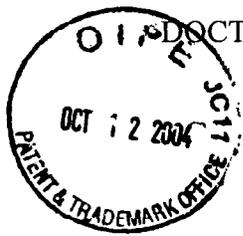


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD



DOCTOR WATERHEATER INC.,

*Opposer,*

v.

Anthony J. Intile, Jr.

*Applicant.*

Application Serial No. 78/319045

Published in the Official Gazette  
August 10, 2004

TTAB

CERTIFICATE OF MAILING UNDER 37 C.F.R. §2.197

I hereby certify that this Correspondence is being deposited on October 8, 2004 with the United States Postal Service as first-class mail in an envelope properly addressed to COMMISSIONER FOR TRADEMARKS, P.O. Box 1351, Alexandria, Virginia 22313-1451.

October 8, 2004

Date of Certificate

VINCENT T. PACE

NOTICE OF OPPOSITION

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Sir:

Opposer, Doctor Waterheater Inc., a Pennsylvania corporation located and doing business at 1617 Oneida Valley Road, Chicora, Pennsylvania 16025, believes that it will be damaged by registration on the Principal Register of the designation "DOCTOR WATER HEATER" shown in Application Serial No. 78/319,045 of Applicant, Anthony J. Intile, Jr. The application was filed on October 27, 2003 and published for opposition in the Official Gazette of August 10, 2004. The application seeks federal registration of the designation "DOCTOR WATER HEATER" for "maintenance, repair, and installation of water heaters", in International

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U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Class 37, and claims a date of first use on January 9, 1993. Opposer hereby opposes the registration under Section 13 of the Lanham Act, 15 U.S.C. §1063, on the following grounds.

1. Opposer has been using the tradename "DOCTOR WATERHEATER" in connection with the repair, replacement, and servicing of hot water heaters in the United States since June 3, 1987 and continues to use said mark presently. Opposer's use of that mark has been valid and continuous since said date of first use and has not been abandoned. Opposer's tradename "DOCTOR WATERHEATER" is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the Opposer's tradename and the Applicant's designation, and the closely related nature of the services of the respective parties, Opposer believes that the Applicant's designation so resembles Opposer's tradename previously used in the United States, and not abandoned, as to be likely to cause confusion or to cause mistake, or to deceive.

2. Opposer has been and is now operating under the designation "DOCTOR WATERHEATER" in the field of repairing, replacing, and servicing hot water heaters since June 3, 1987. Opposer's use of that designation has been continuous since said date of first use and the relevant class of the public has come to associate Opposer with that designation. In view of the similarity of the Applicant's designation and the Opposer's designation, and in view of the closely related nature of the uses thereof, Opposer believes that the Applicant's designation consists of and comprises matter that would falsely suggest a connection with Opposer.

3. In view of the foregoing allegations, it appears that Opposer is likely to be damaged by the registration of Applicant's designation in that such registration will be in derogation of Opposer's rights in connection with the use of the tradename "DOCTOR WATERHEATER".

WHEREFORE, Opposer respectfully requests that this Opposition be sustained in favor

of Opposer, that Applicant's application Serial No. 78/319,045 be rejected, and that no registration be issued thereon to the Applicant.

The filing fee of US\$300.00 required under 37 C.F.R. §2.6(a)(17) is submitted herewith.

**AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

In the event the check is improper, or the fee calculation is in error, the Commissioner is authorized to charge any underpayment or credit any overpayment to the account of the undersigned attorneys, Account No. 04-1406. A duplicate copy of this sheet is enclosed.

Respectfully submitted,  
DANN DORFMAN HERRELL AND SKILLMAN  
A Professional Corporation  
Attorneys for Opposer

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