

ESTTA Tracking number: **ESTTA431076**

Filing date: **09/19/2011**

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	Cutlery and More, LLC
Granted to Date of previous extension	09/18/2011
Address	135 Prairie Lake Road East Dundee, IL 60118 UNITED STATES

Attorney information	Charles C. Valauskas Valauskas Corder LLC 150 South Wacker Drive Suite 620 Chicago, IL 60606 UNITED STATES ccv@vciplaw.com, docket@vciplaw.com, wilt@vciplaw.com
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Applicant Information

Application No	85156141	Publication date	03/22/2011
Opposition Filing Date	09/19/2011	Opposition Period Ends	09/18/2011
Applicant	Desalla Trading Company 828 North Victory Blvd Burbank, CA 91502 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2000/08/00 First Use In Commerce: 2000/08/00 All goods and services in the class are opposed, namely: Retail store and on-line retail store services featuring cutlery and kitchenware

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.	3954102	Application Date	08/17/2010
Registration Date	05/03/2011	Foreign Priority Date	NONE
Word Mark	CUTLERYANDMORE.COM		

Design Mark	
Description of Mark	The mark consists of the stylized text "cutleryandmore.com" with a line appearing beneath the words "andmore."
Goods/Services	Class 035. First use: First Use: 1999/08/02 First Use In Commerce: 1999/08/02 On-line retail store services featuring cutlery, cookware, kitchen items and accessories thereof

U.S. Application No.	85345038	Application Date	06/13/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CUTLERYANDMORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/10/02 First Use In Commerce: 2002/10/02 On-line retail store services featuring cookware, pots, pans, tea kettles, griddles, ceramic cookware, flatware, coffee grinder, coffee maker, bakeware, small appliances, kitchen tools, fondue set, silverware, blender, utensils, toaster ovens, ice cream maker, cutting boards, food preparation devices, tableware, cutting tools, knife sharpener, serving tray, furniture, food processor, mixer, knives, spoons, forks, trash can, cleaning equipment, personal care items, oven mitt, dishcloth, kitchen towels, aprons, and housewares		

U.S. Application No.	85345016	Application Date	06/13/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CUTLERYAND		

Design Mark	CUTLERYAND
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2011/05/20 First Use In Commerce: 2011/05/20 On-line retail store services featuring cookware, pots, pans, tea kettles, griddles, ceramic cookware, flatware, coffee grinder, coffee maker, bakeware, small appliances, kitchen tools, fondue set, silverware, blender, utensils, toaster ovens, ice cream maker, cutting boards, food preparation devices, tableware, cutting tools, knife sharpener, serving tray, furniture, food processor, mixer, knives, spoons, forks, trash can, cleaning equipment, personal care items, oven mitt, dishcloth, kitchen towels, aprons, and housewares

Attachments	85109459#TMSN.jpeg (1 page)(bytes) 85345038#TMSN.jpeg (1 page)(bytes) 85345016#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (5 pages)(379837 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	/Charles C. Valauskas/
Name	Charles C. Valauskas
Date	09/19/2011

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

In the Matter of Application Serial No. 85/156,141
Filed October 19, 2010
For the mark CUTLERYANDBEYOND
Published in the Official Gazette on March 22, 2011

Cutlery and More, LLC,

Opposer,

Opposition No.:

v.

Dasalla Trading Company,

Applicant.

NOTICE OF OPPOSITION

Cutlery and More, LLC, an Illinois Limited Liability Company, located at 135 Prairie Lake Road, East Dundee Illinois, 60118 ("Opposer"), believes that it will be damaged by registration of the mark CUTLERYANDBEYOND in Application Serial No. 85/156,141 ("Applicant's Application") as filed by Dasalla Trading Company ("Applicant") and hereby opposes the registration of the Applicant's Application.

The Trademark Trial and Appeal Board ("TTAB") granted the Opposer's request to extend time to oppose until Sunday, September 18, 2011. The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") states that when the last day for taking any action in the Office falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the action may be taken on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday. TBMP §112. The Notice of Opposition is timely filed.

