

ESTTA Tracking number: **ESTTA71477**

Filing date: **03/17/2006**

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	Moolah Shrine Center - A.A.O.N.M.S a.k.a. Moolah Temple Association		
Entity	Benevolent association	Citizenship	Missouri
Address	12545 Fee Fee Road St. Louis, MO 63146 UNITED STATES		

Attorney information	Ralph W. Kalish Jr., Gary A. Pierson BLACKWELL SANDERS PEPER MARTIN LLP 720 Olive Street 24th Floor St. Louis, MO 63101 UNITED STATES smurphy@blackwellsanders.com, rkalish@blackwellsanders.com, gpierson@blackwellsanders.com Phone:314-345-6000
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Applicant Information

Application No	78539292	Publication date	02/21/2006
Opposition Filing Date	03/17/2006	Opposition Period Ends	03/23/2006
Applicant	Moolah Place, L.P. 3701 Lindell Blvd St. Louis, MO 63108 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. First Use: 2002/02/13 First Use In Commerce: 2002/02/13 All goods and services in the class are opposed, namely: LEASING SPACE FOR COMMERCIAL AND RESIDENTIAL USES, NAMELY, PARKING LOTS, MOVIE THEATRES, APARTMENTS, BOWLING ALLEYS, RECREATIONAL AREA AND AMUSEMENT CENTERS

Related Proceedings	91168632
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Attachments	Petition.to.Oppose.MOOLAH.pdf (10 pages)
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Signature	/Ralph W. Kalish, Jr./
Name	Ralph W. Kalish Jr., Gary A. Pierson II
Date	03/17/2006

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on March 17, 2006.

/s/ Gary A. Pierson II

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

In the matter of Application Serial Nos. 78/539,292

MOOLAH SHRINE CENTER - A.A.O.N.M.S)
a.k.a. MOOLAH TEMPLE ASSOCIATION)

Opposer,)

v.)

MOOLAH PLACE, L.P.)

Applicant.)

Opposition No. _____

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

CONSOLIDATED NOTICE OF OPPOSITION

Moolah Shrine Center - A.A.O.N.M.S. is the “doing business as” name used by Moolah Temple Association, a Missouri benevolent association, located and doing business at 12545 Fee Fee Road, St. Louis, Missouri 63146. Moolah Shrine Center - A.A.O.N.M.S. (“Opposer” or “Moolah”) believes it will be damaged by the use and/or registration of the trademark MOOLAH as shown in Serial No. 78/539,292 and hereby opposes same.

As grounds for opposition, Opposer states:

1. On December 28, 2004, Applicant Moolah Place, L.P. (“Applicant”) applied for registration of MOOLAH in International Class 36 in connection with leasing space for

commercial and residential uses, namely, parking lots, movie theatres, apartments, bowling alleys, recreational area and amusement center. Application Ser. No. 78/539,292 was based on an allegation of use in commerce of MOOLAH by Applicant since February 13, 2002.

2. On January 17, 2006, Opposer filed its Consolidated Notice of Opposition to Application Serial Nos. 78/539,859, 78/539,870, 78/539,868, 78/539,299, 78/539,282, and 78/539,874. That proceeding has been assigned Opposition No. 91/168,632.

3. Opposer's grounds for opposing the above referenced applications and Application Ser. No. 78/539,292 involve common questions of law and/or fact. *See* T.B.M.P. § 305.

4. Applicant's Mark was published on February 21, 2006 and the filing of this Notice of Opposition is timely.

5. Opposer is one of 189 Shrine Temples in the United States. It is the only Shrine Temple of those 189 which uses the name MOOLAH as a trade name to identify its fraternal, philanthropic, charitable association and as a service mark to identify its philanthropic and charitable association services, as described below.

6. In 1872, the first Shrine Temple in the United States was organized under the name Mecca. Today, there are approximately 439,000 members in North America, with the overwhelming majority in the United States. Opposer is the only Shrine Temple in the metropolitan St. Louis area, rendering its charitable services throughout eastern Missouri and southwestern Illinois and drawing its members from several counties in eastern Missouri and several counties in southwestern Illinois. Opposer is one (1) of four (4) Shrine Temples in

Missouri and the only one in eastern Missouri; the others are located on the western side of the State in Springfield, Kansas City and St. Joseph. Opposer routinely coordinates activities, such as parades and fund raising with the A.I.N.A.D. Shriners which is the Shrine Temple in East St. Louis, Illinois.

