

ESTTA Tracking number: **ESTTA508580**

Filing date: **11/30/2012**

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	Uncle Milton Industries, Inc.
Granted to Date of previous extension	12/01/2012
Address	31186 La Baya Drive Westlake Village, CA 91362 UNITED STATES
Correspondence information	Uncle Milton Industries, Inc. 31186 La Baya Drive Westlake Village, CA 91362 UNITED STATES ilee@raklaw.com, azivkovic@raklaw.com, trademark@raklaw.com

Applicant Information

Application No	85445797	Publication date	10/02/2012
Opposition Filing Date	11/30/2012	Opposition Period Ends	12/01/2012
International Registration No.	NONE	International Registration Date	NONE
Applicant	Team John Whitaker Limited Park House, 200 Drake Street Rochdale, OL161PJ UNITED KINGDOM		

Goods/Services Affected by Opposition

<p>Class 009. All goods and services in the class are opposed, namely: Computer game software for personal computers and home video game consoles; computer game software downloadable from a global computer network; apparatus for recording, transmission or reproduction of sound or images; pre-recorded magnetic data carriers featuring horse riding and sporting events concerned with horse-riding, show-jumping and eventing; digital music downloadable from the Internet; computer games consoles for use with an external display screen or monitor; mouse pads; parts and fittings for the aforesaid goods</p>
<p>Class 016. All goods and services in the class are opposed, namely: Printed matter, namely, comics, gift-wrapping paper; greeting cards and post cards in the field of horse riding and sporting events concerned with horse-riding, show-jumping and eventing; books in the field of horse riding and sporting events concerned with horse-riding, show-jumping and eventing; magazines in the field of horse riding and sporting events concerned with horse-riding, show-jumping and eventing; newspapers; catalogues in the field of horse-riding and horse-riding equipment; pamphlets in the field of horse riding and sporting events concerned with horse-riding, show-jumping and eventing; printed</p>

instructional and teaching materials in the field of horse riding and sporting events concerned with horse-riding, show-jumping and eventing; stationery

Class 028.

All goods and services in the class are opposed, namely: Games and playthings, namely, playing cards and card games, board games, teddy bears and beanbags; soft sculpture toys; hand held units for playing video games and electronic games other than those adapted for use with an external display screen or monitor; decorations for Christmas trees; parts and fittings for the aforesaid goods

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2858040	Application Date	06/20/2003
Registration Date	06/29/2004	Foreign Priority Date	NONE
Word Mark	UNCLE MILTON		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1998/11/01 First Use In Commerce: 1998/11/01 MAGNIFYING LENSES, PLANETARIUM PROJECTORS, and MICROSCOPES Class 016. First use: First Use: 1956/12/31 First Use In Commerce: 1956/12/31 POSTERS, INSECT HABITATS, FROG HABITATS, AQUARIUMS and TERRARIUMS and INSTRUCTIONAL MANUALS THEREFOR Class 028. First use: First Use: 1979/01/31 First Use In Commerce: 1979/01/31 SCIENCE AND NATURE TOYS, PLAYTHINGS AND ACTIVITY KITS; NAMELY, TOY MICROSCOPES, INSECT VIEWERS, OUTDOOR EXPLORATION TOYS, GYROSCOPES, WIND-UP TOYS, SCIENCE THEMED ACTIVITY AND PLAY SETS, GEOLOGY EXPLORATION TOYS, PLANT GROWING KITS, CHEMISTRY SETS, BIOLOGY SETS, EARTH SCIENCE SETS, PHYSICS SETS AND ANATOMY SETS, INSECT HABITATS, INTERLOCKING TILES and PLAY PIECES; ACTIVITY KITS COMPRISED OF TOY PICKS, TWEEZERS, BRUSHES, LENSES, SPECIMENS and SPECIMEN BAGS and INSTRUCTIONAL MANUALS THEREFOR		

