

ESTTA Tracking number: **ESTTA51112**

Filing date: **10/31/2005**

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

Name	Hallmark Licensing, Inc.
Granted to Date of previous extension	10/30/2005
Address	2440 Pershing Road Kansas City, MO 64108 UNITED STATES

Attorney information	David N. Johnson Hallmark Cards, Incorporated 2501 McGee, MD 339, Box 419126 Kansas City, MO 64141-6126 UNITED STATES psimmo2@hallmark.com Phone:816-274-5583
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Applicant Information

Application No	76519085	Publication date	05/03/2005
Opposition Filing Date	10/31/2005	Opposition Period Ends	10/30/2005
Applicant	Diastar, Inc. 6117 Harrison Place West New York, NJ 07093		

UNITED STATES

Goods/Services Affected by Opposition

Class 014. First Use: 19880000 First Use In Commerce: 19880000 All goods and services in the class are opposed, namely: JEWELRY, DIAMONDS AND WATCHES
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Applicant Information

Application No	76519090	Publication date	05/03/2005
Opposition Filing Date	10/31/2005	Opposition Period Ends	
Applicant	Diastar, Inc. 6117 Harrison Place West New York, NJ 07093 UNITED STATES		

Goods/Services Affected by Opposition

Class 014. First Use: 19880000 First Use In Commerce: 19880000 All goods and services in the class are opposed, namely: JEWELRY, DIAMONDS AND WATCHES
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Attachments	00027119.pdf (4 pages)
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Signature	/David N. Johnson/
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Name	David N. Johnson
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Date	10/31/2005
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 76519085; Filed 05/12/2003; Published 05/03/2005
and
Serial No. 76519090, Filed 05/12/2003; Published 05/03/2005

HALLMARK LICENSING, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
DIASTAR, INC.)	
)	
Applicant)	

OPPOSITION

Hallmark Licensing, Inc., a Delaware corporation located and doing business at 2440 Pershing Road, Suite 300, Kansas City, Missouri 64108 (hereinafter called Opposer), believes that it will be damaged by registration of the marks HALLMARK DIAMONDS in connection with jewelry, diamonds and watches, Application Serial No. 76519085, and HALLMARK RINGS in connection with jewelry, diamonds and watches, Application Serial No. 76519090, both marks filed by Diastar, Inc. (hereinafter called Applicant), and both marks published in the Official Gazette of May 3, 2005, and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds of opposition, it is alleged that:

1. Opposer is the licensor of the mark HALLMARK to licensees which are in the business of manufacturing and selling a wide variety of goods, and rendering and selling certain services, under the mark HALLMARK and various other marks which include the name

HALLMARK, including but not limited to HALLMARK ENTERTAINMENT and HALLMARK HALL OF FAME. The use of said marks by said licensees inures to the benefit of Opposer.

2. Opposer, or its predecessor in interest, adopted and used the trademark HALLMARK in said business as early as 1925 and Opposer is now using said trademark. Opposer is the owner of all right, title and interest to the trademark HALLMARK for greeting cards, Reg. No. 380596; HALLMARK for furnishing advertising material in the form of newspaper mats, posters, radio and television commercials, display pieces and signs, Reg. No. 916900; and HALLMARK & Crown Device for various goods in International Class 16, Regs. Nos. 654790, 657441, 658900, and 712525, all of said registrations and uses predating Applicant's filing of the subject applications. Opposer owns many other registrations and applications for the mark HALLMARK and other marks which include the word HALLMARK, the filing or use of which predate Applicant's filing of the subject applications. In addition, Opposer is the owner of marks which consist of or include the word HALLMARK on account of the use of such marks by Opposer prior to Applicant's filing of the subject applications.

3. The marks HALLMARK DIAMONDS and HALLMARK RINGS which Applicant seeks to register are so similar to Opposer's trademark that the use and registration of HALLMARK DIAMONDS and HALLMARK RINGS by Applicant is likely to cause confusion, mistake or deception as to the source or origin of the goods which are covered by the subject applications, and therefore the granting of the registrations would injure Opposer's goodwill in its trademark.

4. Applicant's use and registration of HALLMARK DIAMONDS and HALLMARK RINGS is likely to cause the public to assume erroneously that Applicant's goods are sponsored

by Opposer or that they are in some way connected with Opposer, all to Opposer's irreparable damage.

5. Opposer's HALLMARK mark is a "famous mark" under 15 U.S.C. § 1125(c), and registration of the marks HALLMARK DIAMONDS and HALLMARK RINGS would dilute the distinctive quality of Opposer's mark and would, by virtue of 15 U.S.C. § 1125(c)(3), impede Opposer's ability to prevent such dilution from occurring.

For the reasons set forth in the foregoing paragraphs 1-5, Opposer believes, and believing, asserts that the goodwill of its trademark HALLMARK will be damaged and that Applicant should be denied registration of the marks which it seeks to register.

WHEREFORE, Opposer prays that this Opposition be sustained and that both Application Serial No. 76519085 and Application Serial No. 76519090 be refused registration.

The filing fee of Six Hundred Dollars (\$600.00) may be deducted from our Deposit Account, the details of which are included in the electronic Notice of Opposition filed concurrently herewith.

Please recognize David N. Johnson, Legal Department, Hallmark Cards, Incorporated, 2501 McGee Trafficway, P.O. Box 419126, Kansas City, Missouri 64141-6126, member of the bar of the state of Missouri, as the attorney for the Opposer in the above-entitled proceeding.

All communications are to be directed to David N. Johnson at his address identified above.

HALLMARK LICENSING, INC.

/David N. Johnson/
David N. Johnson
Attorney for Opposer
P.O. Box 419126

CERTIFICATE OF MAILING

I hereby certify that this Opposition is being filed electronically via the Electronic System for Trademark Trial and Appeals, on October 31, 2005.

/David N. Johnson/
David N. Johnson