

ESTTA Tracking number: **ESTTA25641**

Filing date: **02/10/2005**

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>	Aviara Land Associates Limited Partnership, composed of Aviara Land Company		
<b>Entity</b>	Partnership	<b>Citizenship</b>	Delaware
<b>Composed Of:</b>	Aviara Land Company, a Delaware corporation		
<b>Address</b>	2020 Main Street Suite 305 Irvine, CA 92614 UNITED STATES		

<b>Attorney information</b>	Allison Z. Gifford, Esq. Duane Morris LLP One Liberty Place 1650 Market Street Philadelphia, PA 19103-7396 UNITED STATES azgifford@duanemorris.com Phone: 215-979-1000		
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#### Applicant Information

<b>Application No</b>	78391308	<b>Publication date</b>	01/11/2005
<b>Opposition Filing Date</b>	02/10/2005	<b>Opposition Period Ends</b>	02/10/2005
<b>Applicant</b>	Watkins Manufacturing Corporation 1280 Park Center Drive Vista, CA 92083		

UNITED STATES
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**Goods/Services Affected by Opposition**

Class 019.

All goods and services in the class are opposed, namely: GAZEBOS

**Attachments**

aviaraopp.pdf ( 4 pages )  
aviarapoa.pdf ( 1 page )

**Signature**

/allison z gifford/

**Name**

Allison Z. Gifford, Esq.

**Date**

02/10/2005

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

In the matter of Trademark Application Serial No. 78/391,308  
Filed: March 26, 2004  
For the Mark: AVIARA  
Published in the Official Gazette on January 11, 2005

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AVIARA LAND ASSOCIATES LIMITED	:	
PARTNERSHIP, composed of Aviara Land Company,	:	
	:	
Opposer	:	Opposition No. _____
	:	
v.	:	
	:	
WATKINS MANUFACTURING CORPORATION,	:	
	:	
Applicant.	:	

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**NOTICE OF OPPOSITION**

Aviara Land Associates Limited Partnership, a Delaware limited partnership, of which Aviara Land Company, a Delaware corporation, is its sole general partner, having a place of business at 2020 Main Street, Suite 305, Irvine, California 92614, believes that it will be damaged by registration of the mark AVIARA shown in Serial No. 78/391,308 as applied to gazebos, and hereby opposes registration of same.

As grounds for opposition, Opposer alleges that:

1. Upon information and belief, Applicant Watkins Manufacturing Corporation (hereinafter "Applicant") is a California corporation having its principal place of business at 1280 Park Center Drive, Vista, California 92083.

2. On March 26, 2004, Applicant filed Application Serial No. 78/391,308 (the “Application”) to register, on the Principal Register, the mark AVIARA (hereinafter “the Mark”) for “gazebos” (hereinafter “the Goods”).

3. Applicant filed its application for the Mark on a bona fide intent to use basis and has not yet filed an affidavit showing use of the mark in commerce.

4. The Mark was published for opposition in the *Official Gazette* on January 11, 2005.

5. Opposer Aviara Land Associates Limited Partnership (hereinafter “Opposer”) is the owner of the following trademarks and U.S. trademark registrations:

<b>MARK</b>	<b>REGISTRATION NO./REGISTRATION DATE</b>	<b>GOODS/SERVICES</b>
AVIARA	1,687,841 May 19, 1992	Periodic newsletter concerning events at and facilities of master-planned community
AVIARA	1,560,163 October 10, 1989	Real estate development services
AVIARA GOLF ACADEMY	2,688,351 February 18, 2003	Golf instruction, namely, private and group lessons, programs and seminars, including related printed and videotaped materials, related to golf and golfing techniques
AVIARA GOLF CLUB	1,739,227 December 8, 1992	Golf course services and golf tournament services
AVIARA & Heron Design	1,781,505 July 13, 1993	Clothing, namely, golf shirts, polo shirts, sweat shirts, T-shirts, sweaters, sweater vests, hats and visors

6. There is no issue as to priority, as Opposer’s filing and registration dates predate Applicant’s filing date.

7. Opposer is the developer of a large-scale master planned community named AVIARA, which features residences, the Four Season Resort Aviara, a championship golf course, spa facilities and recreational and sports facilities.

8. Opposer coined the term AVIARA in the late 1980s, after considerable time and expense, for its real estate development services and other goods and services.