U.S. Registration No.	3987795	Application Date	03/19/2010
Registration Date	07/05/2011	Foreign Priority Date	NONE
Word Mark	UNCLE MILTON		

Design Mark	
Description of Mark	The mark consists of the two words "Uncle" and "Milton" with the first letters "U" and "M" in capital letters and the remaining letters in lower case, all in a highly stylized type font.
Goods/Services	Class 009. First use: First Use: 1999/08/31 First Use In Commerce: 1999/08/31 Gyroscopes; Magnifying lenses; Microscopes; Picture projectors; Planetarium projectors Class 021. First use: First Use: 1999/08/31 First Use In Commerce: 1999/08/31 Ant vivaria; Indoor terrariums for animals or insects; Insect habitats; Insect vivaria

U.S. Registration No.	4133574	Application Date	03/19/2010
Registration Date	05/01/2012	Foreign Priority Date	NONE

Word Mark	UNCLE MILTON
Design Mark	
Description of Mark	The mark consists of the two words "Uncle" and "Milton" with the first letters "U" and "M" in capital letters and the remaining letters in lower case, all in a highly stylized type font.
Goods/Services	Class 028. First use: First Use: 1999/08/31 First Use In Commerce: 1999/08/31 science and nature toys, educational playthings and activity kits, namely, toy insect viewers, wind-up toys, toy globes, toy rocks, planetariums, moon replicate, toy solar system, toy rainbow, toy rockets, hobby craft plant growing kits, hobby craft biology sets, hobby craft earth science sets, hobby craft physics sets, radio controlled toys, animals, reptiles and insects, namely, toy vehicles, toy telescopes, toy cameras, toy mechanical arms, toy airplanes and toy volcanoes

Attachments	77963758#TMSN.jpeg (1 page)(bytes) 77963809#TMSN.jpeg (1 page)(bytes)
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	3186-US2 121130 Notice of OppositionRev.pdf (6 pages)(191396 bytes) 3186-US2 121130 Notice of OppositionRev - Exh A.pdf (5 pages)(798570 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	/Irene Y. Lee/
Name	Irene Y. Lee
Date	11/30/2012

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No.

Serial No. **85/445,797**

Mark: MILTON

NOTICE OF OPPOSITION

Opposer, Uncle Milton Industries, Inc. (“Uncle Milton” or “Opposer”), a California Corporation, with a place of business at 31186 La Baya Drive, Westlake Village, California 91362, believes that it is being and will continue to be damaged by use and registration of the mark MILTON shown in Application Serial No. 85/445,797 (the “MILTON” mark), and hereby opposes the same.

As grounds for opposition, Uncle Milton alleges as follows:

1. Uncle Milton is informed and believes that Applicant Team John Whitaker Limited is a corporation formed in the United Kingdom having a place of business at Park House, 200 Drake Street, Rochdale, United Kingdom O1161PJ and that the application for the MILTON mark was filed on or about October 12, 2011.

2. Uncle Milton is the owner of, among other things, the following United States trademark and service mark registrations for the UNCLE MILTON formative marks (collectively, the “UNCLE MILTON” marks):

Mark	Reg. No. Reg. Date	Ser. No. Filing Date	Goods/Services
UNCLE MILTON	2,858,040 June 29, 2004	78/265,317 June 20, 2003	Magnifying lenses, planetarium projectors, and microscopes in Class 9.

