

ESTTA Tracking number: **ESTTA312229**

Filing date: **10/19/2009**

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	The Bramton Company
Granted to Date of previous extension	10/31/2009
Address	2727 Chemsearch Blvd Irving, TX 75062 UNITED STATES
Attorney information	Monty L. Ross, Esq. Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200 Dallas, TX 75201-6776 UNITED STATES mross@lockelord.com, rmail@lockelord.com Phone:214-740-8519

Applicant Information

Application No	77705982	Publication date	09/01/2009
Opposition Filing Date	10/19/2009	Opposition Period Ends	10/31/2009
Applicant	Hercules Products, Inc. P.O. Box 405 20533 Biscayne Blvd. Aventura, FL 33180 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. First Use: 2008/12/00 First Use In Commerce: 2008/12/00 All goods and services in the class are opposed, namely: Plastic household and kitchen containers, utensils, and other housewares for domestic use, namely, food containers, cups, bowls, water pitchers, baskets, trays, garbage cans, plant holders, laundry bins, and clothes laundry baskets
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2512379	Application Date	10/31/2000
Registration Date	11/27/2001	Foreign Priority Date	NONE

Word Mark	SIMPLE SOLUTION
Design Mark	SIMPLE SOLUTION
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1994/10/11 First Use In Commerce: 1994/10/11 DIAPER GARMENT PADS FOR DOGS AND DISPOSABLE PADS USED FOR HOUSEBREAKING AND TRAINING DOGS

U.S. Registration No.	2436167	Application Date	09/15/1998
Registration Date	03/20/2001	Foreign Priority Date	NONE
Word Mark	SIMPLE SOLUTION		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1991/04/02 First Use In Commerce: 1991/04/02 Combination pet stain and odor removers; combination cleaner, sanitize and deodorizer for pet crates, cages and kennels; combination cleaner and deodorizer for litter boxers; carpet shampoos; fabrics, upholstery and surface cleaners for water safe surfaces other than in the food service industry; pet shampoos</p> <p>Class 005. First use: First Use: 1994/10/11 First Use In Commerce: 1994/10/11 Indoor and outdoor repellent sprays for dogs and cats; dog sprays used to aid in housebreaking dogs; odor neutralizing preparations for animal-related use, namely, odor removers for application to cat litter; carpet deodorizers and room deodorizer compositions</p>		

Attachments	76156940#TMSN.gif (1 page)(bytes) color NCH Notice of Opposition re _SIMPLE SOLUTION_ (Hercules Products Inc).pdf (9 pages)(101610 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	/Monty L. Ross/
Name	Monty L. Ross, Esq.
Date	10/19/2009

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

THE BRAMTON COMPANY, Opposer, v. HERCULES PRODUCTS, INC., Applicant.	§ § § § § § § § § §	Serial Number: 77/705,982 Mark: SIMPLE SOLUTION & DESIGN Filed: April 3, 2009 Published: Opposition No.: _____
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TO: THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS

NOTICE OF OPPOSITION

Opposer, The Bramton Company, a corporation organized under the laws of the state of Texas, having its principal place of business at 2727 Chemsearch Boulevard, Irving, Texas 75062, believes that it will be damaged by registration of the above-identified mark SIMPLE SOLUTION & DESIGN in International Class 21 under U.S. Trademark Application Serial No. 77/705,982 ("Applicant's Mark") for "plastic household and kitchen containers, utensils, and other housewares for domestic use, namely, food containers, cups, bowls, water pitchers, baskets, trays, garbage cans, plant holders, laundry bins, and clothes laundry baskets" ("Applicant's Products") and hereby opposes the same under the provisions of the Trademark Act of 1946, § 1063 of Title 15 of the United States Code, as amended.

This Notice of Opposition is timely filed, given the September 1, 2009 publication date of Applicant's Mark and Opposer's granted request to extend time to file an opposition until October 31, 2009.

The grounds for opposition are as follows:

1. Long prior to Applicant's filing of the above-identified application for Applicant's Mark, or the date on which Applicant can claim priority, Opposer adopted and has continuously used the mark SIMPLE SOLUTION (the "SIMPLE SOLUTION Trademark") on and in connection with a wide variety of Opposer's goods, particularly including diaper garment pads

for dogs and disposable pads used for housebreaking and training dogs (Class 18), combination pet stain and odor removers, combination cleaner, sanitizer and deodorizer for pet crates, cages and kennels; combination cleaner and deodorizer for litter boxes; carpet shampoos; fabric, upholstery and surface cleaners for water safe surfaces other than in the food service industry; pet shampoos (Class 3); and indoor and outdoor repellent sprays for dogs and cats; dog sprays used to aid in housebreaking dogs; odor neutralizing preparations for animal-related use, namely, odor removers for application to cat litter; carpet deodorizers and room deodorizer compositions (Class 5) (collectively, "Opposer's Products").

