

ESTTA Tracking number: **ESTTA630420**

Filing date: **10/01/2014**

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 parties oppose registration of the indicated application.

Opposers Information

Name	DMI Furniture, Inc.
Granted to Date of previous extension	10/01/2014
Address	9780 Ormsby Station Road Suite 200 Louisville, KY 40223 UNITED STATES

Name	DMI Management, Inc.
Granted to Date of previous extension	10/01/2014
Address	9780 Ormsby Station Road Suite 200 Louisville, KY 40223 UNITED STATES

Attorney information	Samantha M. Quimby Frost Brown Todd LLC 10 West Broad Street - Suite 2300 Columbus, OH 43215 UNITED STATES fbtplitigation@fbtlaw.com, squimby@fbtlaw.com, kcomella@fbtlaw.com, sross@fbtlaw.com
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Applicant Information

Application No	85832551	Publication date	06/03/2014
Opposition Filing Date	10/01/2014	Opposition Period Ends	10/01/2014
Applicant	M. Z. Berger & Co., Inc. 4th floor Long Island City, NY 11101 UNITED STATES		

Goods/Services Affected by Opposition

Class 014. First Use: 2012/07/23 First Use In Commerce: 2012/07/23
All goods and services in the class are opposed, namely: Clocks

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.	2810598	Application Date	01/08/2003
Registration Date	02/03/2004	Foreign Priority Date	NONE
Word Mark	HOME STYLES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 1998/03/16 First Use In Commerce: 1998/08/01 Wooden household furniture		

U.S. Registration No.	4500462	Application Date	01/22/2013
Registration Date	03/25/2014	Foreign Priority Date	NONE
Word Mark	HOME STYLES		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 020. First use: First Use: 1998/03/16 First Use In Commerce: 1998/08/01 Home furnishings, namely, bed headboards, night tables, chests of drawers, vanities, vanities and mirrors; vanity benches; dining buffets, tables, chairs, hutches, stools, kitchen islands, furniture bars; entertainment credenzas and consoles; television stands; desks; side chairs, lounge chairs, storage benches, storage trunks, mobile file cabinets; office cabinets; entry way furniture namely, benches, tables and coat racks</p> <p>Class 028. First use: First Use: 1998/03/16 First Use In Commerce: 1998/08/01 Recreational tables, namely, poker tables, pool tables, and foosball tables</p>		

Attachments	85829297#TMSN.png(bytes) Notice of Opposition against M.Z. Berger HOMESTYLE for clocks.pdf(278359 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	/samantha m quimby/
Name	Samantha M. Quimby

Date	10/01/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF: Application Serial No. 85/832,551
DATE OF PUBLICATION: June 3, 2014

DMI Management, Inc.)	
)	
DMI Furniture, Inc.,)	
)	
Opposers,)	Opposition Proceeding # _____
)	
v.)	
)	
M.Z. Berger & Co., Inc.,)	
)	
Applicant.		

NOTICE OF OPPOSITION

Opposer DMI Management, Inc. (“DMI Management”), a corporation organized and existing under the laws of Kentucky and Opposer DMI Furniture, Inc. (“DMI Furniture”), a corporation organized and existing under the laws of Delaware, both with a principal place of business at 9780 Ormsby Station Road, Suite 200, Louisville, KY 40223 (collectively referred to as “Opposers”), believe they will be damaged by the registration of Application Serial No. 85/832,551 for the mark HOMESTYLE for use in connection with “clocks” in Class 14 (the “Homestyle Application”), filed by M.Z. Berger & Co., Inc. (“Applicant”) and hereby opposes the same pursuant to Section 13 of the Lanham Act codified as 15 U.S.C. § 1063, and as grounds therefore, alleges that:

1. DMI Furniture is one of the most well-known manufacturers of various home furnishings and furniture for the home, office, and garden in the United States.

2. DMI Furniture and its predecessors in interest have been in the business of manufacturing and supplying various home furnishings and furniture for the home, office, and garden for over 100 years.

