

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

NOTICE OF OPPOSITION

Opposer, **HERITAGE CANDLES, INC.**

vs.

Applicant, **HERITAGE CANDLE COMPANY**

Opposition No. _____

Application Serial No. **76223551**

Published in the Official Gazette
on February 4, 2003

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TRADEMARK TRIAL AND APPEAL BOARD
03 MAR 19 2003

Opposer, **Heritage Candles, Inc.**, a Georgia corporation, located and doing business at 10 Andrew Drive, Suite 800, Stockbridge, Georgia 30281, is the purchaser of all of the tangible and intangible assets, including without limitation, the good will, of Heritage Candles, Inc., a Georgia corporation, originally incorporated on June 9, 1994, believes that it will be damaged by registration of the mark shown in Serial No. **76223551**, and hereby opposes the same.

Description of Applicant's Application: Filed on March 14, 2001. Published for Opposition in the Official Gazette on February 4, 2003. Mark "HERITAGE CANDLE COMPANY": in International Class 004. US 001, 006, 015 for "custom manufacture of candles and related goods on an intent to use basis."



As grounds of opposition, it is alleged that:

03-04-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #7:

1. Opposer, since at least May 20, 1994, has been, and is now, using the mark **Heritage Candles** in connection with the sale of candles for wholesale and retail sale. Said use has been valid and continuous since said date of first use and has not been abandoned. Said mark of opposer is symbolic of extensive good will and consumer recognition built up by opposer through substantial amounts of time and effort in advertising and promotion. In addition, since at least March, 1998, opposer has used the mark on its website located at www.heritagecandles.com. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that applicant's mark so resembles opposer's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.
2. Opposer's predecessor, was originally incorporated under the name Heritage Candles, Inc., on June 9, 1994, to Value Creation, Inc., on October 5, 2001. Said Value Creation, Inc. changed its name to Heritage Candles, Inc., on February 20, 2002. Opposer or opposer's predecessor is now and has been, operating under the designation **Heritage Candles** since at least May 20, 1994, in the area of wholesale and retail sales of candles. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate opposer with said designation. In view of the similarity of applicant's mark with opposer's designation, and in view of the related nature of the uses thereof, it is alleged that applicant's mark consists of and comprises matter that may disparage and falsely suggest a connection with the opposer.
3. Applicant's mark consists of a mark which, when applied to the goods of applicant, is merely descriptive in that said mark is an apt and common term used to describe goods of the nature involved herein. Opposer, since May 20, 1994, has been involved in the manufacture and sale of candles, which are of a related nature to applicant's goods, and which opposer has a valid

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and legal right to describe by use of the term sought to be registered by applicant. Opposer is likely to be damaged by registration of said term in that the prima facie effect of such registration will tend to impair opposer's right to descriptive use of said term. In view of the above allegations, applicant is not entitled to federal registration of its alleged mark in that applicant is not entitled to exclusive use of said term in commerce on the goods specified and further, that applicant's alleged mark does not function to identify applicant's goods and distinguish them from those offered by others.

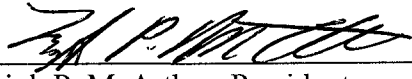
4. Applicant's alleged mark has not become distinctive of the applicant's goods in commerce and no customer recognition of said term as a valid mark identifying only applicant has been achieved.

WHEREFORE, Opposer prays that said application Serial No. **76223551**, be rejected, that no registration be issued thereon to applicant, and that this opposition be sustained in favor of Opposer. Opposer hereby appoints Wagner, Johnston & Rosenthal, P.C., a law firm composed of Craig A. Wagner, Esq., C. David Johnston, Esq., Michael S. Rosenthal, Esq., R. Thomas Hicks, Esq. Kristofer R. Schleicher, Esq., John R. Thornburgh, Esq., C. Elizabeth Jones, Esq., Susan B. Shaw, and S. Bradley Shipe, all members of the bar of the State of Georgia, to act as attorneys for opposer herein, with full power to prosecute said opposition, to transact all relevant business with the patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this opposition.

Opposer:

Heritage Candles, Inc., a Georgia corporation

By: _____


Leigh P. McArthur, President

WAGNER, JOHNSTON & ROSENTHAL, P.C.

Attorneys at Law

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March 3, 2003

Via Federal Express

Box TTAB FEE

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513



03-04-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

Re: NOTICE OF OPPOSITION
Applicant, **HERITAGE CANDLE COMPANY**
Application Serial No. **76223551**

Dear Sir or Madam:

Enclosed herein please find the following documents in connection with the above identified Applicant:

1. One (1) original and one (1) copy of the Notice of Opposition, signed by the opposer; and
2. Check number 3193 in the amount of Three Hundred and No/100 Dollars (\$300.00) in payment of the requisite opposition fee for the one (1) international class being opposed.

Please review this Notice of Opposition and do not hesitate to contact me should you have any questions. Thank you for your prompt attention to this matter.

Very truly yours,

WAGNER, JOHNSTON & ROSENTHAL, P.C.

C. Elizabeth Jones

Enclosure

cc: Mr. Leigh McArthur (w/encl.)
John R. Thornburgh, Esq. (w/encl.)

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