2. Opposer has continuously used its SIMPLE SOLUTION Trademark in commerce throughout the United States since at least as early as October 11, 1994 in connection with its marketing and sale of Opposer's Products in Classes 5 and 18, and since at least as early as April 2, 1991 in connection with its marketing and sale of Opposer's Products in Class 3. During such time Opposer has gained a high level of valuable public recognition of Opposer's SIMPLE SOLUTION Trademark as identifying Opposer as the exclusive source of Opposer's Products. Accordingly, there is no issue as to priority or Opposer's status as the senior user of Opposer's SIMPLE SOLUTION Trademark in U.S. commerce.

3. Opposer is the owner of U.S. Trademark Registration No. 2,512,379 for use of its SIMPLE SOLUTION Trademark in connection with Opposer's Products in Class 18. Opposer's Class 18 SIMPLE SOLUTION Trademark registered on the Principal Register on November 27, 2001 and has been in continuous use in interstate commerce since at least October 11, 1994. Pursuant to 15 U.S.C. § 1065, Opposer's exclusive right to use its registered SIMPLE SOLUTION Trademark in commerce on or in connection with the goods covered by U.S. Trademark Registration No. 2,512,379 has become incontestable.

4. Additionally, Opposer is the owner of U.S. Trademark Registration No. 2,436,167 for use of its SIMPLE SOLUTION Trademark in connection with Opposer's Products in Classes 3 and 5, such registration having been granted on the Principal Register on March 20, 2001.

Opposer's SIMPLE SOLUTION Trademark has been in use continuously under its U.S. Trademark Registration No. 2,436,167 since at least as early as April 2, 1991 for Opposer's Products in Class 3 and since at least as early as October 11, 1994 for Opposer's Products in Class 5. Pursuant to 15 U.S.C. § 1065, Opposer's exclusive right to use its registered SIMPLE SOLUTION Trademark in commerce on or in connection with the goods covered by U.S. Trademark Registration No. 2,436,167 has become incontestable.

5. Additionally, and importantly, Opposer has, since at least as early as December 31, 1999, consistently used a specific color scheme and stylized font in the marketing of Opposer's Products under Opposer's Mark and has spent many years and thousands of dollars developing and consistently presenting its unique color marketing format to the consuming public. In particular, Opposer's proprietary color marketing format comprises distinctive stylized white lettering appearing superimposed over a red background ("Opposer's Trade Dress"). An example of Opposer's Trade Dress as used by Opposer in commerce in connection with its SIMPLE SOLUTION Trademark is shown as follows:



Opposer's Trade Dress is utilized by Opposer nationwide via numerous marketing medias in connection with its advertising of Opposer's Products. Opposer has engaged in extensive promotion of its goods using Opposer's Trade Dress, and its customers and others have come to associate the distinctive appearance of Opposer's Trade Dress, particularly with respect to Opposer's proprietary red and white color scheme, with Opposer as the source or origin of Opposer's Products. In this regard, Opposer is the exclusive owner of Opposer's Trade Dress.

6. On April 3, 2009, more than eighteen (18) years after Opposer first used its SIMPLE SOLUTION Trademark in commerce in connection with the marketing of Opposer's Products in Class 3, Applicant filed U.S. Application Serial No. 77/705,982 seeking registration of Applicant's Mark in a form substantially and confusingly identical to Opposer's SIMPLE SOLUTIONS Trademark, wherein Applicant claimed a date of first use in commerce of December, 2008.

7. Regardless of the presence or absence of competition between the parties or the presence or absence of likelihood of confusion, mistake or deception between the marks, Opposer submits on information and belief that Applicant has committed fraud on the Office through Applicant's intentional assertion of false facts in its above-identified U.S. Trademark Application Serial No. 77/705,982 at the time such application was filed with the Office. In particular, Opposer submits that Applicant intentionally falsely asserted that Applicant's Mark was in use in commerce at the time of Applicant's April 3, 2009 filing date for its U.S. Trademark Application Serial No. 77/705,982 (via the December, 2008 date of first use in commerce claimed and verified by Applicant via executed Declaration under 37 C.F.R. § 2.20 at the time Applicant filed such application under Section 1(a) of the Trademark Act). In support of Opposer's assertion herein, Opposer submits herewith (in the form of **Exhibit A** attached hereto and incorporated herein by reference) a true and correct copy of a September 25, 2009 letter from counsel for Applicant to Opposer's in-house counsel (said letter having been mailed by counsel for Applicant more than 5 months after Applicant's referenced April 3, 2009 filing date), wherein Applicant's counsel clearly states that "my client has not used and does not currently anticipate to use the mark 'Simple Solution' in the United States until such time as the USPTO grants its application." Accordingly, Opposer submits that Applicant's intentional withholding of material information and false representations pertaining to Applicant's lack of actual use of its mark in commerce at the time Applicant's U.S. Trademark Application Serial No. 77/705,982 was filed with the Office constitutes fraud in the procurement of a federal trademark registration

and provides independent grounds for disallowance of the registration sought by Applicant and rejection of Applicant's U.S. Trademark Application Serial No. 77/705,982 in its entirety.

