

ESTTA Tracking number: **ESTTA199474**

Filing date: **03/19/2008**

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	3M Company
Granted to Date of previous extension	03/19/2008
Address	3M Center2501 Hudson Road St. Paul, MN 55144 UNITED STATES

Attorney information	Chet F. Garner Fulbright & Jaworski LLP 600 Congress Ave.Ste. 2400 Austin, TX 78701 UNITED STATES cgarner@fulbright.com, mmetteauer@fulbright.com, khaskins@fulbright.com, aotrademark@fulbright.com, trademarks@mmm.com, kpfertner@fulbright.com Phone:512.474.5201
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Applicant Information

Application No	77064778	Publication date	11/20/2007
Opposition Filing Date	03/19/2008	Opposition Period Ends	03/19/2008
Applicant	Settgast, David 3115 S. A1A #105 Melbourne Beach, FL 32951 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: adhesive bandage for covering skin legions and wounds
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2291484	Application Date	11/12/1997
Registration Date	11/09/1999	Foreign Priority Date	NONE
Word Mark	TATTOO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1998/01/28 First Use In Commerce: 1998/01/28 adhesive bandages

Attachments	75388982#TMSN.gif (1 page)(bytes) 20080319155259.pdf (3 pages)(111281 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	/Chet Garner/
Name	Chet F. Garner
Date	03/19/2008

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

In the matter of Application Serial No.: 77/064,778
By David Settgest for the Mark: BOOBOO TATTOO
Filed: December 14, 2006
Published in the *Official Gazette* on November 20, 2007

3M Company,

Opposer,

v.

David Settgest,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

3M Company (“Opposer”), a Delaware corporation having a principal place of business at 3M Center, 2501 Hudson Road, St. Paul, Minnesota, 55144-1000, believes that it will be damaged by registration of the mark in Application Serial No. 77/064,778, and opposes this Application under the provisions of 15 U.S.C. § 1063.

As grounds for this opposition, Opposer asserts that:

1. Opposer is the owner of the mark TATTOO.
2. Opposer adopted and began using the TATTOO mark in commerce at least as early as January 28, 1998 in connection with adhesive bandages and has continuously used its TATTOO mark since that time.
3. Opposer’s TATTOO mark serves to identify and indicate the source of Opposer’s products to the consuming public.
4. Opposer’s TATTOO mark is inherently distinctive.

5. Opposer has developed a substantial amount of goodwill in its TATTOO mark. This mark is well-known and respected by consumers and represents Opposer's commitment to providing high quality products to consumers.

6. As a result of Opposer's extensive use and promotion of its TATTOO mark, the TATTOO mark has become distinctive to designate Opposer as the source of its products and to distinguish Opposer's products from the products of others. As a result of Opposer's efforts, the consuming public throughout the United States widely recognizes and associates the TATTOO mark with Opposer and its products.

7. As a result of Opposer's long use and extensive promotion of the TATTOO mark, Opposer has acquired valuable common law rights in the TATTOO mark throughout the United States.

8. In accordance with federal law, Opposer has registered its TATTOO mark on the Principal Register of the United States Patent and Trademark Office, Registration No. 2,291,484 covering "adhesive bandages" in International Class 5. This registration is valid and enforceable and is incontestable pursuant to 15 U.S.C. § 1065.

9. Applicant David Settgest ("Applicant") seeks to register the mark BOOBOO TATTOO for "adhesive bandage for covering skin lesions and wounds" in International Class 5 ("Applicant's Goods").

10. The mark that Applicant seeks to register so resembles Opposer's TATTOO mark as to be likely, when used on or in connection with Applicant's Goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that the goods of Applicant offered under the BOOBOO TATTOO mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer or Opposer's goods.

11. Registration of the BOOBOO TATTOO mark would be a source of damage to Opposer because purchasers are likely to attribute the source or sponsorship of Applicant's Goods to Opposer.

12. Registration of the BOOBOO TATTOO mark would be a source of damage to Opposer, as it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Opposer's long prior use of its TATTOO mark.

WHEREFORE, 3M Company prays that Application Serial No. 77/064,778 be rejected, and that registration of the mark therein be refused under 15 U.S.C. §§ 1052(d) and 1063.

The filing fee in the amount of \$300.00 required by 37 C.F.R. § 2.6(a)(17) is being submitted herewith. The Commissioner is authorized to draw on the deposit account of Fulbright & Jaworski L.L.P., Account No. 50-1212/THRT298/MSM, in the event that anything prevents the successful completion of electronic payment of the filing fee.

Date: March 19, 2008

Respectfully submitted,



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ATTORNEYS FOR OPPOSER
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