

ESTTA Tracking number: **ESTTA175588**

Filing date: **11/19/2007**

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	Carpenter Co.		
Entity	Corporation	Citizenship	Virginia
Address	5016 Monument Avenue Washington, DC 20036 UNITED STATES		

Attorney information	Scott Woldow Smith, Gambrell & Russell, LLP 1130 Connecticut Avenue, NW Suite 1130 Washington, DC 20036 UNITED STATES sdwoldow@sgrlaw.com Phone:202-263-4300
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Applicant Information

Application No	78725431	Publication date	11/13/2007
Opposition Filing Date	11/19/2007	Opposition Period Ends	12/13/2007
Applicant	FKA DISTRIBUTING COMPANY d/b/a HOMEDICS, INC. 3000 Pontiac Trail Commerce Township, MI 48390 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. All goods and services in the class are opposed, namely: cushions
Class 024. All goods and services in the class are opposed, namely: pillow accessories, namely, cases, covers and slips

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1587858	Application Date	03/13/1989
Registration Date	03/20/1990	Foreign Priority Date	NONE
Word Mark	PERFECT PILLOW		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 1989/02/24 First Use In Commerce: 1989/02/24 PILLOWS

Attachments	20071119154546.PDF (11 pages)(321482 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/SW/
Name	Scott Woldow
Date	11/19/2007

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

In the Matter of Application Serial No. 78/725,431
Published: November 13, 2007

Carpenter Co.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
FKA DISTRIBUTING COMPANY d/b/a)	
HOMEDICS, INC.)	
)	
Applicant.)	

Commissioner for Trademarks
Box TTAB FEE
P.O. Box 1451
Alexandria, Virginia 22313-1451

Madam:

NOTICE OF OPPOSITION

In the matter of the application of FKA DISTRIBUTING COMPANY d/b/a
HOMEDICS, INC., for registration of the mark PERFECT FIRMNESS PILLOW, filed on
October 3, 2005, application Serial No. 78/725,431, published in the Official Gazette on
November 13, 2007, Carpenter Co. believes that it will be damaged by registration of the mark
shown in Serial No. 78/725,431, and hereby opposes registration.

The grounds for opposition are as follows.

1. Opposer is a Corporation of the State of Virginia, with its principal place of business at 5016 Monument Avenue, Richmond, Virginia 23261.
2. Opposer is now and has been engaged in the bedding business as well as in businesses related to cushions. Opposer has used and is using the mark PERFECT PILLOW in association with "pillows."
3. Opposer owns Registration No. 1587858 for the mark PERFECT PILLOW, registered on March 20, 1990. The aforesaid registration is valid, subsisting and incontestable. Carpenter Co. is the owner of the aforesaid registration and all of the goodwill represented thereby.
4. The use of Opposer's mark has been valid and continuous and has not been abandoned. Opposer's mark is symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.
5. Notwithstanding Opposer's rights in and to its PERFECT PILLOW mark, Applicant on October 3, 2005, filed an application for registration of the mark PERFECT FIRMNESS PILLOW. The PERFECT FIRMNESS PILLOW trademark was published in association with "cushions" in Class 20 and "pillow accessories, namely, cases, covers and slips" in Class 24. The application was assigned Serial No. 78/725,431 and was published for opposition in the Official Gazette dated November 13, 2007.
6. Applicant opposes registration of the PERFECT FIRMNESS PILLOW mark with respect to all of the goods identified in the trademark application.
7. Applicant's mark, PERFECT FIRMNESS PILLOW, when used in connection with the goods set forth in its application, is confusingly similar to Opposer's use of its

PERFECT PILLOW mark, as set forth and protected by Opposer's above-identified registration. Registration and use of Applicant's mark is likely to cause confusion, mistake and deception. The marks are nearly identical in appearance, sound, and meaning, and the goods are highly similar so that there would be a likelihood of such confusion, mistake and deception.

8. Despite Opposer's rights in and to the PERFECT PILLOW mark, Applicant filed a trademark application for the PERFECT FIRMNESS PILLOW designation to refer to its products. Both marks are used in association with bedding goods. The nearly identical nature of the marks accentuates the similarity and exacerbates the likelihood of confusion regarding the marks and the likelihood of confusion as to sponsorship or affiliation.

