

ESTTA Tracking number: **ESTTA700989**

Filing date: **10/08/2015**

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	Lianhuan Toys & Crafts Co., LTD		
Entity	Limited corporation	Citizenship	China
Address	Feng Xia Hua Dong Lu Xi Ce Guang Yi St. Cheng Hai District Shan Tou City, Guang Dong Province, CHINA		

Domestic Representative	Brent D. Sausser Attorney The Law Firm of Sausser and Spurr, LLC 2 Rosedale Dr. Charleston, SC 29407 UNITED STATES info@sausserspurrllaw.com Phone:8436540078
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Applicant Information

Application No	86528161	Publication date	10/06/2015
Opposition Filing Date	10/08/2015	Opposition Period Ends	11/05/2015
Applicant	GuangDong ZhenFeng Science and Educational Toys Co., LTD. South Dengfeng Road, Xinshi District Shantou, Guangdong, CHINA		

Goods/Services Affected by Opposition

Class 028. First Use: 2008/06/02 First Use In Commerce: 2014/03/20 All goods and services in the class are opposed, namely: Archery implements; Balls for games; Board games; Body-building apparatus; Boxing gloves; Bubble making wand and solution sets; Card games; Children's educational toys for developing cognitive; Christmas tree decorations; Dog toys; Dolls; Exercise equipment, namely, exercise bands; Fishing tackle; Inflatable swimming pools; Parlor games; Scratch cards for playing lottery games; Swimming belts; Tennis rackets; Toy building blocks; Toy vehicles

Grounds for Opposition

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)
Other	Applicant is not and was not, at the time of the filing for registration, the rightful owner

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registra-	NONE	Application Date	NONE
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tion No.			
Registration Date	NONE		
Word Mark	STAR DIAMOND		
Goods/Services	slides (toys); building blocks (toys); toy pistols; dolls; toy cars; gyro (toys); radio-controlled toy car; activity toys (bed bell); toys; proportional model car		

Attachments	Opposition Proceeding (STAR DIAMOND).pdf(115984 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	/Brent D. Sausser/
Name	Brent D. Sausser
Date	10/08/2015

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

Lianhuan Toys & Crafts Co., LTD

Opposer,

v.

GuangDong ZhenFeng Science and
Educational Toys Co., LTD.

Applicant.

Opposition No.:

Application Serial No.: 86/528,161

Mark: STAR DIAMOND and
Design

NOTICE OF OPPOSITION

In the matter of the application for registration of the mark STAR DIAMOND and Design for “Archery implements; Balls for games; Board games; Body-building apparatus; Boxing gloves; Bubble making wand and solution sets; Card games; Children's educational toys for developing cognitive; Christmas tree decorations; Dog toys; Dolls; Exercise equipment, namely, exercise bands; Fishing tackle; Inflatable swimming pools; Parlor games; Scratch cards for playing lottery games; Swimming belts; Tennis rackets; Toy building blocks; Toy vehicles” in International Class 28 filed February 9, 2015 by GuangDong ZhenFeng Science and Educational Toys Co., LTD. (“Applicant”), assigned Serial No. 86/528,161 (“Applicant’s STAR DIAMOND Application”), and published for opposition in the Official Gazette on October 6, 2015. Lianhuan Toys & Crafts Co., LTD (Opposer) believes it will be damaged by such

registration and hereby opposes the registration of Applicant's STAR DIAMOND Application pursuant to 15 USC § 1063 and 37 CFR § 2.104.

As grounds for opposition, the Opposer alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Opposer, Lianhuan Toys & Crafts Co., LTD. is a limited corporation of China, with a business address at Feng Xia Hua Dong Lu Xi Ce Guang Yi Street, Cheng Hai District, Shan Tou City, Guang Dong Province, China.
2. Opposer, since at least 2002, has been and is now using the mark STAR DIAMOND in connection with toys offered worldwide ("Opposer's Mark").
3. Opposer owns multiple international registrations for the identical mark or the word mark therein.
4. On or about March 27, 2015 Opposer filed for trademark registration of STAR DIAMOND and Design with the Hong Kong Trademark Office, Application No. 303353571 in International Class 28 for "slides (toys); building blocks (toys); toy pistols; dolls; toy cars; gyro (toys); radio-controlled toy car; activity toys (bed bell); toys; proportional model car", which is identical to Applicant's STAR DIAMOND Application.
5. Opposer owns the trademark registration trademark of STAR DIAMOND and Design with the Macao Trademark Office, Registration No. N/96823 (471) in International Class 28 for "slides (toys); building blocks (toys); toy pistols; dolls; toy cars; gyro (toys); radio-controlled toy car; activity toys (bed bell); toys; proportional model car," which is identical to Applicant's STAR DIAMOND Application.