8. Notwithstanding the foregoing, Opposer further submits that Applicant's Mark is substantially and confusingly identical to Opposer's SIMPLE SOLUTION Trademark in overall appearance, sound, and commercial impression and is used by Applicant for marketing of Applicant's Products via channels of trade which substantially overlap with, and which in many instances are substantially identical to, those utilized by Opposer for marketing of Opposer's Products. Such overlap in respective trade channels thereby creates the mistaken perception among consumers, particularly given the substantially identical nature of Applicant's Mark as compared to Opposer's SIMPLE SOLUTION Trademark, that the respective goods come from the same source or that Applicant has some affiliation with, connection with or is somehow sponsored by Opposer, all to Opposer's detriment via Applicant's misappropriation of Opposer's longstanding goodwill in its SIMPLE SOLUTION Trademark.

9. Furthermore, Applicant is presently advertising, offering for sale, and selling Applicant's Products under Applicant's Mark by utilizing a color scheme and stylized font substantially and confusingly identical to Opposer's Trade Dress. Specifically, Applicant's Mark includes a color scheme and marketing format comprising stylized white lettering appearing over a red background, such format being essentially identical to and easily confused with the unique color format utilized by Opposer in the marketing of Opposer's Products under Opposer's SIMPLE SOLUTION Trademark, with Applicant thereby further misappropriating Opposer's longstanding goodwill not only in Opposer's SIMPLE SOLUTION Trademark but also in Opposer's Trade Dress. The confusingly identical color scheme of Applicant's Mark is depicted as follows:



10. Opposer, through years of advertising, marketing, and sales of Opposer's Products under Opposer's Mark and in connection with Opposer's proprietary marketing format shown in Opposer's Trade Dress, has built up, at great expense and effort, a valuable reputation and goodwill symbolized by said mark, which reputation and goodwill would be irreparably damaged and injured by Applicant's registration of its substantially identical mark.

11. Accordingly, given (i) the substantially identical appearance, sound, and commercial impression of Applicant's Mark as compared to Opposer's SIMPLE SOLUTION Trademark; (ii) the substantially identical appearance of the color marketing format utilized by Applicant as compared to Opposer's Trade Dress; and (iii) the substantially overlapping trade channels utilized by Applicant and Opposer in the marketing and sale of their respective goods, consumers and prospective consumers of Opposer's Products are likely to be confused, mistaken or deceived (within the meaning of Section 2(d) of the Trademark Act of 1946) into the belief, contrary to fact, that Applicant's Products sold under Applicant's Mark, emanate from or are in some way sponsored by, or associated or affiliated with Opposer, which confusion, mistake or deception will cause irreparable damage and injury to the goodwill and reputation symbolized by Opposer's SIMPLE SOLUTION Trademark.

12. Moreover, due to the identical nature of the respective marks, Applicant's mark is likely to lessen the capacity of the Opposer's SIMPLE SOLUTION Trademark to identify and distinguish Opposer's Products regardless of the presence or absence of competition between the parties or the presence or absence of likelihood of confusion, mistake or deception between the marks.

13. If Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its proposed mark. Such registration would be a source of irreparable damage and injury to Opposer and would result in the fraudulent procurement of a registration by Applicant, given Applicant's intentional false representations and withholding of information as to material facts, with respect to Applicant's lack of actual use of its mark in commerce at the time Applicant filed its U.S. Trademark Application Serial No. 77/705,982.

WHEREFORE, Opposer requests that the identified application for the mark SIMPLE SOLUTION & DESIGN, U.S. Serial No. 77/705,982, be rejected in its entirety and that registration of the mark be refused.

Respectfully submitted,

 /Monty L. Ross/
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Dated: October 19, 2009

**ATTORNEYS FOR OPPOSER
THE BRAMTON COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Notice of Opposition was mailed via U.S. Certified mail, return receipt requested, to the following counsel of record for Applicant this 19th day of October, 2009:

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September 25, 2009

Via Facsimile and U.S. Mail
Sharie Wang, Esquire
PO Box 152170
Irving, TX 75015-2170

Re: Simple Solution

Dear Ms. Wang:

Please be advised that the above referenced law firm represents Hercules Products in connection with its trademark, "Simple Solution." I have had an opportunity to review your letter dated September 22, 2009, and vehemently disagree with your assertion that my clients' use of the mark "Simple Solution" will in any way have a likelihood of confusion with your company's trademark. I am sure you are aware the mark "Simple Solution" is what is known as a generic mark, which has no arbitrary and/or fanciful meaning, and that it is used commonly used in the market place. This is evidenced by a review of the USPTO website, which has dozens of registered "Simple Solutions" trademarks in many different classes of products. In addition to which, the products that my client will be selling under the mark Simple Solution are substantially different than your clients' products. As such, we will be moving forward with the registration of the trademark "Simple Solution."

Notwithstanding the foregoing, my client has not used and does not currently anticipate to use the mark "Simple Solution" in the United States until such time as the USPTO grants its application. As such, your client has no legal right to file a claim for trademark infringement, as said claim is not ripe for adjudication.

Should you wish to discuss this matter in greater detail, please do not hesitate to contact me.

Sincerely,

Steven K. Platzek

SKP:mp
cc: Hercules Products, Inc.

EXHIBIT

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