9. If Applicant is permitted to register its mark, PERFECT FIRMNESS PILLOW, for the goods specified in the application, and uses the aforesaid mark in commerce, confusion in the marketplace will occur. Persons familiar with Opposer's mark would be likely to confuse Applicant's goods as products made, sold, or sponsored by Opposer. Any such confusion in the trade would inevitably result in loss of sales to Opposer.

10. In addition to the harm identified in the preceding paragraph, any defect, objection or fault found with Applicant's products marketed under the PERFECT FIRMNESS PILLOW mark would necessarily reflect badly upon and significantly injure the reputation which Opposer has established for its products.

11. A current printout of information from the electronic database records of the United States Patent and Trademark Office showing the current status and title of Trademark Registration No. 1587857 is attached as Exhibit A and is properly made part of the record.

12. Applicant's mark PERFECT FIRMNESS PILLOW when used on or in connection with "cushions" in Class 20 is deceptively misdescriptive under §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark, and prays that registration be denied.

Please charge Deposit Account No. 02-4300 for any additional fees which may be required.

DATED this 19th day of November, 2007.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



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EXHIBIT A

#293778



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Typed Drawing

Word Mark	PERFECT PILLOW
Goods and Services	IC 020. US 032. G & S: PILLOWS. FIRST USE: 19890224. FIRST USE IN COMMERCE: 19890224
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73785989
Filing Date	March 13, 1989
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 1, 1989
Registration Number	1587858
Registration Date	March 20, 1990
Owner	(REGISTRANT) E. R. CARPENTER COMPANY, INC. CORPORATION VIRGINIA 5016 MONUMENT AVENUE RICHMOND VIRGINIA 23230 (LAST LISTED OWNER) CARPENTER CO. CORPORATION BY CHANGE OF NAME VIRGINIA 5016 MONUMENT AVENUE RICHMOND VIRGINIA 23230
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	ANJANETTE PLICHTA STINSON
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20001111.
Renewal	1ST RENEWAL 20001111

Live/Dead Indicator LIVE

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Serial Number: 78725431 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

PERFECT FIRMNESS PILLOW

(words only): PERFECT FIRMNESS PILLOW

Standard Character claim: Yes

Current Status: Final review prior to publication has been completed, application will be published for opposition.

Date of Status: 2007-10-11

Filing Date: 2005-10-03

The Information will be/was published in the Official Gazette on 2007-11-13

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 114

Attorney Assigned:
FIRST VIVIAN M Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-10-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FKA DISTRIBUTING COMPANY d/b/a HOMEDICS, INC.

Address:

FKA DISTRIBUTING COMPANY d/b/a HOMEDICS, INC.
3000 Pontiac Trail
Commerce Township, MI 48390
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Michigan

GOODS AND/OR SERVICES

International Class: 020

Class Status: Active

cushions

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 024

Class Status: Active

pillow accessories, namely, cases, covers and slips

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Disclaimer: "FIRMNESS PILLOW"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2007-10-11 - Law Office Publication Review Completed

2007-10-10 - Assigned To LIE

2007-09-10 - Approved for Pub - Principal Register (Initial exam)

2007-08-07 - Teas/Email Correspondence Entered

2007-08-06 - Communication received from applicant

2007-08-06 - TEAS Response to Office Action Received

2007-02-05 - NON-FINAL ACTION E-MAILED

2007-02-05 - Non-Final Action Written
2007-01-12 - Teas/Email Correspondence Entered
2007-01-11 - Communication received from applicant
2007-01-11 - TEAS Response to Office Action Received
2006-11-01 - Final refusal e-mailed
2006-11-01 - Final Refusal Written
2006-10-10 - Teas/Email Correspondence Entered
2006-10-05 - Communication received from applicant
2006-10-05 - TEAS Response to Office Action Received
2006-04-05 - Non-final action e-mailed
2006-04-05 - Non-Final Action Written
2006-04-05 - Assigned To Examiner
2005-10-06 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Matthew R. Mowers

Correspondent

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In the Matter of Application Serial No. 78/725,431
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Carpenter Co.)	
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Applicant.)	

Commissioner for Trademarks
Box TTAB FEE
P.O. Box 1451
Alexandria, Virginia 22313-1451

CERTIFICATE OF SERVICE

I, Scott D. Woldow, counsel for Carpenter Co., do hereby certify that the **NOTICE OF OPPOSITION** was served upon applicant by placing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

MATTHEW R. MOWERS
BROOKS KUSHMAN P.C.
1000 TOWN CTR FL 22
SOUTHFIELD, MI 48075-1183

This 19TH day of November, 2007



Scott D. Woldow