, goodwill and/or reputation.

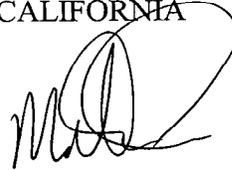
10. Opposer believes that it will be damaged by the registration by Applicant of the **FUTURE** trademark, as set forth in Applicant's application Serial No. 76/247,198, and that if registration on the opposed application is granted, and the presumptions accorded to such registration are conferred under the Trademark Act of 1946, as amended, Applicant will receive benefits to which it is not entitled, to the damage and detriment of Opposer, its **FUTURA** Mark.

WHEREFORE, this Opposer, The Pep Boys Manny, Moe & Jack prays that:

- a. judgment for Opposer and against Applicant in the present opposition be entered;
- b. registration of application Serial No. 76/247,198 of Kent G. Anderson be rejected and refused; and
- c. the present opposition be sustained.

Respectfully submitted,

THE PEP BOYS MANNY, MOE & JACK
OF CALIFORNIA



By: _____

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Dated: October 29, 2003
Atty Dkt No. 3701/I-4945



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October 29, 2003

Assistant Commissioner for Trademarks
 U.S. Patent and Trademark Office
 2900 Crystal Drive
 Arlington, VA 22202



10-29-2003
 U.S. Patent & TMOc/TM Mail Rcpt Dt. #78

Re: U.S. Trademark Application
 Serial No.: 76/247,198
 Mark: FUTURE
 Registrant: Kent G. Anderson
 Our Reference: 3701/I-4945

Sir:

We enclose the following for filing in the Patent and Trademark Office:

X Notice of Opposition

Also enclosed is our check for the required filing fee in the amount of \$300.00.
 Should this check become detached, or the amount be insufficient, please charge our Deposit
 Account No. 06-1358.

Respectfully submitted,

JACOBSON HOLMAN PLLC

Marsha G. Gentner /msx

Marsha G. Gentner

MGG/MJC/sec

Enclosures