6. Opposer owns the trademark registration of STAR DIAMOND and Design with the Chinese Trademark Office, Registration No. 12752152 in International Class 28 for “slides (toys); building blocks (toys); toy pistols; dolls; toy cars; gyro (toys); radio-controlled toy car; activity toys (bed bell); toys; proportional model car,” filed for on June 14, 2013, which is identical to Applicant’s STAR DIAMOND Application.
7. Opposer owns the trademark registration of STAR DIAMOND (standard character mark) with the Chinese Trademark Office, Registration No. 8737675 in International Class 28 for “slides (toys); building blocks (toys); toy pistols; dolls; toy cars; gyro (toys); radio-controlled toy car; activity toys (bed bell); toys; proportional model car,” filed for on October 13, 2010, identical to the word portion of Applicant’s STAR DIAMOND Application.
8. Opposer owns the trademark registration of a logo with a star containing a diamond with the Chinese Trademark Office, Registration No. 3408705 in International Class 28 for “slides (toys); building blocks (toys); toy pistols; dolls; toy cars; gyro (toys); radio-controlled toy car; activity toys (bed bell); toys; proportional model car,” filed for on December 18, 2002, identical to the design portion of Applicant’s STAR DIAMOND Application.
9. Opposer owns the trademark registration for the Chinese characters that translate to STAR DIAMOND with the Chinese Trademark Office, Registration No. 3416243 in International Class 28 for “slides (toys); building blocks (toys); toy pistols; dolls; toy cars; gyro (toys); radio-controlled toy car; activity toys (bed bell); toys; proportional model car,” filed for on December 25, 2002, identical to

the first two Chinese characters in the design portion of Applicant's STAR DIAMOND Application.

10. Applicant is a Chinese limited company and doing business at South Dengfeng Road, Xinshi District Guangyi Street, Chenghai District Shantou, Guangdong, China.
11. On or about February 9, 2015, Applicant filed the Applicant's STAR DIAMOND Application with the USPTO for the mark STAR DIAMOND and Design, pursuant to Section 1(a) of the Trademark Act, as an actual-use application, and was assigned Application Serial No. 86/528,161.
12. Applicant's STAR DIAMOND Application was submitted by Applicant for "Archery implements; Balls for games; Board games; Body-building apparatus; Boxing gloves; Bubble making wand and solution sets; Card games; Children's educational toys for developing cognitive; Christmas tree decorations; Dog toys; Dolls; Exercise equipment, namely, exercise bands; Fishing tackle; Inflatable swimming pools; Parlor games; Scratch cards for playing lottery games; Swimming belts; Tennis rackets; Toy building blocks; Toy vehicles" in International Class 28 ("Applicant's Goods").
13. Applicant's STAR DIAMOND Application claims a date of first use on June 2, 2008 and a date of first use in U.S. commerce on March 20, 2014.
14. As evidence of Applicant's use Applicant submitted a specimen of the top of the toy box. Said portion of the specimen is an exact match to that of Opposer's Mark.
15. Applicant has never used the applied for mark in U.S. commerce.

16. On or about June 9, 2015, Applicant obtained a trademark application with the USPTO for the mark LOZ and Design, pursuant to Section 66(a) of the Trademark Act, based on its Chinese Registration No. 7501468 in International Class 28 for “Magic equipment; toys; building blocks (toys); dolls; toy car; board games; sports balls; sports equipment; fishing tackle; Christmas tree decorations (except lighting and confectionery); Conjuring apparatus, Toys, Blocks (Building -) [toys], Dolls, toy car, Board games, Balls for games, Physical exercises (Machines for -), Ornaments for Christmas trees [except illumination articles and confectionery], Fishing tackle,” and was assigned Registration No. 4,750,189 for “Conjuring apparatus, namely, magic tricks; Toys, namely, building blocks dolls, toy cars, board games, and balls for games; machines for physical exercises; Christmas tree decorations except lighting and candy; fishing tackle,” in international class 28 (“Applicant’s LOZ Mark”).
17. Opposer is not affiliated or connected with Applicant or its goods; nor has Opposer endorsed or sponsored Applicant or its goods.
18. Opposer and Applicant are competitors in the worldwide marketplace for toys

COUNT I - LIKELIHOOD OF CONFUSION

19. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.
20. Opposer’s use of Opposer’s Mark has been valid and continuous worldwide since at least 2002 and has not been abandoned.
21. Opposer’s use of Opposer’s Mark has been valid and continuous in the U.S. since at least as early as 2013 and has not been abandoned.