7. Each Shrine Temple adopts a unique name to distinguish its association and to use as a mark to distinguish its services. Long prior to Applicant's first use of MOOLAH and the filing of its Application Serial No.78/539,292, Opposer adopted and used MOOLAH as the name to identify and distinguish its association and as a service mark to identify and distinguish its philanthropic and charitable services. Opposer also uses MOOLAH in combination with "TEMPLE", "SHRINE" and "SHRINERS", as "MOOLAH TEMPLE", "MOOLAH SHRINE" and "MOOLAH SHRINERS", respectively.

8. The Shrine Temples supported various charities almost from their inception. In 1920, Shrine Temples voted to adopt their own official philanthropy, dedicated to providing free orthopedic medical care to children in need. The first Shriners Hospital for Children was built in Shreveport, La., in 1922. The Shrine's philanthropy eventually expanded to a network throughout North American of 19 Shriners Hospitals for Children and three burns institutes, where children under the age of 18 receive the highest quality medical care absolutely free of charge. There is never a charge to the patient, parent or any third-party for any service or medical treatment received at the hospitals, and no state, local or federal funding of any kind is sought or accepted by Shriners Hospitals in the United States.

9. In addition to providing orthopaedic treatment and engaging in clinical research, Shriners Hospitals treat children with acutely dangerous burns and spinal cord injuries and now address the multiple needs of children, including medical, neurosurgical and urological needs (“Hospital Services”).

10. The network of the Shriners’ Hospitals, spinal cord injury centers and burn centers are located in the following cities (albeit inexactly geographically presented):

Spokane WA			Montreal Canada	
Portland OR		Minneapolis MN		
			Springfield MA	Boston MA
		Chicago, IL	Erie PA	
	Salt Lake City UT			Philadelphia PA
Sacramento CA			Cincinnati OH	
		St. Louis MO	Lexington KY	
Los Angeles CA				Greenville SC
		Shreveport LA		
		Houston TX		
		Galveston TX		Tampa, FL
Honolulu HA		Mexico City Mexico		

11. Shrine Temples sponsor activities to promote, and fund-raising events to provide funds for, the various Shriners Hospitals. The Shriners Hospital in St. Louis, Missouri provides primarily orthopedic services for indigent children. It opened in 1925 and has operated continuously since then. Opposer sponsors activities to promote, and fund-raising events to provide funds for, Shriners Hospitals in St. Louis and the entire Shriners Hospitals network.

12. Members of Opposer provide myriad services to the St. Louis Shriners Hospital's patients and their families, including but not limited to, providing ground transportation by operating vans with MOOLAH emblazoned thereon, contracting with other transportation companies when needed to provide both air and ground transportation, conducting tours of the St. Louis, MO hospital facilities and explaining the Hospital Services to patients, their families and others.

13. The Shriners established the East-West Shrine College All-Star Football Game ("The Game") in 1925 in San Francisco, which has been played annually over the last 80 years. This activity has raised millions of dollars for the network of Shriners Hospitals and has also raised awareness of the work of Shriners Hospitals. Opposer supports The Game through the sale of tickets, advertising and attendance.

14. Since at least as early as January 17, 1900, and for approximately a century prior to Applicant's filing date, Opposer (including its predecessors in interest) has used in commerce its MOOLAH name to identify its benevolent association and its MOOLAH service mark to identify its charitable services, and since 1922, as a benevolent fraternal organization providing fundraising, volunteering, and promotional services for Shriners Hospitals ("Opposer's

Services”). As a result, the MOOLAH name and mark has become a distinctive symbol uniquely associated with Opposer and Opposer’s Services, respectively, with a reputation for the highest quality services.

15. The name "Moolah" has an Arabic origin, meaning "Turkish title of respect for a religious or learned man.” Opposer’s MOOLAH name has been held in respect by the public well before Applicant’s first use of MOOLAH.

16. Opposer owns U.S. Trademark Application No. 78/601,705 for MOOLAH, for Opposer’s Services.

17. Opposer has continuously used and promoted and currently uses and promotes its MOOLAH name and mark in interstate commerce within the United States for identifying Opposer’s association and Opposer’s Services.

18. Opposer’s MOOLAH mark is famous, distinctive, and uniquely associated with Opposer in connection with Opposer’s Services throughout southwestern Illinois and eastern Missouri, including especially the greater St. Louis metropolitan area, by reason of Opposer’s continuous use and promotion of its name and mark through extensive advertising, promotion and use. Such advertising, promotion, and/or use has occurred for a century prior to Applicant’s filing date and Applicant’s alleged first use of MOOLAH.

