

ESTTA Tracking number: **ESTTA212892**

Filing date: **05/21/2008**

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	Cooper and Company, Inc.		
Entity	Corporation	Citizenship	Ohio
Address	10179 Commerce Park Drive Cincinnati, OH 45246 UNITED STATES		

Correspondence information	Clayton L. Kuhnell Attorney Ulmer & Berne LLP 600 Vine Street Suite 2800 Cincinnati, OH 45202 UNITED STATES ckuhnell@ulmer.com, mmarrero@ulmer.com
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Applicant Information

Application No	77331967	Publication date	04/22/2008
Opposition Filing Date	05/21/2008	Opposition Period Ends	05/22/2008
Applicant	Sabal Medical, Inc. 227 Fairchild Street Charleston, SC 29492 UNITED STATES		

Goods/Services Affected by Opposition

Class 012. All goods and services in the class are opposed, namely: Portable cart for controllably dispensing medications and medical supplies at a patient's bedside
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Grounds for Opposition

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

U.S. Registration No.	3379243	Application Date	02/15/2007
Registration Date	02/05/2008	Foreign Priority Date	NONE
Word Mark	MEDCENTER		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 020. First use: First Use: 2007/05/31 First Use In Commerce: 2007/05/31 Plastic medication containers; dispensers for medical pills or capsules sold empty		
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U.S. Registration No.	3379244	Application Date	02/15/2007
Registration Date	02/05/2008	Foreign Priority Date	NONE
Word Mark	MEDCENTER SYSTEM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2007/05/31 First Use In Commerce: 2007/05/31 Plastic medication containers; dispensers for medical pills or capsules sold empty		

Attachments	77108162#TMSN.jpeg (1 page)(bytes) 77108180#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (3 pages)(16047 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 Overnight Courier on this date.

Signature	/Clayton L. Kuhnell/
Name	Clayton L. Kuhnell
Date	05/21/2008

3. Both of those applications identified the following goods in International Class 020: “Plastic medication containers; dispensers for medical pills or capsules sold empty”.
4. On July 3, 2007, and pursuant to the applications mentioned above, the Office registered MEDCENTER (Reg. 3,379,243) and MEDCENTER SYSTEM (Reg. 3,376,244), copies of the certificates of registration are attached.
5. Those registrations serve as *prima facie* evidence of Cooper’s exclusive ownership of the MEDCENTER and MEDCENTER SYSTEM marks and Cooper’s exclusive rights to use those marks in connection with the goods listed in said application. See 15 U.S.C. §§1065 and 1115(b).
6. Applicant, Sabal Medical, Inc. (“Sabal”), is a corporation duly organized and existing under the laws of the state of Delaware with its principal place of business at 227 Fairchild Street, Charleston, South Carolina 29492.
7. Sabal filed an application, Serial Number 77/331,967, pursuant to section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), to register the mark MEDCENTER, on November 16, 2007.
8. That application was published for opposition on April 22, 2008.
9. The mark sought to be registered by Sabal pursuant to Application Serial Number 77/331,967 is identical to, a colorable imitation of and/or confusingly similar to Cooper’s MEDCENTER and MEDCENTER SYSTEM marks.
10. The goods described by Sabal in Application Serial Number 77/331,967, namely, a “Portable cart for controllably dispensing medications and medical supplies at a patent’s

bedside”, are the same, similar or related to the goods described in Cooper’s aforementioned registrations, and are or will be advertised, promoted or sold through the same or similar channels of trade and to the same general class of purchasers as Cooper’s goods offered and sold under Cooper’s MEDCENTER and MEDCENTER SYSTEM.

11. Customers of Cooper or Sabal, as well as the public in general, are likely to be confused, mistaken or deceived as to the origin or sponsorship of Sabal’s goods marketed, promoted or sold under or in connection with the opposed MEDCENTER mark that Sabal seeks to register and, furthermore, said persons are likely to be misled into believing that Sabal or Sabal’s goods are manufactured, sold or rendered by, emanate from, or in some way are, directly or indirectly, associated with or connected to Cooper or its products and business, to the damage and detriment of Cooper, its good will, and reputation.

WHEREFORE Cooper prays that this opposition be sustained and that registration for application Serial Number 77/331,967 be rejected and refused.

Opposer submits herewith the \$300.00 filing fee.

Respectfully submitted,

By: /Clayton L. Kuhnell/
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