

ESTTA Tracking number: **ESTTA512476**

Filing date: **12/21/2012**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Military Order of the Purple Heart of the United States of America, Incorporated
Granted to Date of previous extension	01/02/2013
Address	5413-B Backlick Road Springfield, VA 22151 UNITED STATES

Name	Military Order of the Purple Heart Service Foundation, Inc.
Granted to Date of previous extension	01/02/2013
Address	7008 Little River Turnpike Annandale, VA 22030 UNITED STATES

Attorney information	Marta S. Levine Quarles & Brady LLP 411 East Wisconsin Avenue Milwaukee, WI 53202 UNITED STATES marta.levine@quarles.com, david.cross@quarles.com Phone:414 277 5675
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Applicant Information

Application No	85596245	Publication date	09/04/2012
Opposition Filing Date	12/21/2012	Opposition Period Ends	01/02/2013
Applicant	Jewelry Exchange of Delaware Inc. Suite 135 4001 Kennett Pike Greenville, DE 19807 UNITED STATES		


Goods/Services Affected by Opposition

Class 014. All goods and services in the class are opposed, namely: Jewelry
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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. Registration No.	2206768	Application Date	07/02/1997
Registration Date	12/01/1998	Foreign Priority Date	NONE
Word Mark	MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1939/05/01 First Use In Commerce: 1939/05/01 ornamental pins; medals; tie tacks; precious metal money clips; medallions; bolo ties with precious metal tips; clocks; watches		

U.S. Registration No.	2206764	Application Date	07/02/1997
Registration Date	12/01/1998	Foreign Priority Date	NONE
Word Mark	PURPLE HEART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1939/02/01 First Use In Commerce: 1939/02/01 magazine for combat wounded veterans		

U.S. Registration No.	2208417	Application Date	07/02/1997
Registration Date	12/08/1998	Foreign Priority Date	NONE
Word Mark	MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 026. First use: First Use: 1944/05/01 First Use In Commerce: 1944/05/01 ornamental cloth patches		
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U.S. Registration No.	2206762	Application Date	07/02/1997
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Registration Date	12/01/1998	Foreign Priority Date	NONE
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Word Mark	MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932		
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Design Mark			
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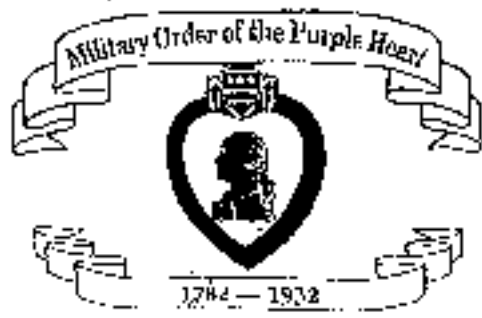
Description of Mark	NONE		
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Goods/Services	Class 020. First use: First Use: 1951/03/01 First Use In Commerce: 1951/03/01 plaques		
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U.S. Registration No.	2206761	Application Date	07/02/1997
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Registration Date	12/01/1998	Foreign Priority Date	NONE
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Word Mark	MILITARY ORDER OF THE PURPLE HEART 1782 1932		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 024. First use: First Use: 1940/04/01 First Use In Commerce: 1940/04/01 cloth flags, flag sets and banners		
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U.S. Registration No.	2212475	Application Date	07/02/1997
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Registration Date	12/22/1998	Foreign Priority Date	NONE
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Word Mark	MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932		
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Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1944/04/01 First Use In Commerce: 1944/04/01 ball point pens, decals, informational brochures about military history and fraternal activities for combat-wounded veterans		


U.S. Registration No.	2208425	Application Date	07/07/1997
Registration Date	12/08/1998	Foreign Priority Date	NONE

Word Mark	MILITARY ORDER OF THE PURPLE HEART SERVICE FOUNDATION
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Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 036. First use: First Use: 1958/08/26 First Use In Commerce: 1958/08/26 providing scholarships, tuition assistance and financial aid to combat-wounded veterans, their dependents and survivors</p> <p>Class 042. First use: First Use: 1958/08/26 First Use In Commerce: 1958/08/26 association services, namely, promoting the interests of combat-wounded veterans, their dependents and survivors</p>		

U.S. Registration No.	4015788	Application Date	01/28/2011
Registration Date	08/23/2011	Foreign Priority Date	NONE

Word Mark	PURPLE HEART
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 1991/00/00 First Use In Commerce: 1991/00/00 Charitable fundraising

