

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

In the matter of application Serial No. 78-198,976
Published in the *Official Gazette* on March 23, 2004

PPM AMERICA, INC.,

Opposer,

v.

PPM ENERGY, INC.,

Applicant.

Opposition No. _____

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

NOTICE OF OPPOSITION

PPM America, Inc. ("Opposer"), a Delaware corporation, believes that it will be damaged by the registration of PPM ENERGY, Serial No. 78/198,976, by the applicant, PPM Energy, Inc. ("Applicant"), and opposes the issuance of such registration in Class 36. In support of its opposition, Opposer states as follows:

1. Opposer owns three federal registrations for the marks PPM, Registration No. 2,149,113, for financial services, namely, financial analysis and consultation, financial forecasting, financial management, financial planning, financial portfolio management, financial research in International Class 36; PPM AMERICA (AND DESIGN), Registration No. 2,566,684, for financial services, namely, financial analysis and consultation, financial forecasting, financial management, financial planning, financial portfolio management, financial research in International Class 36; and PPM AMERICA, Registration No. 2,651,098, for financial services, namely, financial analysis and consultation,

financial forecasting, financial management, financial planning, financial portfolio management, financial research in International Class 36, (hereinafter "PPM Marks").

2. Opposer's mark PPM, Registration No. 2,149,113, has been registered based upon Section 44D since April 7, 1998; its mark PPM AMERICA (AND DESIGN), Registration No. 2,566,684, has been in use since October 16, 1990; and its mark PPM AMERICA, Registration No. 2,651,098, has been in use since October 16, 1990.
3. On December 31, 2002, Applicant filed an intent-to-use application to register the mark PPM ENERGY for "energy auditing; managing production of energy for others in class 35, electricity and gas commodity trading for others in Class 36, installation of energy systems in Class 37, natural gas storage services in Class 39, generation of electricity in Class 40 and design and engineering of energy production systems; engineering services in the field of energy; conducting feasibility studies; product research and development; research in the energy field; design and development for others of energy services packages in Class 42."
4. There is no issue as to priority in Class 36. Applicant's filing date is many years subsequent to Opposer's first use and registration of its PPM Marks. Furthermore, Applicant filed its application on an intent-to-use basis and has not yet filed a Statement of Use for the mark.
5. Opposer has both offered and sold its services under its PPM Marks throughout the United States. As a result of Opposer's use of its PPM Marks on services offered nationwide, its advertising and the high quality of its services, Opposer

enjoys considerable goodwill in its PPM Marks. The public has come to associate the high quality services offered under the PPM Marks with Opposer.

6. The services covered by Applicant's proposed mark, namely, electricity and gas commodity trading for others in Class 36, are confusingly similar to the services covered by Opposer's Registrations, in particular, financial services, namely, financial analysis and consultation, financial forecasting, financial management, financial planning, financial portfolio management, financial research in Class 36. Furthermore, the services covered in Class 36 by Applicant's proposed mark PPM ENERGY, as commodity trading and financial services, are related to and therefore highly similar to the services covered by Opposer's PPM registrations. Thus, the high degree of similarity between Applicant's mark as intended to be used in Class 36 and Opposer's mark and between Applicant's services in Class 36 and Opposer's services creates a substantial likelihood of confusion. Applicant's services are likely to be mistaken as originating from Opposer.
7. Applicant's use of the mark PPM ENERGY would be likely to confuse and/or deceive as to the source and origin of Applicant's services in Class 36 and as to the existence of any association, connection, sponsorship or relationship between Opposer and Applicant.
8. By reason of Opposer's continued and exclusive use of its PPM Marks, Opposer has rights in the PPM Marks superior to any rights claimed by Applicant.
9. Applicant's registration of the mark PPM ENERGY in Class 36 on the Principal Register will interfere with Opposer's enjoyment of its rights in its PPM Marks and will result in substantial detriment to Opposer.

WHEREFORE, Opposer believes that it would be damaged by said registration in Class 36 and prays that it be denied.


A duplicate copy of this Notice of Opposition and the fee in the amount of \$300.00 required in 37 C.F.R. § 2.6 are enclosed herewith.

DATED this 17th day of September, 2004.

Respectfully submitted,

PPM AMERICA, INC

By: _____

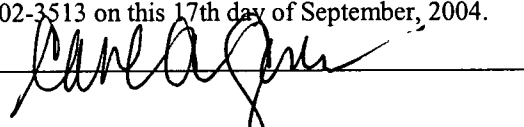

One of the Attorneys
for PPM America, Inc.

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Certificate of First Class Mail

I, Carol A. Genis, hereby certify that the foregoing Notice of Opposition and the appropriate filing fee are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on this 17th day of September, 2004.

(Signature)



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AND WASHINGTON, D.C.

September 17, 2004

VIA FIRST CLASS MAIL

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

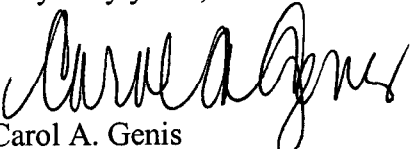
Dear Commissioner:

Enclosed on behalf of our client, PPM America, Inc., please find the following:

1. A Notice of Opposition to PPM ENERGY, Serial No. 78/198,976;
2. A check in the amount of \$300.00 for payment of the required fee; and
3. A postcard which we ask that you date stamp and return.

Please reference attorney docket No. 0107426-036 on all correspondence. The Commissioner is hereby requested to deduct any additional fees from deposit account No. 02-1818. If you have any questions, please correspond with me at the above address.

Very truly yours,


Carol A. Genis

CAG:mcf
Enclosures



09-20-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70