

ESTTA Tracking number: **ESTTA22763**

Filing date: **01/06/2005**

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

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	Hunter Fan Company		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Delaware
<b>Address</b>	2500 Frisco Avenue Memphis, TN 38114 UNITED STATES		

<b>Attorney information</b>	Valerie Walsh Johnson, Esq. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC 165 Madison Avenue Suite 2000 Memphis, TN 38103 UNITED STATES vjohanson@bakerdonelson.com Phone:(901) 577-2180
-----------------------------	--

#### Applicant Information

<b>Application No</b>	78290408	<b>Publication date</b>	12/28/2004
<b>Opposition Filing Date</b>	01/06/2005	<b>Opposition Period Ends</b>	01/27/2005
<b>Applicant</b>	FPI Fireplace Products International Ltd. 6988 Venture Street Delta, British Columbia, V4G 1H4 CANADA		

#### Goods/Services Affected by Opposition

Class 011.

All goods and services in the class are opposed, namely: Fireplaces and gas stoves; parts, accessories and attachments for such fireplaces and stoves, namely, cast iron gas surround inserts, cast iron and ceramic plates, covers, louvers, brackets, burners, artificial fire logs sold as parts of fireplaces and stoves

<b>Attachments</b>	0555s965.pdf ( 5 pages )
--------------------	--------------------------

<b>Signature</b>	/Valerie Walsh Johnson/
<b>Name</b>	Valerie Walsh Johnson, Esq.
<b>Date</b>	01/06/2005

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

---

**HUNTER FAN COMPANY**

v.

**FPI FIREPLACE PRODUCTS INTERNATIONAL LTD.**

)  
)  
)  
) **Serial No.: 78/290,408**  
)  
)

---

**NOTICE OF OPPOSITION**

---

Hunter Fan Company ("Hunter"), a Delaware corporation, with its principal place of business at 2500 Frisco Avenue, Memphis, Tennessee 38114, believes that it would be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 78/290,408 (the "Application"), filed August 21, 2003 by FPI Fireplace Products International Ltd. ("FPI") and published for opposition on December 28, 2004. Hunter hereby opposes registration of said marks pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063.

To the best of Hunter's knowledge, the current owner of the Application is FPI Fireplace Products International Ltd., a Canadian company, doing business at 6988 Venture Street Delta, British Columbia, CANADA V4G 1H4.

As grounds for this Opposition, Hunter alleges that:

1. Prior to the date FPI filed its intent to use Application and prior to any claimed date of first use or any other date upon which Applicant may rely, and continuing to the present, Hunter has used and continues to use its HUNTER trademarks in the United States for a variety of goods, namely: lighting products; air treatment units for use in commercial and residential installations for regulating ambient air

quality by removing odors, chemicals and particulates; electronic retailing services via computer featuring ceiling fans, thermostats and air purifiers; electric circulating fans for commercial and residential use; electronic retailing services via computer featuring ceiling fans, thermostats and air purifiers; ceiling fans; thermostats; ventilating fans; electric circulating fans; online information services concerning ceiling fans, thermostats and air purifiers accessible via computer network and electric circulating fans for domestic and commercial use (the “Hunter Goods/Services”).

2. Hunter has been using its HUNTER trademarks in interstate commerce since at least as early as September 1, 1962.
  
3. Hunter is the owner of a number of federal trademark registrations for HUNTER and formatives (collectively, the “Hunter Trademarks”) thereof as follows:

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
HUNTER	786814	16-Mar-1965
HUNTER	1381169	04-Feb-1986
HUNTER (STYLIZED)	1388231	01-Apr-1986
HUNTER SINCE 1886	1388230	01-Apr-1986
THE ORIGINAL HUNTER SINCE 1886	1388229	01-Apr-1986
HUNTER	1403033	29-Jul-1986
HUNTER	1507014	04-Oct-1988
HUNTER (AND DESIGN)	1801997	02-Nov-1993
HUNTER SINCE 1886 (AND DESIGN)	1801998	02-Nov-1993
HUNTER	2038067	18-Feb-1997
HUNTER	2115496	25-Nov-1997

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
HUNTER (AND DESIGN)	2117548	02-Dec-1997
HUNTER BUILDING THE BEST FOR OVER 100 YEARS	2128355	13-Jan-1998
HUNTER SINCE 1886 (AND DESIGN)	2851938	08-Jun-2004

4. Hunter has continuously used the Hunter Trademarks in a prominent and distinctive manner in interstate commerce so as to distinguish the source of its products from those of others and has spent significant effort and sums of money in advertising and otherwise promoting the sale of its goods under the HUNTER Trademarks.
  
5. The trade and purchasing public has come to know and recognize the HUNTER Trademarks as a designation identifying Hunter as the source of the Hunter Goods/Services. Accordingly, the Hunter Trademarks have developed and represent valuable goodwill which rightfully belong exclusively to Hunter.
  
6. On August 21, 2003, FPI filed an intent to use application to register HUNTER (Serial No. 78/290,408) as a trademark for fireplaces and gas stoves; parts, accessories and attachments for such fireplaces and stoves, namely, cast iron gas surround inserts, cast iron and ceramic plates, covers, louvers, brackets, burners, artificial fire logs sold as parts of fireplaces and stoves.
  
7. Upon information and belief, FPI has not yet made use of the HUNTER mark in the United States.

8. FPI's HUNTER mark is identical to the Hunter Trademarks and would be used in connection with the sale of closely related products that would travel and would be promoted through the same channels of trade for sale to, and use by, the same class of purchasers for Hunter's products sold under the Hunter Trademarks.
9. FPI's use and registration of HUNTER is likely to cause consumer confusion or mistake or to deceive as to the affiliation, connection, or association of FPI with Hunter, or as to the origin, sponsorship, or approval of FPI's goods or commercial activities by Hunter, within the meaning of Sections 2(d), 32 and 43 of the Lanham Act, 15 U.S.C. Sections 1052(d), 1114(1) and 1125(a).
10. Accordingly, the grant of registration to FPI for the HUNTER mark will interfere with Hunter's use and enjoyment of its Hunter Trademarks to the damage and injury of Hunter within the meaning of 15. U.S.C. Section 1063 and will result in a likelihood of consumer confusion, mistake and/or deception to the public.
11. For all the foregoing reasons, registration of the HUNTER trademark in the name of FPI will result in damage and injury to Hunter.

WHEREFORE, Hunter prays that the registrations sought by FPI be refused and that this Notice of Opposition be sustained.

Hunter hereby appoints the following attorneys to prosecute this Opposition and transact all business in the Patent and Trademark Office connected therewith: Valerie Walsh Johnson, Danny Awdeh, Lea Hall Speed and Lee R. Dickinson.

Please send all correspondence to the attention of:

Valerie Walsh Johnson, Esq.  
BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.  
165 Madison Avenue, Suite 2000  
Memphis, Tennessee 38103  
(901) 577-2180

Respectfully submitted,

HUNTER FAN COMPANY

January 6, 2005

Date

By: 

Valerie Walsh Johnson  
Attorney for Opposer  
BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.  
165 Madison Avenue, Suite 2000  
Memphis, Tennessee 38103  
(901) 526-2000