

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



POINTE NOIR PTY. LTD.,

\*

Opposer

\*

Serial No.: 76/566,685

04-25-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

v.

\*

Opposition No.: \_\_\_\_\_

Published: October 26, 2004

BLOCK HEADWEAR LTD.,

\*

Applicant.

\*

Ref.: 37287-TBA(temp.164753)

\* \* \* \* \*

Trademark Assistance Center  
Madison East, Concourse Level Room C 55  
600 Dulany Street  
Alexandria, VA 22314

**NOTICE OF OPPOSITION**

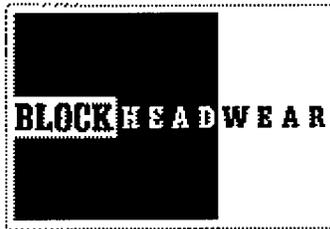
Sir:

Pointe Noir Pty. Ltd. ("Opposer") is an Australian corporation. It has its principal place of business currently at Suite 2, Wharf 19-21, Jones Bay Wharf, Pirrama Road, Pymont, NSW 2009, Australia.

For the reasons below, Opposer believes it will be damaged by registration of the mark BLOCK HEADWEAR and Design ("Applicant's Mark"), reproduced below, for all of the goods in the captioned application, namely, "hats, caps, visors, headbands and earbands," in International Class 25 ("Applicant's Goods"), by Block Headwear Ltd. ("Applicant").

04/28/2005 ZCLIFT01 00000020 220261 76566685

01 FC:6402 300.00 DA



Upon information and belief, Applicant is a corporation organized and existing under the laws of the State of New York, which is located at 42 Cleveland Avenue, Glen Head, New York 11545. Applicant's Mark is the subject of Application Serial No. 76/566,685 ("Application"), filed December 22, 2003, on an intent-to-use basis.

Opposer now opposes registration of Applicant's Mark, before the deadline of April 25, 2005 (since April 24, 2005, is a Sunday). The Trademark Trial and Appeal Board of the United States Patent and Trademark Office ("USPTO") granted Opposer's three requests for extension of time to file a Notice of Opposition under ESTTA Tracking numbers: ESTTA19014, ESTTA21667, and ESTTA26380.

Opposer's grounds for opposition are:

1. Opposer owns the following mark, USPTO registration, and common-law trademark rights:

<b>MARK ("Opposer's Mark")</b>	<b>FILING DATE</b>	<b>REG. NO./ SERIAL NO.</b>	<b>GOODS (collectively, "Opposer's Goods")</b>
BLOCH	3/26/93	1,898,161 (hereinafter "Opposer's Registration")	"Clothing and footwear; namely, leotards, tights, tutus, unitards, leg warmers, leggings, dance pants, dance shorts, dance footwear, ballet shoes, toe shoes, tap shoes, athletic footwear, gym suits, sweat pants, sweat shirts, T-shirts, undergarments, skirts, and sweaters," in International Class 25.
BLOCH	N.A.	N.A.	"Headwear," in International Class 25.

2. Upon information and belief, Applicant did not use Applicant's Mark on or in connection with Applicant's Goods before its effective filing date in the Application—that is, December 22, 2003.

3. Opposer's common law trademark rights in the mark BLOCH for "headwear" ("Opposer's Common Law Rights") predate December 22, 2003.

4. Upon information and belief, Opposer's Common Law Rights predate any date on which Applicant may rely in support of Applicant's Mark.

5. Upon information and belief, the effective date of Opposer's Registration predates any date on which Applicant may rely in support of Applicant's Mark.

6. Upon information and belief, Opposer's date of first use of the mark in Opposer's Registration—either in interstate commerce in the United States or between a foreign country and the United States (hereinafter "Commerce")—that is, January 1, 1993, predates any date on which Applicant may rely in support of Applicant's Mark.

7. Opposer's Registration is incontestable pursuant to Section 15 of the Trademark Act of 1946, as amended (hereinafter "Lanham Act"), 15 U.S.C. § 1065.

8. Opposer's Mark is currently used in Commerce on or in connection with Opposer's Goods.

9. The following goods in Opposer's Registration are not limited to a particular field of use: "leotards, tights, unitards, leg warmers, leggings, sweat pants, sweat shirts, T-shirts, undergarments, skirts, and sweaters," in International Class 25.

10. Applicant's Goods are headwear.

11. Applicant's Goods are not limited to a particular field of use and, therefore, implicitly cover all fields of use, including the fields of dance and athletics.

12. Headbands help trap sweat and, therefore, can be helpful to use in the fields of dance and athletics.

13. Hats, caps, and visors help shield the eyes from sun or lights and, therefore, can be helpful to use in the fields of dance and athletics.

14. Upon information and belief, it is common for the same party to provide both clothing and footwear, on the one hand; and Applicant's Goods, on the other hand.

15. Opposer's Goods and Applicant's Goods are identical, highly similar, and/or complementary.

16. The darkened portion of Applicant's Mark represents a block and is intended to reinforce the word "BLOCK" in Applicant's Mark.

17. The word BLOCK is the dominant word in Applicant's Mark.

18. The words BLOCH and BLOCK are phonetic equivalents.

19. The word HEADWEAR is generic for Applicant's Goods.

20. The word HEADWEAR should have been disclaimed in Applicant's Mark because it does not function with BLOCK as a compound word mark.

21. Applicant's Mark and Opposer's Mark are highly similar in overall appearance, sound, connotation, and commercial impression.

22. Applicant's Mark, as applied-for and intended to be used by Applicant on or in connection with Applicant's Goods, is so similar to Opposer's Mark, as owned by Opposer, that the trade and consumers are likely to be confused and likely to believe, and

would be justified in so believing, that Applicant's Goods originate from Opposer or an entity in some way associated with Opposer, resulting in damage to Opposer.

23. Applicant's Mark, as applied-for and intended to be used by Applicant on or in connection with Applicant's Goods, is so similar to Opposer's Mark, as owned by Opposer, that the trade and consumers are likely to be confused and likely to believe, and would be justified in so believing, that Opposer's Goods originate from Applicant or an entity in some way associated with Applicant, resulting in damage to Opposer.

24. Opposer believes that registration of Applicant's Mark as proposed in the Application would result in damage to Opposer under the provisions of the Lanham Act, 15 U.S.C. § 1052(d), pursuant to the allegations stated above.

ACCORDINGLY, Opposer respectfully requests that registration sought by Applicant, in Application Serial No. 76/566,685, be refused and that this Notice of Opposition be sustained.

Opposer appoints Andrew D. Price, Mark B. Harrison, Marcia A. Auberger, Janet F. Satterthwaite, and Jacqueline L. Patt, along with the law firm of Venable LLP to transact all business on its behalf in connection with this Opposition.

Please conduct all correspondence with Andrew D. Price at Venable LLP, P.O. Box 34385, Washington, DC 20043-9998.

Authorization is granted to debit the requisite fee of \$300 for filing a Notice of Opposition in one International Class (@ \$300/Class), or the requisite fee, from Deposit Account No. 22-0261.

This Notice is being submitted in duplicate.

Respectfully submitted,



By: \_\_\_\_\_

Andrew D. Price  
Attorneys for Opposer

Venable LLP  
P.O. Box 34385  
Washington, DC 20043-9998  
(202) 344-4000

Date: April 25, 2005  
DC2DOCS1/643226