

ESTTA Tracking number: **ESTTA144602**

Filing date: **06/07/2007**

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	Thermo King Corporation		
Entity	Corporation	Citizenship	Delaware
Address	314 West 90th Street Minneapolis, MN 55420 UNITED STATES		

Attorney information	Billie Jean Smith Michael Best & Friedrich LLP 100 East Wisconsin Avenue Suite 3300 Milwaukee, WI 53202 UNITED STATES mkeipdocket@michaelbest.com Phone:414-271-6560		
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Applicant Information

Application No	78972057	Publication date	05/08/2007
Opposition Filing Date	06/07/2007	Opposition Period Ends	06/07/2007
Applicant	Midea America Corporation 10305 N.W. 41st Street, Suite 221 Miami, FL 33178 UNITED STATES		

Goods/Services Affected by Opposition

Class 011. All goods and services in the class are opposed, namely: Residential and commercial air conditioners, portable air conditioners, window air conditioners, dehumidifiers, split air conditioners

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Set forth in the attached Notice of Opposition.

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	522496	Application Date	07/19/1947
Registration Date	03/21/1950	Foreign Priority Date	NONE
Word Mark	THERMO KING		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class U031 (International Class 011). First use: First Use: 1938/06/20 First Use In Commerce: 1938/06/20 SELF-CONTAINED TEMPERATURE CONTROL REFRIGERATION UNITS ADAPTED FOR CONNECTION TO INDUSTRIAL ENCLOSURES SUCH AS TRANSPORT VEHICLES, LOCKER CABINETS, AND THE LIKE; SAID UNITS BEING ADAPTED TO CONTROL THE TEMPERATURE OF THE AIR WITHIN SUCH ENCLOSURES

U.S. Registration No.	800606	Application Date	01/14/1965
Registration Date	12/21/1965	Foreign Priority Date	NONE
Word Mark	THERMO KING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U019 (International Class 012). First use: First Use: 1956/08/21 First Use In Commerce: 1956/08/21 AIR CONDITIONING FOR PASSENGER AND/OR DRIVER COMFORT IN BUSES, TRUCK CABS, AUTOMOBILES, AND THE LIKE		

U.S. Registration No.	982686	Application Date	09/13/1972
Registration Date	04/23/1974	Foreign Priority Date	NONE
Word Mark	THERMO KING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U103 (International Class 037). First use: First Use: 1944/08/01 First Use In Commerce: 1944/08/01 MAINTENANCE, OVERHAUL AND REPAIR OF TRANSPORT REFRIGERATION AND AIR CONDITIONING EQUIPMENT		

U.S. Registration No.	2330732	Application Date	01/12/1998
Registration Date	03/21/2000	Foreign Priority Date	NONE
Word Mark	TK THERMO KING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 007. First use: First Use: 1965/02/00 First Use In Commerce: 1965/02/00 Refrigerator compressors Class 009. First use: First Use: 1965/02/00 First Use In Commerce: 1965/02/00 Computer software, namely, programs for use in controlling the operation of mobile transport refrigeration systems, programs for use in tracking the efficiency of mobile transport refrigeration systems, programs for use in marketing of mobile transport refrigeration systems Class 011. First use: First Use: 1965/02/00 First Use In Commerce: 1965/02/00		

	Self-contained temperature control refrigeration units and control panels adapted for connection to industrial enclosures such as rail transport vehicles, sea going containers and the like; all components associated therewith, such as compressors, and the like; said units being adapted to control the temperature and humidity of the air within such enclosures by means heat exchangers; air conditioning units for passenger and/or driver comfort in buses, and the like
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U.S. Registration No.	2301438	Application Date	01/12/1998
Registration Date	12/21/1999	Foreign Priority Date	NONE
Word Mark	TK THERMO KING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1965/02/00 First Use In Commerce: 1965/02/00 retail outlets featuring transport refrigeration and air conditioning equipment Class 037. First use: First Use: 1965/02/00 First Use In Commerce: 1965/02/00 maintenance, overhaul and repair of transport refrigeration and air conditioning equipment		

U.S. Registration No.	2655517	Application Date	07/12/2000
Registration Date	12/03/2002	Foreign Priority Date	NONE
Word Mark	WHISPER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1997/08/00 First Use In Commerce: 1997/08/00 Self-contained temperature control units adapted for connection to industrial enclosures such as transport vehicles, locker cabinets, and the like; said units being adapted to refrigerate and/or heat the space therein to preserve perishable products in transit and sold as a unit such that no claim is made to the right to use the mark for individual components of the unit, specifically, fans and blowers		

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Signature	/billie jean smith/
Name	Billie Jean Smith
Date	06/07/2007

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

In the Matter of Trademark Applicant:)
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Midea America Corporation)
)
Serial No. : 78/972057)
)
Filed : September 12, 2006)
)
Mark: : QUIET KING)
)
)

Published in the Official Gazette dated May 8, 2007

THERMO KING CORPORATION,)
)
Opposer,)
)
v.)
)
MIDEA AMERICA CORPORATION,)
)
Applicant.)

Opp. No.

NOTICE OF OPPOSITION

Thermo King Corporation (“Opposer”), a Delaware corporation, believes that it will be damaged by the registration of Midea America Corporation (“Applicant”) of the mark QUIET KING (“Applicant’s Mark”), shown in Serial No. 78/972057, in International Class 11 (for residential and commercial air conditioners, portable air conditioners, window air conditioners, dehumidifiers, split air conditioners), and hereby opposes said registration.

