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06-23-2003

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

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

HERSEY METERS CO., )  
)  
Opposer, )  
)  
v. )  
)  
MAGNETROL INTERNATIONAL )  
INCORPORATED, )  
Applicant. )  
\_\_\_\_\_ )

Application Serial No. 76/465241  
Mark: HORIZON  
Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

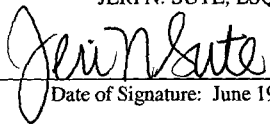
Opposer Hersey Meters Co. ("Opposer"), for its Notice of Opposition against Application Serial No. 76/465241 for the mark HORIZON filed by Magnetrol International Incorporated ("Applicant"), believes that it will be damaged by, and thus opposes registration of, the mark which is the subject matter of Application No. 76/465241. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a Delaware corporation with a principal place of business located at 10210 Statesville Boulevard, Cleveland, North Carolina 27013.
2. Upon information and belief, Applicant is a Delaware corporation and has a mailing address of 5300 Belmont Road, Downers Grove, Illinois 60515-4499.
3. Opposer is the owner of use-based Application Serial No. 78/143463 for the mark HORIZON in International Class 9, for "water meters," filed July 12, 2002, and pending before the U.S. Patent and Trademark Office (hereinafter "Opposer's Mark").

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**CERTIFICATE OF MAILING**  
Date of Deposit: June 19, 2003

I hereby certify that this Notice of Opposition is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.  
JERI N. SUTE, ESQ.

  
Date of Signature: June 19, 2003



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4. By virtue of the widespread sales, advertising, and promotion of the goods under Opposer's Mark, Opposer's Mark is well-known in the relevant industry, is recognized and relied upon as identifying the Opposer's goods and as distinguishing them from the goods and services of others, and has come to represent and symbolize valuable goodwill belonging exclusively to Opposer.

5. Opposer has continuously and exclusively used Opposer's Mark in connection with water meters prior to Applicant's filing date and constructive and/or actual first use date, if any, in United States commerce for the mark HORIZON.

6. Applicant is the owner of Application No. 76/465241 for the mark HORIZON ("Applicant's Mark").

7. Applicant's Mark is identical to Opposer's Mark.

8. Applicant filed Application No. 76/465241 on an intent-to-use basis on November 7, 2002, for "level and flow instrumentation for use in measuring, monitoring, indicating, signaling and controlling the level of liquids and the flow of liquids," in International Class 9.

9. Opposer's rights in Opposer's Mark are superior to Applicant's filing date for Applicant's Mark.

10. The use and registration of Applicant's Mark falsely suggest a connection with Opposer and/or Opposer's goods identified by Opposer's Mark, in violation of 15 U.S.C. § 1052(a).

11. The use and registration of Applicant's Mark are likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, and association of Applicant with Opposer, and as to the origin, sponsorship, and approval of Applicant's goods, services or commercial activities by Opposer, in violation of 15 U.S.C. §§ 1052(d) and 1125(a).

12. Use and registration of the Applicant's Mark will therefore be injurious to Opposer.

13. A duplicate copy of this Notice and the requisite filing fees are enclosed herewith.

WHEREFORE, Opposer believes that it will be damaged by the registration of the Applicant's Mark and prays that said Application No. 76/465241 be refused, and that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

This 19th day of June, 2003.

Respectfully submitted,

TROUTMAN SANDERS LLP



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