

ESTTA Tracking number: **ESTTA219018**

Filing date: **06/19/2008**

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 | Price Industries, Inc. | | |
| Entity | Corporation | Citizenship | Georgia |
| Address | 2975 Shawnee Ridge Court Suwanee, GA 30024 UNITED STATES | | |

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|----------------------|--|--|--|
| Attorney information | Stephanie A. Gumm Baker & Daniels LLP 300 N. Meridian Street Suite 2700 Indianapolis, IN 46204 UNITED STATES inteam@bakerd.com Phone:317-237-1423 | | |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 77207130 | Publication date | 05/20/2008 |
| Opposition Filing Date | 06/19/2008 | Opposition Period Ends | 06/19/2008 |
| Applicant | Dadanco-Mestek Joint Venture LLC 260 North Elm Street Westfield, MA 01085 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 011. All goods and services in the class are opposed, namely: central heating and air conditioning, air cooling and ventilation apparatus and installations |
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Grounds for Opposition

| | |
|--------------------------------|-------------------------------|
| The mark is merely descriptive | Trademark Act section 2(e)(1) |
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| Attachments | 20080619142012.PDF (4 pages)(140978 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 | /sag/ |
| Name | Stephanie A. Gumm |

| | |
|------|------------|
| Date | 06/19/2008 |
|------|------------|

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

Price Industries, Inc.,) U.S. Trademark Application Serial No. 77/207,130
)
Opposer,) Mark: ACB
)
v.) Opposition No.: _____
)
Dadanco-Mestek Joint Venture, LLC)
)
Applicant.)
)

NOTICE OF OPPOSITION

Price Industries, Inc., a Georgia corporation, having a principal place of business at 2975 Shawnee Ridge Court, Suwanee, Georgia 30024 ("Opposer"), believes it will be damaged by the registration of the mark "ACB" that is the subject of U.S. Trademark Application Serial No. 77/207,130 (the "Application") and hereby opposes registration of same under Section 13 of the Trademark Act, 15 U.S.C. §1063.

In support of its opposition, Opposer, by its attorneys, states as follows:

1. Opposer is a market leader in supplying air distribution products and related equipment.
2. Since at least as early as 2006, Opposer has used the recognized abbreviation for "active chilled beam," namely, the term "ACB," to describe an HVAC system.
3. The term "ACB" is an abbreviation and acronym for the phrase "active chilled beam." The abbreviation "ACB" is well-recognized in the HVAC industry as meaning "active chilled beam."

4. Because of the descriptive nature of the phrase "ACB," on information and belief, other companies have also used the phrase "ACB" and variations thereof as a means of describing an active chilled beam system in the HVAC industry.

5. Dadanco-Mestek Joint Venture LLC, a joint venture organized under the laws of the State of Massachusetts ("Applicant"), composed of Dadanco Pty Ltd., a corporation organized under the laws of Australia, and Mestek Incorporated, a corporation organized under the laws of the Commonwealth of Pennsylvania, has, through the Application filed June 15, 2007, sought to register the mark "ACB" for "central heating and air conditioning, air cooling and ventilation apparatus and installations" ("Applicant's Goods").

6. On May 20, 2008, the Application was published for opposition.

7. Applicant filed the Application pursuant to Section 1(b) of the Trademark Act based on an intention to use the mark "ACB."

8. On information and belief, Applicant did not use the mark "ACB" in connection with Applicant's Goods prior to June 15, 2007.

9. On information and belief, Applicant has never used the mark "ACB" in connection with Applicant's Goods.

10. Applicant's Goods are directly competitive with the products and services offered by Opposer.

11. Applicant's Goods are identical and/or closely related to Opposer's products and services.

12. The word "ACB" which is sought to be registered as a trademark by Applicant is merely descriptive of Applicant's Goods because the term "ACB" stands for "active chilled

beam" system which is a type of central heating and air conditioning system. Accordingly, "ACB" is merely descriptive of Applicant's Goods.

13. On information and belief, Applicant uses the term "ACB" as an acronym for "active chilled beam."

14. The mark sought to be registered is merely descriptive as applied to Applicant's Goods and does not function as a trademark or indication of origin.

15. The mark sought to be registered is merely descriptive as applied to Applicant's Goods and therefore may not be registered pursuant to Section 2(e)(1) of the Trademark Action, 15 U.S.C. §1052(e)(1).

16. The registration of Applicant's mark would be contrary to the descriptive use of the term "ACB" by Opposer, as such registration would provide Applicant with the *prima facie* exclusive right to use the phrase which is inconsistent with the rights of Opposer and others to describe active chilled beam systems.

17. For all of the foregoing reasons, Opposer will be damaged by the registration of the mark "ACB" sought to be registered by Applicant.

WHEREFORE, Opposer respectfully requests that the Board deny registration of Applicant's "ACB" mark sought through the Application.

Respectfully submitted,



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Attorney for Opposer

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this notice is being filed with the Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, by using the ESTTA electronic filing system, this 19th day of June 2008.


Stephanie A. Gumm

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Notice of Opposition" has been served on Applicant's Attorney, Mark D. Giarratana, McCarter & English, LLP, 185 Asylum Street, Cityplace I, Hartford, Connecticut 06102-3495 via first class mail, today June 19th, 2008.


Stephanie A. Gumm