Mark	Reg. No. Reg. Date	Ser. No. Filing Date	Goods/Services
			<p>Posters, insect habitats, frog habitats, aquariums and terrariums and instructional manuals therefor in Class 16.</p> <p>Science and nature toys, playthings and activity kits; namely, toy microscopes, insect viewers, outdoor exploration toys, gyroscopes, wind-up toys, science themed activity and play sets, geology exploration toys, plant growing kits, chemistry sets, biology sets, earth science sets, physics sets and anatomy sets, insect habitats, interlocking tiles and play pieces; activity kits comprised of toy picks, tweezers, brushes, lenses, specimens and specimen bags and instructional manuals therefor in Class 28.</p>
Uncle Milton	3,987,795 July 5, 2011	77/963,758 March 19, 2010	<p>Gyroscopes; magnifying lenses; microscopes; picture projectors; planetarium projectors in Class 9.</p> <p>Ant vivaria; indoor terrariums for animals or insects; insect habitats; insect vivaria in Class 21.</p>
Uncle Milton	4,133,574 May 1, 2012	77/963,809 March 19, 2010	<p>Science and nature toys, educational playthings and activity kits, namely, toy insect viewers, wind-up toys, toy globes, toy rocks, planetariums, moon replicate, toy solar system, toy rainbow, toy rockets, hobby craft plant growing kits, hobby craft biology sets, hobby craft earth science sets, hobby craft physics sets, radio controlled toys, animals, reptiles and insects, namely, toy vehicles, toy telescopes, toy cameras, toy mechanical arms, toy airplanes and toy volcanoes in Class 28.</p>

3. The foregoing registrations are valid and subsisting and constitute *prima facie* evidence of the validity of the marks and registrations and Uncle Milton's ownership of and exclusive right to use the UNCLE MILTON marks in commerce, and provide constructive notice of ownership thereof by Uncle Milton.

4. Uncle Milton has continuously used the UNCLE MILTON marks in commerce since long before the filing date of the opposed application for the MILTON mark. Uncle Milton's pleaded registrations were also applied for and issued well before the filing date of the opposed application for the MILTON mark.

5. Founded in 1946, over the past six decades, Uncle Milton has created, developed, produced, and marketed toys with primary focus in the science, nature, and space categories.

6. Today, Uncle Milton leads the science, nature and space categories with popular toys that inspire wonder, learning and fun, such as Ant Farm®, Back 2 Nature®, Bug Town®, Tarantula Planet™, and Star Wars™ Science, to name a few.

7. Particularly, the flagship product, Ant Farm®, has been a staple in homes and classrooms for over 50 years and has sold more than 20 million units during the lifetime of its creator and founder of Uncle Milton, Milton Levine, who passed away last year. *See*, January 26, 2011 article, entitled, "*Milton Levine dies at 97; co-creator of popular ant farm toys*," by Valerie Nelson, Times Staff Writer, Los Angeles Times, a true and correct copy of which is attached hereto, marked as **Exhibit A** and incorporated herein, along with true and correct copy of The Washington Post article of January 27, 2011, "*Uncle Milton sold millions of ant farms*."

8. The company sells its products worldwide through mass merchandisers such as Toys 'R' Us, Target, and Amazon as well as through several thousand specialty toy stores.

9. Through Uncle Milton's extensive, continuous and nationwide use, and considerable resource expenditures to advertise, market and promote its products – all under the UNCLE MILTON marks – the UNCLE MILTON marks have come to represent the leading, nationally-recognized toy brand for consumers, households, and classrooms.

10. Uncle Milton has also invested significantly in licensing agreements such as with NASA's Jet Propulsion Laboratory to launch the Mars and Beyond Space Exploration System, a line of interplanetary toys for children, to give Uncle Milton access to some of the world's top engineers and scientists.

11. For over half a century, Uncle Milton's products have garnered considerable media attention through the years and have been featured in various films, television shows, newspapers, and magazines such as the Science Channel, National Geographic, as well as NBC's hit show "The Office" and CBS's "CSI: Crime Scene Investigation".

COUNT ONE

12. Uncle Milton repeats and realleges the allegations set forth in paragraph 1 through 11 as though set forth herein.

13. As a result of Uncle Milton's widespread use in commerce of the UNCLE MILTON marks, promotional efforts, and commercial success, the marks have acquired extensive goodwill, have developed a high degree of distinctiveness and are well known and recognized as identifying high quality goods which have their origin with or have been authorized by Uncle Milton.