The grounds for opposition are as follows:

1. The Opposer is a full service online retailer. Specifically, the Opposer specializes in the online retail of certain items such as cutlery, kitchenware, cookware, housewares, furniture, appliances, and cleaning equipment.
2. The Opposer uses the marks CUTLERYANDMORE.COM, CUTLERYANDMORE, and CUTLERYAND (“Opposer’s Marks”) to identify its services in interstate commerce.
3. The Opposer has been using the mark CUTLERYANDMORE.COM at least as early as August 2, 1999 in connection with “online retail services featuring cutlery, cookware, kitchen items and accessories thereof” in International Trademark Class 35 as identified in U.S. Trademark Registration No. 3,954,102 (“Opposer’s Registration”) filed on August 17, 2010.
4. The Opposer’s Registration is valid, subsisting, in full force and effect, and not abandoned.
5. The Opposer has been using the mark CUTLERYANDMORE in interstate commerce at least as early as October 2, 2002 in connection with “online retail services featuring cookware, pots, pans, tea kettles, griddles, ceramic cookware, flatware, coffee grinder, coffee maker, bakeware, small appliances, kitchen tools, fondue set, silverware, blender, utensils, toaster ovens, ice cream maker, cutting boards, food preparation devices, tableware, cutting tools, knife sharpener, serving tray, furniture, food processor, mixer, knives, spoons, forks, trash can, cleaning equipment, personal care items, oven mitt, dishcloth, kitchen towels, aprons, and housewares” in International Trademark Class 35 as identified in U.S. Trademark

Registration Application Serial No. 85/345,038 (“the ‘038 Application”) filed on June 13, 2011.

6. The ‘038 Application is valid, subsisting, and not abandoned.
7. The Opposer has been using the mark CUTLERYAND in interstate commerce at least as early as May 20, 2011 in connection with “online retail services featuring cookware, pots, pans, tea kettles, griddles, ceramic cookware, flatware, coffee grinder, coffee maker, bakeware, small appliances, kitchen tools, fondue set, silverware, blender, utensils, toaster ovens, ice cream maker, cutting boards, food preparation devices, tableware, cutting tools, knife sharpener, serving tray, furniture, food processor, mixer, knives, spoons, forks, trash can, cleaning equipment, personal care items, oven mitt, dishcloth, kitchen towels, aprons, and housewares” in International Trademark Class 35 as identified in U.S. Trademark Registration Application Serial No. 85/345,016 (“the ‘016 Application”) filed on June 13, 2011.
8. The ‘016 Application is valid, subsisting, and not abandoned.
9. Based on continuous use of the Opposer’s Marks, the Opposer has common law trademark rights in the Opposer’s Marks throughout the United States.
10. As a consequence of the sales, advertising, promotion, and use of the Opposer’s Marks, the Opposer has developed consumers recognition of its services under the Opposer’s Marks and has acquired and enjoys a valuable reputation and goodwill under the Opposer’s Marks.
11. The Opposer has never licensed, assigned, or otherwise authorized Applicant to use the Opposer’s Marks or any similar variation of the Opposer’s Marks.

12. The Applicant's Application was filed on October 19, 2010 for the mark CUTLERYANDBEYOND ("Applicant's Mark") and published on March 22, 2011 for "Retail store and on-line retail store services featuring cutlery and kitchenware" in International Trademark Class 35.
13. The Applicant's Mark was first used in commerce in August of 2000.
14. The Opposer has used at least one of the Opposer's Marks to identify its services in interstate commerce prior to the date of first use of the Applicant's Mark.
15. The Applicant's Mark so resembles the Opposer's Marks that, when applied to the services identified in Applicant's Application, the Applicant's Mark is likely to cause confusion or to cause mistake or deception as to the affiliation, connection or association of the Applicant with the Opposer.

WHEREFORE, the Opposer believes that it will be damaged by the registration of Applicant's Mark, the Opposer prays that the opposition be sustained, that the Applicant's mark is denied registration, and that other further relief as is deemed just and proper be granted.

Dated: September 19, 2011

Respectfully submitted,

/Charles C. Valauskas/

Charles C. Valauskas, Reg. No. 32,009
Allison M. Corder, Reg. No. 50,545
Kathleen M. Wilt, Reg. No. 67,960

Valauskas Corder LLC
150 South Wacker Drive, Suite 620
Chicago, Illinois 60606
(312) 673-0360
(312) 673-0361 Facsimile
Email: ccv@vciplaw.com; corder@vciplaw.com
Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Opposition has been served via United States first class mail, postage prepaid, on the following on September 19, 2011.

Mr. Matthew H. Swyers
The Trademark Company
344 Maple Avenue West, Suite 151
Vienna, VA 22180

Dated: September 19, 2011

Respectfully submitted,

/Charles C. Valauskas/
Charles C. Valauskas