

ESTTA Tracking number: **ESTTA408637**

Filing date: **05/11/2011**

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	Chrysler Group LLC
Granted to Date of previous extension	05/11/2011
Address	1000 Chrysler Drive CIMS 485-13-32 Auburn Hills, MI 48326 UNITED STATES

Attorney information	Alex Fonoroff Kilpatrick Townsend & Stockton LLP 1100 Peachtree St. NE Suite 2800 Atlanta, GA 30309 UNITED STATES jpowell@kiltown.com, afonoroff@kiltown.com, ksullivan@kiltown.com, rgordon@kiltown.com, tmadmin@kilpatricktownsend.com Phone:404-815-6500
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Applicant Information

Application No	77082295	Publication date	01/11/2011
Opposition Filing Date	05/11/2011	Opposition Period Ends	05/11/2011
Applicant	Douglas "Chip" Foose 13012 Marcy Ranch Road Santa Ana, CA 92705 UNITED STATES		

Goods/Services Affected by Opposition

Class 012. All goods and services in the class are opposed, namely: Automobiles
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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.	1741153	Application Date	04/08/1991
Registration Date	12/22/1992	Foreign Priority Date	NONE
Word Mark	HEMI		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 012. First use: First Use: 1966/02/00 First Use In Commerce: 1966/02/00 automotive vehicles; namely, automobiles and/or trucks, and engines for automobiles and/or trucks

U.S. Registration No.	3036437	Application Date	11/21/2002
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	300C HEMI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 MOTOR VEHICLES, NAMELY, AUTOMOBILES AND THEIR STRUCTURAL PARTS		

U.S. Registration No.	2867906	Application Date	12/06/2002
Registration Date	07/27/2004	Foreign Priority Date	NONE
Word Mark	HEMI C		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 MOTOR VEHICLES, NAMELY, AUTOMOBILES AND THEIR STRUCTURAL PARTS		

U.S. Registration No.	2867905	Application Date	12/06/2002
Registration Date	07/27/2004	Foreign Priority Date	NONE
Word Mark	300 HEMI C		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 MOTOR VEHICLES, NAMELY, AUTOMOBILES AND THEIR STRUCTURAL PARTS		

U.S. Registration No.	2993078	Application Date	01/17/2003
Registration Date	09/06/2005	Foreign Priority Date	NONE
Word Mark	HEMI EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2004/08/02 First Use In Commerce: 2004/08/02		

	MOTOR VEHICLES, NAMELY, PASSENGER AUTOMOBILES, PICKUP TRUCKS, SPORT UTILITY VEHICLES, VANS AND MINIVANS, AND STRUCTURAL PARTS AND ENGINES THEREFOR
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U.S. Registration No.	2907243	Application Date	01/22/2003
Registration Date	11/30/2004	Foreign Priority Date	NONE
Word Mark	300 HEMI C		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 MOTOR VEHICLES, NAMELY AUTOMOBILES, AND THEIR STRUCTURAL PARTS		

Attachments	78205759#TMSN.gif (1 page)(bytes) Notice of Opposition.pdf (5 pages)(18893 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	/Katharine M. Sullivan/
Name	Katharine M. Sullivan
Date	05/11/2011

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

CHRYSLER GROUP LLC,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	Application Serial No. 77082295
DOUGLAS “CHIP” FOOSE,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer Chrysler Group LLC (“Chrysler”) will be damaged by registration of the mark set forth in application Serial No. 77082295 (the “Application”) by Applicant Douglas “Chip” Foose (“Applicant”) and states the following for its opposition to that Application:

1. Chrysler is the owner of the HEMI trademark, used in connection with automotive vehicles, namely, automobiles and/or trucks, and engines for automobiles and/or trucks. Chrysler and its predecessors in interest have continuously used the HEMI Mark in commerce since 1966, prior to the Application’s January 12, 2007 filing date.

2. In addition to its common-law rights, Chrysler is the owner of several federal registrations incorporating the HEMI mark, including the following (collectively, the “HEMI Mark”):

Mark	Registration No.	Goods	Registration Date
HEMI	1741153	automotive vehicles, namely, automobiles and/or trucks, and engines for automobiles and/or trucks in International Class 12	December 22, 1992
300C HEMI	3036437	motor vehicles, namely, automobiles and their structural parts in International Class 12	December 27, 2005

Mark	Registration No.	Goods	Registration Date
HEMI C	2867906	motor vehicles, namely, automobiles and their structural parts in International Class 1	July 27, 2004
300 HEMI C	2867905	motor vehicles, namely, automobiles and their structural parts in International Class 12	July 27, 2004
HEMI EXPRESS	2993078	motor vehicles, namely, passenger automobiles, pickup trucks, sport utility vehicles, vans and minivans, and structural parts and engines therefor in International Class 12	September 6, 2005
300 HEMI C & Design	2907243	motor vehicles, namely, automobiles, and their structural parts in International Class 12	November 30, 2004

3. Each of these registrations has been in full force and effect for five years and is therefore immune from cancellation except under certain grounds enumerated in Section 14 of the Lanham Act, 15 U.S.C. § 1064. Each was registered prior to the Application's January 12, 2007 filing date.

