

ESTTA Tracking number: **ESTTA30227**

Filing date: **04/11/2005**

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	HBI International
Granted to Date of previous extension	04/09/2005
Address	836 E. University Dr.# 101 Pheonix, AZ 85034 UNITED STATES

Attorney information	Melissa LaBauve Adams and Reese, LLP 1221 McKinney Street Suite 4400 Houston, TX 77010 UNITED STATES melissa.labauve@arlaw.com
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Applicant Information

Application No	78204179	Publication date	02/08/2005
Opposition Filing Date	04/11/2005	Opposition Period Ends	04/09/2005
Applicant	M. Meerapfel Sohne Belgium S.A. Felix Marchallaan 41-43 Brussels, 1130		

BELGIUM

Goods/Services Affected by Opposition

Class 025.

All goods and services in the class are opposed, namely: Clothing, namely, suits, jackets, shirts, blouses, pants, underwear, ties, gloves, footwear, hats and caps

Class 034.

All goods and services in the class are opposed, namely: TOBACCO PRODUCTS AND SMOKERS' ARTICLES, NAMELY, CIGARS, CIGARILLOS, TOBACCO, CIGAR CUTTERS, CIGARETTE PAPERS, MATCHES, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL AND ASHTRAYS NOT OF PRECIOUS METAL

Class 035.

All goods and services in the class are opposed, namely: ADVERTISING, NAMELY, DISSEMINATION OF ADVERTISING MATTER, BUSINESS SERVICES, NAMELY, BUSINESS CONSULTATION AND BUSINESS MARKETING SERVICES; WHOLESALE DISTRIBUTORSHIPS AND RETAIL STORE SERVICES FEATURING TOBACCO PRODUCTS AND SMOKERS' ARTICLES, NAMELY, CIGARS, CIGARILLO, TOBACCO, CIGAR CUTTERS, CIGARETTE PAPERS, MATCHES, LIGHTERS AND ASHTRAYS

Attachments	lahoja.PDF (3 pages)
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Signature	/MelissaLaBauve/
Name	Melissa LaBauve
Date	04/11/2005

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

In the matter of Trademark Application Serial No.	78204179
For the Mark:	LA HOJA TRIBAL
Published in the Official Gazette:	February 8, 2005

HBI International, Inc.)	
)	
Opposer)	
)	
v.)	Opposition No. _____
)	
M. Meerapfel Sohne Belgium S.A.)	
)	
Applicant)	

NOTICE OF OPPOSITION OF HBI INTERNATIONAL, INC.

HBI International, Inc., its subsidiaries and affiliates, as the case may be (collectively the "Opposer") is a corporation incorporated in the State of Arizona whose business address is 836 E. University Drive #101, Phoenix, Arizona 85034.

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

M. Meerapfel Sohne Belgium S.A. ("Applicant") requests the proprietary right to use the word mark "LA HOJA TRIBAL." Applicant states this mark is used in conjunction with "(1) tobacco products and smokers' articles, namely, cigars, cigarillos, tobacco, cigar cutters, cigarette papers, matches, cigarette lighters not of precious metal and ashtrays not of precious metal in class 34; (2) advertising, namely, dissemination of advertising matter, business services, namely, business consultation and business marketing services; wholesale distributorships and retail store services featuring tobacco

products and smokers' articles, namely, cigars, cigarillo, tobacco, cigar cutters, cigarette papers, matches, lighters and ashtrays in class 35; and (3) clothing, namely, suits, jackets, shirts, blouses, pants, underwear, ties, gloves, footwear, hats and caps in Class 25.”

The application at issue is Serial Number 78204179 filed on January 16, 2003. The word mark was published in the Official Gazette of the United States Patent and Trademark Office, on February 8, 2005. Applicant is a Joint Stock Company organized in Belgium whose business address is Felix Marchallaan 41-43 Brussels Belgium 1130.

The grounds for opposition are as follows:

1. Since 1997, Opposer has been and is engaged in selling herbal cigarettes and prepackaged herbal smoking blends with cigarette rolling papers in conjunction with its registered trademark, TRIBE, bearing Registration No. 2205711. The aforesaid goods of Opposer are being provided to consumers nationwide and internationally.
2. Applicant provides closely related to that of Opposer utilizing the trademark “LA HOJA TRIBAL.”
3. Consumers are likely to be confused by the use of the mark “LA HOJA TRIBAL” by Applicant. Likelihood of confusion encompasses any type of confusion, including: confusion of source; confusion of sponsorship; confusion of affiliation; or confusion of connection.
4. Trademark protection extends beyond that of competing goods and services.
5. The goods provided by Applicant and Opposer are competing goods and it is not only reasonable that consumers will think that the goods originate from the same source, but highly likely.

6. In addition, Opposer contends that any grant of the use of the mark “LA HOJA TRIBAL” will dilute, weaken, and reduce the Opposer’s mark’s ability to “distinguish” and “identify” it as one source.
7. In order for dilution to occur, prospective purchasers must make a mental connection between the plaintiff’s mark and the designation used by the defendant. The connection, however, is not that which serves as the basis of liability for trademark infringement—the mistaken belief that the plaintiff is in some way associated with defendant’s goods—but rather is the accurate recognition that a mark associated with the plaintiff is now also in use as an identifying symbol by another.

By reason of the foregoing, Opposer believes and submits that it will be irreparably damaged by being restricted from advertising, promoting or otherwise utilizing aforementioned mark if Applicant is allowed to register “LA HOJA TRIBAL” as a trademark in Class 34 or otherwise.

WHEREFORE, Opposer prays that this Opposition be sustained and that the application for the registration of the word mark “LA HOJA TRIBAL” be denied.

By: _____

Chris P. Perque
Melissa S. LaBauve
Attorneys for
HBI International, Inc.

Date: _____

4-11-05