14. According to its own application, Applicant has made no use of the MILTON mark as a trademark in the United States.

15. Applicant's MILTON mark is confusingly similar to Uncle Milton's UNCLE MILTON marks in sound, appearance and commercial impression. It so resembles Uncle Milton's marks as to be likely, when applied to the goods, to cause confusion, or to cause mistake, or to deceive.

16. Applicant's proposed goods are related to the goods sold and provided in connection with Uncle Milton's UNCLE MILTON marks and/or represent a natural zone of expansion for Uncle Milton and such goods would travel and/or be promoted through the same channels of trade for sale to, and used by, the same class of purchasers.

17. Applicant's use of the MILTON mark in connection with its proposed goods is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods in that the public, the trade and others are likely to believe that Applicant's goods are same goods as Uncle Milton's goods or provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Uncle Milton and/or its goods.

COUNT TWO

18. Uncle Milton repeats and realleges the allegations set forth in paragraph 1 through 17 as though set forth herein.

19. Uncle Milton's UNCLE MILTON marks are distinctive and famous and had become famous long before the filing date of the opposed application for the MILTON mark.

20. Use of the MILTON mark by Applicant causes dilution of the distinctive quality of Uncle Milton's famous UNCLE MILON marks.

21. Uncle Milton will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in use of its mark and thereby dilute Uncle Milton's rights in its distinctive and famous UNCLE MILTON marks.

WHEREFORE, Opposer Uncle Milton respectfully requests that this opposition be sustained and Applicant's application to register the MILTON mark be denied in all respects.

Dated: November 30, 2012

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
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12424 Wilshire Boulevard
Los Angeles, California 90025
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Attorneys for Opposer
Uncle Milton Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2012, one (1) true and correct copy of the foregoing document has been served on Applicant by email and mailing the same via First Class Mail, postage prepaid, to:

John S. Egbert, Esq.
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1314 Texas
Houston, Texas 77002
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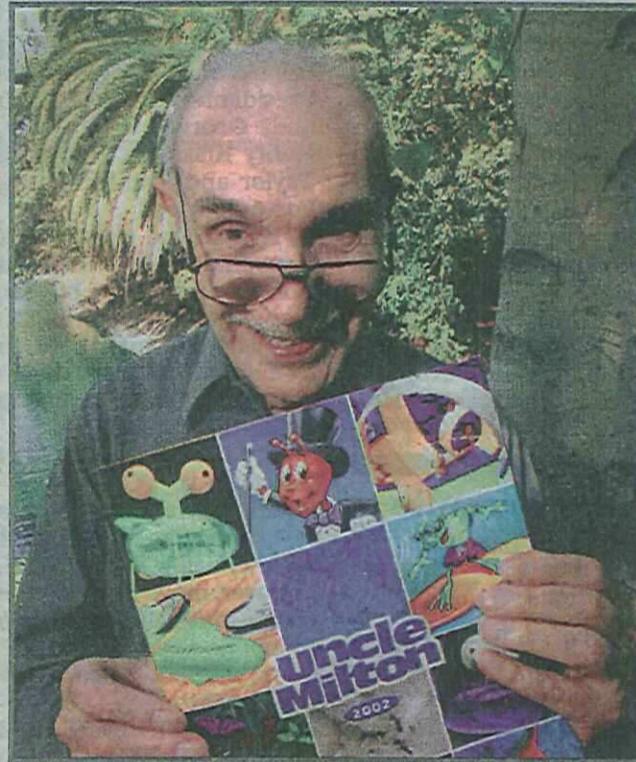
/s/ Anne Zivkovic

Anne Zivkovic

EXHIBIT A

LATEXTRA

WEDNESDAY, JANUARY 26, 2011 :: LATIMES.COM/LANOW



'UNCLE MILTON' DIES

Milton Levine's ant farm toy became an instant hit in the fad-crazy 1950s. His company ultimately sold more than 20 million of them. AA4

OBITUARIES

MILTON LEVINE, 1913 - 2011

Co-creator of wildly popular ant farm toy

VALERIE J. NELSON

The creation of a toy that would become an American classic was triggered in 1956 by a Fourth of July parade of ants at a Studio City picnic.

