

ESTTA Tracking number: **ESTTA109184**

Filing date: **11/13/2006**

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	Original Arts Manufacturing Corporation.		
Entity	Corporation	Citizenship	New Jersey
Address	970-4 New Brunswick Avenue Rahway, NJ 07065 UNITED STATES		

Attorney information	Sherry H. Flax Saul Ewing LLP 500 E. Pratt St. Suite 900 Baltimore, MD 21202 UNITED STATES sflax@saull.com Phone:410-332-8784
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Applicant Information

Application No	78747736	Publication date	10/31/2006
Opposition Filing Date	11/13/2006	Opposition Period Ends	11/30/2006
Applicant	William Switzer & Associates Ltd. #6 - 611 Alexander Street Vancouver, V6E 1A1 CANADA		

Goods/Services Affected by Opposition

Class 011. All goods and services in the class are opposed, namely: Lights namely, lamps, lamps shades, lamp bases, table lamps, floor lamps, wall lights, chandeliers, electric night lights; and lighting fixtures
Class 020. All goods and services in the class are opposed, namely: Furniture, namely bedroom furniture, dining room furniture, living room furniture, office furniture, outdoor furniture, furniture hardware and parts
Class 035. First Use: 2005/03/31 First Use In Commerce: 2005/03/31 Opposed goods and services in the class: Wholesale distributorship featuring furniture, furniture hardware and parts, lighting, lighting fixtures and accessories
Class 040. First Use: 2005/03/31 First Use In Commerce: 2005/03/31 All goods and services in the class are opposed, namely: Custom manufacture of furniture

Attachments	andre.pdf (4 pages)(44599 bytes)
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Signature	/sherry flax/
Name	Sherry H. Flax
Date	11/13/2006

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

In the matter of Application Serial No. 78/747736
Filed on November 4, 2005
For the Mark **ANDRE ARBUS COLLECTION (and DESIGN)**
Published in the *Official Gazette* on October 31, 2006

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Original Arts Manufacturing Corporation *
970-4 New Brunswick Avenue *
Rahway, New Jersey 07065 *

Opposer, *

v. * Opposition No. _____

William Switzer & Associates Ltd. *
#6 - 611 Alexander Street *
Vancouver, Canada V6E 1A1 *

Applicant. *

* * * * *

NOTICE OF OPPOSITION

Opposer, ORIGINAL ARTS MANUFACTURING CORPORATION, a corporation organized and existing under the laws of the state of New Jersey, with offices located at 970-4 New Brunswick Avenue, Rahway, New Jersey 07065 (“Opposer”), believes that it will be damaged by registration of the mark shown in Serial No. 78/747736 and hereby opposes the same. As grounds of opposition, it is alleged that:

1. Pursuant to Application Serial No. 78/747736, Applicant seeks to register ANDRE ARBUS COLLECTION (AND DESIGN) as a service mark for furniture, custom manufacture of furniture, and related goods and services. Applicant claims that the mark was first used in commerce in connection with the custom manufacture and wholesale distributorship of furniture at least as early as March 31, 2005. Applicant seeks to register the mark based on a

bona fide intent to use it in commerce in connection with furniture, including bedroom furniture, dining room furniture, living room furniture, office furniture, outdoor furniture, furniture hardware and parts, and lighting fixtures based on its application filing date of November 4, 2005. The mark was published in the Official Gazette on October 31, 2006.

2. Opposer first used the mark ANDRE ORIGINALS MFG. CO. at least as early as May 21, 1991, in connection with furniture and the custom manufacture of furniture. Opposer has filed an application with the USPTO to register the ANDRE ORIGINALS MFG. CO. mark, U.S. Ser. No. 77/037225, based on actual use of the mark.

3. Opposer continuously used the ANDRE ORIGINALS MFG. CO. mark in interstate commerce until June 16, 2004. At that time, Opposer began using the mark ANDRE (“Mark”) and has used that mark continuously in interstate commerce in connection with furniture and the custom manufacture of furniture. Opposer has filed an application with the USPTO to register the Mark, U.S. Ser. No. 77/037285, based on actual use of the mark.

4. On or about December 16, 1999, Opposer registered the Internet domain andreoriginals.com. Opposer has operated an Internet web site at that location since at least as early as March 30, 2001.

5. Opposer provides its goods and services under the ANDRE Mark throughout the United States. Opposer is headquartered in Rahway, New Jersey and maintains additional showrooms for dealers and decorating professionals in Atlanta, Georgia, Las Vegas, Nevada, and San Francisco, California. Opposer also provides its goods and services directly to consumers via catalogs and its website. Opposer has developed exceedingly valuable goodwill in the ANDRE Mark. By virtue of its efforts and the expenditure of considerable sums for

promotional activities, and by virtue of the excellence of its goods and services, Opposer has gained for its ANDRE Mark a most valuable reputation.

6. There is no issue as to priority of use. Opposer has used the Mark since at least as early as June 16, 2004. Applicant filed application on November 4, 2005, alleging actual use of the mark for a portion of its services on March 31, 2005.

7. Opposer hereby opposes registration of the ANDRE ARBUS COLLECTION (AND DESIGN) mark because it is confusingly similar to Opposer's ANDRE mark. Applicant seeks registration for the same goods and services as are provided by Opposer. Because both marks are used to identify furniture and furniture manufacturing services, Applicant's intended use of the mark in connection is likely to cause confusion as to the source of the goods and services among consumers.

8. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of the mark. Such registration would be a source of damage and injury to Opposer. Opposer would lose the value of the good will associated with its use of its ANDRE mark. Applicant's use of the proposed mark would cause confusion and deception as to the source, origin or sponsorship of its services in trade in violation of the Lanham Act, 15 U.S.C. § 1114(1).

WHEREFORE, Opposer prays that the application Serial No. 78/747736 be rejected, and that the mark therein sought for the goods and services specified in the application be denied and refused.

The statutory filing fee of \$1200 is submitted herewith.

Opposer hereby appoints Sherry H. Flax, Esquire, a member of the Bar of the State of Maryland, Saul Ewing LLP, 500 E. Pratt St., Baltimore, Maryland 21202, as its duly

authorized attorney in the matter of the Opposition identified above to prosecute said Opposition, to transact all business in the Patent and Trademark Office and in the United States Courts connected with this Opposition, to sign its name to all papers which may hereinafter be filed in connection therewith, and to receive all communications relating to the same.

Original Arts Manufacturing Co.

Date: November 13, 2006

By: /sherry flax/
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