

TTAB

08/20/2003 TTAB

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

In the Matter of Trademark Application Serial No.: 78138031  
For the Mark: HERBANCOWBOY  
Published in the Official Gazette on: April 8, 2003



08-07-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #66

HERBAN AVENUES, L.L.C. )

Opposer, )

v. )

HERBANCOWBOY.COM, INC. )

Applicant. )

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

In the matter of the intent to use application for registration of an alleged trademark HERBANCOWBOY for "Health and beauty aids" in International Class 3, Application Serial No. 78138031 filed June 24, 2002, which was published in the Official Gazette on April 8, 2003.

The Herban Avenues, L.L.C. (the "Opposer") is a Virginia limited liability company located and doing business at 4701 Ball Cypress Road, Chesterfield, Virginia 23832. The Opposer believes it would be damaged by registration of the mark shown in Application Serial No. 78138031, in International Class 3 and opposes the same. The grounds for opposition are as follows:

**Background**

1. The Opposer holds registration to the mark HERBAN AVENUES (Registration No. 2499364).

2. HERBAN AVENUES was registered on October 23, 2001 under the bath, body and skincare products category (International Class 3) with a first use in commerce of November 1, 1998. The registration is valid and subsisting, uncanceled and unrevoked.

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9. As a result of the use of the HERBAN AVENUES mark in connection with the Opposer's goods, the mark has become closely associated with Opposer and such mark has acquired value.

**The Application**

10. HerbanCowboy.com, Inc (the "Applicant") seeks to register the mark HERBANCOWBOY in connection with "Health and beauty aids, namely, shaving cream, skin moisturizers, body lotion, anti-wrinkle cream, eye cream, non-medicated lip balm, non-medicated blemish cream, cosmetic facial cover-up, makeup, hair shampoo, hair conditioner, soap, hair gel, personal deodorant, breath freshening spray, foot powder and cologne in International Class 3. (The Applicant also seeks to register the mark in connection with International Class 35).

11. Upon information and belief, the Applicant's goods identified in International Class 3 will be distributed in and through the same channels of commerce and sold to the same class of purchasers as the Opposer's goods under its mark HERBAN AVENUES.

12. The dominant portion of the Applicant's mark is the term HERBAN.

13. The term HERBAN in the Applicant's mark is virtually identical to Opposer's mark HERBAN AVENUES.

14. The Applicant's mark HERBANCOWBOY is confusing similar in sound, appearance and meaning to Opposer's mark HERBAN AVENUES.

15. The Opposer believes and alleges that consumers are likely to believe that HERBANCOWBOY identifies goods originating with the Opposer.

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16. The Applicant's use and registration of the alleged trademark HERBANCOWBOY will enable Applicant to trade upon and utilize goodwill established by the Opposer in its mark HERBAN AVENUES.

17. The Opposer believes and alleges that the Applicant's mark when used in connection with the goods identified in International Class 3 is likely to cause confusion or mistake or to deceive and will deceive and mislead the purchasing public into believing that the Applicant is licensed or controlled by the Opposer or that the Applicant is a subsidiary of, or in some way related to, the Opposer.

The Opposer believes and submits it will be irreparably damaged by the registration of the Applicant's confusingly similar mark for the goods identified in International Class 3.

WHEREFORE the Opposer requests respectfully that this Opposition be sustained and the application for registration of HERBANCOWBOY be denied for the goods identified in International Class 3.

POWER OF ATTORNEY

The Opposer has appointed **Jeffrey H. Geiger**, a member of the bar of the Commonwealth of Virginia and an attorney with the law firm of Sands Anderson Marks & Miller, P.C., to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

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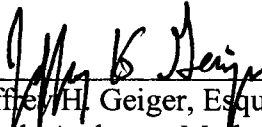
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The filing fee for this opposition in the amount of \$300.00 is enclosed.

Respectfully submitted,

**HERBAN AVENUES, L.L.C.**

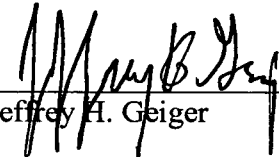
By Counsel

  
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Attorney for Herban Avenues, L.L.C.

Dated: August 6, 2003

**Certificate of Mailing**

I certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on August 6, 2003.

  
\_\_\_\_\_  
Jeffrey H. Geiger

**SANDS ANDERSON  
MARKS & MILLER**   
A PROFESSIONAL CORPORATION

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August 6, 2003

08-07-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Re:	Applicant:	HerbanCowboy.com, Inc.
	Application Serial No.:	78138031
	Class:	003
	Application Filing Date:	06/24/2002
	Mark:	HERBANCOWBOY
	Date of Publication:	04/08/2003
	Opposer:	Herban Avenues, L.L.C.
	ESTTA Tracking No.:	ESTTA 1661
	Our File No.:	008914/056435

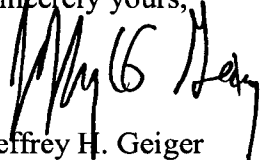
TRADEMARK TRIAL AND  
APPEAL BOARD  
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Dear Sir:

On behalf of **Herban Avenues, L.L.C.**, I am enclosing (1) our "Notice of Opposition," in duplicate, and (2) our check for the required filing fee in the amount of \$300.00.

Thank you for your consideration and please do not hesitate to contact me if you have any questions.

Sincerely yours,



Jeffrey H. Geiger

Enclosures

JH