3. Today, DMI Furniture ranks as one of the leading manufacturers of various home furnishings and furniture for the home, office, and garden in the United States.

4. DMI offers and sells a line of various home furnishings, recreational tables, and furniture for the home, office, and garden under the federally registered trademark HOME STYLES® (U.S. Reg. Nos. 2,810,598 and 4,500,462).

5. DMI Management owns the following federally registered trademarks relevant to this matter on the principal register:

U.S. Trademark Registration for HOME STYLES (U.S. Reg. No. 2,810,598) for wooden household furniture in Class 20 registered on February 3, 2004; and,

U.S. Trademark Registration for HOME STYLES (U.S. Reg. No. 4,500,462) for Home furnishings, namely, bed headboards, night tables, chests of drawers, vanities, vanities and mirrors; vanity benches; dining buffets, tables, chairs, hutches, stools, kitchen islands, furniture bars; entertainment credenzas and consoles; television stands; desks; side chairs, lounge chairs, storage benches, storage trunks, mobile file cabinets; office cabinets; entry way furniture namely, benches, tables and coat racks, in Class 20 and Recreational tables, namely, poker tables, pool tables, and foosball tables, in Class 28, registered on March 25, 2014.

(Collectively, the “Home Styles Registered Marks”).

6. In addition, DMI Management has obtained common law trademark rights in the HOME STYLES marks through its use in commerce in connection with various home furnishings, recreational tables, and furniture products (the Home Styles Registered Marks and the common law trademarks are hereinafter collectively referred to as the “Home Styles Marks”). DMI Management controls and oversees all use of the Home Styles Marks by DMI Furniture and exercises quality control over DMI Furniture’s use of the Home Styles Marks in connection with

various home furnishings, recreational tables, and furniture for the home, office, and garden. Per Trademark Rule 2.122(d)(1), printout copies from the USPTO electronic databases related to the above trademark registrations are attached to this Notice of Opposition as Exhibit 1.

7. As a result of Opposers' long, continuous, and substantially exclusive use of the Home Styles Marks, Opposers enjoy tremendous goodwill associated with the Home Styles Marks by the public.

8. The certificates of registration identified in paragraph 5 are prima facie evidence of the validity of the Home Styles Registered Marks; DMI Management's ownership of the Home Styles Registered Marks; and DMI Management's exclusive right to use the Home Styles Registered Marks in connection with the goods specified in the certificates of registration. *See* 15 U.S.C. § 1057(b).

9. The certificates of registration also provide constructive notice of DMI Management's claim of ownership. *See* 15 U.S.C. 1072.

10. Section 8 and 15 Affidavits have been filed in connection with U.S. Reg. No. 2,810,598 for HOME STYLES, and that registration is now incontestable. *See* 15 U.S.C. § 1065.

11. On January 25, 2013, Applicant filed the Homestyle Application, alleging a first use date of July 23, 2012. As such, there is no issue as to priority.

12. The designation HOMESTYLE, which Applicant seeks to register, is identical to the Home Styles Marks. The marks are neither different in sound, appearance nor meaning; and Applicant's HOMESTYLE mark creates the same aural impression as Opposers' Home Styles

Marks. Indeed, the marks are pronounced the same, have the same number of syllables, and create the same commercial impression.

13. Applicant's use and registration of its HOMESTYLE mark will cause potential and existing customers to mistakenly assume, and to be confused, misled, and or deceived into believing that Applicant is either affiliated with, or endorsed, licensed, authorized, or sponsored by Opposers and its HOME STYLES brand of home furnishings. Opposers, through counsel, informed Applicant of the same in correspondence dated June 21, 2013, but did not receive the courtesy of a reply.

14. Similarly, Opposers, through counsel, sent follow up correspondence dated August 25, 2014. Once again, neither Opposers nor its counsel heard back from Applicant, making the filing of the instant Notice of Opposition necessary.

