

ESTTA Tracking number: **ESTTA154880**

Filing date: **08/03/2007**

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	Mine Design a d.b.a. of Amal Flores (U.S.)
Granted to Date of previous extension	08/04/2007
Address	11151 Mississippi Ave. Los Angeles, CA 90025 UNITED STATES

Attorney information	Carlos Candeloro 1601 N. Sepulveda Blvd. 239 Manhattan Beach, CA 90266 UNITED STATES carlos@candeloro.net Phone:310 498 4249
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Applicant Information

Application No	76613881	Publication date	06/05/2007
Opposition Filing Date	08/03/2007	Opposition Period Ends	08/04/2007
Applicant	VOTIVO, LTD. 3450 4th Avenue S. Seattle, WA 98134 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Bath salts and hand lotion

Grounds for Opposition

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Genericness	Trademark Act section 23

Attachments	NoticeOpp.pdf (7 pages)(85349 bytes)
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Signature	/c/
Name	Carlos Candeloro
Date	08/03/2007

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

Serial No. 76/613881

mine design, a d.b.a. of Amal Flores
v.
Votivo, Ltd.

Opposition No. _____

Notice Of Opposition

Defendant information:

Votivo, Ltd., a corporation of the State of Washington

with a principal place of business at:

3450 4th Avenue S.
Seattle, WA 98134

Represented by:

Mr. Mark V. Jordan
Invicta Law Group, Pllc
1000 Second Avenue, Suite 3310
Seattle, Washington 98104-1019

Plaintiff information:

Mine Design, a d.b.a. of Amal Flores, an individual

with a principal place of business at:

11151 Mississippi Ave.
Los Angeles, CA 90025

Represented by:

Carlos Candeloro
1601 N. Sepulveda Blvd. 239
Manhattan Beach, CA 90266
Tel: (310) 489-4249
carlos@candeloro.net

COMPLAINT

Plaintiff Mine Design alleges as follows for its complaint:

Introduction

Plaintiff Mine Design, a d.b.a. of Amal Flores, an individual, engaged in the manufacture and wholesale of aromatic products, including aromatic candles, aromatic room sprays, reed diffusers, aromatic bath salts, soaps, and other similar items, pursuant to 15 U.S.C. § 1063 opposes Votivo, Ltd.'s Application Serial No. 76/613881 for the term "mandarine" in connection with aromatic bath salts and hand lotion products.

Plaintiff respectfully submits that the term "mandarine" in connection with aromatic bath salts and hand lotion products is generic and functional. Accordingly, pursuant to the Lanham Act, as amended, registration of the term as requested in the application should be refused.

Material Facts

1. Votivo, Ltd. a corporation of the State of Washington, with a principal place of business at 3450 4th Avenue S., Seattle, WA 98134, has filed an application, assigned Serial No. 76/613881 ("the '881 application"), to register the term "mandarine" in connection with aromatic bath salts and hand lotion pursuant to 15 U.S.C. § 1052(f).
2. The '881 application published for opposition on June 5, 1997.
3. Mine Design ("m. design"), a d.b.a. of Amal Flores, an individual, doing business at 11151 Mississippi Ave., Los Angeles, CA, obtained a 30 day extension to file the present opposition.
4. m. design designs, manufactures and wholesales aromatic candles, aromatic room sprays, reed diffusers, aromatic bath salts, soaps, and other similar items.
5. m. design has an interest that common scent descriptors, including the term "mandarin," be freely available to describe his aromatic products, including bath salts products.

6. m. design believes that it is being and will be damaged if the term “mandarine” is registered in connection with aromatic articles, and in particular aromatic bath salts and hand lotion products.

7. The term “mandarine” is incapable of serving a source-indicating function and thus is not capable of functioning as a mark in connection with the goods for which registration is sought. Accordingly, the term “mandarine” cannot be registered by applicant under the Lanham Act, as amended, in connection with aromatic bath salts and hand lotion products.

8. Mandarin is the French spelling, or an incorrect English spelling *a la* tangerine, of "mandarin."

9. In English, the term “mandarin” has several meanings, including a type of citrus plant and its fruits.

10. The “e” at the end of the term as sought to be registered by applicant disambiguates the correct interpretation of the term, as it only refers to the citrus plant and its fruits in French, and not to the other meanings attributed to the term “mandarin” in English.

11. The citrus family includes lemons, limes, grapefruits and oranges of several types, including navel, valencia, and mandarins, to name a few.

12. Fruits in the citrus family are, and for a long time have been, used, and their taste and smell imitated for use, in the food and perfume industries.

