

ESTTA Tracking number: **ESTTA211268**

Filing date: **05/14/2008**

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	Mr.CharlesF.HudsonJr.
Granted to Date of previous extension	05/14/2008
Address	10337 NW Highway 27 Ocala, FL 34482 UNITED STATES

Attorney information	Douglas Wm. Massinger, Esquire MASSINGER LAW OFFICES 887 NE 100 Street Ocala, FL 34479 UNITED STATES massinger@earthlink.net, cmassinger@earthlink.net Phone:(352) 351-0351
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**Applicant Information**

Application No	78882634	Publication date	01/15/2008
Opposition Filing Date	05/14/2008	Opposition Period Ends	05/14/2008
Applicant	Chipman, Roger, Nelson 361 Emma's Grove Road Fletcher, NC 28732 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 020. All goods and services in the class are opposed, namely: Plastic garden globes containing predatory insects for repelling other insects
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**Grounds for Opposition**

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

U.S. Application No.	77143869	Application Date	03/29/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SHOO-FLY		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticides for use in equine and bovine environments Class 007. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticide dispensing systems, namely power-operated sprayers for insecticide for use in animal environments, namely equine and bovine

U.S. Application No.	77144541	Application Date	03/30/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SHOO-FLY
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Design Mark	
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Description of Mark	The mark consists of Stylized lettering of the word "SHOO-FLY" with a logo comprised of a simulated length of tubing extending from the letter "S" terminating in a simulated nozel dispensing a mist over an inverted fly in front of a tombstone.
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Goods/Services	Class 005. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticides for use in equine and bovine environments Class 007. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticide dispensing systems, namely power-operated sprayers for insecticide for use in animal environments, namely equine and bovine
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Related Proceedings	A Petition for Cancellation of Registration No. 3,334,810 owned by Mr. Chipman for the mark SHOO-FLY EYE is being submitted contemporaneously herewith
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Attachments	77143869#TMSN.jpeg ( 1 page )( bytes ) 77144541#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition as Filed 5-14-08.pdf ( 5 pages )(171749 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	/Douglas Wm. Massinger, Esquire/
Name	Douglas Wm. Massinger, Esquire
Date	05/14/2008

In The Matter of Application Serial No. 78/882,634  
For the mark SHOO-FLY DRAGONEYE  
Published in the Official Gazette on: January 15, 2008

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

In The Matter of Application Serial No. 78/882,634  
For the mark SHOO-FLY DRAGONEYE  
Published in the Official Gazette on: January 15, 2008

Charles F. Hudson, Jr.	)
Opposer,	)
v.	)
Roger Nelson Chipman	)
Applicant.	)

Opposition No.:

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

NOTICE OF OPPOSITION

Charles F. Hudson, Jr., an adult individual whose address is 10337 N.W. Highway 27, Ocala, Florida 34482 (hereinafter "Opposer") believes that he will be damaged by registration of the mark **SHOO-FLY DRAGONEYE** directed to "Plastic garden globes containing predatory insects for repelling other insects" which is the subject of U.S. Trademark Application Serial No. 78/882,634 in Class 20 and hereby opposes the same.

This Notice of Opposition has been timely filed, Opposer having been granted a 90 day extension of time in which to oppose, which expires on May 14, 2008.

As grounds of opposition, it is alleged that:

In The Matter of Application Serial No. 78/882,634  
For the mark SHOO-FLY DRAGONEYE  
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1. The Applicant seeks to register **SHOO-FLY DRAGONEYE** as a trademark for “Plastic garden globes containing predatory insects for repelling other insects” in International Class 20, as evidenced by the publication of said mark in the Official Gazette on January 15, 2008.

2. Applicant filed its Application Serial No. 78/882,634 under section 1(b) based on its intent-to-use the mark **SHOO-FLY DRAGONEYE** in commerce. Applicant has not, as of the date of the filing of this Notice of Opposition, alleged use of the mark.