While gazing at the industrious insects, novelty-toy entrepreneur Milton Levine was transported back to childhood and his uncle's farm, where he collected ants in jars and watched them "cavort," Levine told *The Times* in 2002.

"We should make an antarium," he recalled announcing.

With his brother-in-law, Levine soon devised what was eventually named Uncle Milton's Ant Farm, which was an instant hit in the fad-crazy 1950s. More than 20 million of the now-familiar green ant colonies were sold in Levine's lifetime, according to the Westlake Village company that makes them.

Levine, who was known as Uncle Milton, died of natural causes Jan. 16 at a Thousand Oaks assisted-care facility, said his son, Steven. He was 97.

At first, the ant farm was sold through a mail-order business that Levine established in 1946 in Pittsburgh with his brother-in-law, E.J.



Los Angeles Times

AN AMERICAN CLASSIC

More than 20 million Uncle Milton's Ant Farm toys were sold during Milton Levine's lifetime. "Humanity can learn a lot from the ant," Levine said.

Cossman, a gifted pitchman. The whimsical ant community was one more offbeat product from a company that marketed plastic shrunken heads to hang on rear-view mirrors and spud guns that fired potato pellets.

After moving the company to Hollywood in 1952, Levine decided that he would need a "unique product" if the business were to succeed long term, he told *The Times* in 1986.

Once Levine hit on the idea for the ant farm, models

were fashioned out of plastic tissue dispensers. The first farms that were sold — two sheets of transparent plastic that framed sand topped by a farm scene — looked much like they do today.

He advertised them in *The Times* by saying something akin to "Watch the ants dig tunnels and build bridges" and received so many orders for the \$1.98 product he "couldn't believe it," he said.

The ant farm became a classic partly because it "stoked the curiosity" of

budding scientists and provided a fascinating educational experience, said Tim Walsh, a toy historian who last interviewed Levine in 2006 for the documentary "Toyland" (2010).

Because ants won't survive on the store shelf, they are obtained by mailing in a coupon that comes in the box, which added to the toy's mystique, Walsh said.

"Part of the thrill of the ant farm was that you had to wait and check your mail every day" for the 25 or so ants to arrive in a vial, Walsh said.

The insects were gathered by ant rustlers who were paid a penny apiece for red harvester ants from the Mojave Desert.

Over time, the ant farm was tinkered with. The original glue was toxic to some ants, so a replacement was found. Sand made way for white-ish volcanic ash, which made the ants more visible.

Both Levine and Cossman promoted the ant farm on television. Levine made an "executive" ant farm of mahogany and glass for Dick Clark and spoke at length with the puppet Lamb Chop on "The Shari Lewis Show."

In 1965, Levine bought out Cossman, who went on to become a marketing guru. He died at 84 in 2002.

Cossman & Levine Inc. was renamed Uncle Milton Industries, a re-branding that came about partly because Levine often said he was tired of hearing the joke, "If you're in the ant business, where's the 'uncle?'"

Milton Martin Levine was born Nov. 3, 1913, in Pittsburgh to Harry and Mary Levine, Jewish immigrants from Russia. His father started a chain of dry cleaners.

In the Army during World War II, Milton led a platoon that built bridges in France and Germany.

He met his future wife, Mauricette, when the French citizen was playing

classical piano at a USO in Normandy.

After the war, Levine followed the advice of a newsletter that said the best businesses to go into were toys or bobby pins, both of which were in short supply, he later recalled.

The multimillion-dollar company Levine co-founded became known for educational and scientific toys that include frog and butterfly habitats, planetariums and mini-greenhouses. After the business moved to Westlake Village in the mid-1990s, Levine retired and his son ran the company. When Uncle Milton Industries was sold in June to Transom Capital Group, a private-equity firm, it was valued at between \$30 million and \$40 million.

