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

In the Matter of Trademark Application Serial No.: 78/023,553
Filed: August 29, 2000
Mark: KLUSON DELUXE and Design
Published in the Official Gazette: October 21, 2003



04-15-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #78

_____)
GIBSON GUITAR CORP.,)
)
Opposer)
)
v.)
)
WD MUSIC PRODUCTS, INC.)
)
Applicant.)
_____)

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Gibson Guitar Corp., a Delaware Corporation with a business address of 309 Plus Park Drive, Nashville, Tennessee 37217, hereby opposes the registration of the KLUSON DELUXE and Design mark that is the subject of application Serial No. 78/023,553 published in the *Official Gazette* of October 21, 2003 (hereinafter referred to as the "Mark"), the date to oppose having been extended pursuant to multiple timely and proper requests filed by Opposer, and requests that registration to Applicant be denied and refused.

As grounds in support of its opposition, Opposer asserts as follows:

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7. Opposer contends that the design sought to be registered by Applicant is functional and cannot and does not serve as an indication of source for Applicant's goods. That is, the Mark consists of a design feature of the goods, which serves a utilitarian purpose.

8. Additionally, Opposer contends that the design sought to be registered by Applicant is a "configuration of the goods" that is not inherently distinctive and has not acquired distinctiveness.

9. Opposer contends that the Applicant's Mark, when used with tuners, does not function as a trademark to indicate source.

10. Opposer contends that the Mark sought to be registered by Applicant has been in use in commerce by third parties well before the date of first use alleged by Applicant such that the Mark is generic of the goods and cannot and does not function as a trademark to indicate the source of Applicant's goods.

11. In view of the foregoing facts and allegations, Opposer believes that it will be harmed by registration of Applicant's Mark.

WHEREFORE, Opposer prays that the Opposition be sustained and that Application 78/023,553 filed on August 29, 2000 be denied and refused.

This Notice of Opposition is submitted in duplicate and the official filing fee of \$300 is enclosed herewith.

1. Applicant's above-referenced application seeks to register the mark KLUSON DELUXE and Design for use with "musical instruments and accessories therefor, namely, tuning machines for the heads of stringed musical instruments."

2. Applicant's mark consists of a linear arrangement of substantially square boxes with raised vertical pin stripes embodied thereon. The words KLUSON DELUXE are arranged vertically between the pin stripes.

3. Applicant has alleged a date of first use of January 15, 1993.

4. Opposer, Gibson Guitar Corp., has continuously used a tuning machine consisting of a linear arrangement of substantially square boxes with raised vertical pin stripes embodied thereon for many, many years, and well before the date of first use alleged by Applicant and such tuning machine designs are still in use today.

5. Upon information and belief, other third parties have continuously used a tuning machine consisting of a linear arrangement of substantially square boxes with raised vertical pin stripes embodied thereon for many, many years, and well before the date of first use alleged by Applicant and such tuning machine designs are still in use today.

6. Upon information and belief, third parties have continuously used a tuning machine consisting of a linear arrangement of substantially square boxes with raised vertical pin stripes embodied thereon, together with the terms "KLUSON DELUXE," for many, many years, and well before the date of first use alleged by Applicant. Upon information and belief, such third party tuners are still in use today.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment coincident to this Notice of Opposition to Deposit Account 23-0035.

Respectfully submitted,



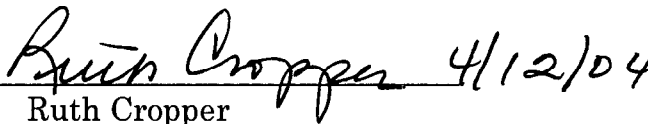
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Attorney for Opposer

CERTIFICATE OF FIRST CLASS MAILING

I hereby certify that this Notice of Opposition, one copy thereof, and a check in the amount of \$300.00 is being deposited with the United States Postal Service, with sufficient postage as first class mail, in an envelope addressed to:

Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



Ruth Cropper