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U.S. Patent & TMO/TM Mail Rcpt Dt. #71



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

MILTON SALES, INC.,)
)
Opposer,)
)
v.)
)
UNIVERSAL MANUFACTURING)
COMPANY, INC.,)
)
Applicant.)

Opposition No. _____
Serial No. 76/335,302
Mark: RACE FOR CASH

TRADEMARK TRIAL AND
APPEAL BOARD
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MOTION TO AMEND NOTICE OF OPPOSITION

In accordance with 37 CFR 2.107, Applicant requests that the notice of opposition be amended. The notice of opposition has not been served on Applicant and, therefore, this request to amend is proper according to Rule 15 of the Federal Rules of Civil Procedure.

The amended notice of opposition is enclosed.

MILTON SALES, INC.

Date: October 29, 2002

By: 
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UNIVERSAL MANUFACTURING)	
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AMENDED NOTICE OF OPPOSITION

In the matter of application no. 76/335,302 filed by Universal Manufacturing Company, Inc., a Delaware corporation (hereafter "Applicant"), having an address at 5450 Deramus, Kansas City, Missouri 64120, on November 7, 2001, requesting federal registration of the mark RACE FOR CASH for "game cards for playing games of chance for monetary prizes" based upon actual use; Opposer, Milton Sales, Inc. (hereafter "Opposer"), a West Virginia corporation, and having a business address at P.O. Box 60063, Malden, West Virginia 25306, believes that it will be damaged by the foregoing registration of Applicant's mark and opposes its registration.

The grounds for this opposition are as follows:

1. Opposer is the owner of the trademark RACING FOR CASH for games of chance, namely, raffle pull tab tickets. Opposer has used and is using the mark RACING FOR CASH in commerce since at least as early as June 5, 1995.
2. Petitioner is the owner of the application no. 76/338,519 for the mark RACING FOR CASH which has been refused registration based on Application No. 76/335,302.

3. Applicant's mark is identical in sound, appearance, and connotation to Opposer's common law mark RACING FOR CASH.

4. The products identified in Applicant's application are identical to the products sold by Opposer under the mark RACING FOR CASH. Furthermore, Applicant's products would be marketed in the same channels of commerce and directed toward the same classes of purchasers as Opposer's products; hence, contemporaneous use of Applicant's mark and Opposer's mark is likely to cause confusion.

5. Opposer has expended considerable resources in promoting, protecting, and using its mark RACING FOR CASH. As a result, Opposer has created substantial goodwill in connection with its mark throughout the United States, all of which will be jeopardized by the registration of Applicant's mark and, therefore, must be precluded from registration under Section 2(d) of the Lanham Act of 1946 [15 U.S.C. 1052(d)].

6. The mark set forth in application Serial No. 76/335,302 so resembles a mark previously used in the United States by Opposer, and not abandoned, as to be likely when applied to the services of Applicant to cause confusion, or to cause mistake, or to deceive.

7. Applicant is fraudulently attempting to obtain a federal registration of Opposer's mark RACING FOR CASH. Opposer hired Applicant as a private label manufacturer for the products listed in its application, namely, games of chance. Opposer ordered from Applicant custom manufactured products that Opposer created, including the trademark used thereon. Therefore, Applicant, at the time of filing its application, knew that Opposer was the owner of the mark and falsely claimed ownership of the trademark and, for this reason, the U.S.

Patent and Trademark Office allowed Applicant's application for registration. But for this false statement, the application would not have been allowed.

WHEREFORE, Opposer respectfully requests that this opposition be granted and that Serial No. 76/335,302 be denied registration.

This Notice of Opposition is filed in duplicate, together with the required government filing fee of three hundred dollars (\$300.00).

MILTON SALES, INC.

Date: October 28, 2002

By: 

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