4. In addition, declarations pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, have been filed and acknowledged for Registration Nos. 1741153, 2867906, 2867905, and 2907243. These registrations are therefore incontestable, and the registrations are conclusive evidence of the validity of the registered marks and their registrations, of Chrysler's ownership of the marks, and of Chrysler's exclusive right to use the marks in commerce.

5. The HEMI Mark is a distinctive indicator of origin that, by virtue of continuous and extensive use, advertising, and promotion by Chrysler and its predecessors, acquired a high degree of recognition and distinctiveness as a symbol of the quality of goods offered by Chrysler prior to the filing date of the Application. The public and the trade are familiar

with and identify the HEMI Mark with Chrysler and, by reason of this identification, goods associated with the mark are understood by the public and trade to be produced, marketed, and supplied by Chrysler or under Chrysler's authority.

6. Applicant seeks to register the HEMISFEAR mark for "automobiles" in Class 12. .

7. The goods recited in the Application are identical to the goods that Chrysler currently provides in interstate commerce in connection with its HEMI Mark, and which it provided prior to the filing date of Applicant's Application.

8. Applicant's HEMISFEAR mark is closely related in sight, sound, appearance, and commercial impression to Chrysler's HEMI Mark, and in fact incorporates the entirety of Chrysler's HEMI Mark.

9. Each of Chrysler's registrations is unrestricted as to the industries, customers, channels of distribution, and advertising media used in connection with the HEMI Mark.

10. Applicant's Application is also unrestricted as to industries, customers, channels of distribution, or advertising media used in connection with the HEMISFEAR Mark.

11. In 2006, Applicant announced the planned production of a vehicle to be equipped with a HEMI engine and to be sold under the HEMISFEAR mark. During that time period, Chrysler and Applicant had communications respecting Chrysler's rights in the HEMI Mark and Applicant's potential use of the HEMISFEAR Mark in connection with automobiles. Applicant was thus aware of Chrysler's rights in the HEMI Mark prior to the filing date of the Application.

12. Chrysler will be damaged by registration of the Application because the mark so resembles Chrysler's HEMI Mark as to be likely to cause confusion, mistake, and decep-

tion, particularly in view of the closely related nature of the parties' goods. Persons familiar with the HEMI Mark and the goods sold under the mark would be likely to believe erroneously that Applicant's goods are the goods of Chrysler or are authorized, endorsed, sponsored, or licensed by Chrysler. Thus, registration of Applicant's Mark on the Principal Register would be inconsistent with Chrysler's prior rights in its HEMI Mark under 15 U.S.C. §§ 1052(d) and 1063.

13. The required \$300.00 opposition fee is being electronically submitted with this Notice of Opposition. The Director is authorized to debit Kilpatrick Townsend & Stockton LLP's Trademark Deposit Account No. 11-0860 for any deficiency in the required fee.

Chrysler therefore requests that the Board sustain this proceeding in Chrysler's favor by refusing registration to the mark underlying Application Serial No. 77082295.

Dated: May 11, 2011.

KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

Respectfully submitted,

/Katharine M. Sullivan/

Judith A. Powell
Alex Fonoroff
Katharine M. Sullivan

Counsel for Opposer Chrysler Inc.

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

CHRYSLER GROUP LLC,)
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Opposer,)
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v.)
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DOUGLAS "CHIP" FOOSE,)
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Applicant.)

Opposition No. _____
Application Serial No. 77082295

CERTIFICATE OF SERVICE

I certify that the attached **Notice of Opposition** was served on Applicant and its Attorney of Record on May 11, 2011 via first-class mail addressed to:

Douglas "Chip" Foose
13012 Marcy Ranch Road
Santa Ana, CA 92705

Susan A. Grode
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles CA 90067-3012

/Katharine M. Sullivan/
Attorney for Opposer

CERTIFICATE OF TRANSMITTAL

I certify that the attached **Notice of Opposition** is being filed electronically with the TTAB via ESTTA on May 11, 2011.

/Katharine M. Sullivan/
Attorney for Opposer