

ESTTA Tracking number: **ESTTA520105**

Filing date: **02/06/2013**

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	Puckmaster LLC		
Entity	Limited Liability Company	Citizenship	Minnesota
Address	220 South Sixth Street Suite 1950 Minneapolis, MN 55402 UNITED STATES		

Attorney information	James T. Nikolai Nikolai & Mersereau, P.A. 900 Second Avenue South Suite 820 Minneapolis, MN 55402 UNITED STATES jim.nikolai@nm-iplaw.com,bonnie.ryan@nm-iplaw.com,april.nelson@nm-iplaw.com Phone:612-339-7461
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### Applicant Information

Application No	85690558	Publication date	01/08/2013
Opposition Filing Date	02/06/2013	Opposition Period Ends	02/07/2013
Applicant	5 Continent, Inc. Suite 700 5775 Wayzata Boulevard Minneapolis, MN 55416 UNITED STATES		

### Goods/Services Affected by Opposition

Class 007. All goods and services in the class are opposed, namely: Industrial compacting machines for processing of metal chips and shavings
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85693281	Application Date	08/02/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PUCKMASTER		

Design Mark	<b>PUCKMASTER</b>
Description of Mark	NONE
Goods/Services	Class 007. First use: Industrial machines for the processing of metal chips and shavings

Attachments	85693281#TMSN.jpeg ( 1 page )( bytes ) Notice_of_Opposition.pdf ( 7 pages )(59434 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	/James T. Nikolai/
Name	James T. Nikolai
Date	02/06/2013

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

In the matter of Trademark Application Serial No. 85/690,558  
For the mark: PUCKMASTER  
Published in the Official Gazette on January 8, 2013.

February 6, 2013

Puckmaster LLC,

Opposer,                      Opposition No. \_\_\_\_\_

v.

5 Continent, Inc.,

Applicant.

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**NOTICE OF OPPOSITION**

TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposer, Puckmaster LLC ("Opposer"), a Minnesota limited liability company, having its principal place of business at 220 South Sixth Street, Suite 1950, Minneapolis, Minnesota 55402, believes it will be damaged by the issuance of a registration of the mark PUCKMASTER as applied for in Application Serial No. 85/690,558 filed on July 30, 2012 by Applicant 5 Continent, Inc. ("Applicant"), a Minnesota corporation, with a mailing address of 5775 Wayzata Blvd., Suite 700, Minneapolis, Minnesota 55416.

As grounds for the opposition, Opposer alleges that:

1. Upon information and belief, Applicant is owned by the

wife of Todd Garamella. Todd Garamella is the manager of 5 Continent Distributing, LLC, which shares the same address as Applicant.

2. For a number of years, 5 Continent Distributing, LLC acquired and sold industrial compacting machines for processing metal chips and shavings. To secure several bank loans to fund its operations, 5 Continent Distributing, LLC pledged certain assets including its inventory and its trademarks.

3. 5 Continent Distributing, LLC defaulted on such loans and abandoned its inventory. As a result, the owners of Opposer legally acquired 5 Continent Distributing, LLC's inventory of PUCKMASTER industrial compacting machines for processing metal chips and shavings and the right to sell such inventory.

4. Applicant was formed on June 19, 2012, about the same time or after Opposer acquired the inventory.

5. Opposer was formed on July 25, 2012 for the purpose of selling the inventory and immediately initiated steps to continue efforts of its owners to market and sell the inventory of PUCKMASTER machines under the PUCKMASTER mark.

6. On July 30, 2012, five days after Opposer was formed, Applicant filed the application which is the subject of this opposition.

7. Three days later, on August 2, 2012, with no knowledge of either Applicant's existence or the subject application,

Opposer filed its own application to register the PUCKMASTER mark, namely U.S. Trademark Application No. 85/693,281.

Opposer's application was filed based upon the *bona fide* intent to sell its PUCKMASTER inventory using the PUCKMASTER mark with which such products have been labeled and packaged.

