

ESTTA Tracking number: **ESTTA575432**

Filing date: **12/09/2013**

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	Home Box Office, Inc.
Granted to Date of previous extension	12/08/2013
Address	1100 Avenue of the Americas New York, NY 10036 UNITED STATES

Attorney information	Tamara F. Carmichael LOEB & LOEB LLP 345 Park Avenue New York, NY 10154 UNITED STATES chdoCKET@loeb.com, tcarmichael@loeb.com, jsarowitz@loeb.com, aprovencio@loeb.com Phone:212-407-4000
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Applicant Information

Application No	85700719	Publication date	06/11/2013
Opposition Filing Date	12/09/2013	Opposition Period Ends	12/08/2013
Applicant	Heartache & Chocolate Cake, LLC 1204 Avenue U, Suite 1126 Brooklyn, NY 11229 NJ		

Goods/Services Affected by Opposition

<p>Class 021. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dinnerware, china dinnerware, crystal dinnerware, beverage ware, and stemware; beverage glassware and drinking glasses;mugs, cups, goblets, bottles and glass storage jars sold empty, bottle squeegees, vacuum bottles and barware, namely, seltzer bottles; dewar bottles and vessels; drinking vessels and heat-insulated vessels; bottle stands; wine bottle cradles; insulating jars and cookie jars; non-metal jars for jams and jellies made of earthenware, glass, porcelain and plastic; beer jugs; drinking steins; flasks; coasters, not made of paper and not being table linen, leather coasters and plastic coasters; barware, namely, high ballglasses, shot glasses, cocktail shakers, cork screws, cork holders, bottle openers, tumblers, wine goblets, carafes, decanters, portable coolers for beverages,namely, wine, wine cooler stands, pitchers, buckets and beverage stirrers; insulating sleeve holders for beverage cans;foam drink holders; bread boxes; household containers for foods; containers forhousehold or kitchen use not made of precious metal; all purpose portable household containers; non-electric kitchen containers not made of precious metal; portable plastic containers for storing household and kitchen goods; canteens; portable coolers, portable beverage coolers and beverage dispensers; portable ice chests for food and beverages; thermal insulated containers for food and beverages; thermal insulated tote bags for food and beverages; thermal insulated wrap forcans to keep the contents cold or hot;</p>

serviette holders; serviette rings not of precious metal; lunch boxes and pails; tea kettles, cooking and kitchen utensils, namely, cutting boards, wire baskets, steamer baskets, kitchen and serving ladles, pots, metal and glass pans, pie pans, baking dishes, crumb brushes, brushes for basting meat and dishwashing brushes, dish drying racks, oven to table racks, spice racks, poultry rings, recipe boxes, cruets not of precious metal, and cruet stands for oil or vinegar not of precious metal; non-electric coffee servers, tea services, tea infusers, tea balls, tea pots, and non-electric kitchen containers, all of the foregoing not of precious metal; bowls, plates, dishes and dish covers; saucers; serving platters; serving trays not of precious metal; trivets; salt and pepper shakers; toothpicks and toothpick holders; canister sets; napkin holders; napkin rings not of precious metals; table placard holders not of precious metal; boxes for dispensing paper towels for household use; bathroom and beauty products and accessories, namely, dental floss, tooth brushes and toothbrush holders, cup holders; non-electric candelabras, not of precious metal, glass boxes, non-metal decorative boxes in the nature of ceramic tissue box covers, plastic juice box covers, recipe boxes and sandwich boxes; baskets made of straw, cloth, wicker and wood; fitted picnic baskets; plant and flower pots, bowls, baskets and syringes; plastic lids for plant pots; pot cleaning brushes; scraping and scrubbing brushes; vases; figurines made of china, crystal, earthenware, glass, and porcelain; wastepaper baskets; trash containers for household use; non-metal piggy banks; souvenir and decorative plates; shoe horns; shoe and dusting brushes; golf brush and brushes for billiard tables; cleaning cloths, polishing cloths, furniture dusters, dust pans and brooms; ironing boards, shaped covers for ironing boards, and holders for household irons; serviette rings of precious metal; coffee services, tea services of precious metal; cruets of precious metal; cruet stands for oil or vinegar of precious metal; stirring rods of precious metal; candlesticks, candle holders and candle rings of precious metal; non-electric candelabras of precious metal; and potpourri dishes made in whole or in part of precious metal