As grounds of opposition, Opposer alleges:

1. For many years the Opposer has continuously used, and presently uses, various trademarks consisting of the designation “THERMO KING” or incorporating the designation

“THERMO KING” together with other word and/or design elements and presently uses trademark “WHISPER” (collectively, the “THERMO KING Marks”), in interstate commerce throughout the United States in connection with the advertising, promotion, distribution and sale of its products and services, including, without limitation, transport temperature equipment and control systems for a variety of mobile applications, including trailers, truck bodies, buses, shipboard containers and railway cars, and products, parts, accessories and services related thereto.

2. Opposer is also the owner of the following registrations of the THERMO KING Marks on the Principal Register of the United States Patent and Trademark Office (“USPTO”), together with all right, title and interest in the marks shown therein, and all of the business and good will represented thereby (collectively, the “THERMO KING Registrations”)

Trademark	Reg. No.	Reg. Date	Goods/Services
THERMO KING	0522496	3/21/1950	self-contained temperature control refrigeration units adapted for connection to industrial enclosures such as transport vehicles, locker cabinets, and the like; said units being adapted to control the temperature of the air within such enclosures (International Class 11)
THERMO KING	0800606	12/21/1965	air conditioning for passenger and/or driver comfort in busses, truck cabs, automobiles, and the like (International Class 12)
THERMO KING	0982686	4/23/1974	maintenance, overhaul and repair of transport refrigeration and air conditioning equipment (International Class 37)
TK THERMO KING and design	2330732	3/21/2000	refrigerator compressors (International Class 7); computer software, namely, programs for use in controlling the operation of mobile transport refrigeration systems, programs for use in tracking the efficiency of mobile transport refrigeration systems, programs for use in marketing of mobile transport refrigeration systems (International Class 9); and self-contained temperature control refrigeration units and control panels adapted for connection to industrial enclosures such as rail transport vehicles, sea going containers and the like; all components associated therewith, such as compressors, and the like; said units being adapted

			to control the temperature and humidity of the air within such enclosures by means heat exchangers; air conditioning units for passenger and/or driver comfort in buses, and the like (International Class 11)
TK THERMO KING and design	2301438	12/21/1999	retail outlets featuring transport refrigeration and air conditioning equipment (International Class 35) and maintenance, overhaul and repair of transport refrigeration and air conditioning equipment (International Class 37)
WHISPER	2655517	12/03/2002	self-contained temperature control units adapted for connection to industrial enclosures such as transport vehicles, locker cabinets, and the like; said units being adapted to refrigerate and/or heat the space therein to preserve perishable products in transit and sold as a unit such that no claim is made to the right to use the mark for individual components of the unit, specifically, fans and blowers. (International Class 11)

3. Opposer has, at great expense, continuously engaged in the sale and promotion of its products and services under and in connection with its well known THERMO KING Marks. Opposer has, at great expense, extensively and continuously offered to the public high quality products and services under its THERMO KING Marks. By reason of its efforts, and the expenditure of considerable sums for extensive promotion, and by virtue of the excellence of its products and services sold under the THERMO KING Marks, the public and trade have come to recognize the THERMO KING Marks as signifying Opposer and its products and services, and Opposer has built up exceedingly valuable goodwill in connection with its products and services offered under and in connection with the THERMO KING Marks.

4. Applicant's Mark is confusingly similar in sight, sound, meaning, and commercial impression to Opposer's THERMO KING Marks which have been used in interstate commerce prior to any use or application for trademark registration by Applicant. Moreover, the goods and services provided by Opposer under the THERMO KING Marks and identified in the THERMO KING Registrations and those goods proposed to be provided by Applicant are related, and

would be promoted through the same channels of trade for sale to, and use by, the same category of purchasers.

5. If Applicant is permitted to use and register Applicant's Mark for its goods as specified in the application herein opposed, such registration and use by Applicant are likely to cause confusion, deception and mistake, and will seriously damage Opposer. Persons familiar with Opposer's THERMO KING Marks would be likely to buy Applicant's goods as and for goods and/or services made and sold by Opposer. Any such confusion in trade inevitably would result in loss of sales to Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under Applicant's Mark would reflect upon and seriously injure the reputation which Opposer has established for its products sold under its THERMO KING Marks.

6. If Applicant was granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of Applicant's Mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that Applicant's application, Serial No. 78/972057, be rejected, and that Applicant's Mark sought for the goods specified above for International Class 11 be denied and refused.

The Opposer hereby consents and appoints Billie Jean Smith, member of the bar of the State of Wisconsin, whose address is Michael Best & Friedrich LLP, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, WI 53202-4108, and Jeffrey H. Brown and Luke DeMarte, members of the bar of the State of Illinois, whose address is Michael Best & Friedrich LLP, 180 N. Stetson Avenue, Suite 2000, Chicago, IL 60601, as its duly authorized agents and attorneys in the matter of the opposition above-identified to prosecute said opposition, to transact all business in the Patent and Trademark Office and in the United States courts in connection with this

opposition, to sign its name to all papers which may hereafter be filed in connection therewith,
and to receive all communications related to the same.