

ESTTA Tracking number: **ESTTA87701**

Filing date: **06/29/2006**

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	Reeds Jewelers, Inc.
Granted to Date of previous extension	07/12/2006
Address	2525 South 17th Street Wilmington, NC 28401 UNITED STATES

Attorney information	Herbert Zimmer Zimmer & Zimmer, L.L.P. 111 Princess St. Wilmington, NC 28401 UNITED STATES herbertzimmer@zdc.com Phone:(910) 763-4669 x 202
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Applicant Information

Application No	78527669	Publication date	03/14/2006
Opposition Filing Date	06/29/2006	Opposition Period Ends	07/12/2006
Applicant	Dean & Reed Concepts, LLC 12397 River Valley Drive Fishers, IN 46038 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. All goods and services in the class are opposed, namely: Action figures and modeled plastic toy figurines

Attachments	notice to oppose.PDF (5 pages)(107742 bytes)
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Signature	/Herbert J. Zimmer/
Name	Herbert Zimmer
Date	06/29/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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_____)	
REEDS JEWELERS, INC.,)	
)	
Opposer,)	Opposition No.: _____
)	Application Serial No.: 78527669
vs.)	
)	Application Date: 12/06/2004
DEAN & REED CONCEPTS, LLC,)	Mark: DEAN & REED'S DIAMOND SERIES
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, Reeds Jewelers, Inc., a North Carolina corporation, including its wholly owned subsidiary Reeds Jewelers of North Carolina, Inc., is located and doing business at 2525 South 17th Street, Wilmington, North Carolina 28401, among other locations ("Opposer"). Opposer believes it will be damaged by registration of the mark DEAN & REED'S DIAMOND SERIES (the "Mark") shown in the trademark application Serial Number 78527669, filed December 6, 2004, and published in the *Official Gazette* on March 14, 2006. Opposer hereby opposes registration of the Mark in Class 28, pursuant to the previously-filed extension of time to oppose. The grounds for opposition are as follows:

1. Applicant, Dean & Reed Concepts, LLC, upon information and belief, is an Indiana corporation, located and doing business at 12397 River Valley Drive, Fishers, Indiana 46038 ("Applicant").
2. Opposer owns and operates retail jewelry stores in the state of North Carolina and

numerous other states in the United States, and services the entirety of the United States via an online e-commerce store. Opposer, and its predecessor subsidiaries, has operated retail jewelry stores continuously since 1946 using the trademarks REED'S and REEDS. Among other products, such stores offer diamonds and various figurines for sale.

3. Opposer is the owner of numerous registrations that comprise or contain the mark REED'S or REEDS, including the following U.S. Registrations:

a. Registration No. 1123222, an incontestable registration for the mark REED'S filed November 4, 1977, registered July 31, 1979;

b. Registration No. 1444544, an incontestable registration for the mark REEDS, filed June 4, 1984, registered June 23, 1987;

c. Registration No. 2983036 for the mark REEDS JEWELERS, filed January 15, 2004, registered August 9, 2005; and

d. Registration No. 3000955 for the mark REEDS JEWELERS, filed January 15, 2004, registered September 27, 2005 (collectively, "Opposer's Marks").

4. Opposer has used Opposer's Marks continuously in commerce since 1946 in connection with its products and services.

5. Opposer has advertised and promoted Opposer's Marks extensively across the United States in connection with the operation and promotion of its retail stores. In addition, Opposer has made extensive use of Opposer's Marks on its products, on its website, and in promotional materials for its products and services. As a result of such use and promotion, Opposer's Marks have developed and represent valuable goodwill inuring to the benefit of Opposer.

6. Opposer's Marks are famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c), and became famous before Applicant commenced use of its mark.

7. The filing date of Opposer's applications for Opposer's Marks are prior to the filing date of Applicant's application.

8. On information and belief, Applicant did not commence use of the DEAN & REED'S DIAMOND SERIES mark prior to Opposer's first use of its REEDS, REED'S and REEDS JEWELERS marks.

9. Applicant's DEAN & REED'S DIAMOND SERIES mark is confusingly and deceptively similar to Opposer's previously used and duly registered REEDS, REED'S and REEDS JEWELERS marks.

10. Applicant's mark is nearly identical in sight, sound, and commercial impression to Opposer's Marks.

11. Applicant's goods are nearly identical to certain goods marketed and sold by Opposer in connection with Opposer's Marks.

12. The potential consumers for Applicant's goods and services are consumers of Opposer's goods and services.

13. Due to similarity between Applicant's claimed mark DEAN & REED'S DIAMOND SERIES and Opposer's previously used and registered marks REEDS, REED'S and REEDS JEWELERS, the overlap of consumers, and the identical nature of goods and services sold and marketed, customers and potential customers are likely to believe that Applicant's goods and services originated with Opposer, resulting in a likelihood of confusion in the marketplace and damage to Opposer.

14. Registration by Applicant of the Mark for Applicant's goods and services is likely to cause confusion or cause mistake and deception among purchasers and potential purchasers with Opposer's previously used and duly registered Opposer's Marks, resulting in damage to Opposer.

15. Because of the identical nature of certain goods and services, registration of the Mark by Applicant is likely to cause confusion, mistake or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored, approved by, or affiliated with Opposer.

16. Applicant's DEAN & REED'S DIAMOND SERIES mark dilutes the distinctive quality of Opposer's famous REEDS, REED'S and REEDS JEWELERS marks.

17. Registration of the mark shown in Applicant Serial No. 78527669 will result in damage to Opposer under the provision of Section 2 of the U.S. Trademark Act, 15 U.S.C. §1052, pursuant to the allegations stated above.

WHEREFORE, Opposer prays that Application Serial No. 78527669 filed by the Applicant be canceled and that this Notice of Opposition be sustained in favor of Opposer, Reeds Jewelers, Inc.

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This Notice of Opposition is submitted electronically.

Respectfully submitted on behalf of:

REEDS JEWELERS, INC.

By: /Herbert J. Zimmer/
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