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.	3318130	Application Date	07/24/2006
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	ENTOURAGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2005/05/10 First Use In Commerce: 2005/05/10 Pre-recorded [audiotapes, videotapes,] compact discs and DVDs, all featuring an ongoing comedic television series; images held in electronic format, namely, images related to a comedic television series in the nature of downloadable electronic photographs, and electronic photographs and graphics stored or recorded on electronic or computer media; [electronic game programs; downloadable ring tones and downloadable ring back tones, pre-recorded video clips, pre-recorded audio clips, animated ringers, video ringers, audio shorts,		

	video shorts and] animated screensavers, all downloadable via a global computer network and featuring content from or relating to an ongoing comedic television series; [downloadablepre-recorded audio, video, text and graphics held in electronic personal computers and handheld wireless devices featuring content from or relating to a comedic ongoing television series]
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U.S. Registration No.	3293874	Application Date	04/24/2006
Registration Date	09/18/2007	Foreign Priority Date	NONE

Word Mark	ENTOURAGE
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 009. First use: First Use: 2005/05/10 First Use In Commerce: 2005/05/10 Pre-recorded [audiotapes, videotapes,] compact discs and DVDs, all featuring an ongoing comedic television series; [images held in electronic format, namely, images related to a comedic televisionseries in the nature of downloadable electronic photographs, and electronic photographs and graphics stored or recordedon electronic or computer media; electronic game programs; downloadable ring tones and downloadable ring back tones; pre-recorded video clips, pre-recorded audio clips, animated ringers, video ringers, audio shorts, video shorts and animated screensavers, all downloadable via a global computer network and featuring content from or relating to an ongoing comedic television series; downloadable pre-recorded audio, text and graphics held in electronic personal computers and handheld wireless devices featuring contentfrom or relating to a comedic ongoing television series]</p> <p>Class 021. First use: First Use: 2004/11/00 First Use In Commerce: 2004/11/00 mugs, drinking glasses and shot glasses</p> <p>Class 025. First use: First Use: 2005/06/05 First Use In Commerce: 2005/06/05 clothing, namely, t-shirts [, sweatshirts, jackets,] hats [, visors]</p> <p>Class 041. First use: First Use: 2004/07/18 First Use In Commerce: 2004/07/18 [entertainment services in the nature of an ongoing television program featuring comedy]</p>
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U.S. Registration No.	3215904	Application Date	07/24/2006
Registration Date	03/06/2007	Foreign Priority Date	NONE

Word Mark	ENTOURAGE
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Design Mark	<h1>ENTOURAGE</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2005/06/05 First Use In Commerce: 2005/06/05 clothing, namely, t-shirts,[sweatshirts, jackets,] hats, visors		

U.S. Registration No.	3215903	Application Date	07/24/2006
Registration Date	03/06/2007	Foreign Priority Date	NONE
Word Mark	ENTOURAGE		
Design Mark	<h1>ENTOURAGE</h1>		
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2004/11/00 First Use In Commerce: 2004/11/00 mugs, drinking glasses and shot glasses		

U.S. Registration No.	3645096	Application Date	04/24/2006
Registration Date	06/23/2009	Foreign Priority Date	NONE
Word Mark	ENTOURAGE		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2005/07/31 First Use In Commerce: 2005/07/31 Printed matter, namely, books, calendars and posters, all featuring a comedic ongoing television series		

U.S. Registration No.	4102590	Application Date	09/14/2011
Registration Date	02/21/2012	Foreign Priority Date	NONE

