

ESTTA Tracking number: **ESTTA741125**

Filing date: **04/20/2016**

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	The Dial Corporation
Granted to Date of previous extension	04/20/2016
Address	7201 E. Henkel WayMS 01.45 Scottsdale, AZ 85255 UNITED STATES

Correspondence information	Amy Span Wergeles - c/o Lisa Wolters Attorney of Record The Dial Corporation 7201 E. Henkel Way MS 01.45 Scottsdale, AZ 85255 UNITED STATES trademarks@henkel.com Phone:860.571.2661
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Applicant Information

Application No	86448537	Publication date	12/22/2015
Opposition Filing Date	04/20/2016	Opposition Period Ends	04/20/2016
Applicant	Ohm, Brett 1059 S 4th Ave New Hampton, IA 50659 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Automobile and car wax preparations; Detergent soap; Furniture polish; Hand soaps; Laundry detergent; Shampoos; Wipes impregnated with a cleaning preparation
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2451080	Application Date	06/05/2000
Registration Date	05/15/2001	Foreign Priority Date	NONE
Word Mark	ZOUT		

Design Mark	ZOLT
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1967/07/00 First Use In Commerce: 1967/09/00 STAIN REMOVERS

Attachments	76063012#TMSN.png(bytes) xout - Notice of Opposition.pdf(1001321 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	/Amy Span Wergeles, Esq./
Name	Amy Span Wergeles
Date	04/20/2016

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

In the Matter of United States Trademark Application:

Applicant: Brett Ohm
Serial No.: 86/448537
Filed: November 7, 2014
Mark: XOUT

The Dial Corporation,
Opposer

vs.

Brett Ohm,
Applicant

:
:
:
: Opposition No. _____
:
:
:
:

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Sir:

The Dial Corporation (Dial), of 7201 E. Henkel Way, Scottsdale, AZ 85255, believes that it will be damaged by registration of the mark shown in the above-referenced application, which was published in the Official Gazette of December 22, 2015, and hereby opposes issuance of the registration.

As grounds for opposition, Opposer alleges as follows:

ZOUT (SN. 86/448537)

1. Opposer and/or its predecessor and related companies have used the trademark ZOUT in Commerce since at least as early as July 1967 in association with laundry stain removers ("Opposer's Goods").
2. Since at least as early as July 1967, Opposer and/or its predecessor and related companies have engaged in the manufacture, distribution and sale of laundry stain removers in Commerce, in conjunction with the ZOUT trademark, and the mark has been in continuous use by Opposer and/or its related companies since that time.
3. Opposer is the owner by assignment of United States Trademark Registration No. 2451080, which was filed based on use in commerce on June 5, 2000 and which issued on May 15, 2001, for the trademark ZOUT for "stain removers" in International Class 003. The mark was first used in commerce in July 1967. A copy of the TARR database record for this Registration, as well the Assignment record for the Registration, is attached hereto as Exhibit A.
4. The above referenced registration is valid and incontestable.
5. Opposer has invested considerable effort and resources in advertising and promoting its mark ZOUT and the goods sold under the marks, with the result that the relevant purchasing public has come to know, rely upon, and recognize the goods of Opposer by that mark. Opposer has established valuable goodwill in its mark ZOUT and the mark has become well known to the relevant purchasing public.
6. Upon information and belief, Applicant is a United States citizen, with an address of 1059 S. 4th Ave., New Hampton, Iowa 50659.

XOUT (SN. 86/448537)

7. On November 7, 2014, Applicant filed application Serial No. 86/448537 for the mark XOUT under Section 1(b) for "Automobile and car wax preparations; Detergent soap; Furniture polish; Hand Soaps; Laundry detergent; Shampoos; Wipes impregnated with a cleaning preparation" in International Class 003 ("Applicant's Goods").

8. Application Serial No. 86/448537 was published for opposition in the USPTO Official Gazette of December 22, 2015. Opposer obtained extensions of time to oppose this application to April 20, 2016.

9. There is no issue as to priority. Opposer has priority based on its use and registration of the mark ZOUT in the United States. Opposer and its predecessors in interest used and registered the mark ZOUT long before the Applicant's application date.

10. Applicant's proposed trademark XOUT is visually and phonetically virtually identical to Opposer's mark ZOUT, and Applicant's mark creates a commercial impression which is highly similar to that of Opposer's mark.

11. Applicant's Goods are nearly identical to and are highly related to the goods with which Opposer's mark ZOUT is used and for which it is registered, and Applicant's Goods may be offered for sale to the same customers and through the same channels of trade.

12. Applicant's proposed trademark XOUT so resembles Opposer's trademark ZOUT as to be likely, when applied to Applicant's Goods, to cause confusion or to cause mistake or to deceive within the meaning of 15 U.S.C. §1052(d), in view of Opposer's prior use, ownership and registration of its trademark ZOUT.

XOUT (SN. 86/448537)

13. Registration of Applicant's proposed mark on the Principal Register would be inconsistent with Opposer's rights under the aforementioned registration, and its common-law rights, and would be damaging to Opposer.

14. Registration of Applicant's mark should therefore be refused under 15 U.S.C. §1052(d).

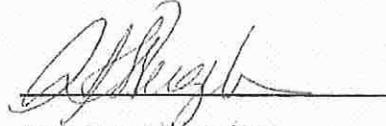
15. Please charge any fees for this matter to USPTO Deposit Account 040980.

WHEREFORE, Opposer prays that its opposition be sustained and that the registration sought by Applicant in be refused.