"Ants work day and night, they look out for the common good and never procrastinate," Levine told *The Times* in 2002. "Humanity can learn a lot from the ant."

More than once, Levine said of ants: "I found out their most amazing feat yet. They put three kids through college."

Besides his son Steven, Levine is survived by Mauricette, his wife of 65 years; daughters Harriet and Ellen; sisters Pearl Cossman and Ruth Shriber; and three grandchildren.

valerie.nelson@latimes.com

The Washington Post

'Uncle Milton' sold millions of ant farms

Advertisement

By Valerie J. Nelson

Thursday, January 27, 2011; B08

The creation of a toy that would become an American classic was triggered in 1956 by a Fourth of July parade of ants at a picnic in Studio City, Calif.

While gazing at the industrious insects, novelty-toy entrepreneur Milton Levine was transported back to childhood and his uncle's farm, where he collected ants in jars and watched them "cavort," he said in 2002.

"We should make an antarium," he recalled announcing.

With his brother-in-law, Mr. Levine soon devised what was eventually named Uncle Milton's Ant Farm, which was an instant hit in the fad-crazy 1950s. More than 20 million of the now-familiar green ant colonies were sold in Mr. Levine's lifetime, according to the Westlake Village company that makes them.

Mr. Levine, who was known as Uncle Milton, died of undisclosed causes Jan. 16 at an assisted-living facility in Thousand Oaks, Calif. He was 97.

At first, the ant farm was sold through a mail order business that Mr. Levine established in 1946 in Pittsburgh with his brother-in-law E.J. Cossman, a gifted pitchman. The whimsical ant community was one more offbeat product from a company that marketed plastic shrunken heads to hang on rear-view mirrors and spud guns that fired potato pellets.

After moving the company to Hollywood in 1952, Mr. Levine decided that he needed a "unique product" if the business were to succeed long term, he told the Los Angeles Times in 1986.

Once Mr. Levine hit on the idea for the ant farm, models were fashioned out of plastic tissue dispensers. The first farms that were sold - two sheets of transparent plastic that framed sand topped by a farm scene - looked much like they do today.

He advertised them in the Times by saying something akin to "Watch the ants dig tunnels and build bridges" and received so many orders for the \$1.98 product he "couldn't believe it," he said in the 1986 interview.

The ant farm became a classic partly because it "stoked the curiosity" of budding scientists and provided a fascinating educational experience, said Tim Walsh, a toy historian who interviewed Mr. Levine in 2006 for the documentary "Toyland" (2010).

Because ants won't survive on the store shelf, they are obtained by mailing in a coupon that comes in the box, which added to the toy's mystique, Walsh said.

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Milton Martin Levine was born Nov. 3, 1913, in Pittsburgh to Jewish immigrants from Russia. His father started a chain of dry cleaners.

In the Army during World War II, Mr. Levine led a platoon that built bridges in France and Germany. He met his future wife, Mauricette, when the French citizen was playing classical piano at a USO in Normandy.

Besides his wife, survivors include three children, two sisters and three grandchildren.

After the war, Mr. Levine followed the advice of a newsletter that said the best businesses to go into were toys or bobby pins, both of which were in short supply, he later recalled.

The multimillion-dollar company Mr. Levine co-founded became known for educational and scientific toys that include frog and butterfly habitats, planetariums and mini-greenhouses. After the business moved to Westlake Village in the mid-1990s, Mr. Levine retired and his son, Steven, ran the company.

When Uncle Milton Industries was sold in June to Transom Capital Group, a private-equity firm, it was valued at between \$30 million and \$40 million.

"Ants work day and night. They look out for the common good and never procrastinate," Mr. Levine told The Times in 2002. "Humanity can learn a lot from the ant."

- Los Angeles Times

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