

ESTTA Tracking number: **ESTTA615202**

Filing date: **07/11/2014**

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 | Blind Visual Propaganda, Inc. |
| Granted to Date of previous extension | 07/12/2014 |
| Address | 1702 OLYMPIC BLVD Santa Monica, CA 90404 UNITED STATES |
| Attorney information | STUART L CARROLL LAW OFFICES OF STUART L CARROLL 400 CONTINENTAL BLVD, STE 600 EL SEGUNDO, CA 90245 UNITED STATES carrollaw@aol.com Phone:310-615-1935 |

Applicant Information

| | | | |
|--------------------------------|---|---------------------------------|------------|
| Application No | 85936201 | Publication date | 05/13/2014 |
| Opposition Filing Date | 07/11/2014 | Opposition Period Ends | 07/12/2014 |
| International Registration No. | NONE | International Registration Date | NONE |
| Applicant | Blind Limited 102 Wormholt Road, Shepherds Bush London, N10QH UNITED KINGDOM | | |

Goods/Services Affected by Opposition

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|---|
| <p>Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Preparation of visual effects and animations for entertainment purposes; production of visual effects and animations for films, television and videos; visual effects animation services for film, television and video; post-production editing services in the field of film, television and video; production of film, videofilm and animation; research and development in the field of visual effects and animation services for films, television and videos; research and development in the field of film, television and video production incorporating credit and end sequences for films, television and videos; professional consultancy relating to film, video film and animation production</p> |
| <p>Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Animation and visual effects design for others; professional consultancy relating to animation and visual effects design; computer software design services in the field of visual effects, animations, cinematics and cut-scenes for computer software; computer software design services in the field of visual effects animation design for computer software; computer software design services incorporating research, development and visualization</p> |

technologies in the field of visual effects, animations, cinematics and cutscenes for computer software; computer game software design services incorporating research, development and visualization technologies for credit and end sequences for computer game software; computer game software design services incorporating research, development and visualization technologies for user interfaces for computer game software; Computer user interface design services incorporating research, development and visualization technologies for concepts for computer user interfaces to be displayed on computer screens featured in films, television and videos; Computer interface and screen graphic design services incorporating research, development, visualization technologies for design of computer interfaces and screen graphics for films, television and videos; research and development in the field of visualization technologies used in connection with films, television and videos

Grounds for Opposition

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|---|---|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |

Mark Cited by Opposer as Basis for Opposition

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|----------------------|---|-----------------------|------------|
| U.S. Application No. | 85789749 | Application Date | 11/28/2012 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | BLIND | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 035. First use: First Use: 1996/02/26 First Use In Commerce: 1996/02/26 Production services for advertising, namely, production of television and internet commercials for distribution via television and a global computer network Class 041. First use: First Use: 1996/02/26 First Use In Commerce: 1996/02/26 Production services for television and motion pictures; namely, production of digital and live-action elements for inclusion in films and television programs | | |

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| Attachments | 85789749#TMSN.jpeg(bytes) Blind--Notice of Opposition (85936201).pdf(172403 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 | /Stuart L. Carroll/ |
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|------|------------------|
| Name | STUART L CARROLL |
| Date | 07/11/2014 |

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

In the matter of trademark application

Serial No. **85936201**

For the mark **BLIND**

Published in the *Official Gazette* on:

May 13, 2014

BLIND VISUAL PROPAGANDA, INC., dba

BLIND

Opposer,

vs.

BLIND LIMITED,

Applicant

NOTICE OF OPPOSITION

In the matter of the application of BLIND LIMITED, a United Kingdom Limited Liability Company (hereinafter “Applicant”), for the registration of the mark “BLIND ”, Serial No. 85936201, (hereinafter, “Application”) published in the Official Gazette of May 13, 2014, BLIND VISUAL PROPAGANDA, INC., a California Corporation doing business as BLIND, (hereinafter “Opposer”), with principal place of business at 1702 Olympic Blvd., Santa Monica, California 90404, believes it will be damaged by the registration of the mark shown in the application and hereby opposes the same.

The grounds for the opposition are as follows:

1. Opposer is a multi-disciplinary design, animation and visual effects studio. Opposer, is and for many years has been engaged in the business of, inter alia, providing production services for advertising, television and motion pictures in the form of motion graphics, digital and visual effects, animation and live-action audio-visual productions (hereinafter, collectively, “Production Services”).
2. Applicant is a limited liability company located in the United Kingdom having an address at 102 Wormholt Road, Shepherds Bush, London, United Kingdom N10QH.
3. The Application for Applicant’s Mark was published for opposition in the *Official Gazette* on May 13, 2014. Opposer timely filed a request for a 30-day extension of time to oppose the Application for Applicant’s mark which was granted until July 12, 2014.
4. Since at least as early as 1996 and for more than 16 years prior to the May 19, 2013 filing date of the Application, Opposer has continuously used the mark BLIND in connection with its provision of Production Services.
5. Opposer is generally known within the entertainment industry solely by its trademark and trade name BLIND. Since its inception, Opposer has been doing business as

BLIND and has previously filed and maintained BLIND as its fictitious business name as appropriate through the County of Los Angeles, California.

6. Opposer has been using the mark BLIND to identify the source and origin of its services referred to above which have been extensively promoted, advertised, distributed to the trade and public through various media and channels of trade. Through such efforts, Opposer has built up extensive good will in its mark and trade name BLIND in connection with the provision of its Production Services.

7. Opposer has continuously published information about its Production Services through a website at the domain name www.Blind.com since 1996. Opposer registered that domain name on February 26, 1996.

