


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

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HAGGERTY ENTERPRISES, INC. :  
Opposer, :  
-vs- :  
ROSE ART INDUSTRIES, INC. :  
Applicant. :  
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Opposition No. 91152891  
Serial No. 76/335,477  
Mark: LAVA  
**APPLICANT'S ANSWER TO  
NOTICE OF OPPOSITION**

  
10-24-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #70

TO THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS:

Rose Art Industries, Inc., a corporation of the State of New Jersey, with its principal place of business at 6 Regent Street, Livingston, New Jersey 07039, by way of Answer to the Notice of Opposition filed herein, responds as follows:

1. Answering the introductory paragraph, Applicant admits that it filed an application to register the mark LAVA, Serial No. 76/335,477, in connection with pens, pencils, crayons, markers, colored pencils, and highlighters in International Class 16, on November 7, 2001. Applicant also admits that this mark was published for opposition in the Official Gazette of May 28, 2002. Except as specifically admitted, Applicant denies the allegations in the introductory paragraph.

2. Answering Paragraph 1, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and leaves the Opposer to its proofs.

3. Answering Paragraph 2, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and leaves the Opposer to its proofs.

4. Answering Paragraph 3, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and leaves the Opposer to its proofs.

5. Answering Paragraph 4, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and leaves the Opposer to its proofs.

6. Answering Paragraph 5, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and leaves the Opposer to its proofs.

7. Answering Paragraph 6, Applicant denies the allegations contained therein.

8. Answering Paragraph 7, Applicant denies the allegations contained therein.

9. Answering Paragraph 8, Applicant denies the allegations contained therein.

10. Answering Paragraph 9, Applicant denies the allegations contained therein.

11. Answering Paragraph 10, Applicant denies the allegations contained therein.

12. Answering Paragraph 11, Applicant admits the allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

13. The Notice of Opposition fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

14. The Opposer lacks standing.

THIRD AFFIRMATIVE DEFENSE

15. Opposer has not stated a claim for recovery because the Opposer's LAVA and LAVA LITE marks are neither distinctive nor famous, nor have they acquired secondary meaning among the public and trade.

FOURTH AFFIRMATIVE DEFENSE

16. Opposer has not stated a claim for recovery because Opposer's LAVA and LAVA LITE marks are generic when used in connection with Opposer's goods.

WHEREFORE, Applicant respectfully submits that the Opposition be dismissed, with prejudice, and that its Application Serial No. 76/335,477, for the mark LAVA, be approved for registration.

Respectfully Submitted,

By: 

Robert W. Smith  
McCarter & English, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, NJ 07102-4096  
(973) 622-4444  
Attorneys for Applicant

Dated: October 24, 2002


CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10

"Express Mail" mailing label number: EV115144940US

Date of Deposit: October 24, 2002

I hereby certify that the foregoing Answer to Notice of Opposition to Application Serial No. 76/335,477 is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under CFR 1.10 on the date indicated above, addressed to: BOX TTAB – NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, and via Express Mail to counsel for the Opposer at the following address:

Dyann L. Kostello  
Lori S. Meddings  
MICHAEL, BEST & FRIEDRICH LLP  
100 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

  
\_\_\_\_\_  
Kelly J. Garrone

Date: October 24, 2002

TTAB

**MCCARTER & ENGLISH, LLP**

ATTORNEYS AT LAW  
FOUR GATEWAY CENTER  
100 MULBERRY STREET  
P.O. BOX 652  
NEWARK, NJ 07101-0652

(973) 622-4444

TELECOPIER (973) 624-7070



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NEW YORK  
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CHERRY HILL  
HARTFORD  
BALTIMORE

Direct Dial (973) 639-2061

E-Mail rsmith@mccarter.com

October 24, 2002

TO: [REDACTED]  
102 NOV - 1 PM 9:30

**VIA EXPRESS MAIL**

Re: Haggerty Enterprises, Inc. v. Rose Art Industries, Inc.  
Opposition No. 91152891  
Serial No. 76/335,477  
Mark: LAVA

Box TTAB - No Fee  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Sir or Madam:

We enclose for filing an original and two (2) copies of Applicant's Answer to Notice of Opposition in this matter.

Please indicate receipt of this Answer by stamping the enclosed pre-paid postage postcard, and returning it to us.

Very truly yours,

  
Kelly J. Garrone

KJG/mb  
Enclosures

cc: Dyann L. Kostello, Esq. (w/enc.)  
Lori S. Meddings, Esq. (w/enc.)