

ESTTA Tracking number: **ESTTA7156**

Filing date: **04/01/2004**

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

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Name	CPD Associates, Inc.		
Opposer Entity	Corporation	Citizenship of Opposer	North Carolina
Opposer Address	104 Cambridge Plaza Drive Winston-Salem, NC 27104 UNITED STATES		

Correspondence information	George L. Little, Jr., Esq. Kilpatrick Stockton 1001 West Fourth Street Winston-Salem, NC 27101 UNITED STATES glittle@kilpatrickstockton.com Phone:(336) 607-7325
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Applicant Information

Application No	78230367	Publication date	03/02/2004
Opposition Filing Date	04/01/2004	Opposition Period Ends	04/01/2004
Applicant	LeBrun, Honore A. III		
Address	2 Peachtree Battle Court, NW Atlanta, GA 30305 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 20011214 First Use In Commerce: 20011214

All goods and services in the class are opposed, namely: Media sales services and marketing services, namely, business marketing consulting, to the broadcast and cable television industries

Signature	/William M. Bryner/
Name	William M. Bryner
Date	04/01/2004

Attachments	Blue Rhino v. LeBrun (TWO BLUE RHINO) PDF of Notice of Opposition.PDF (8 pages)
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In the matter of Application Serial No. 78/230,367
Published in the *Official Gazette* on March 2, 2004

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

CPD ASSOCIATES, INC.,)	
)	
Opposer,)	Opposition No. _____
)	
vs.)	
)	
HONORE A. LEBRUN III,)	Mark: TWO BLUE RHINO
)	MEDIA SALES SOLUTIONS
)	& Design
Applicant.)	

NOTICE OF OPPOSITION

Opposer CPD Associates, Inc. ("Opposer"), a North Carolina corporation having a place of business at 104 Cambridge Plaza Drive, Winston-Salem, North Carolina 27104, believes that it will be damaged by registration by Applicant Honore A. LeBrun III ("Applicant") of the trademark "TWO BLUE RHINO MEDIA SALES SOLUTIONS & Design" for use in connection with "media sales services and marketing services, namely, business marketing consulting, to the broadcast and cable television industries" in International Class 35, shown in U.S. Trademark App. Ser. No. 78/230,367 and published in the *Official Gazette* on March 2, 2004 (the "TWO BLUE RHINO Mark"), and hereby opposes same.

As grounds for this opposition to registration of the TWO BLUE RHINO Mark, Opposer alleges the following:

FACTS COMMON TO ALL GROUNDS FOR OPPOSITION

1. For many years, and since long before Applicant's actual or constructive first use of the TWO BLUE RHINO Mark, Opposer, together with its predecessors-in-interest, and through its affiliated entities and licensees (collectively referred to hereinafter as "Blue Rhino"), has continuously used, and presently uses, various trademarks consisting of the designation "BLUE RHINO," or incorporating the designation "BLUE RHINO" together with other word and/or design elements (collectively the "BLUE RHINO Marks"), in interstate commerce throughout the United States in connection with the advertising, promotion, distribution and sale of goods and services in the field of propane gas cylinders, outdoor appliances, and related goods and services.

2. In addition to Blue Rhino's use of the BLUE RHINO Marks, continuously and without interruption since at least 1994, and since long before Applicant's actual or constructive first use of the mark herein opposed, Blue Rhino has used the designation "Blue Rhino Corporation" as the trade name (the "Trade Name") under which Blue Rhino has conducted, and presently conducts, its business, and provides its goods and services.

3. As a result of Blue Rhino's long and continuous use of the BLUE RHINO Marks, and the Trade Name, in connection with its goods, services, and business activities, and as a consequence of Blue Rhino's advertising, promotion, distribution and sale of goods and services under its BLUE RHINO Marks, and the conduct of its business activities under the Trade Name, the consuming public and the trade have come to recognize, and do recognize, the BLUE RHINO Marks, and the Trade Name, as being used by Blue Rhino or by a single source, and associate and identify the goods and services offered and sold under the BLUE RHINO Marks, and the business activities conducted under the Trade Name, with Blue Rhino or with a single

source. Blue Rhino consequently derives an invaluable goodwill and value from this recognition, association, and identification by the consuming public and the trade.

