

ESTTA Tracking number: **ESTTA193052**

Filing date: **02/15/2008**

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	M. Davis Management, Inc.
Granted to Date of previous extension	02/16/2008
Address	809 S ORLANDO AVENUE ORLANDO, FL 32789 UNITED STATES
Correspondence information	Michael L. Leetzow, Esq. Michael L. Leetzow, P.A. 5213 Shoreline Cir Sanford, FL 32771 UNITED STATES michael@leetzow.com Phone:407 302 9970

Applicant Information

Application No	77218820	Publication date	12/18/2007
Opposition Filing Date	02/15/2008	Opposition Period Ends	02/16/2008
Applicant	Fairbrother, Faith PO Box 1992 Windermere, FL 34786 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. All goods and services in the class are opposed, namely: Healthcare consulting services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Applicant signed declaration without the requisite beliefs making application invalid.

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CPAPSUPPLY.COM		
Goods/Services	CPaP Supplies and consults with customers regarding their healthcare and the supplies for that healthcare.		

Related Proceedings	M. Davis Management v. Faith Fairbrother, Case No.: 07-CA-10183, Circuit Court of the Ninth Judicial Circuit In and For Orange County, FL
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Attachments	NoticeOpposition.pdf (5 pages)(179090 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	/Michael L. Leetzow/
Name	Michael L. Leetzow, Esq.
Date	02/15/2008

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

M. Davis Management , Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	Serial No. 77/218,820
)	Mark: CPAPSUPPLY
Faith Fairbrother)	Filing Date: June 29, 2007
)	Publication Date: December 18, 2007
)	
Applicant.)	

NOTICE OF OPPOSITION

M. Davis Management , Inc., a Florida corporation, located and doing business at 809 S. Orlando Ave., Suite A, Winter Park, Fl 32789, (hereinafter “Opposer”), believes that it will be damaged by the registration of the mark shown in Application Serial No. 77/218,820 in Class 35, filed by Faith Fairbrother (hereinafter “Applicant”), on June 29, 2007, and opposes Application Serial No. 77/218,820.

The grounds for this opposition are as follows:

1. Applicant has used the common-law trademark CPAPSUPPLY.COM in conjunction with a website that distributes, markets, advertises, promotes, and sells in interstate commerce CPaP supplies and consults with customers regarding their healthcare and the supplies for that healthcare.

2. The mark CPAPSUPPLY.COM was first adopted and used by Opposer at least as early as May 1, 2007, when the website having the domain name CPAPSUPPLY.COM was launched on the internet. Opposer has used the mark CPAPSUPPLY.COM on its

website since its launch date to identify its goods and services related to the healthcare industry.

3. Applicant is one of the shareholders of Opposer and, until June 6, 2007, was also an employee of Opposer. Applicant was also an officer and director of Opposer until June 18, 2007, when Applicant was removed as an officer and director by the Opposer.

4. Applicant registered the domain name www.cpapsupply.com on behalf of Opposer on or about July 12, 1999, the cost of the registration having been reimbursed to Applicant by Opposer.

5. Upon information and belief, Applicant was aware at all relevant times that the domain name was to be used with the mark CPAPSUPPLY.COM (both in words and with designs) for supplies and services related to the healthcare industry.

6. Upon information and belief, Applicant was aware that Opposer hired a website design company in October 2006 to develop content for the website and to be used on the website at www.cpapsupply.com, and that the website would include the trademark CPAPSUPPLY.COM.

7. Opposer requested Applicant to transfer the ownership of the domain name www.cpapsupply.com on several occasions, but Applicant never transferred the ownership.

8. On June 6, 2007, the same day as Applicant's resignation of employment from Opposer, Applicant requested information from the website design company hired by Opposer about transferring the domain name to Opposer.

9. Applicant never voiced an objection to the use of the mark CPAPSUPPLY.COM or the website using the domain name www.cpapsupply.com prior to her removal as officer and director of Opposer.

10. After Applicant's resignation of employment and subsequent removal as officer and director of Opposer, Applicant removed the content of the website and offered the domain name for rent or lease to anyone who visited the website.

11. Upon information and belief, Applicant filed the subject trademark application for the mark CPAPSUPPLY for healthcare consulting services merely to interfere with the business operations of Opposer.

12. Opposer has filed suit in Florida against Applicant regarding the ownership of the domain name www.cpapsupply.com and the trademark CPAPSUPPLY.COM.

13. Pursuant to stipulated Order Regarding Entry of a Temporary Injunction filed in the lawsuit between Opposer and Applicant, Applicant has replaced the website content with Opposer's original content.

14. Opposer's mark CPAPSUPPLY.COM and Applicant's mark CPAPSUPPLY are confusingly similar in sound appearance and meaning as to be likely, when applied to Applicant's services (apparently healthcare consulting services for CPAP patients), to cause confusion or mistake or to deceive consumers resulting in damage and detriment to Opposer and its reputation. Further, Applicant's services may be identical to or closely related to Opposer's services. Additionally, in view of the absence of any trade channel limitation in Applicant's application, both Applicant's and Opposer's marks are presumed to be distributed in the channels of trade to the same class of consumers, namely the general public.

15. Opposer, upon information and belief, avers that its ultimate consumers, and the public in general, are likely to be confused, mistaken, or deceived as to the origin and sponsorship of Applicant's services marketed under the alleged CPAPSUPPLY mark and misled into believing that such services emanate from, or are licensed by or are in some way

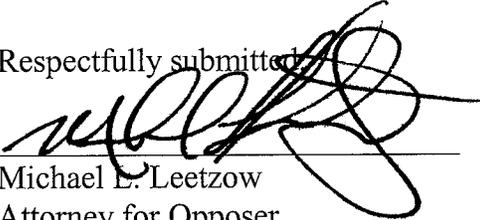
directly or indirectly associated with Opposer, particularly given the relationship between the Applicant and the Opposer, to the damage and detriment to Opposer and its reputation.

16. Opposer, upon information and belief, avers that the application was filed without the requisite beliefs on behalf of the Applicant as required in the declaration for the application and that the application is thus invalid.

WHEREFORE, Registrant believes and avers that it will be damaged by the registration of the proposed CPAPSUPPLY trademark as indicated above and that the application is invalid, and prays that Serial No. 77/218,820 be rejected in accordance with the allegations set forth above and the applicable provisions of the Trademark Act, that no registration be issues thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

By:

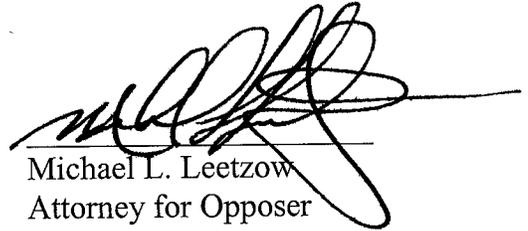

Michael E. Leetzow
Attorney for Opposer
Michael L. Leetzow, PA
5213 Shoreline Circle
Sanford, FL 32771
Telephone: 407/302-9970

Date: February 15, 2008

CERTIFICATE OF SERVICE

This will certify that on February 15, 2008, a copy of NOTICE OF OPPOSITION was served via first class mail, postage prepaid, to:

Faith Fairbrother
PO BOX 1992
Windermere, FL 34786



Michael L. Leetzow
Attorney for Opposer