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

Proceeding	91173580
Party	Plaintiff The Creative Company The Creative Company 123 South Broad Street Mankato, MN 56001 UNITED STATES
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78/703,333
For the mark AMERICA'S LEADER IN CREATIVE EDUCATION
Published in the Official Gazette on September 26, 2006

The Creative Company,)
)
Opposer,)
)
v.)
)
Education Management, LLC,)
)
Applicant.)
_____)

Opposition No. 91173580

AMENDED NOTICE OF OPPOSITION

The Creative Company ("Opposer"), a Minnesota Corporation, opposes the registration of the mark "AMERICA'S LEADER IN CREATIVE EDUCATION" shown in Application No. 78/703,333 and published on September 26, 2006. This opposition is made to said application of Education Management, LLC ("Applicant"). Because Opposer believes it will be damaged by the registration of the mark shown in the application, it hereby files this opposition.

The grounds for opposition are as follows:

1. Opposer is a Minnesota corporation with its principal place of business located at 123 South Broad Street, Mankato, Minnesota 56001. Opposer is a leading provider of children's books and educational materials in the United States and Canada. It has used its registered mark "CREATIVE EDUCATION" extensively throughout the

United States and Canada since at least as early as 1976. Its businesses include the sale of educational materials for use in teaching instructional courses.

2. Beginning in 1948, Opposer's company name was registered in Minnesota as "Creative Education, Inc.", and its assumed name was "Creative Education."

3. Opposer is engaged in the sale of a vast spectrum of educational materials under a family of trademarks, many of which include the prominent and distinctive display of the word "Creative". These trademarks include CREATIVE PAPERBACKS, Registration No. 2,971,872 (covering a "series of educational paperback nonfiction books ... directed to junior high school and higher reading levels in the fields of technology, natural history, anatomy, health, nutrition, disabilities, mathematics, social studies, cultures and civilization, cultural studies, history, archaeology, mythology, geography, current events, government, civics, business, economics, agriculture, media, social issues, sociology, pet care, art history, art, architecture, literature, literary history, grammar, dictionaries, reference, poetry, music history, and music."); CREATIVE PAPERBACKS, Registration No. 2,864,191 (covering a "series of fiction books; a series of non-fiction books on a variety of topics"); CREATIVE PAPERBACKS, Registration No. 2,665,640 (covering a "series of educational paperback nonfiction books covering nonreligious subject matter and directed to junior high school and higher reading levels"); THE CREATIVE COMPANY, Registration No. 2,584,593 (covering "books on a variety of topics"); "); THE CREATIVE COMPANY, Registration No. 2,484,279 (covering "a series of fiction and nonfiction

books on a variety of topics”); and CREATIVE EDITIONS, Registration No. 1,802,717 (covering “children's books, and pictorial books”).

4. On information and belief, Applicant is a Delaware limited liability company with its principal place of business in Pittsburgh, Pennsylvania.

5. On August 30, 2005, Applicant applied to register the mark AMERICA'S LEADER IN CREATIVE EDUCATION for use with “Education services, namely, providing courses of instruction at the post-secondary level.”

6. Commencing long prior to Applicant's filing date, Opposer has extensively used the mark CREATIVE EDUCATION to identify its books and educational materials directed to schools, children and others, including those used in secondary schools. Opposer first began using the mark as early as 1976 and has numerous federal registrations, with the result that its customers have come to know and recognize Opposer's mark with Opposer and the goods and services provided by Opposer. Opposer has built extensive goodwill in connection with the sale of products under its mark.

7. Opposer first registered its mark CREATIVE EDUCATION with the United States Patent and Trademark Office on April 13, 1993 under Registration No. 1,764,414 for goods described as “children's books sold to schools, libraries and private institutions.”

8. Opposer later registered the CREATIVE EDUCATION trademark for “children's books.” Registration No. 2,344,557 was granted to Opposer on April 25, 2000.

9. Most recently, Opposer applied to register the CREATIVE EDUCATION trademark on June 6, 1997 for “educational materials, namely, printed teacher’s guides for use in teaching primary and secondary school reading skills, posters and printed instructional materials to enhance reading skills at the primary and secondary school level.” Registration No. 2,394,534 was granted to Opposer on October 17, 2000 and has attained incontestable status.

10. In view of the issuance of Opposer’s registrations noted above well prior to any use by Applicant, and prior to the filing by Applicant of its Application Serial No. 78/703,333, there is no issue of priority concerning Opposer’s adoption and use of its mark prior to any adoption and use of the opposed mark by Applicant.

11. CREATIVE EDUCATION is a distinctive mark that has been used by Opposer for 30 years. Opposer has spent a substantial sum on advertising and publicity using the CREATIVE EDUCATION trademark. Schools, private institutions and others recognize the CREATIVE EDUCATION trademark and associate the mark with Opposer and its educational materials.

12. The rights Opposer has acquired in the trademark CREATIVE EDUCATION are superior to any rights Applicant claims to have in the trademark AMERICA’S LEADER IN CREATIVE EDUCATION.

13. Use of the trademark AMERICA’S LEADER IN CREATIVE EDUCATION is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Applicant’s products because purchasers will likely believe that Applicant’s products are Opposer’s products, or in some way are generally connected with, licensed, or approved by Opposer.

14. Because Applicant's mark and Opposer's mark are confusingly similar and are used on closely related goods, and are or will be sold in related channels of trade, purchasers are likely to believe and would be justified in believing that Applicant's goods originate from Opposer or from an entity in some way associated with, endorsed by, or sponsored by Opposer, resulting in damage and detriment to Opposer and its reputation.

15. Use by Applicant of the mark AMERICA'S LEADER IN CREATIVE EDUCATION is without Opposer's consent or permission.

16. Applicant's registration should be denied because of the mark AMERICA'S LEADER IN CREATIVE EDUCATION is likely to cause confusion with Opposer's use of the similar mark.

17. Applicant's registration should be denied because the mark AMERICA'S LEADER IN CREATIVE EDUCATION, and the phrase AMERICA'S LEADER, are laudatory and merely descriptive as applied to the quality of services identified in Applicant's application.

WHEREFORE, registration by Applicant of the aforesaid trademark for the aforesaid goods will be damaging to Opposer, who requests that the registration sought by Applicant be denied.

It is respectfully requested that the fees due for this Opposition be charged to the Deposit Account of the undersigned Attorney's law firm, Deposit Account number 13-4300. If any further fees are due to bring the present Notice of Opposition into compliance with the rules for oppositions and to avoid abandonment of this Opposition,

the Patent Office is hereby authorized to charge these fees to the aforementioned
Deposit Account.

Dated: November 29, 2006.

Respectfully Submitted,
By: /Richard A. Kempf/
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**ATTORNEYS FOR OPPOSER
THE CREATIVE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Amended Notice
of Opposition has been served on Christie Baty Heinze by mailing said copy on
November 29, 2006, via First Class Mail, postage prepaid to:

Christie Baty Heinze
Finnegan, Henderson, Farabow, Garrett, et al.
901 New York Avenue NW
Washington, D.C. 20001-4413

Dated: November 29, 2006

/Judith E. Diaz de Leon/