

60/29/2003TTA

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

In re Application Serial No. : 76/458053  
For the Mark : **AUTOMATIC SLIMS**  
Filed : October 15, 2002  
Published in the Trademark  
Official Gazette on : July 15, 2003



09-08-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

AUTOMATIC SLIMS, INC. )  
 )  
Opposer, ) Opposition No.  
 )  
v. )  
 )  
 )  
THE DREAM TEAM, LLC )  
 )  
Applicant. )

**NOTICE OF OPPOSITION**

Automatic Slims, Inc., ("Opposer), believes that it will be damaged by the above-referenced registration, and it opposes the registration of Applicant's mark.

The grounds for the opposition are:

1. Opposer is a Tennessee corporation with its principal place of business located at 83 South Second Street, Memphis, Tennessee 38103.
2. Opposer's president had been using the mark in connection with a New York restaurant and bar known as Automatic Slims since approximately 1985.

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3. When the Opposer's president moved to Memphis, Tennessee in 1991, she relinquished control over the day-to-day operations of Automatic Slims in New York. She continues to have an ownership interest in such restaurant and bar.

4. Opposer's president then incorporated the Opposer and began to operate a restaurant and bar in Memphis, Tennessee, known as Automatic Slims on or about May 31, 1991. The Opposer has continuously operated and used the mark, Automatic Slims, in interstate commerce to identify its restaurant and bar services.

5. Applicant's mark should be refused registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) because the Applicant's mark when used in connection with restaurant and bar services so resembles the Opposer's mark that it is likely to cause confusion, or to cause mistake or deceive.

6. Opposer's mark and Applicant's mark are identical.

7. Opposer has priority of use of the mark and was using the mark prior to any date of first use on which the Applicant can rely. Opposer has never abandoned use of the mark.

8. The services offered by the Opposer and the Applicant are identical in that both Opposer and Applicant offer restaurant and bar services.

9. The channels of trade and classes of purchaser are identical.



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17. A trademark and/or simple internet search would have put the Applicant on notice that another party was using the identical mark for restaurant and bar services.

18. Opposer avers that Applicant knew of the Opposer's prior and superior rights to the mark but nevertheless filed an application alleging that no one else had the right to use the same or similar mark in commerce.

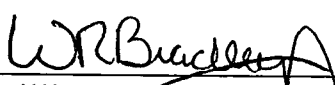
19. This opposition is filed in duplicate.

20. A \$300.00 check enclosed.

WHEREFORE, Opposer requests that application serial No. 76/458053 be rejected, that no registration be issued, and that this Opposition be sustained in favor of Opposer.

Dated this 8 day of September, 2003.

Respectfully submitted,

  
\_\_\_\_\_  
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Attorneys for Opposer

EXPRESS MAIL

I hereby certify that this *Notice of Opposition to United States Trademark Application Serial No. 76/458053* is being deposited with the United States Postal Service as "Express Mail Post Office To Addressee," in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.  
on the 8<sup>th</sup> day of September, 2003.

*Thomas T. Nelson*

Express Mail No.: EI849603618US

GLANKLER BROWN, PLLC  
-ATTORNEYS AT LAW

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September 8, 2003

VIA U.S. POSTAL SERVICE  
EXPRESS MAIL #

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



09-08-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

RE: Mark : Automatic Slims  
Serial No. : 76/458053  
Applicant : The Dream Team, LLC  
Our File No. 13688.29559

Dear Sirs:

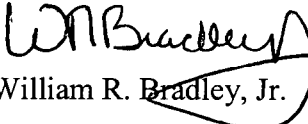
Enclosed are the following:

1. Original and one copy of Notice of Opposition. This Notice of Opposition is being submitted as a correction. A Notice of Opposition was received at the USPTO on August 20, 2003 with the incorrect Serial No. of 76/458063.
2. A check in the amount of \$300.00 in payment of the filing fee.
3. A return receipt postcard confirming receipt of the foregoing.

If you have any questions, please do not hesitate to give me a call.

Very truly yours,

GLANKLER BROWN, PLLC

  
William R. Bradley, Jr.

WRB,jr./yth  
Enclosures

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on the 8<sup>th</sup> day of September, 2003.

Lyndon T. Ripson

Express Mail No.: EI849603618 US