13. The primary significance of the term “mandarine” or “mandarin” to the relevant public when the term is used in connection with aromatic bath salts and hand lotion products is that the products either include a product derived from the mandarin plant or that the products are intended to have an impact on at least one of the senses similar to that of a mandarin plant product.

14. The term “mandarin” is necessary in the aromatic goods industry, which includes aromatic bath salts and hand lotion products, to label products having a mandarin plant product as an ingredient, or an imitation intended to have an impact on at least one of the senses (e.g., a smell), similar to that of a mandarin plant product.

15. Mandarin scented bath salt and hand lotion products differ from other aromatic bath salt and hand lotion products in a significant, functional characteristic, namely their scent.

16. The term “mandarin” is the common descriptive term for a mandarin plant product’s scent, and more particularly the fruit.

17. No commonly used alternative that effectively communicates the same functional information, namely, the scent of a mandarin, is available to competitors.

Standing

18. m. design has a real interest in the proceeding and a reasonable basis for its belief of damage.

19. m. design has a direct and personal stake in the outcome of the proceeding, inter alia, because m. design is a manufacturer and wholesaler of aromatic candles, aromatic room sprays, reed diffusers, aromatic bath salts, soaps, and other similar items. As such, m. design has an interest that common scent descriptors, including the term “mandarin,” be freely available to describe m. design’s aromatic products, including bath salts. Accordingly, m. design will be damaged if the term “mandarine” is registered in connection with aromatic articles, and in particular aromatic bath salts and hand lotion products.

Statutory Grounds for Opposition to Registration

Registration Should Be Refused Because The Term “Mandarine” Is Generic In Connection With The Goods Cited In The ‘881 Application (15 U.S.C. § 1052)

20. m. design realleges and incorporates by this reference each and every allegation contained in paragraphs 1-19 of this Complaint as though set forth in full herein.

21. The term “mandarine” is generic in connection with the class of goods at issue herein, namely aromatic products, particularly aromatic bath salts and lotion products, and even more particularly mandarin scented bath salts and lotion products.

22. Additionally or in the alternative, the term “mandarine” is not a term by which the goods of the applicant may be distinguished from the goods of others.

23. Additionally or in the alternative, the term “mandarine” in connection with aromatic bath salts and lotion products is incapable of serving as a means by which applicant's products may be distinguished from mandarin scented bath salts and lotion products of others.

24. Additionally or in the alternative, the term “mandarine” is generic in connection with bath salts and lotion products because it is not being used as a mark.

25. Additionally or in the alternative, the term “mandarine” in connection with bath salts and hand lotion products cannot be used in a manner calculated to project to purchasers or potential purchasers a single source or origin for bath salts and hand lotion products, including mandarin scented bath salts and hand lotion products.

26. Additionally or in the alternative, the term “mandarine” in connection with aromatic bath salts and hand lotion products identifies the function or purpose of the products, namely, that the products provide the user with one or more sensations associated with one or more mandarin plant products.

27. Additionally or in the alternative, the relevant public understands the designation “mandarine” in connection with bath salts and hand lotion products primarily to refer to a class of products, namely, mandarin containing, or mandarin scented bath salts and hand lotion products.

28. Accordingly, the term “mandarine” in connection with bath salts and hand lotion products is not a trademark and can not be registered under the Lanham Act, as amended.

**Registration Should Be Refused Because The Term “Mandarine” Is Functional In
Connection With The Goods Named In The ‘881 Application
(15 U.S.C. §§ 1052, 1052(e)(5))**

29. m. design realleges and incorporates by this reference each and every allegation contained in paragraphs 1-28 of this Complaint as though set forth in full herein.

30. The term “mandarine” is *de jure* functional in connection with bath salts and hand lotion products.

31. Additionally or in the alternative, the term “mandarine” is *de jure* functional in connection with bath salts and hand lotion products because the term serves the utilitarian purpose of informing the public of the qualities, ingredients and characteristics of the product.

32. Additionally or in the alternative, the term “mandarine” is *de jure* functional in connection with bath salts and hand lotion products because the term is necessary for competitors to effectively compete in the market for bath salts and hand lotion products having a mandarin scent, or bath salts and hand lotion products that include one or more mandarin plant products as an ingredient.

33. Accordingly, registration should be refused pursuant to 15 U.S.C. §§ 1052, 1052(e)(5).

Prayer for Relief

WHEREFORE, m. design respectfully requests the Director, pursuant to the authority delegated in 15 U.S.C. § 1068, refuse to register the opposed mark “mandarine” in connection with aromatic bath salts and hand lotion products.

The \$300 fee has been submitted electronically.

Dated: August 3, 2007

Respectfully submitted,

/c/
Carlos Candeloro
Reg. No. 52,691
Cal. Bar No. 194716

Attorney For Plaintiff
mine design

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