

ESTTA Tracking number: **ESTTA361982**

Filing date: **08/06/2010**

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	Catfish Productions, Inc.
Granted to Date of previous extension	08/14/2010
Address	24800 Pacific Coast Highway Malibu, CA 90265 UNITED STATES
Attorney information	Jesse Saivar Greenberg Glusker et. al. 1900 Avenue of the Stars 21st Floor Los Angeles, CA 90067 UNITED STATES ipmail@ggfirm.com Phone:310.553.3610

Applicant Information

Application No	77814789	Publication date	06/15/2010
Opposition Filing Date	08/06/2010	Opposition Period Ends	08/14/2010
International Registration No.	NONE	International Registration Date	NONE
Applicant	Otopio Pty Limited 678 Huon Road Fern Tree, 7054 AUSTRALIA		

Goods/Services Affected by Opposition

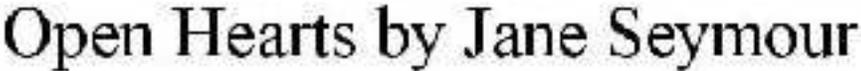
<p>Class 016. All goods and services in the class are opposed, namely: posters, blank cards, notebooks, cardboard boxes, packing cardboard and paper, wrapping paper, envelopes, gift boxes; greeting cards, decals, photographs, pictures, postcards, prints, stickers and iron-on transfers; event programs, paper banners and paper flags; stationery; artist materials, namely, sketch books, note books, pencils, drawing boards, brushes, drawing compasses, drawing and drafting curves; paint brushes; office requisites, other than furniture, namely, finger stalls, franking machines, envelope sealing machines, paper hole punches, rubber bands and staplers; plastic materials for packaging, namely, plastic bags for packaging and plastic cushioning material that contains encapsulated air cells and bags for packaging</p>

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. Application No.	77935002	Application Date	02/12/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OPEN HEARTS BY JANE SEYMOUR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2008/12/00 First Use In Commerce: 2008/12/00 Greeting cards, gift cards, note cards, gift boxes		

U.S. Registration No.	3678429	Application Date	04/30/2008
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	OPEN HEARTS BY JANE SEYMOUR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2008/04/23 First Use In Commerce: 2008/04/23 Jewelry		

Attachments	77935002#TMSN.jpeg (1 page)(bytes) 77461631#TMSN.jpeg (1 page)(bytes) 20100806150705891.pdf (4 pages)(819651 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	/jesse saivar/
Name	Jesse Saivar
Date	08/06/2010

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

CATFISH PRODUCTIONS, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
OTOPIO PTY LIMITED)	
)	
Applicant.)	

COMMISSIONER FOR TRADEMARKS
Box TTAB - FEE
2900 Crystal Drive
Arlington, VA 22202-3513

RE: Application No.: 77/814,789
 Mark: OPENHEART
 Applicant: Otopio Pty Limited
 Filed: August 28, 2009
 Published: June 15, 2010

NOTICE OF OPPOSITION

Catfish Productions, Inc., a California corporation, (“Opposer”) by and through its attorney, hereby states that it will be damaged by registration of the mark OPENHEART, covered by U.S. application No. 77/814,789, owned by Otopio Pty Limited (“Applicant”), and hereby opposes registration of the same.

The grounds for the opposition are as follows:

1. Opposer owns pending trademark application Serial No. 77/935,002 for the trademark OPEN HEARTS BY JANE SEYMOUR (“Opposer’s Mark”) in International Class 16 in connection with greeting cards and related paper goods and has been using the mark for such goods since at least as early as December 2008. In addition Opposer owns Registration No. 3,678,429 for Opposer’s Mark in International Class 14 in connection with jewelry and has been using the mark for such goods since at least as early as April 2008.