Word Mark	ENTOURAGE
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 009. First use: First Use: 2011/03/24 First Use In Commerce: 2011/03/24 Protective cases specially adapted for laptop computers, tablet computers, smart phones and other portable electronic devices, namely, media players, portable electronic game devices, mobile phones, global positioning systems and personal digital assistants; plastic, rubber or vinyl protective coverings specially adapted for laptop computers, tablet computers, smart phones and other portable electronic devices, namely, media players, portable electronic game devices, mobile phones, global positioning systems and personal digital assistants; electronic pens; neon signs		
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U.S. Registration No.	3235828	Application Date	09/27/2004
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Registration Date	05/01/2007	Foreign Priority Date	NONE
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Word Mark	ENTOURAGE
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Design Mark	ENTOURAGE
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2004/07/18 First Use In Commerce: 2004/07/18 entertainment services in the nature of an ongoing television program featuring comedy

Attachments	78935946#TMSN.jpeg(bytes) 78867772#TMSN.jpeg(bytes) 78935957#TMSN.jpeg(bytes) 78935953#TMSN.jpeg(bytes) 78980353#TMSN.jpeg(bytes) 85422477#TMSN.jpeg(bytes) 78489879#TMSN.jpeg(bytes) Not of Oppos NONTOURAGE 85700719.pdf(28323 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	/Tamara F. Carmichael/
Name	Tamara F. Carmichael
Date	12/09/2013

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

**In the Matter of Application Serial No. 85/7007,19: NONTOURAGE
Published in the *Official Gazette* of June 11, 2013**

HOME BOX OFFICE, INC.,)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
HEARTACHE & CHOCOLATE CAKE,)	
LLC)	
Applicant.)	

NOTICE OF OPPOSITION

Home Box Office, Inc. (“Opposer”), a Delaware corporation located and doing business at 1100 Avenue of the Americas, New York, New York 10036, believes it will be damaged by the registration of the trademark NONTOURAGE, in International Class 21 for “Dinnerware, china dinnerware, crystal dinnerware, beverage ware, and stemware; beverage glassware and drinking glasses; mugs, cups, goblets, bottles and glass storage jars sold empty, bottle squeegees, vacuum bottles and barware, namely, seltzer bottles; dewar bottles and vessels; drinking vessels and heat-insulated vessels; bottle stands; wine bottle cradles; insulating jars and cookie jars; non-metal jars for jams and jellies made of earthenware, glass, porcelain and plastic; beer jugs; drinking steins; flasks; coasters, not made of paper and not being table linen, leather coasters and plastic coasters; barware, namely, high ball glasses, shot glasses, cocktail shakers, cork screws, cork holders, bottle openers, tumblers, wine goblets, carafes, decanters, portable coolers for beverages, namely, wine, wine cooler stands, pitchers, buckets and beverage stirrers; insulating sleeve holders for beverage cans; foam drink holders; bread boxes; household containers for

foods; containers for household or kitchen use not made of precious metal; all purpose portable household containers; non-electric kitchen containers not made of precious metal; portable plastic containers for storing household and kitchen goods; canteens; portable coolers, portable beverage coolers and beverage dispensers; portable ice chests for food and beverages; thermal insulated containers for food and beverages; thermal insulated tote bags for food and beverages; thermal insulated wrap for cans to keep the contents cold or hot; serviette holders; serviette rings not of precious metal; lunch boxes and pails. tea kettles, cooking and kitchen utensils, namely, cutting boards, wire baskets, steamer baskets, kitchen and serving ladles, pots, metal and glass pans, pie pans, baking dishes, crumb brushes, brushes for basting meat and dishwashing brushes, dish drying racks, oven to table racks, spice racks, poultry rings, recipe boxes, cruets not of precious metal, and cruet stands for oil or vinegar not of precious metal; non-electric coffee servers, tea services, tea infusers, tea balls, tea pots, and non-electric kitchen containers, all of the foregoing not of precious metal; bowls, plates, dishes and dish covers; saucers; serving platters; serving trays not of precious metal; trivets; salt and pepper shakers; toothpicks and toothpick holders; canister sets; napkin holders; napkin rings not of precious metals; table placard holders not of precious metal; boxes for dispensing paper towels for household use; bathroom and beauty products and accessories, namely, dental floss, tooth brushes and toothbrush holders, cup holders; non-electric candelabras, not of precious metal, glass boxes, non-metal decorative boxes in the nature of ceramic tissue box covers, plastic juice box covers, recipe boxes and sandwich boxes; baskets made of straw, cloth, wicker and wood; fitted picnic baskets; plant and flower pots, bowls, baskets and syringes; plastic lids for plant pots; pot cleaning brushes; scraping and scrubbing brushes; vases; figurines made of china, crystal, earthenware, glass, and porcelain; wastepaper baskets; trash containers for household use; non-