19. Opposer has operated, advertised and promoted The Moolah Shrine Circus, which has been a mainstay in the metropolitan St. Louis area each year over several days since 1942, drawing sponsors and spectators from eastern Missouri and southwestern Illinois. Monies raised by the Moolah Shrine Circus have gone to support Shriners Hospitals and Opposer’s Services.

20. Opposer directs all of its myriad charitable fund raising efforts to Shriners Hospitals. Opposer has been recognized by the St. Louis Regional Chapter of the Association of Fundraising Professionals, which covers eastern Missouri and southwestern Illinois, for its philanthropy to Shriners Hospitals.

21. From 1914 through 1988, Opposer maintained its offices and held its meetings in the City of St. Louis, Missouri at 3871 Lindell Boulevard (“The Property”). Opposer built a building on The Property in 1914, which has MOOLAH TEMPLE and other symbols used by Opposer’s association (e.g., the sword and scimitar design) embedded on the exterior of the front of the building. In 1988, Opposer sold The Property to a party unrelated to Applicant and moved to a suburban St. Louis location. From 1988 through most of 2004, The Property lay dormant. Upon information and belief, the Property has been declared a historical landmark which prevents certain changes to the structure, including the removal, obliteration or obfuscation of “MOOLAH TEMPLE” on the exterior front of the building.

22. In or around 2004, Applicant or another entity under its ownership and/or control purchased The Property and has since redeveloped same into apartments, movie theatre and bowling alley. Applicant was well aware of Opposer and its ownership and use of MOOLAH prior to its acquisition of The Property.

23. Opposer does not object to either Applicant’s use of the sign “MOOLAH TEMPLE” physically embedded in The Property or the use of “Moolah Temple” as part of the address of The Property, such as “ABC Theatre at the Moolah Temple.”

24. Ownership and/or use of The Property does not empower the Applicant to seize ownership of and appropriate the name and mark, MOOLAH, for its own commercial benefit as a trade name to identify a business, a trademark to identify a product or as a service mark to identify a service.

25. Ownership and/or use of The Property does not empower the Applicant to claim ownership of MOOLAH as a service mark as set forth in pending U.S. Application Serial No. 78/539,292 or corresponding Missouri Registration No. S016722. Applicant was well aware of Opposer, its use of MOOLAH and the great esteem in which Opposer is held in eastern Missouri and southwestern Illinois long prior to the filing of these U.S. Applications and Missouri Registrations.

26. By the filing the above-referenced application, Applicant has demonstrated a callous disregard for:

- a. the philanthropic and charitable work undertaken by Opposer and its members under the name and mark MOOLAH;
- b. confusion by the public, Opposer's members, contributors and the patients of the Shriners Hospital in St. Louis;
- c. the institutions of Moolah Shrine and Shriners' Hospital as well as their respective members, staff, vendors and customers; and,
- d. the famous, distinctive, and unique association of Opposer and Opposer's Services throughout the greater St. Louis metropolitan area in eastern Missouri and southwestern Illinois.

27. By the filing of the above referenced application and use of the corresponding mark, Applicant may disparage Opposer and Opposer's Services and/or bring them into contempt or disrepute. For example, Opposer has no control over the quality or nature of Applicant's movie theatre services, including the showing of movies which are unsuitable for showing to families and children.

28. The application herein opposed consists of or comprises immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with Opposer's institution, beliefs and Services or bring them into contempt, or disrepute.

29. The application herein opposed so resembles Opposer's MOOLAH mark as to be likely, when used in conjunction with Applicant's Services, to cause confusion, and mistake, and to deceive consumers.

30. MOOLAH is confusingly and deceptively similar to Opposer's MOOLAH mark when used in connection with Applicant's Services.

31. Applicant's Mark sought to be registered and Opposer's Mark, when used in connection with their respective services, are confusingly similar.

32. Applicant's use of Applicant's Mark sought to be registered, which so resembles and is colorably imitative of Opposer's Mark, is likely to cause confusion, mistake, or deception of purchasers as to the source of Applicant's Services and will inevitably falsely suggest a trade connection between Opposer and Applicant.

33. The application, registration, and/or use of Applicant's Mark sought to be registered will cause dilution of the distinctiveness of Opposer's Mark and otherwise injure Opposer's reputation and unique identity in the minds of consumers.

34. Registration of Applicant's Mark, should be refused because the mark consists of or comprises deceptive matter which may falsely suggest a connection with Opposer.

WHEREFORE, Opposer believes that it would be damaged by the registration applied for and prays that said application be refused registration.

Please debit our Deposit Account No. 11-0160 for the statutory filing fee of \$300.00.

Respectfully submitted,

Date: March 17, 2006

By: /s/ Ralph W. Kalish, Jr.
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