

ESTTA Tracking number: **ESTTA700741**

Filing date: **10/07/2015**

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	Foto Electric Supply Co., Inc.
Granted to Date of previous extension	10/07/2015
Address	1 Rewe Street Brooklyn, NY 11211 UNITED STATES
Attorney information	Edward F. Maluf Seyfarth Shaw LLP 620 8th Ave 32nd Floor New York, NY 10018 UNITED STATES bosippto@seyfarth.com Phone:212-218-4658

**Applicant Information**

Application No	86492385	Publication date	06/09/2015
Opposition Filing Date	10/07/2015	Opposition Period Ends	10/07/2015
Applicant	Mavsak, Inc. 3060 Ocean Avenue Brooklyn, NY 11235 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. First Use: 2012/12/01 First Use In Commerce: 2012/12/01 All goods and services in the class are opposed, namely: Camcorders; Cameras; Dashboard cameras; Lenses for cameras; Video cameras
--

**Grounds for Opposition**

The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	Not being use for all listed goods

Attachments	62765_2_Opposition_Notice.pdf(122008 bytes )
-------------	--

**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	/Joseph M. Walker/
Name	Joseph M. Walker
Date	10/07/2015

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

In the Matter of Application Serial No. 86/492,385

FOTO ELECTRIC SUPPLY CO., INC.,

Opposer,

v.

MAVSAK, INC.,

Applicant.

Opposition No.: \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer Foto Electric Supply Co., Inc. (“Opposer”) will be damaged by registration of the mark shown in Application Serial No. 86/492,385 (the “Opposed Application”), published in the *Official Gazette* on June 9, 2015. Opposer obtained an extension of time until August 8, 2015 to file a notice of opposition against the Opposed Application, and hereby opposes the same. As grounds for opposition, Opposer alleges:

1. Opposer is a New York corporation with offices in Brooklyn, New York.
2. On information and belief, applicant Mavsak, Inc. (“Applicant”) is a New York corporation with offices in Brooklyn, New York.
3. On December 30, 2014, Applicant filed the Opposed Application to register the claimed mark “PROTECTING DRIVERS EVERYWHERE” on the Principal Register in Class 9 for goods identified as “Camcorders; Cameras; Dashboard cameras; Lenses for cameras; Video cameras.”

4. The basis of the Opposed Application is Section 1(a) (15 U.S.C. § 1051(a)), where Applicant asserts current use of the mark in commerce in association with those goods, and claims a date of first use of December 1, 2012.

5. Opposer is, and has been for many years, a distributor throughout the United States of consumer electronics products and home technology solutions, including a variety of cameras such as vehicle dashboard cameras.

6. Applicant's applied-for mark constitutes in its entirety a phrase that is descriptive of goods described in the Opposed Application. Specifically, vehicle dashboard cameras (and the other goods identified in the Opposed Application) are used exclusively for the protection of drivers and, because they are intended for automobile use, are mobile and able to be used "everywhere." As such, the applied-for mark merely describes a function and purpose of the identified goods.

7. The applied-for mark has not become distinctive in commerce of the goods set forth in the Opposed Application or of any other goods or services offered or sold by the Applicant.

8. On information and belief, the applied-for mark would not be understood by relevant consumers as a source identifier.

9. Opposer has a present and prospective right to use the phrase "protecting drivers everywhere" and similar phrases to communicate the protective function of its cameras, including dashboard cameras.

10. On information and belief, Applicant has not used the applied-for mark in connection with, among other things, "lenses for cameras," despite having identified these goods upon which the applied-for mark was being used at the time of filing the Opposed Application.

11. Because the applied-for mark is merely descriptive, and because Applicant seeks to register the applied-for mark in connection with goods for which it has not used the applied-for mark, Applicant's registration should be refused.

**FIRST CLAIM FOR RELIEF**  
**(Mere Descriptiveness)**

12. Opposer repeats and realleges the allegations in preceding paragraphs 1-11 as if fully set forth herein.

13. The applied-for mark PROTECTING DRIVERS EVERYWHERE is merely descriptive of the goods identified therein and is thus unregistrable under § 2(e)(1) of the United States Trademark Act, 15 U.S.C. § 1052(e)(1), in the absence of Applicant's showing that the mark has acquired distinctiveness with respect to the goods identified in the Opposed Application.

14. Applicant's mark has not acquired distinctiveness.

15. Opposer will be damaged by registration of the applied-for mark because such registration will confer upon Applicant various statutory presumptions to which Applicant is not entitled, including *prima facie* evidence of ownership of and the exclusive right to use a mark that is unregistrable without a showing of acquired distinctiveness.

**SECOND CLAIM FOR RELIEF**  
**(Mark Has Not Been Used For All of the Goods Recited in the Opposed Application)**

16. Opposer repeats and realleges the allegations in preceding paragraphs 1-15 as if fully set forth herein.

17. As additional and alternative grounds for this Opposition, Applicant has not used the applied-for mark PROTECTING DRIVERS EVERYWHERE for each and every good recited in its application within the meaning of "use in commerce" in the Trademark Act, 15

U.S.C. §§ 1051 and 1127. As Applicant has not offered the goods for sale in commerce since the date alleged in the declaration, the application should be void *ab initio* in its entirety.

\* \* \* \*

WHEREFORE, Opposer Foto Electric Supply Co., Inc. prays for judgment sustaining this opposition and refusing registration of the mark shown in the Opposed Application.

Please charge the filing fees for this opposition to Deposit Account No. 50-5265 and direct all correspondence and communication in this opposition to the undersigned.

Respectfully submitted,

SEYFARTH SHAW LLP

Dated: October 7, 2015

By: Edward F. Maluf/

Edward F. Maluf  
Joseph V. Myers III  
F. Richard Rimer, Jr.  
Attorneys for Opposer  
Foto Electric Supply Co., Inc.

620 Eighth Avenue  
New York, NY 10018  
Telephone: (212) 218-5500  
Facsimile: (212) 218-5526

**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 2015, I served the foregoing Notice of Opposition on the applicant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to applicant's counsel of record at applicant's counsel's correspondence address of record in the records of the U.S. Patent and Trademark Office as follows:

Thomas Dunlap, Esq.  
Dunlap Bennett & Ludwig PLLC  
211 Church Street SE  
Leesburg, VA 20175

By: /Joseph M. Walker/  
Joseph M. Walker