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

Proceeding	91170482
Party	Plaintiff Bayerische Motoren Werke Aktiengesellschaft
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Bayerische Motoren Werke Aktiengesellschaft,	§	
	§	Opposition No. 91170482
Opposer,	§	
	§	Appl. Ser. No. 78/516,133
v.	§	
	§	Filed: Nov. 12, 2004
Medical Depot, Inc.,	§	
	§	Published: Dec. 20, 2005
Applicant.	§	
	§	

AMENDED NOTICE OF OPPOSITION

Opposer, Bayerische Motoren Werke Aktiengesellschaft (hereinafter “Opposer”), a German joint stock corporation with its principal place of business at Petuelring 130, 80809 Munich, Federal Republic of Germany, will be damaged by the registration of the mark shown in Application Serial No. 78/516,133, and therefore opposes registration of this mark under Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

The grounds for opposition are as follows:

1. Application Serial No. 78/516,133 (hereinafter the “opposed application”) filed by Medical Depot, Inc. (hereinafter “Applicant”) seeks registration of the mark PHANTOM for “Motorized scooter vehicles, namely, power wheelchair vehicles for use by handicapped and elderly people” in International Class 12.
2. The opposed application was filed on November 12, 2004 based on Applicant’s intent to use the mark in commerce.
3. The opposed application was published for opposition in the *Trademark Official Gazette* on December 20, 2005.

4. Opposer, itself or through its related companies, is engaged in the business of designing and manufacturing motor vehicles and parts and accessories therefor under various marks, including the mark PHANTOM.

5. Opposer, its related companies and its predecessors-in-interest have used the PHANTOM trademark in commerce in the United States continuously for many years and since long prior to the filing of the opposed application, in connection with the design, manufacture and sale of its motor vehicles.

6. Opposer is the owner of Registration No. 856,912 for the mark PHANTOM for automobiles in International Class 12. Registered on September 17, 1968, this registration is valid, subsisting and incontestable. This registration also serves as constructive notice of Opposer's ownership thereof, as provided by § 22 of the Federal Trademark Act of 1946, as amended.

7. Opposer, its related companies and its predecessors-in-interest have prominently and extensively used, promoted and advertised the PHANTOM mark for goods in International Class 12 for many years, through varied promotional and advertising media.

8. The PHANTOM mark has become well known and famous within the meaning of §43(c) of the Federal Trademark Act.

9. Upon information and belief, Applicant is engaged in the business of manufacturing and selling medical equipment.

10. Applicant is not affiliated with or sponsored by Opposer, and has never been authorized by Opposer or any of its predecessors-in-interest, related companies, subsidiaries, affiliates or authorized agents to use the PHANTOM mark in any form.

11. Applicant's alleged PHANTOM mark is identical in sound, appearance and commercial impression to Opposer's PHANTOM mark so as to be likely to cause confusion, or to cause mistake, or to deceive.

12. Applicant's alleged mark PHANTOM so closely resembles Opposer's previously used and registered PHANTOM mark as to be likely to cause confusion, mistake or deception under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

13. Opposer's distinctive PHANTOM mark is famous among consumers and became famous long prior to November 12, 2004, the date that Applicant filed the opposed application.

14. Applicant's adoption of its alleged PHANTOM mark in connection with the products described in the opposed application is likely to dilute and does dilute the distinctive quality of Opposer's previously used, registered, distinctive and famous PHANTOM mark within the meaning of §43(c) of the Federal Trademark Act.

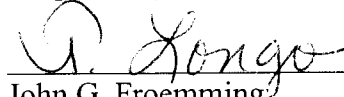
15. If Applicant's mark is registered, Applicant will receive a *prima facie* nationwide exclusive right to use a mark that is likely to cause confusion as to source, sponsorship and affiliation and likely to cause dilution with Opposer's PHANTOM mark in commerce and, as such, would be inconsistent with Opposer's rights.

WHEREFORE, as a result of Opposer's priority and the likelihood of confusion and likelihood of dilution between Opposer's PHANTOM mark and Applicant's alleged PHANTOM mark, Opposer will be damaged by registration of Applicant's mark, and prays that Application Serial No. 78/516,133 be refused registration, and that this opposition be sustained in favor of Opposer.

Date: 04/26/2006

By:

Respectfully submitted,



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