

TTAB

02-22-2003

U.S. Patent & TMO/c/TM Mail Rcpt. Dt. #40

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

**IN THE MATTER OF  
THE TRADEMARK APPLICATION**

Serial No. : 76/331595  
Filed : Oct. 31, 2001  
Published : Dec. 24, 2002  
Applicant : Mannheim Auctions, Inc.  
Trademark : DALLAS AUTO AUCTION ✓  
Classes : 035

**NOTICE OF OPPOSITION**

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TRADEMARK TRIAL AND APPEAL BOARD

**BOX TTAB FEE ENCLOSED**

Assistant Commissioner for Trademarks  
2900 Crystal Drive, South Tower  
Arlington, VA 22202-3513

COMES NOW Titanium Entertainment, Inc., (the "Opposer") a corporation organized and existing under the laws of the State of Florida, which believes that it will be damaged by registration of the mark shown in the application having Serial No. 76/331595 in International Class 035. The application was filed by Mannheim Auctions, Inc. (The "Applicant") and the Opposer hereby opposes the same.

This Notice of Opposition has been timely filed, the Opposer having been granted a thirty-day extension of time in which to oppose, which expires on February 24, 2003.

As grounds of opposition, it is alleged that:

1. The applicant seeks to register the word mark "DALLAS AUTO AUCTION" as a trademark for "automobile auction services" in International Class 35, as evidenced by the publication of said mark in the *Official Gazette* in the December 24, 2002 issue.

2. The Opposer has used the marks and is continuing to use the potential trademarks DETROITAUTOAUCTION.COM; STLOUISAUTOAUCTION.COM, TUSCONAUTOAUCTION.COM; MINNEAPOLISAUTOAUCTION.COM; (the "Domains"). The Opposer has valid domain name registrations for each of the Domains for development of "electronic online automobile auction services distributed via the Internet."

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3. The Applicant transmitted a letter to iCarmedia, a subsidiary of the Opposer, dated October 16, 2002 demanding that the Opposer cease and desist all use of "Manheim's AUTO AUCTION marks in connection with these domain name [sic] constitutes trademark infringement and dilution." The Applicant asserted all right to license and control the use of any and all use of "AUTO AUCTION" preceded by a geographic location as used in this mark. This letter predated the filing of the referenced mark hereby opposed.

4. The Opposer has expended significant resources in the development of websites related to conducting automobile auctions via the Internet prior to the filing date of the opposed mark.

5. The use of a geographic location in conjunction with the general term "auto auction" is widely used by the Opposer and others in the automobile sales and auctioning industry. This phrase is therefore a general reference to a class of services namely the auctioning of automobiles.

6. The trademark proposed for registration by the Applicant would be taken by purchasers in the public to designate a broadly defined type of service.


7. If the Applicant is granted the registration opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark, and allegedly each of the remaining 69 locations where the Applicant has business locations. The Applicant has previously demonstrated a desire to prevent any use of "auto auction" by any entity other than itself and it is presumed would do so in the future.

8. Such registration would be a source of damage and injury to the Opposer and others in the automobile auction industry who use the designation "auto auction" extensively to indicate the types of goods and services offered. This registration would require the Opposer and the trade to abandon its use and change its promotional and advertising methods, all to the great expense and detriment of the Opposer.

**WHEREFORE**, the Opposer prays that application Serial No. 76/331595 for trademark registration of "DALLAS AUTO AUCTION" be refused.

A duplicate copy of this Notice of Opposition and the \$300 fee required by §2.6(a)(17) are enclosed herewith.


Respectfully submitted,

By:  Digitally signed  
by John A.  
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Attorneys for the Opposer

### CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as "First Class Mail" postage prepaid addressed to: BOX TTAB Fee, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on February 22, 2003.

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