metal piggy banks; souvenir and decorative plates; shoe horns; shoe and dusting brushes; golf brush and brushes for billiard tables. cleaning cloths, polishing cloths, furniture dusters, dust pans and brooms; ironing boards, shaped covers for ironing boards, and holders for household irons; serviette rings of precious metal; coffee services, tea services of precious metal; cruets of precious metal; cruet stands for oil or vinegar of precious metal; stirring rods of precious metal; candlesticks, candle holders and candle rings of precious metal; non-electric candelabras of precious metal; and potpourri dishes made in whole or in part of precious metal” in Application Serial No. 85/700,719, filed by Heartbreak & Chocolate Cake, LLC (“Applicant”), and hereby opposes the same.

As grounds for this opposition, Opposer alleges:

1. Opposer operates well-known and widely distributed premium television channels and is the producer of the award-winning television series, “Entourage.”

2. Since long prior to the filing of Applicant’s Application Serial No. 85/700,719, Opposer has produced and extensively marketed and distributed the ENTOURAGE television series, as well as related goods and services, under the mark ENTOURAGE, with its attendant trade dress, logos, and designs (the “ENTOURAGE Mark”).

3. Opposer owns registrations and applications for the ENTOURAGE Mark with the United States Patent and Trademark Office (“PTO”). Opposer’s registrations include, but are not limited to:

<u>TRADEMARK</u>	<u>REG. NO.</u>
ENTOURAGE	3318130
ENTOURAGE	3293874
ENTOURAGE	3215904
ENTOURAGE	3215903

<u>TRADEMARK</u>	<u>REG. NO.</u>
ENTOURAGE	3645096
ENTOURAGE	4102590
ENTOURAGE	3235828

The registrations are valid, subsisting, and owned by Opposer.

4. By virtue of the popularity of Opposer's goods and services offered or sold in connection with the ENTOURAGE Mark, Opposer has built up and now owns an extremely valuable goodwill which is symbolized by its ENTOURAGE Mark.

5. Applicant's proposed use and/or use of the mark NONTOURAGE for "Dinnerware, china dinnerware, crystal dinnerware, beverage ware, and stemware; beverage glassware and drinking glasses; mugs, cups, goblets, bottles and glass storage jars sold empty, bottle squeegees, vacuum bottles and barware, namely, seltzer bottles; dewar bottles and vessels; drinking vessels and heat-insulated vessels; bottle stands; wine bottle cradles; insulating jars and cookie jars; non-metal jars for jams and jellies made of earthenware, glass, porcelain and plastic; beer jugs; drinking steins; flasks; coasters, not made of paper and not being table linen, leather coasters and plastic coasters; barware, namely, high ball glasses, shot glasses, cocktail shakers, cork screws, cork holders, bottle openers, tumblers, wine goblets, carafes, decanters, portable coolers for beverages, namely, wine, wine cooler stands, pitchers, buckets and beverage stirrers; insulating sleeve holders for beverage cans; foam drink holders; bread boxes; household containers for foods; containers for household or kitchen use not made of precious metal; all purpose portable household containers; non-electric kitchen containers not made of precious metal; portable plastic containers for storing household and kitchen goods; canteens; portable coolers, portable beverage coolers and beverage dispensers; portable ice chests for food and beverages; thermal insulated containers for food and beverages; thermal insulated tote bags for