9. Opposer, via its licensees, uses the AVIARA marks for real estate services, real estate development services, hotel services, golf instruction and course services, spa services, clothing goods, and other goods and services, and Opposer has used the AVIARA marks since at least 1988.

10. Opposer and its licensees have engaged in advertising and promotional activities of the AVIARA marks, and as a result of such use, the marks have become identified with and are recognized as representing the services and goods of Opposer among the relevant trade and consumers.

11. The Mark sought to be registered in the application opposed herein is identical to Opposer's AVIARA marks.

12. The services and goods of Opposer and Applicant are related in the real estate, golf and spa goods and services fields and industries, and are or will be offered in the same or similar channels of commerce and offered to the same or similar customers.

13. When Applicant's proposed Mark is applied to goods similar and related to the goods and services already rendered and promoted by Opposer, in connection with its AVIARA marks, it so nearly resembles Opposer's marks as to be likely confused therewith and mistaken therefore.

14. Many residences in new residential home developments have gazebos, including those residences in Opposer's planned community.

15. If Applicant is permitted to use and register the Mark for the goods specified in the application herein opposed, confusion in the trade resulting in damage and injury to the Opposer would be caused and would result by reason of the almost identical nature of the respective marks and goods and services. Persons familiar with Opposer's AVIARA mark would likely buy Applicant's Goods, mistakenly believing the goods are made, sold, endorsed or sponsored by or otherwise connected with Opposer.

16. If Applicant is permitted to use and register the Mark for the goods specified in the application herein opposed, any defect, objection or fault found with Applicant's Goods marketed under the proposed Mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its goods and services currently marketed and sold under its AVIARA marks.

17. Opposer's mark has acquired a strong distinctiveness based upon its widespread use and recognition by the public.

18. Opposer's AVIARA mark is famous and distinctive and is uniquely associated with Opposer in the real estate, hotel, spa and travel community.

19. Long after Opposer's mark had acquired fame, the Applicant's proposed use will cause a likelihood of dilution and will dilute the distinctive quality of Opposer's mark by lessening the capacity of the mark AVIARA to identify and distinguish Opposer's goods and services.

20. If Applicant is granted the registration herein opposed, it would therefore obtain at least a *prima facie* exclusive right to the use of its proposed Mark. Such registration would be a source of damage and injury to the Opposer.

WHEREFORE, Opposer believes it will be damaged by registration of the mark AVIARA as shown in Application Serial No. 78/391,308, and respectfully requests that this opposition be sustained and that the registration sought by Applicant be denied.

Respectfully submitted,

AVIARA LAND ASSOCIATES  
LIMITED PARTNERSHIP

Date: February 10, 2005

By: /allison z gifford/  
Allison Z. Gifford  
Julie Mebane  
Attorneys for Opposer

DUANE MORRIS LLP  
One Liberty Place  
Philadelphia, PA 19103  
Tel.: (215) 979-1000

**POWER OF ATTORNEY**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

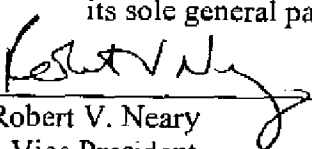
Sir:

AVIARA LAND ASSOCIATES LIMITED PARTNERSHIP, of which Aviara Land Company, a Delaware corporation, is its sole general partner, hereby appoints Julie Mebane, Lewis F. Gould, Jr., Peter J. Cronk, Stephan P. Gribok, Richard T. Redano, Robert E. Rosenthal, Steven E. Koffs, Richard A. Paikoff, Samuel W. Apicelli, Gregory P. Gulia, Gary R. Maze, Susan O. Goldsmith, Allison Z. Gifford, Joseph A. Powers, Nicole K. McLaughlin, and Duane Morris LLP, its attorneys, with full power of substitution and revocation, to prosecute this Opposition against Application Serial No. 78/391,308 and to transact all business in the Patent and Trademark Office connected therewith. Please send all correspondence and telephone calls in connection with this Opposition to:

Allison Z. Gifford, Esq.  
Duane Morris LLP  
One Liberty Place  
Philadelphia, PA 19103  
215-979-1267.

Aviara Land Associates Limited Partnership,  
a Delaware limited partnership  
By: Aviara Land Company,  
a Delaware corporation,  
its sole general partner

Dated: 2/10/05

  
By: Robert V. Neary  
Title: Vice President