

ESTTA Tracking number: **ESTTA14146**

Filing date: **08/27/2004**

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

Notice of Opposition

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

Opposer Information

Name	Spinnaker Coating, LLC
Granted to Date of previous extension	09/01/2004
Address	Spinnaker Coating, LLC 518 East Water Street Troy, OH 45373 UNITED STATES

Attorney information	John P. Murtaugh PEARNE & GORDON LLP 1801 East 9th Street, Suite 1200 Cleveland, OH 44114-3108 UNITED STATES jmurtaugh@pearnegordon.com Phone:216-579-1700
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Applicant Information

Application No	76444631	Publication date	05/04/2004
Opposition Filing Date	08/27/2004	Opposition Period Ends	09/01/2004
Applicant	Labelblank Corporation		

Goods/Services Affected by Opposition

Class 016. First Use: 19991105 First Use In Commerce: 19991105
All goods and services in the class are opposed, namely: ADHESIVE PAPER LABELS AND STICKERS FOR APPLICATION TO PACKAGING PAPER, CLOTH FOIL, AND SIMILAR MATERIALS, BOTH COATED AND UNCOATED

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Signature	/johnpmurtaugh/
Name	John P. Murtaugh
Date	08/27/2004

application was filed, which application included a Declaration which was executed on October 11, 2003. Thus the application which is now pending was the one filed on October 14, 2003, and this application includes a Declaration dated October 11, 2003 which states that all the facts set forth in the application are true as of October 11, 2003.

3. The October 14, 2003 application states that the applicant is using the mark in interstate commerce and that the date of first use of the mark in commerce was November 5, 1999. On information and belief, Opposer avers that Applicant was not using the mark in interstate commerce as of October 11 and October 14, 2003.

4. On information and belief, Opposer avers that Applicant did not exercise control over the nature and quality of the goods on which the mark appeared. On information and belief, Opposer states that Opposer has been the party which affixes the mark to the goods sold. On information and belief, Opposer avers that customers look to Opposer, not Applicant, as standing behind the goods, e.g., that Opposer received complaints for defects and made appropriate replacement or refund.

5. On information and belief, Opposer avers that the specimen submitted with the October 14, 2003 application is (a) a specimen which was not in use on October 14, 2003 and/or (b) an incomplete specimen, that is, it is merely a portion of a larger specimen and the larger specimen in its entirety is necessary to show the mark in its full context and in relation to the additional material surrounding it on the specimen. Lacking a proper specimen, the application cannot be granted. In addition, the specimen does not correspond to the drawing of the mark (which is not in standard characters and thus is specific to font and case) and for this reason the application cannot be granted.

6. On information and belief, Opposer avers that the subject mark is owned by (a) Opposer or (b) Opposer and Applicant jointly.

7. Registration of the mark in Applicant's name will result in damage to Opposer.

Wherefore, Opposer prays that Application No. 76/444,631 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

SPINNAKER COATING, LLC

By John P. Murtaugh
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Date: August 27, 2004