8. Opposer has provided Production Services to hundreds of clients including broadcast and cable television networks, motion picture studios, advertising agencies, production companies and consumer brands (hereinafter, collectively, “Consumers”).

9. Opposer has won more than fifty (50) awards in association with its trade name/ trade mark BLIND for its Production Services including Emmy Awards, Broadcast Design Association (BDA) Awards, and dozens of Telly Awards.

10. Opposer has been referenced by its trade name/ trade mark BLIND in more than 100 articles in various industry websites, books and trade publications including VFX World and Animation World Network (AWN.com), ‘boards, Wikipedia, Post (magazine), Broadcast Beat, Graphic Design USA, and Stash.

11. By reason of the extensive promotion, advertisement, distribution, use and sale of Opposer’s Production Services under the mark BLIND, Consumers have come to recognize BLIND as signifying Opposer and its Production Services.

12. Opposer filed for registration of its word mark BLIND on November 28, 2012, in connection with the provision of its Production Services in international classes 35 and 41 under Serial No. 85789749.

13. Opposer had previously registered the word mark BLIND on the Principal Register under registration no. 2540204 with an original registration date of February 19, 2002.

14. Opposer's prior registration under registration 2540204 was cancelled for failure to timely file a declaration of use under Section 8 with the U.S. Patent and Trademark Office. Nevertheless, Opposer has continuously used the word mark BLIND to identify itself and its Production Services in interstate commerce since 1996.

15. Notwithstanding Opposer's long prior rights in and to the mark BLIND and despite having actual and constructive knowledge of Opposer's long, extensive and continuous use of the mark BLIND, on May 19, 2013, Applicant filed an intent-to-use application, Serial No. 85936201, for registration of the word mark "BLIND" in international classes 41 and 42 for services virtually identical in nature to the Production Services provided by Opposer.

16. The BLIND mark sought to be registered by Applicant is identical to Opposer's mark BLIND and is likely, when used in connection with the entertainment production services stated in the Application to cause confusion, mistake and deception among Consumers.

17. Opposer believes and submits that it will be irreparably damaged if applicant is allowed to register the mark BLIND in connection with the entertainment production services stated in the Application as Opposer already uses the identical mark in connection with its Production Services.

18. Opposer further believes and submits that it will be irreparably damaged if applicant is allowed to register the mark BLIND in connection with the entertainment production

services stated in the Application as both marks are likely to be encountered by the same purchasers (consumers) of Production Services.

19. Accordingly, registration of the mark BLIND will likely cause confusion among Consumers as to the source, origin, affiliation and sponsorship of Applicant's services since the services stated in the Application and the services in connection with which Opposer has used the identical mark are substantially similar if not the same

20. Applicant's Application should further be denied on the basis of fraud.

21. On November 20, 2012, at 2:53 pm PST, Opposer sent an e-mail to Applicant informing Applicant that Opposer had learned that Applicant was intending to sell its services in the United States using the trade name BIND and politely suggested that Applicant use a different name to avoid conflict and confusion in the marketplace for the parties' respective Production Services.

22. Applicant did not respond to Opposer's e-mail but on November 22, 2012, Applicant filed for trademark registration in the European Union for the mark BLIND.

23. The Application seeks priority registration pursuant to sections 44(d) and 44(e) based upon the November 22, 2012, European Union trademark filing.

24. Applicant committed fraud when it declared in its Application that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statement made of his/her own knowledge are true."

25. At the time it submitted the Application, Applicant had knowledge of Opposer's use of the trade name and trademark BLIND to identify the source of its Production Services.

26. At the time it submitted the Application, Applicant had knowledge that use of its proposed mark would cause confusion. Accordingly, Applicant submitted the Application in bad faith and with wanton disregard for Opposer's prior rights to the proposed mark and committed fraud when it stated otherwise.

27. As set forth above, Opposer has valid common law rights in the proposed mark BLIND.

28. Applicant's proposed marks for the specified services is in violation and derogation of those common law rights and if the Application is granted will likely cause confusion, mistake and deception among Consumers as to the source of origin of Applicant's services, or their affiliation with or sponsorship by Opposer, thereby causing loss, damage, and injury to Opposer and to Consumers.

29. The granting of a trademark registration pursuant to the Application would violate and diminish the prior and superior rights of Opposer in the mark BLIND and would be in violation of 15 U.S.C. § 1052(d).

30. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie exclusive right to its mark which would threaten Opposer's continued use of BLIND as its long-standing mark identifying its Production Services and inhibit Opposer's ability to proceed with its own registration under Serial No. 85789749.

31. Accordingly, the registration of the mark BLIND will seriously and irreparably damage Opposer's business and goodwill and interfere with Opposer's prior use of its BLIND mark and for that, and for all of the reasons set forth above, should be denied.

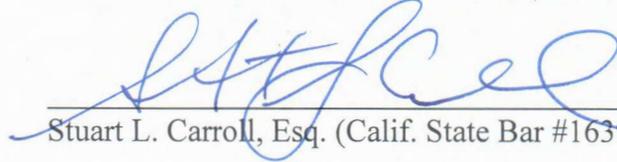
WHEREFORE, Opposer prays that Application Serial No. 85936201 be denied registration and that this Opposition be sustained in favor of Opposer.

The filing fee for this Notice of Opposition required under 37 CFR § 2.6 is being paid electronically.

Dated: July 11, 2014

Respectfully submitted,

LAW OFFICES OF STUART L. CARROLL



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Attorneys for Opposer

**BLIND VISUAL PROPAGANDA, INC.
dba BLIND**