

ESTTA Tracking number: **ESTTA177226**

Filing date: **11/28/2007**

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	United Artists Pictures Inc.
Granted to Date of previous extension	12/05/2007
Address	10250 Constellation Blvd. Los Angeles, CA 90067 UNITED STATES

Attorney information	Joan Kupersmith Larkin Seyfarth Shaw LLP 2029 Century Park East Suite 3300 Los Angeles, CA 90067 UNITED STATES jlarkin@seyfarth.com, mmoore@mgm.com Phone:(310) 201-5240
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Applicant Information

Application No	77104926	Publication date	08/07/2007
Opposition Filing Date	11/28/2007	Opposition Period Ends	12/05/2007
Applicant	Peterson, James 2608 Gilmary Ave. Las Vegas, NV 89102 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Entertainment in the nature of live comedy and impersonation performances
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THE BIRDCAGE		
Goods/Services	production and distribution of entertainment-related goods		

Attachments	birdcagenotice.PDF (5 pages)(126374 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joan Kupersmith Larkin/
Name	Joan Kupersmith Larkin
Date	11/28/2007

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

In the Matter of Application Serial No. 77/104,926
Published in the Official Gazette of August 7, 2007

UNITED ARTISTS PICTURES INC.

Opposer,

vs.

JAMES PETERSON

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Opposer United Artists Pictures Inc. (“Opposer”) believes that it will be damaged by the registration of the mark shown in Application Serial No. 77/104,926, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a Delaware corporation with its principal place of business at 10250 Constellation Blvd., Los Angeles, California 90067.

2. Upon information and belief, applicant James Peterson (“Applicant”) is an individual, with an address at 2608 Gilmary Ave., Las Vegas, NV 89102.

3. On February 12, 2007, Applicant filed Application Serial No. 77/104,926 (the “Opposed Application”) to register the mark “BIRD CAGE” on the Principal Register for “entertainment in the nature of live comedy and impersonation performances,” on the basis of Applicant’s alleged intent to use the mark in commerce.

4. Opposer, its predecessors-in-interest, and its affiliated companies, have been involved for many years in various aspects of the entertainment business, including, but not limited to, the development, production, marketing and distribution of theatrical and television

motion pictures, animated films and cartoons, video recordings, CD ROM and interactive products, and related merchandise.

5. From a time long prior to the filing date of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, Opposer has made extensive use of the mark “THE BIRDCAGE” in the United States in connection with the production and distribution of entertainment-related goods. Opposer first used the mark “THE BIRDCAGE” in connection with Opposer’s 1996 film entitled The Birdcage, a comedy starring Robin Williams, Nathan Lane and Gene Hackman. The film, a remake of the 1978 film La Cage Aux Folles, was set in a nightclub featuring performances by female impersonators and told the story of a gay couple and the adventures that ensue when their son brings home his fiance’s ultra-conservative parents to meet them. The name of the nightclub in the film was “The Birdcage.”

6. Opposer is a wholly owned subsidiary of Metro-Goldwyn-Mayer Studios Inc. (“MGM”). MGM owns all rights in and to the mark LA CAGE AUX FOLLES. MGM has used the mark “LA CAGE AUX FOLLES” in the United States in connection with the production and distribution of two films entitled La Cage Aux Folles and La Cage Aux Folles II. Because Opposer’s film The Birdcage was a remake of MGM’s La Cage Aux Folles films, the producers of the film chose a title that would convey this to consumers and was a “play on words” of the original film title.

7. The relevant purchasing public will assume that the services offered by Applicant under its claimed “BIRD CAGE” mark are in some way associated with Opposer and “THE BIRDCAGE” mark, or are in some way approved or licensed by Opposer, when such is not the case.

8. Upon information and belief, Applicant selected and adopted its claimed “BIRD CAGE” mark for use with the services identified in the Opposed Application due to its similarity to Opposer’s “THE BIRDCAGE” mark, and to suggest an affiliation or other business relationship with Opposer, its film The Birdcage and the films of its parent company, and the goods offered by Opposer.

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion With Previously-Used Mark)

9. Opposer repeats and realleges the allegations in preceding paragraphs 1-8, inclusive, as if fully set forth herein.

10. The Opposed Mark so resembles a mark previously used by Opposer in the United States, and not abandoned, as to be likely, when applied to the services identified in the Opposed Application, to cause confusion, or to cause mistake, or to deceive, and is thus unregistrable under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant prima facie evidence of, *inter alia*, the exclusive nationwide right to use its confusingly-similar mark, in derogation of Opposer’s rights in the mark “THE BIRDCAGE”.

WHEREFORE, Opposer prays for judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

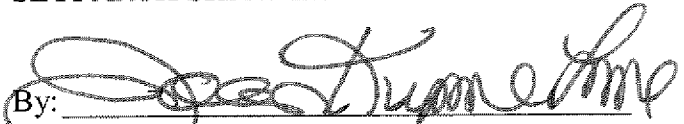
Pursuant to 37 CFR § 2.101(a), Opposer is serving a copy of this Notice of Opposition on the Applicant by mailing a copy to its representative at the correspondence address identified in the Opposed Application. Please charge any deficiency or credit any overpayment to Deposit

Account No. 50-2291 and direct all correspondence and communication in connection with this opposition to the undersigned.

Respectfully submitted,

SEYFARTH SHAW LLP

Dated: 11/28, 2007

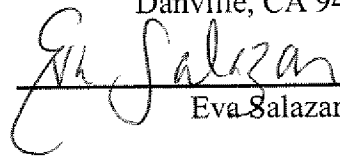
By: 

Joan Kupersmith Larkin
Christopher C. Larkin
Attorneys for Opposer
UNITED ARTISTS PICTURES INC.

CERTIFICATE OF SERVICE

I hereby certify that on NOV. 28, _____, 2007, I served the foregoing Notice of Opposition on the Applicant by depositing a true copy thereof in a sealed envelope, postage prepaid, in First Class U.S. mail addressed to Applicant's counsel as follows:

Thomas P. Philbrick
Allmark Trademark
4041 Sugar Maple Drive
Suite A
Danville, CA 94506



Eva Salazar