



05-22-2002

U.S. Patent & TMOfo/TM Mail Rpt. Dt. #40

THAB

**EXHIBITS**

SERVICE MARKS  
Attorney Docket 21180

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

In the Matter of U.S. Application Serial No. 76/320,901  
For: Happy Face Design  
Filed: October 3, 2001  
Date of Publication: March 5, 2002

FRANKLIN LOUFRANI	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
WAL-MART STORES, INC.	)	
	)	
Applicant.	)	

06/10/2002 CMAY11 00000152 76320901

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300.00 OP

NOTICE OF OPPOSITION

In the matter of U.S. Trademark Application Serial No. 76/320,901 ("Serial No. 76/320,901") for the mark "Happy Face Design" in International Class 35, by Wal-Mart Stores, Inc. ("applicant"), which has been published for opposition in the Official Gazette of March 5, 2002. Franklin Loufrani ("opposer"), an individual of France with a principal place of business at 114 Eaton Square, London SW1W 9AA, United Kingdom, believes he will be damaged by the registration of the mark in Serial No. 76/320,901 and hereby opposes the same, in accordance with Section 13 of The Trademark (Lanham) Act of 1946, 15 U.S.C. §1063.

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 TRADEMARK TRIAL AND  
 APPEAL BOARD

Opposition Against "Happy Face Design"  
Serial No. 76/320,901

As grounds for the opposition, opposer alleges as follows:

1. Upon information and belief, applicant is a Delaware corporation with a principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716.

2. Applicant seeks to register the Happy Face Design in Serial No. 76/320,901 for "retail department store services" in International Class 35, as evidenced by the publication of the mark in the Official Gazette of March 5, 2002.

3. Opposer is the owner of U.S. Trademark Application Serial No. 75/977,376 ("Serial No. 75/977,376") for the mark "SMILEY and Happy Face Design," shown at Exhibit A hereto.

4. The filing date of opposer's Serial No. 75/977,376 is earlier than the filing date of applicant's Serial No. 76/320,901.

5. Through its retail store services, applicant offers or may offer many of the same products and services listed in opposer's Serial No. 75/977,376.

6. Based on the evidence attached at Exhibit B hereto, the U.S. Patent and Trademark Office determined that the Happy Face Design element in opposer's Serial No. 75/977,376 does not serve any trademark function under Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127.

Opposition Against "Happy Face Design"  
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7. Applicant's Happy Face Design in Serial No. 76/320,901 is identical or substantially similar to opposer's disclaimed Happy Face Design in Serial No. 75/977,376.

8. Applicant's Happy Face Design in Serial No. 76/320,901 does not serve any trademark function under Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127.

9. If applicant's Happy Face Design in Serial No. 76/320,901 is permitted to register on the Principal Register, then applicant will be granted an exclusive right to use a design that does not serve any trademark function under Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127.

10. If applicant's Happy Face Design in Serial No. 76/320,901 is permitted to register on the Principal Register, then applicant will be able to rely on its registered rights in challenging or contesting opposer's use or registration of a Happy Face Design, even though applicant's Happy Face Design does not serve any trademark function under Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127.

11. By reason of all the foregoing, opposer will be gravely damaged by the registration of applicant's design in Serial No. 76/320,901, because registration of that mark would entitle opposer to own and enforce registered rights for a design that is in the public domain and does not serve any trademark function

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under Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections  
1051, 1052 and 1127.

WHEREFORE, opposer prays that this Notice of Opposition be  
sustained in favor of opposer and that Serial No. 76/320,901 be  
denied registration. Opposer submits herewith a duplicate copy  
of this Notice of Opposition, along with a check to cover its  
filing fee of \$300, as required by 37 C.F.R. §2.6(a)(17).

Respectfully submitted,

FRANKLIN LOUFRANI

Date: May 22, 2002

By: Mary Catherine Merz  
Mary Catherine Merz, Esq.  
Bruce Haraguchi, Esq.  
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Attorneys for Opposer

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number: EV 057958205 US  
Date of Deposit: May 22, 2002

I hereby certify that this correspondence is being deposited with the United States  
Postal Service "Express Mail Post Office To Addressee" Service under 37 C.F.R. 1.10 on  
the date indicated above and is addressed to the Commissioner for Trademarks, Box TTAB  
- FEE, 2900 Crystal Drive, Arlington, VIRGINIA 22202-3513  
(1) Notice of Opposition (Original and one copy)  
(2) Check No. 55707 for \$300

Mary Catherine Merz  
Mary Catherine Merz



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COMMISSIONER FOR TRADEMARKS  
BOX TTAB - FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

Transmitted herewith is the:

- Trademark
- Service Mark
  
- Application
- Notice of Opposition
- Petition to Cancel
- Office Action Response
- Supplemental Response
- Combined Sections 8 and 15 Declaration
- Consented Motion to Extend Discovery  
and Testimony Periods

Of Opposer: Franklin Loufrani

For: "Happy Face Design"

Also enclosed are:

- Notice of Opposition (Original and copy)
- Check No. 5570 for \$300

In the unlikely event that insufficient funds are submitted herewith to cover the filing fee in this correspondence, please charge such funds against Deposit Account No. 50-0277.

Respectfully submitted,

Enclosures

By: Mary Catherine Merz

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