22. Applicant's STAR DIAMOND Application and Opposer's Mark are identical in sound, appearance and meaning.
23. Applicant's Goods and Opposer's Goods are similar, if not identical.
24. Upon information and belief, Applicant's Goods and Opposer's Goods are likely to be marketed and sold within the same geographical area and within the same channels of commerce.
25. Upon information and belief, Opposer's first use of Opposer's Mark precedes Applicant's first use of the STAR DIAMOND and Design mark.
26. Upon information and belief, Opposer's first use of Opposer's Mark precedes the date of first use and filing of Applicant's STAR DIAMOND Application with the USPTO.
27. Applicant's use of and application to register STAR DIAMOND and Design is without the consent or permission of Opposer.
28. Applicant's STAR DIAMOND Application and Opposer's Mark are likely to be confused.
29. As a result of confusing similarity between Opposer's Mark and Applicant's STAR DIAMOND Application and because the Applicant's Goods and Opposer's Goods are almost identical, are likely to travel in the same channel of commerce, and are directed to the same customers, registration of the proposed mark STAR DIAMOND and Design is likely to deceive purchasers as to the source or sponsorship of such goods, to cause confusion, or to cause mistake.
30. Opposer is likely to be damaged by registration of Applicant's STAR DIAMOND Application in that the prima facie effect of registration of Applicant's STAR

DIAMOND Application would tend to impair Opposer's right to use the wording and design contained in Applicant's STAR DIAMOND Application.

31. Opposer is likely to be damaged by registration of Applicant's STAR DIAMOND Application in that the prima facie effect of registration of Applicant's STAR DIAMOND Application would tend to impair Opposer's right to register Opposer's Mark with the USPTO.

COUNT II - FRAUD

32. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.
33. Applicant owns the Chinese toy company, LOZ, whose goods can be found on the website, "www.loztoys.com."
34. Applicant and Opposer are direct competitors in China and worldwide in the field of toys.
35. Applicant, through one or more of its representatives, had knowledge that Opposer is a competitor of Applicant at all times relevant herein.
36. In an effort to knowingly mislead the USPTO and acquire federal trademark registration, Applicant, through one or more of its representatives, willfully applied for the STAR DIAMOND and Design mark on or about February 9, 2015 with the knowledge that it did not, nor had ever used, the Star Diamond and Design mark.
37. In an effort to knowingly mislead the USPTO and acquire federal trademark registration, Applicant, through one or more of its representatives, willfully applied for the STAR DIAMOND and Design mark on or about February 9, 2015

with the knowledge Opposer is the actual owner of the STAR DIAMOND and Design mark.

38. At the time of submitting the application for the Star Diamond and Design mark, Applicant, through one or more of its representatives, willfully deceived the USPTO that it owns the Star Diamond and Design mark.
39. In submitting its application on or about February 9, 2015 for U.S. Application No. 86/528,161, Applicant, through one or more of its representatives, signed and acknowledged a declaration that stated they did not know of any “other person, firm, corporation, or association [that] 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.” (the “Declaration”).
40. At the time of signing the Declaration for the STAR DIAMOND and Design mark, Applicant, through one or more of its representatives, knew of and was aware of Opposer’s ownership of the STAR DIAMOND and Design mark.
41. In so signing the Declaration, Applicant, through one or more of its representatives, made a false representation to the USPTO that it had no knowledge of Opposers’s conflicting mark despite having knowledge.
42. In so signing the Declaration, Applicant, through one or more of its representatives, made a false representation to the USPTO that it had no knowledge of Opposers’s ownership of the STAR DIAMOND and Design mark despite having knowledge.

43. At all times relevant herein, Applicant, through one or more of its representatives, knew that the Opposer owned the rights to use the STAR DIAMOND and Design mark and by filing for the identical mark, knew it is likely to create confusion in the mind of the consumer.
44. The false representations that were willfully made by one or more of Applicant's representatives were material to the registrability of the mark.
45. One or more of Applicant's representatives had knowledge of the falsity of the representation at the time it was made.
46. One or more of Applicant's representatives made the representation with the willful intent to deceive the USPTO.
47. Upon information and belief, Applicant's LOZ Mark is its actual mark and Applicant's STAR DIAMOND Application was submitted to the USPTO with the sole intent to prevent Opposer from later acquiring registration with the USPTO.

COUNT III – APPLICANT IS NOT OWNER

48. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.
49. Applicant is not and was not, at the time of the filing Applicant's STAR DIAMOND Application for registration the rightful owner of the Star Diamond and Design mark.
50. At all times relevant hereto, Opposer is the actual owner of the Star Diamond and Design mark.

WHEREFORE, Opposer prays that the Board sustain the Opposition and refuse the registration of Applicant's STAR DIAMOND Application.

Dated: October 8, 2015

Respectfully submitted,

/Brent D. Sausser/

Brent D. Sausser, Esq.

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Attorney for Opposer

CERTIFICATE OF SERVICE

I confirm that on October 8 2015, I served a copy of the above NOTICE OF OPPOSITION to Applicant to the following by U.S. Mail, postage prepaid:

Guangdong Zhenfeng Educational toys; CO., LTD.
South Dengfeng Road, Xinshi District Guangyi Street,
Chenghai District Shantou, Guangdong
CHINA

/Brent D. Sausser/
Brent D. Sausser, Esq.