

ESTTA Tracking number: **ESTTA760434**

Filing date: **07/25/2016**

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	Los Angeles Rag House, Inc.
Granted to Date of previous extension	07/30/2016
Address	11684 Tuxford Street Los Angeles, CA 91352 UNITED STATES
Correspondence information	Joel D. Voelzke IP Law Offices of Joel Voelzke, APC 24772 W. Saddle Peak Road Malibu, CA 90265 UNITED STATES joel@voelzke.com, ip.law@verizon.net Phone:310-317-4466

Applicant Information

Application No	86855859	Publication date	05/31/2016
Opposition Filing Date	07/25/2016	Opposition Period Ends	07/30/2016
Applicant	The Rag Place, Inc. 13160 Raymer St. North Hollywood, CA 91605 UNITED STATES		

Goods/Services Affected by Opposition


Class 024. First Use: 2011/04/26 First Use In Commerce: 2011/04/26 All goods and services in the class are opposed, namely: Synthetic fiber fabric used to manipulate harsh bright light in order to diffuse, soften, or reflect light for use in the motion picture, television, theater, and trade industries
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
The mark is generic	Trademark Act Sections 1, 2 and 45
Failure to function as a mark	Trademark Act Sections 1, 2 and 45

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	87108033	Application Date	07/18/2016
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MAGIC CLOTH
Design Mark	
Description of Mark	NONE
Goods/Services	Class 024. First use: First Use: 0 First Use In Commerce: 0 Cloth used to diffuse, soften, and reflect light, for use in the photography, film, television, and theater industries

Attachments	87108033#TMSN.png(bytes) Notice of Opposition - MAGIC CLOTH.pdf(17352 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	/Joel D. Voelzke73/
Name	Joel D. Voelzke
Date	07/25/2016

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

Los Angeles Rag House, Inc.)	
)	
Opposer,)	Opposition No.:
)	
v.)	Serial No.: 86855859
)	Mark: MAGIC CLOTH
The Rag Place, Inc.)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Los Angeles Rag House, Inc., a California corporation (“Opposer”), believes that it will be damaged by registration of the mark MAGIC CLOTH (“the Opposed Mark”) as specified in Application Serial No. 86855859 (“the Application”), and hereby opposes said Application.

As grounds for the opposition, Opposer alleges:

1. Opposer, Los Angeles Rag House, Inc, is a California corporation, with a place of business at 11684 Tuxford Street, Los Angeles, California 91352.
2. Upon information and belief, Applicant, The Rag Place, Inc. is a California corporation, with an address at 13160 Raymer Street, North Hollywood, California 91605.
3. Applicant filed U.S. Application Serial No. 86855859 (“the Application”) for the term MAGIC CLOTH in standard characters for the goods of “Synthetic fiber fabric used to manipulate harsh bright light in order to diffuse, soften, or reflect light for use in the motion picture, television, theater, and trade industries” in International Class 24, which includes a disclaimer of the word “CLOTH.” In its Application, Applicant claims a date of first use, and a date of first use in commerce, of April 26, 2011.

4. The Application was published in the Official Gazette on May 31, 2016. That same day, Opposer received an extension of time to oppose until July 30, 2016.

**I. PRIOR USE IN COMMERCE BY OPPOSER AND LIKELIHOOD OF
CONFUSION UNDER § 2(d), 15 U.S.C. §1052(d)**

5. Prior to Applicant's claimed date of first use, Opposer had adopted and used in interstate commerce the mark MAGIC CLOTH ("Opposer's Mark") in connection with cloth used to diffuse, soften, and reflect light, for use in the photography, film, television, and theater industries, and has used that mark continuously since then.

6. Upon information and belief, prior to any date by which Applicant had begun using in interstate commerce the Opposed Mark for Applicant's goods, Opposer had adopted and used in interstate commerce Opposer's Mark for Opposer's goods.

7. Applicant's Opposed Mark is identical to Opposer's Mark.

8. Applicant's goods are commercially related to Opposer's goods. More specifically, Applicant's goods are identical, nearly identical, and/or closely related to Opposer's goods.

9. Because the respective marks are identical and the respective goods are identical, nearly identical, or at least commercially related, Opposer enjoys superior rights to its mark.

10. The Opposed Mark so resembles Opposer's mark as to be likely, when used on or in commerce with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

11. Opposer would be damaged by registration of Applicant's Opposed Mark because such registration would constitute *prima facie* evidence of Applicant's exclusive right to use the Opposed Mark for and in connection with Applicant's goods, which would be inconsistent with and detrimental to Opposer's superior rights in Opposer's Mark.

II. THE OPPOSED MARK IS GENERIC

12. In addition, or in the alternative, Opposer pleads the following.

13. Opposer and third parties have used the term “magic cloth” to denote synthetic fiber fabric used to manipulate harsh bright light in order to diffuse, soften, or reflect light for use in the motion picture, television, theater, and trade industries.

14. “Magic cloth” is a generic term for Applicant’s goods, and thus is not registrable.

15. Opposer and others have a competitive and equal right to use the term “magic cloth” as a generic name for their goods.

16. By its Application, Applicant seeks to monopolize the generic use of the term “magic cloth” and affects the ability of Opposer to use the term generically.

17. If Applicant is allowed to obtain registration for the generic term “magic cloth,” it will effectively misappropriate for Applicant’s exclusive use a generic term, and cause injury and damage to Opposer and others.

18. Accordingly, the Application should be denied on the ground that the term “magic cloth” is the generic name for Applicant’s goods, and is incapable of functioning as a mark.

III. ABANDONMENT AND FAILURE TO POLICE UNDER 15 U.S.C. §1127

19. In the alternative, Applicant has abandoned any rights in the term “magic cloth” under Section 45, 15 U.S.C. §1127 by failing to enforce any such rights against widespread uses by others of the term, and thus the term has lost any significance as an indication of origin, to the extent that it ever had such significance.

WHEREFORE, Opposer prays that the Opposition be sustained and that the application for registration of the Opposed Mark be refused.

Respectfully submitted,

Dated: July 25, 2016

/s/ Joel D. Voelzke
Joel D. Voelzke (Reg. No. 37,957)

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Notice of Opposition was served upon Applicant by first class mail, on this 25th day of July, 2016 addressed to:

Sang N. Dang
BLUE CAPITAL LAW FIRM, P.C.
650 Town Center Drive, Suite 1530
Costa Mesa, California 92626

Attorney for Applicant
The Rag Place, Inc.

/s/ Joel D. Voelzke

Joel D. Voelzke