2. On August 28, 2009, Applicant filed U.S. Trademark Application serial No. 77/814,789 on a 44E basis to register the mark OPENHEART (“Applicant’s Application”) for use in connection with various paper goods, including “greeting cards” in International Class 16. Applicant’s Application was published for opposition on June 15, 2010 in the Official Gazette (Trademarks) of the United States Patent and Trademark Office. Opposer filed a request for an extension of time to oppose Applicant’s Application, which was granted. Opposer has until August 15, 2010 to oppose, and this Notice of Opposition, being filed today, August 6, 2010, is being timely filed.

3. Opposer first began using Opposer’s Mark at least as early as April 2008 in connection with jewelry. The jewelry sold under Opposer’s Mark was the subject of an extensive and high profile national advertising campaign, a campaign which continues today. In December 2008, Opposer broadened its use of the by-then well-known Opposer’s Mark for use in connection with greeting cards and related paper goods. Opposer’s use of Opposer’s Mark in connection with such goods has been continuous since that date. Through such extensive and continuous use of Opposer’s Mark for both jewelry and greeting cards (and related paper goods), the mark has become a very strong indicator of source causing the public to associate goods offered under Opposer’s Mark with Opposer.

4. The Applicant’s Application was filed on August 28, 2009, nearly a year and a half after Opposer began using its mark in connection with jewelry and eight months after Opposer began using its mark in connection with greeting cards and related paper goods. Applicant’s Application was filed on a 44E basis with no claim of use of its goods in the U.S. On information and belief, Applicant made no use of its mark on such goods prior to the first use date of Opposer’s Mark on either jewelry or greeting cards and related paper goods and, thus, Opposer’s Mark enjoys priority of use in the U.S. over any use or constructive use of Applicant’s mark.

5. The goods described in Applicant’s Application include greeting cards and related paper goods and thus are identical or highly related to certain goods offered under the Opposer’s Mark. In addition, Applicant’s mark OPENHEART is nearly identical to Opposer’s Mark and incorporates the term “OPEN HEARTS,” which is associated by the public with Opposer for such goods. Due to the foregoing

facts, it is likely that consumers will mistakenly believe that the Applicant's mark is connected to or associated with Opposer.

6. Opposer's application Serial No. 77/935,002 for Opposer's Mark in IC-16 has been initially refused on 2(d) grounds due to the existence of Applicant's Application. In the event Applicant's Application matures to registration, the registration will interfere with Opposer's use and registration of Opposer's Mark, and is likely to cause irreparable damage to the goodwill and consumer recognition that Opposer has built up in such mark.

WHEREFORE, Opposer prays that said Application Serial No. 77/814,789 be rejected, that no registration be issued thereon to Applicant, and that this Notice of Opposition be sustained in favor of Opposer.

The requisite filing fee prescribed by 37 C.F.R. §2.6(a)(17), in the amount of \$300.00 should be charged to Deposit Account No. 501833. If there are any additional fees due in connection with this Notice of Opposition, they should also be charged to Deposit Account No. 501833, and any excess fees should be credited to the same.

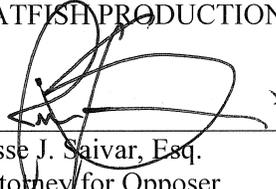
All correspondence relating to this matter should be directed to the undersigned attorneys for Opposer.

Respectfully submitted,

CATFISH PRODUCTIONS, INC.

Dated: August 6, 2010

By:

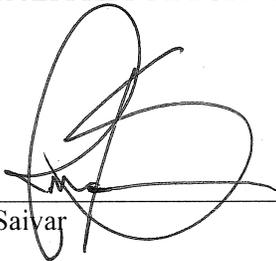


Jesse J. Saivar, Esq.
Attorney for Opposer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on Applicant on August 6, 2010 by delivery via first class mail to applicant's counsel JEFFREY M. FURR at FURR LAW FIRM, 2622 DEBOLT RD., UTICA, OH 43080-9604

A handwritten signature in black ink, appearing to be 'Jesse Saivar', written over a horizontal line. The signature is stylized and somewhat cursive.

Jesse Saivar