8. On December 1, 2012, the U.S. Patent and Trademark Office issued a Notice of Suspension related to Opposer's application. The Notice of Suspension reads in part:

PRIOR-FILED PENDING APPLICATION(S) FOUND: The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1502(d). However, a mark(s) in a prior-filed application(s) may present a bar to registration of applicant's mark.

The effective filing date of the pending application(s) identified below precedes the filing date of applicant's application. If the mark in the referenced application(s) registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark(s). See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, action on this application is suspended until the earlier-filed referenced application(s) is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application(s) is attached.

- Application Serial No(s). 85690558

9. On information and belief, Applicant filed the subject application to (and with the knowledge any registration resulting therefrom could) interfere with the rights of creditors of 5 Continent Distributing, LLC and, in particular, the right of

Opposer to offer for sale and sell under the PUCKMASTER mark the inventory Opposer rightfully acquired and is attempting to sell under the PUCKMASTER mark in partial satisfaction of debts owned by 5 Continent Distributing, LLC.

**FIRST GROUND FOR OPPOSITION: LIKELIHOOD OF CONFUSION**

10. Opposer incorporates by reference Paragraphs 1-9, inclusive, as fully set forth herein.

11. Applicant's PUCKMASTER mark is confusingly similar to Opposer's PUCKMASTER mark in appearance, sound and commercial impression. Both marks consist of an identical term, specifically PUCKMASTER.

12. The goods described in the subject application are the same as or closely related to the goods offered by Opposer under the PUCKMASTER mark, namely the aforementioned inventory of industrial compacting machines for processing of metal chips and shavings.

13. The types of goods identified in the subject application and those offered by Opposer under the PUCKMASTER mark are normally offered through the same channels of trade.

14. On information and belief, Applicant chose the PUCKMASTER mark with knowledge of and intent to create an association or to create a likelihood of confusion as to the source of origin of the products offered by Applicant and Opposer.

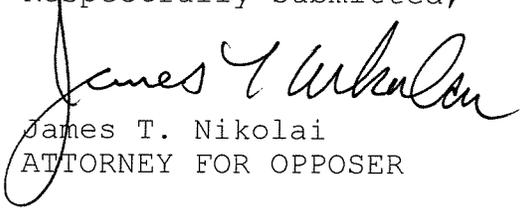
15. Accordingly, registration of the PUCKMASTER mark by Applicant will injure Opposer by causing the public to be confused or mistakenly believe that the goods provided by Applicant are associated with, endorsed by or sponsored by Opposer or that Applicant is otherwise affiliated with Opposer. Opposer has no control over the nature and quality of any goods offered by Applicant under the PUCKMASTER mark, and Opposer's reputation and good will will be damaged and jeopardized, all to Opposer's detriment. Further, any defect, objection or fault found with Applicant's goods marketed under the PUCKMASTER name would necessarily reflect upon and seriously injure the reputation of Opposer.

16. Should Applicant be permitted to register and use the PUCKMASTER mark, Applicant could use that registration to interfere with Opposer's legitimate right to sell the PUCKMASTER inventory it acquired from or through 5 Continent Distributing, LLC.

17. Accordingly, registration of the mark herein opposed will damage Opposer because Applicant's mark is likely, when used on or in connection with the goods described in the proposed application, to cause confusion, to cause mistake or to deceive. Thus, the PUCKMASTER mark is unregistrable to Applicant under

§§2(d) and 3 of the Trademark Act, as amended, 15 U.S.C.  
§§1052(d) and 1053. Applicant should therefore be refused  
registration.

Respectfully submitted,



James T. Nikolai  
ATTORNEY FOR OPPOSER

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Dated: Feb. 6, 2013

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Opposer,                      Opposition No. \_\_\_\_\_

v.

5 Continent, Inc.,

Applicant.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the following documents:

1. Notice of Opposition; and
2. Certificate of Service

were served upon Benjamin C. Armitage, Esq., CLISE, BILLION &  
CYR, P.A., 605 Highway 169 North, Suite 300, Minneapolis,  
Minnesota 55441-6454 (Attorneys for Applicant) by First Class  
Mail this 6<sup>th</sup> day of February, 2013.

  
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James T. Nikolai