4. Blue Rhino owns the following federal registration (the “BLUE RHINO Registration”), and the following pending, use-based federal application (the “BLUE RHINO Application”), for the BLUE RHINO Marks on the Principal Register of the United States Patent and Trademark Office, together with all right, title and interest in the Marks shown therein, and all of the business and goodwill represented thereby:

Trademark	Reg. (App.) Number	Reg. (App.) Date	Goods and/or Services
BLUE RHINO & Design	1,898,501	June 13, 1995	Propane gas; and metal propane gas cylinders
BLUE RHINO	(78,283,791)	(August 6, 2003)	Propane gas; and propane gas sold in cylinders; metal cylinders for propane gas, sold empty; insect traps for attracting and destroying insects; bait for attracting insects; and nets for use with insect traps; retail services by direct solicitation by sales agents in the field of propane gas cylinders; propane cylinder exchange services, namely, refurbishment and exchange of propane gas cylinders; leasing of propane gas cylinders; providing recipes for outdoor grilling; providing information in the fields of grilling, grilling equipment, and grilling safety; and consultation and technical support services in the fields of propane gas cylinders, grilling, and grilling equipment

5. The above-listed BLUE RHINO Registration remains valid, subsisting and uncanceled, and the BLUE RHINO Registration has become incontestable pursuant to 15 U.S.C. § 1065 by virtue of long and continuous use.

6. By the application opposed herein, Applicant seeks to register the TWO BLUE RHINO Mark, namely, the designation "TWO BLUE RHINO MEDIA SALES SOLUTIONS" along with the design of rhinoceros, on the Principal Register for use in connection with "media sales services and marketing services, namely, business marketing consulting, to the broadcast and cable television industries" in International Class 35.

GROUND I — LIKELIHOOD OF CONFUSION

7. Blue Rhino hereby incorporates by references the allegations of Paragraphs 1 through 6 hereof as if fully set forth herein.

8. Because of the high degree of inherent and acquired distinctiveness of the BLUE RHINO Marks, the length of time and extent to which Blue Rhino has used the BLUE RHINO Marks, the vast advertising and publicity the BLUE RHINO Marks have received, the substantial trading area in which the BLUE RHINO Marks are used, and the high degree of consumer recognition of the BLUE RHINO Marks, the BLUE RHINO Marks are well-known, strong, and famous trademarks, deserving of a broad scope of legal protection.

9. The TWO BLUE RHINO Mark is confusingly similar in sight, sound, meaning, and commercial impression to Blue Rhino's senior BLUE RHINO Marks, and to the Trade Name.

10. The TWO BLUE RHINO Mark is also confusingly similar in sight, sound, meaning and commercial impression to the registered mark shown in Blue Rhino's BLUE

RHINO Registration, and to the mark shown in Blue Rhino's pending BLUE RHINO Application.

11. In light of the high degree of distinctiveness and fame of the BLUE RHINO Marks, the services identified in the subject application for the TWO BLUE RHINO Mark are related to the goods and services in connection with which Blue Rhino has previously used its BLUE RHINO Marks, and to the goods and services identified in the BLUE RHINO Registration and the BLUE RHINO Application.

12. The TWO BLUE RHINO Mark, when used in connection with Applicant's services as identified in the subject application, so resembles Blue Rhino's previously used BLUE RHINO Marks, and Blue Rhino's previously used Trade Name, as to be likely to cause confusion, mistake, and/or to deceive consumers concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under the BLUE RHINO Marks, in violation of 15 U.S.C. § 1052(d), with consequent injury to Blue Rhino, the public, and the trade.

13. The TWO BLUE RHINO Mark, when used in connection with Applicant's services as identified in the subject application, so resembles the previously registered trademark shown in the BLUE RHINO Registration as to be likely to cause confusion, mistake, and/or to deceive consumers concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under the trademarks shown in the BLUE RHINO Registration, in violation of 15 U.S.C. § 1052(d), with consequent injury to Blue Rhino, the public, and the trade.

