



03-19-2002

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

IN THE MATTER OF Trademark Application Serial No. 76/090,310 for the trademark TNT FIREWORKS, INC., in Class 35, filed July 17, 2000, and published in the Official Gazette of May 15, 2001

TERRY P. GAUDREAU, Individually,
RONALD KNUTSON, Individually,,
TNT FIREWORKS, INC., A North Dakota Corporation,
and TNT FIREWORKS, INC., A Montana Corporation

Opposers,

v.

AMERICAN PROMOTIONAL EVENTS, INC.,

Applicant.

Opposition No.

AMENDED NOTICE OF OPPOSITION

Terry P. Gaudreau, an individual residing at 4515 2nd Avenue West, Williston, North Dakota 58801, Ronald Knutson, an individual residing at 826 Munich Drive, Bismarck, North Dakota 58501, TNT Fireworks Inc., a North Dakota Corporation, with a principal place of business at 826 Munich Drive, Bismarck, North Dakota 58504-7050, and TNT Fireworks, Inc., a Montana Corporation, with a principal place of business at HC 58, Box 16, Bainville, Montana 59212, ("hereafter, "Opposers"), believe they are or will be damaged by registration on the Principal Register of the mark TNT FIREWORKS, INC., as shown in Application Serial No. 76/090,310 and hereby opposes the same through their attorney.

As grounds for opposition, it is alleged that:

1. This Opposition is timely filed because the Opposers have requested five separate extensions of time to file this opposition, some under consent, and the Trademark Trial and Appeal Board has granted all of the requests extending the time to file this opposition until February 15, 2002.

2. Opposers, both individually and jointly, have been engaged in the retail sales of fireworks throughout the upper mid-west for many years.

3. Opposers are the owners of the corporate names, trade names and trademarks TNT FIREWORKS for retail fireworks sales, having used these names and marks continuously in interstate commerce in connection with the retail sales of fireworks to the general public since long prior to July 17, 2000, the effective filing date of the Applicant's U.S. Application No. 76/090,310 opposed herein.

4. These corporate names, trade names and trademarks have become valuable assets of the Opposers through considerable advertising expenditures and the building of good will throughout their market area.

5. Applicant filed Application No. 76/090,310 on July 17, 2000 claiming a bona fide intent to use the trademark TNT FIREWORKS, INC. on the services consisting of distributorship service for fireworks in International Class 35 which are services identical or substantially identical to those services which the Opposers currently offer and have used TNT FIREWORKS in conjunction with.

6. Upon information and belief, Applicant made no use of TNT FIREWORKS, INC. for services consisting of distributorship services for fireworks prior to the July 17, 2000, the filing date on such services. The Applicant had direct knowledge of the Opposers use of TNT FIREWORKS in conjunction with retail sales of fireworks for many years and has directly, through the Applicant's business and their predecessor entities, done business with the Opposers as well as invoiced, billed and entered into

agreements with the Opposers under the name TNT FIREWORKS. Simultaneous use of the Applicant's alleged mark, TNT FIREWORKS, INC., in association with the services set forth in Application No. 76/090,310 and the Opposers corporate names, trade names, and trademark TNT FIREWORKS in association with the retail sale of fireworks to the general public as set forth above is likely to cause confusion, mistake or deception among purchasers, users and the public, thereby damaging the Opposers.

7. Use by the Applicant of its alleged mark TNT FIREWORKS, INC. on the services set forth in Application No. 76/090,310 is likely to lead to the belief that the Applicant's services are sponsored by, affiliated with, approved by or otherwise emanate from the Opposers, thereby damaging the Opposers.

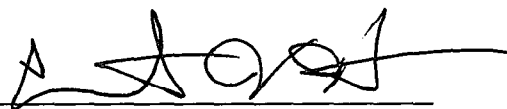
8. Upon information and belief, Applicant knew or should have known of the Opposers prior adoption and use of the corporate name, trade name and trademark TNT FIREWORKS and the Opposers ownership of these various marks and therefore, could not have formed the requested good faith belief that Applicant is the owner of the mark sought to be registered, and no other person, firm, corporation, or association has the right to use said mark in commerce, and consequently knew that such use is and would be in derogation and violation of the Opposers rights.

WHEREFORE, the Opposers, individually and jointly, request that the registration of the mark sought to be registered in Application No. 76/090,310 for the mark TNT FIREWORKS, INC. be denied and that this opposition be sustained.

A duplicate copy of this Notice of Opposition is enclosed in duplicate in accordance with 37 C.F.R. §2.104(a) along with the sum of \$300.00 for the statutory fee for this Notice of Opposition for each Opposer, totaling \$1200.00.

Please recognize Curtis V. Harr, Harr Law Office, P.C., P.O. Box 2842, Fargo, ND 58108-2842, as Opposer's attorney in connection with this opposition proceeding. All correspondence should be directed to Curtis V. Harr.

Respectfully submitted,

By: 

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Attorney for the Opposers

TTH



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03-19-2002

CURTIS V. HARR
Registered Patent Attorney

E-MAIL: harr@patent-law.com

March 13, 2002

BOX TTAB NO FEE
ATTN: GEORGE WOODS
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

**RE: OPPOSITION OF TNT FIREWORKS, INC.
APPLICANT: AMERICAN PROMOTIONAL EVENTS, INC.
MARK: TNT FIREWORKS, INC.
SERIAL NO.: 76/090,310**

03-19-2002 9 AM

Dear Sir:

Please find enclosed the following documents for filing:

1. Applicant's Amended Notice of Opposition in duplicate - 4 pages;
2. Certificate of Mailing regarding item 1 dated March 13, 2002; and
3. Return Receipt postcard.

If you have any questions regarding the above-listed documents, please feel free to contact me.

Sincerely,

Curtis V. Harr
Attorney at Law

mlr
Enclosures

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box TTAB-NO FEE, Assistant Commissioner for Trademarks, ATTN: GEORGE WOODS, 2900 Crystal Drive, Arlington, VA 22202-3513, on March 13, 2002.

DATE: 3-13-02

Curtis V. Harr