3. On March 29, 2007, Opposer filed an application to register the mark **SHOO-FLY** (word mark) (“Opposer Application No. 1”) with the U.S. Patent and Trademark Office. This application attested to the Opposer’s use of the mark **SHOO-FLY** in interstate commerce on or in connection with “Insecticides for use in equine and bovine environments” in International Class 5 as well as “Insecticide dispensing systems, namely power-operated sprayers for insecticide for use in animal environments, namely equine and bovine” in International Class 7, and claiming a first use at least as early as October 8, 1982. The Application was assigned serial number 77/143,869.

3. On March 30, 2007, Opposer filed an application to register the mark **SHOO-FLY** (stylized) (“Opposer Application No. 2”) with the U.S. Patent and Trademark Office. This application attested to the Opposer’s use of the mark **SHOO-FLY** in interstate commerce on or in connection with “Insecticides for use in equine and bovine environments” in International Class 5 as well as “Insecticide dispensing systems, namely power-operated sprayers for insecticide for use in animal environments, namely equine and bovine” in International Class 7, and claiming a first use at least as early as October 8, 1982. The Application was assigned serial number 77/144,541. Opposer Application No. 1 and Opposer Application No. 2 are together hereinafter referred to as (“Opposer’s Applications”).

4. There is no issue as to priority. The Applicant has not yet commenced use of the subject mark in commerce. By contrast, Opposer has been using its **SHOO-FLY** marks in commerce since at least as early as 1982.

5. Opposer has sold and continues to sell directly and through its network of distributors the goods listed in Opposer's Applications under its **SHOO-FLY** marks throughout the United States and internationally. Opposer has developed an exceedingly valuable goodwill in respect to its **SHOO-FLY** marks.

6. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its products, the Opposer has gained for its above-identified marks a most valuable reputation.

7. The trademark proposed for registration by the Applicant, namely, **SHOO-FLY DRAGONEYE**, is substantially incorporated in its entirety in Opposer's **SHOO-FLY** marks, and is applied to related goods as those sold by Opposer and so nearly resembles the Opposer's **SHOO-FLY** marks as to be likely to be confused therewith and mistaken therefore. The Applicant's mark is deceptively similar to Opposer's **SHOO-FLY** marks so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing the Applicant's mark.

8. On January 11, 2008 and March 11, 2008, the U.S. Patent and Trademark Office suspended action on Opposer Application No. 2 and Opposer Application No. 1, respectively, based in part on Application Serial No. 78/882,634 stating that if and when it registers it may be cited against Opposer's Applications in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). Thus, Opposer has been damaged by the Applicant's trademark application in that

the registration has impeded registration of Opposer's **SHOO-FLY** mark.

9. Moreover, if the Applicant is permitted to use and register his mark for his goods, as specified in the application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between the Applicant's mark and the Opposer's marks. Persons familiar with Opposer's marks would be likely to buy Applicant's goods as and for a product made and sold by the Opposer. Any such confusion in trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's products marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its products merchandised under its **SHOO-FLY** marks for more than a quarter of a century.

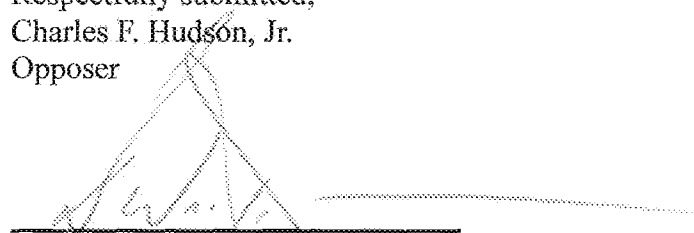
10. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

WHEREFORE, the Opposer prays that the application Serial No. 78/882,634 be rejected, and that the mark therein sought for the goods herein specified in International Class 20 be denied and refused.

Respectfully submitted,  
Charles F. Hudson, Jr.  
Opposer

Date: May 14, 2008

By:

  
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Douglas Wm. Massinger, Esq.  
USPTO Reg. No. 35,942  
Attorney for Opposer

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