

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

Twinkle, Inc., )  
 )  
 Opposer, )  
 )  
 v. )  
 )  
 U.S. Smokeless Tobacco )  
 Manufacturing Partnership )  
 )  
 Applicant. )

Opposition No. \_\_\_\_\_  
  
Serial No. 76/529,626  
Mark: DIAMOND CUT  
Published: Oct. 25, 2005

11/30/2005 K6IBBONS 00000041 503505 76529626

01 FC:6402 300.00 DA

NOTICE OF OPPOSITION

In the matter of Application Serial No. 76-529,626 for registration of the mark "DIAMOND CUT" in International Class 34 - Smokers' Articles by U.S. Smokeless Tobacco Manufacturing Partnership, which application was published in the Official Gazette of Oct. 25, 2005, at page TM 1448, Twinkle, Inc., an Illinois corporation, located and doing business at 1411 E. Main Street, East Dundee, Illinois 60118, believes it will be damaged by the registration of this mark and therefore opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Applicant, U.S. Smokeless Tobacco Manufacturing Partnership, seeks to register "DIAMOND CUT" in International Class 34 - Smokers' Articles as a mark for "Smokeless Tobacco" as evidenced by an application to register said mark filed July 3, 2003, and publication of said mark in the Official Gazette on Page TM 1448 of the Oct. 25, 2005 issue.

2. Opposer is the owner of many trademark registrations for which DIAMOND is a part of the mark, including U.S. Trademark Registration Nos. 2,439,290 for the mark DOUBLE



DIAMOND, registered on March 27, 2001; 2,605,641 for the mark TRIPLE DIAMOND, registered on August 6, 2002; 2,691,588 for the mark MISS DIAMOND registered on February 25, 2003; 2,578,451 for the mark DOUBLE DIAMOND & DESIGN, registered on June 11, 2002; 2693,056 for the mark MISS DIAMOND & DESIGN, registered on March 4, 2003, 2,820,494 for the mark AMERICAN DIAMOND, registered on March 2, 2004; 2,830,824 for the mark DIAMOND DIAMOND, registered April 6, 2004, all for "Cigarettes" in International Class 34 – Smokers' Articles (herein the marks of the registrations are collectively referred to as the DIAMOND family of marks). All registrations were filed and/or registered by or before July 3, 2003, and therefore all registrations took place prior to the filing date of Applicant's application. Said registered marks of Opposer are valid and subsisting and are prima facie evidence of Opposer's exclusive right to use said marks in commerce on the goods specified in the registrations. Said marks of Opposer are symbolic of the extensive good will and consumer recognition developed by Opposer through substantial amounts of time and effort in advertising and promotion.

3. Commencing long prior to Applicant's filing date for DIAMOND CUT, Opposer has used and is now using the DIAMOND family of marks indicated by the above-referenced registrations which have been in extensive use prior to Applicant's filing date and is well known. Opposer has made a substantial investment in advertising and promoting its DIAMOND family of marks such that Opposer's customers have come to know and recognize Opposer's DIAMOND family of marks as associated with Opposer and the goods and services of Opposer. Opposer has thus built extensive good will in connection with sales of tobacco products under its DIAMOND family of marks.

4. Opposer also has a pending trademark application for which DIAMOND is part of the mark. The mark is TRIPLE DIAMOND, Serial No. 76/216,391 filed on February 26, 2001. This application was filed prior to the filing date of Applicant's application.

5. In view of the similarity of respective marks of the parties and the related nature of goods and services of the respective parties, and upon information and belief it is alleged that Applicant's mark so resembles Opposer's DIAMOND family of marks previously used, registered and/or applied for in the United States, and not abandoned, that the Applicant's mark is likely to cause confusion, to cause mistake, and/or to deceive.

6. Opposer believes that registration of the mark shown in the opposed application will result in damage to Opposer under the provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. §1052(d) pursuant to the allegations above.

WHEREFORE, Opposer prays that said application Serial No. 76-529,626 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer hereby appoints:

Andrew J. Heinisch  
Jeffery J. Makeever  
Kevin L. Wingate  
Lawrence E. Crowe

Jeremy Bridge  
Daniel E. Kattman  
Kent A. Lee  
David G. Hanson

Attorneys at Law of the firm of Reinhart Boerner Van Deuren P.C., whose Post Office address is 483 North Mulford Road, Suite 7, Rockford, Illinois 61107 [Telephone No. (815) 484-1900], all members of the bar of the State of Illinois or Wisconsin, to act as attorneys for Opposer herein, with full power to prosecute said opposition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this opposition.

CORRESPONDENCE ADDRESS

Please address all communications to Opposer's attorneys as follows:

Reinhart Boerner Van Deuren P.C.  
Attn: Andrew J. Heinisch  
483 North Mulford Road, Suite 7  
Rockford, Illinois 61107

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

The Commissioner is authorized to charge Deposit Account No. 50-3505 in the amount of \$300.00. The Commissioner is also authorized to charge any deficiencies in the fees associated with this communication or credit any overpayment to Deposit Account No. 50-3505. This Notice of Opposition is being filed in duplicate. An additional copy of this transmittal is attached for the deposit account authorization purpose (thus, technically is being filed in triplicate).

Respectfully submitted,

By: 

Andrew J. Heinisch  
REINHART BOERNER VAN DEUREN, P.C.  
483 N. Mulford Road, Suite 7  
Rockford, Illinois 61107  
(815) 484-1900  
Attorneys for Opposer

Date: November 22, 2005