Respectfully submitted,

Dated: 4/19/16

By:



Amy Span Wergeles
Attorney for Opposer
The Dial Corporation
19001 N. Scottsdale Rd.
Legal Dept. MS 04.50
Scottsdale, AZ 85255

EXHIBIT A

Mark Information

Mark Literal
Elements:
ZOUT
Standard Character
Claim:
No
Mark Drawing
Type:
1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:
Brackets [.] indicate deleted goods/services;
Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
Asterisks "*" identify additional (new) wording in the goods/services.

For: STAIN REMOVERS
International
Class(es):
003 - Primary Class U.S Class(es): 001, 004, 006, 050, 051, 052
Class Status: ACTIVE
Basis: 1(a)
First Use: Jul. 1967 Use In Commerce: Sep. 1967

Basis Information (Case Level)

Filed Use: Yes Currently Use: Yes Amended Use: No
Filed ITU: No Currently ITU: No Amended ITU: No
Filed 44D: No Currently 44D: No Amended 44D: No
Filed 44E: No Currently 44E: No Amended 44E: No
Filed 66A: No Currently 66A: No
Filed No Basis: No Currently No Basis: No

Current Owner(s) Information

Owner Name: THE DIAL CORPORATION
Owner Address: 19001 N. Scottsdale Road
Legal Dept., M.S. 04.50
Scottsdale, ARIZONA 85255
UNITED STATES
Legal Entity Type: CORPORATION State or Country
Where Organized:
DELAWARE
Generated on: This page was generated by TSDR on 2016-04-15 11:41:49 EDT
Mark: ZOUT
US Serial Number: 76063012 Application Filing
Date:
Jun. 05, 2000
US Registration
Number:
2451080 Registration Date: May 15, 2001
Register: Principal
Mark Type: Trademark
Status: The registration has been renewed.
Status Date: May 03, 2011
Publication Date: Feb. 20, 2001

Attorney/Correspondence Information

Attorney of Record
Attorney Name: A. Kate Huffman Docket Number: hc - zout
Attorney Primary
Email Address:
trademarks@us.henkel.com Attorney Email
Authorized:
Yes
Correspondent
Correspondent
Name/Address:
A. Kate Huffman
HENKEL OF AMERICA, INC.
19001 North Scottsdale Road

MS 04.50
SCOTTSDALE, ARIZONA 85255
UNITED STATES
Phone: (480) 754-2654 Fax: (480) 754-3789
Correspondent email:
trademarks@us.henkel.com Correspondent email
Authorized:
Yes
Domestic Representative - Not Found

Prosecution History

Date Description Proceeding
Number

May 03, 2011 REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS) 75461
May 03, 2011 REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED
Apr. 28, 2011 CASE ASSIGNED TO POST REGISTRATION PARALEGAL 75461
Apr. 15, 2011 TEAS SECTION 8 & 9 RECEIVED
Jan. 14, 2009 APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED 88888
Jan. 14, 2009 TEAS CHANGE OF OWNER ADDRESS RECEIVED
Jan. 14, 2009 APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED 88888
Jan. 14, 2009 TEAS CHANGE OF OWNER ADDRESS RECEIVED
Jan. 14, 2009 TEAS CHANGE OF CORRESPONDENCE RECEIVED
Dec. 13, 2006 ATTORNEY REVOKED AND/OR APPOINTED
Dec. 13, 2006 TEAS REVOKE/APPOINT ATTORNEY RECEIVED
Nov. 01, 2006 CASE FILE IN TICRS
Sep. 02, 2006 REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. 69471
Aug. 21, 2006 ASSIGNED TO PARALEGAL 69471
May 30, 2006 REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED
May 30, 2006 TEAS SECTION 8 & 15 RECEIVED
May 15, 2001 REGISTERED-PRINCIPAL REGISTER
Feb. 20, 2001 PUBLISHED FOR OPPOSITION
Jan. 19, 2001 NOTICE OF PUBLICATION
Nov. 20, 2000 APPROVED FOR PUB - PRINCIPAL REGISTER
Nov. 14, 2000 ASSIGNED TO EXAMINER 74308

Maintenance Filings or Post Registration Information

Affidavit of
Continued Use:
Section 8 - Accepted
Affidavit of
Incontestability:
Section 15 - Accepted
Renewal Date: May 15, 2011

TM Staff and Location Information

TM Staff Information - None
File Location
Current Location: GENERIC WEB UPDATE Date in Location: May 03, 2011

Assignment Abstract Of Title Information

Summary
Total Assignments: 1 Registrant: J.C. Garet, Inc.
Assignment 1 of 1
Conveyance: ASSIGNS THE ENTIRE INTEREST
Reel/Frame: 2153/0063 Pages: 4
Date Recorded: Aug. 28, 2000
Supporting
Documents:
assignment-tm-2153-0063.pdf
Assignor
Name: JC GARET INCORPORATED Execution Date: Jun. 05, 2000
Legal Entity Type: CORPORATION State or Country
Where Organized:
No Place Where Organized Found
Assignee
Name: DIAL CORPORATION, THE
Legal Entity Type: CORPORATION State or Country
Where Organized:
DELAWARE
Address: SUITE 2214
15501 NORTH DIAL BOULEVARD
SCOTTSDALE, ARIZONA 85260-1619
Correspondent
Correspondent
Name:

XOUT (SN. 86/448537)

RICHARD G. HARRER
Correspondent
Address:
15501 NORTH DIAL BOULEVARD
SUITE 2214
SCOTTSDALE, AZ 85260-1619
Domestic Representative - Not Found

XOUT (SN. 86/448537)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Opposition was served on:

Brett Ohm
1059 S. 4th Ave.
New Hampton
Iowa 50659

by first class mail, postage prepaid, this 20th day of April, 2016.

Wes Anderson