food and beverages; thermal insulated wrap for cans to keep the contents cold or hot; serviette holders; serviette rings not of precious metal; lunch boxes and pails. tea kettles, cooking and kitchen utensils, namely, cutting boards, wire baskets, steamer baskets, kitchen and serving ladles, pots, metal and glass pans, pie pans, baking dishes, crumb brushes, brushes for basting meat and dishwashing brushes, dish drying racks, oven to table racks, spice racks, poultry rings, recipe boxes, cruets not of precious metal, and cruet stands for oil or vinegar not of precious metal; non-electric coffee servers, tea services, tea infusers, tea balls, tea pots, and non-electric kitchen containers, all of the foregoing not of precious metal; bowls, plates, dishes and dish covers; saucers; serving platters; serving trays not of precious metal; trivets; salt and pepper shakers; toothpicks and toothpick holders; canister sets; napkin holders; napkin rings not of precious metals; table placard holders not of precious metal; boxes for dispensing paper towels for household use; bathroom and beauty products and accessories, namely, dental floss, tooth brushes and toothbrush holders, cup holders; non-electric candelabras, not of precious metal, glass boxes, non-metal decorative boxes in the nature of ceramic tissue box covers, plastic juice box covers, recipe boxes and sandwich boxes; baskets made of straw, cloth, wicker and wood; fitted picnic baskets; plant and flower pots, bowls, baskets and syringes; plastic lids for plant pots; pot cleaning brushes; scraping and scrubbing brushes; vases; figurines made of china, crystal, earthenware, glass, and porcelain; wastepaper baskets; trash containers for household use; non-metal piggy banks; souvenir and decorative plates; shoe horns; shoe and dusting brushes; golf brush and brushes for billiard tables. cleaning cloths, polishing cloths, furniture dusters, dust pans and brooms; ironing boards, shaped covers for ironing boards, and holders for household irons; serviette rings of precious metal; coffee services, tea services of precious metal; cruets of precious metal; cruet stands for oil or vinegar of precious metal; stirring rods of

precious metal; candlesticks, candle holders and candle rings of precious metal; non-electric candelabras of precious metal; and potpourri dishes made in whole or in part of precious metal” (“Applicant’s Goods”) is without Opposer’s consent or permission.

6. Applicant’s use of NONTOURAGE in connection with Applicant’s Goods is likely to cause confusion, mistake, or deception in that consumers are likely to believe Applicant’s Goods are Opposer’s goods or the goods or services of a person or company that is sponsored, authorized or licensed by, or in some other way legitimately connected with, Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Application Serial No. 85/700,719 be denied registration.

Please debit our Deposit Account No. 502547 for the filing fee and for any additional necessary fees.

Please address all correspondence to Tamara F. Carmichael, Esq., Loeb & Loeb LLP, 345 Park Avenue, New York, New York, 10154.

Date: December 9, 2013

LOEB & LOEB LLP

By: /s/ Tamara F. Carmichael
Tamara F. Carmichael
Jodi R. Sarowitz
345 Park Avenue
New York, New York 10154
Telephone: (212) 407-4000
Facsimile: (212) 407-4990

*Attorneys for Opposer
Home Box Office, Inc.*

CERTIFICATE OF SERVICE

I, Angela Ocasio Provencio, hereby certify that a copy of this **NOTICE OF OPPOSITION** has been served upon:

BRAD D. ROSE
PRYOR CASHMAN LLP
7 TIMES SQUARE, 3rd FLOOR
NEW YORK, NEW YORK 10036-6569

via first class mail, postage prepaid, and electronic mail on this 9th day of December, 2013.

/s/ Angela Ocasio Provencio

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