15. For the reasons set forth in paragraph 1 through 14 above, Opposers believe, and in so believing assert, that the goodwill associated with its HOME STYLES trademark—goodwill that it has developed for over 15 years—has been and will continue to be damaged under Section 2(d) and that the Applicant should be denied registration of the term HOMESTYLE for the goods applied for in Class 14, namely clocks.

16. By reason of the foregoing, Applicant's HOMESTYLE mark for use in connection with its applied for goods in Class 14, namely clocks, is likely to cause confusion with Opposers HOME STYLES Marks and is thus not registrable under Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

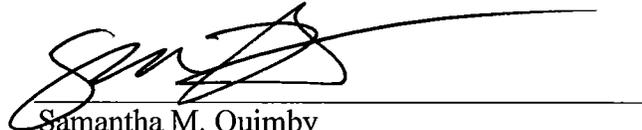
WHEREFORE, Opposers pray this Notice of Opposition be sustained and Application Serial No. 85/832,551 for HOMESTYLE be refused registration.

The fee of \$600 as provided by Sections 13 and 31 of the Trademark Act of 1946 is paid by credit card upon electronic filing of this Notice of Opposition.

Please recognize Samantha M. Quimby and Kathryn A. Comella, members of the Bar of the State of Ohio, and Cynthia L. Stewart, a member of the Bar of the Commonwealth of Kentucky, as its attorneys to prosecute this Notice of Opposition and to transact all business in the Patent and Trademark Office in connection herewith. Please address all communications and correspondence to: Samantha M. Quimby, Frost Brown Todd LLC, 10 West Broad Street, Suite 2300, Columbus, Ohio 43215, Telephone 614.559.7282, Facsimile 614.464.1737, e-mail squimby@fbtlaw.com.

Date: October 1, 2014

Respectfully submitted,



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Attorneys for Opposers

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served via first class mail, postage prepaid, upon Applicant's Attorney/Correspondence Information as listed with the USPTO, namely M.Z. Berger & Co., Inc., 2976 Northern Boulevard, 4th Floor, Long Island, New York 11101-2829, on this 1st day of October 2014.



Samantha M. Quimby
Attorney for Opposers

EXHIBIT 1



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TSDR **ASSIGNMENTS** **TTAB GLASS** (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark HOME STYLES

Goods and Services IC 020. US 002 013 022 025 032 050. G & S: Wooden household furniture. FIRST USE: 19980316. FIRST USE IN COMMERCE: 19980801

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78201174

Filing Date January 8, 2003

Current Basis 1A

Original Filing Basis 1A

Published for Opposition November 11, 2003

Registration Number 2810598

Registration Date February 3, 2004

Owner (REGISTRANT) DMI Management, Inc. CORPORATION KENTUCKY 9780 Ormsby Station Road Suite 2000 Louisville KENTUCKY 40223

Attorney of Record Cynthia L. Stewart

Prior Registrations 2439589

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20131010.

Renewal 1ST RENEWAL 20131010

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HOME STYLES

Word Mark	HOME STYLES
Goods and Services	IC 020. US 002 013 022 025 032 050. G & S: Home furnishings, namely, bed headboards, night tables, chests of drawers, vanities, vanities and mirrors; vanity benches; dining buffets, tables, chairs, hutches, stools, kitchen islands, furniture bars; entertainment credenzas and consoles; television stands; desks; side chairs, lounge chairs, storage benches, storage trunks, mobile file cabinets; office cabinets; entry way furniture namely, benches, tables and coat racks. FIRST USE: 19980316. FIRST USE IN COMMERCE: 19980801
	IC 028. US 022 023 038 050. G & S: Recreational tables, namely, poker tables, pool tables, and foosball tables. FIRST USE: 19980316. FIRST USE IN COMMERCE: 19980801
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85829297
Filing Date	January 22, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	January 7, 2014
Registration Number	4500462
Registration Date	March 25, 2014
Owner	(REGISTRANT) DMI Management, Inc. CORPORATION KENTUCKY Suite 2000 9780 Ormsby Station Road Louisville KENTUCKY 40223

Attorney of Record Cynthia L. Stewart
Prior Registrations 2810598
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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