14. The TWO BLUE RHINO Mark, when used in connection with Applicant's services as identified in the subject application, so resembles the trademark shown in the BLUE

RHINO Application as to be likely to cause confusion, mistake, and/or to deceive consumers concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under the trademarks shown in the BLUE RHINO Application. Subject to registration of the mark shown in the BLUE RHINO Application, registration of the TWO BLUE RHINO Mark would result in violation of 15 U.S.C. § 1052(d) because of such confusing similarity to the mark shown in the BLUE RHINO Application, with consequent injury to Blue Rhino, the public, and the trade.

15. Pursuant to 15 U.S.C. § 1063(a), Blue Rhino believes it will be damaged by the registration of Applicant's TWO BLUE RHINO Mark in that a substantial portion of the purchasing public and/or the trade is likely to be confused, or mistakenly to believe, that Applicant's services offered under the TWO BLUE RHINO Mark originate from Blue Rhino, or from the same source as the goods and services sold under the BLUE RHINO Marks, the Trade Name, the registered mark shown in the BLUE RHINO Registration, or the previously used mark shown in the BLUE RHINO Application, or that such services are sponsored by, endorsed by, or affiliated with the source of goods and services sold under Blue Rhino's BLUE RHINO Marks, the Trade Name, the registered mark shown in the BLUE RHINO Registration, or the previously used mark shown in the BLUE RHINO Application. Such likelihood of confusion would result both in lost sales to Blue Rhino and in damage to the goodwill among purchasers and the trade that the BLUE RHINO Marks and the Trade Name symbolize. Registration of Applicant's TWO BLUE RHINO Mark will support and assist Applicant in the confusing and misleading use of Applicant's TWO BLUE RHINO Mark, and, in addition, will give color and exclusive statutory right to Applicant in violation and derogation of prior and superior rights of Blue Rhino.

GROUND II — DILUTION OF THE FAMOUS BLUE RHINO MARK

16. Blue Rhino hereby incorporates by reference the allegations of Paragraphs 1 through 15 hereof as if fully set forth herein.

17. Because of the high degree of inherent and acquired distinctiveness of the BLUE RHINO Marks, the length of time and extent to which Blue Rhino has used the BLUE RHINO Marks, the vast advertising and publicity the BLUE RHINO Marks have received, the substantial trading area in which the BLUE RHINO Marks are used, and the high degree of consumer recognition of the BLUE RHINO Marks, the BLUE RHINO Marks are famous trademarks pursuant to 15 U.S.C. § 1125(c)(1).

18. The BLUE RHINO Marks became famous long before Applicant's first use, actual or constructive, of the TWO BLUE RHINO Mark.

19. The TWO BLUE RHINO Mark, when used on or in connection with "media sales services and marketing services, namely, business marketing consulting, to the broadcast and cable television industries," as identified in the subject application, would lessen the capacity of Blue Rhino's famous BLUE RHINO Marks to identify and distinguish Blue Rhino's goods and services sold thereunder and, as such, would cause dilution of the BLUE RHINO Marks in violation of 15 U.S.C. § 1052.

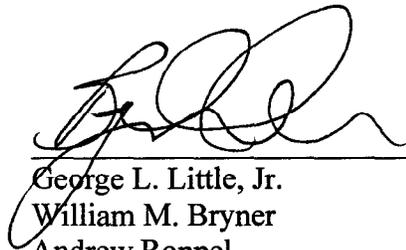
20. Pursuant to 15 U.S.C. § 1063(a), Blue Rhino believes it will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the diluting use of the TWO BLUE RHINO Mark, and will give color and exclusive statutory right to Applicant in violation and derogation of prior and superior statutory and common law rights of Blue Rhino.

WHEREFORE, Blue Rhino believes it will be damaged by registration of Applicant's TWO BLUE RHINO Mark and prays that such registration not be allowed.

The required fee for instituting this opposition proceeding is included herewith. Please charge any deficiency or refund in the filing fee to Deposit Account No. 16-1435.

Please recognize George L. Little, Jr., William M. Bryner, Andrew Roppel, and the law firm of Kilpatrick Stockton LLP as attorneys for Blue Rhino in connection with this opposition proceeding. Please address all correspondence regarding this proceeding to George L. Little, Jr., at Kilpatrick Stockton LLP, 1001 West Fourth Street, Winston-Salem, NC 27101.

This the 1st day of April, 2004.



George L. Little, Jr.
William M. Bryner
Andrew Roppel

Attorneys for CPD Associates, Inc.

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