Attachments	75318751#TMSN.gif (1 page)(bytes) 75318548#TMSN.gif (1 page)(bytes) 75318541#TMSN.gif (1 page)(bytes) 75318535#TMSN.gif (1 page)(bytes) 75318297#TMSN.gif (1 page)(bytes) 75319682#TMSN.gif (1 page)(bytes) 85229127#TMSN.jpeg (1 page)(bytes) Notice of Opposition MOTHERS PURPLE HEART 12.21.2012.PDF (6 pages) (219727 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	/MartaLevine/
Name	Marta S. Levine
Date	12/21/2012

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

In the Matter of Application Serial No. 85/596245
Mark: MOTHER'S PURPLE HEART
Published in the *Official Gazette* on September 4, 2012

MILITARY ORDER OF THE PURPLE
HEART OF THE UNITED STATES OF
AMERICA, INCORPORATED

and

MILITARY ORDER OF THE PURPLE
HEART SERVICE FOUNDATION, INC.,

Opposers,

v.

Opposition No. _____

JEWELRY EXCHANGE OF DELAWARE
INC.,

Applicant.

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Military Order of the Purple Heart of the United States of America, Incorporated
and Military Order of the Purple Heart Service Foundation, Inc. (collectively,
"Opposers"), believe that they would be damaged by registration of the mark shown in
Application Serial No. 85/596245, and hereby oppose same. Opposers have been granted
extensions of time to oppose, to January 2, 2013.

Opposers: Military Order of the Purple Heart of the United States of America, Incorporated and Military Order Of The Purple Heart Service Foundation, Inc.

Applicant: Jewelry Exchange Of Delaware Inc.

Application Serial No. 85/596245

As grounds of opposition, Opposers allege that:

1. Military Order of the Purple Heart of the United States of America, Incorporated is a Congressionally-chartered veterans organization with its principal place of business at 5413-B Backlick Road, Springfield, Virginia 22151. Military Order of the Purple Heart of the United States of America, Incorporated was established to assist, comfort and aid combat-wounded veterans of the United States and their dependants.

2. Military Order of the Purple Heart Service Foundation, Inc. is a Wisconsin not-for profit corporation, tax-exempt under IRS Section 501(c)(4), with its principal place of business at 7008 Little River Turnpike, Annandale, Virginia 22030. Military Order of the Purple Heart Service Foundation, Inc. engages in fundraising activities for and on behalf of Military Order of the Purple Heart of the United States of America, Incorporated. Military Order of the Purple Heart Service Foundation, Inc. is the exclusive national fundraising foundation for Military Order of the Purple Heart of the United States of America, Incorporated, raising funds to support a wide variety of veteran programs and to provide financial assistance to veterans and their dependents.

3. Application Serial No. 85/596245 is an intent-to-use trademark application, filed by Jewelry Exchange of Delaware Inc. ("Applicant") on April 12, 2012 under Section 1(b) of the Trademark Act (15 U.S.C. §1051(b), as amended), for registration of the mark MOTHER'S PURPLE HEART, for "jewelry" (in Int. Class 14).

Opposers: Military Order of the Purple Heart of the United States of America, Incorporated and Military Order Of The Purple Heart Service Foundation, Inc.

Applicant: Jewelry Exchange Of Delaware Inc.

Application Serial No. 85/596245

4. Opposers have used the PURPLE HEART mark for promoting the interests of combat-wounded veterans for over forty years.

5. Opposers use the PURPLE HEART mark specifically in connection with providing services to combat-wounded veterans and their dependants, including scholarships and tuition assistance, the publication of a magazine on veterans' issues and providing rehabilitation and assistance to indigent, needy, and physically, mentally and socially handicapped veterans of American wars.

6. Military Order of the Purple Heart of the United States of America, Incorporated is the owner of U.S. Trademark Registration Nos.:

- 2206768 (issued December 1, 1998) for MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932 and Design, used in connection with "ornamental pins, medals, tie tacks, precious metal money clips, medallions, bolo ties with precious metal tips, clocks, and watches";
- 2206764 (issued December 1, 1998) for PURPLE HEART used in connection with a "magazine for combat-wounded veterans";
- 2208417 (issued December 8, 1998) for MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932 and Design, used in connection with "ornamental cloth patches";
- 2206762 (issued December 1, 1998) for MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932 and Design, used in connection with "plaques";
- 2206761 (issued December 1, 1998) for MILITARY ORDER OF THE PURPLE HEART 1782 1932 and Design, used in connection with "cloth flags, flag sets and banners"; and
- 2212475 (issued December 22, 1998) for MILITARY ORDER PURPLE HEART OF THE U.S.A. 1782 1932 and Design, used in connection with "ball point pens,

Opposers: Military Order of the Purple Heart of the United States of America, Incorporated and Military Order Of The Purple Heart Service Foundation, Inc.

Applicant: Jewelry Exchange Of Delaware Inc.

Application Serial No. 85/596245

decals, informational brochures about military history and fraternal activities for combat-wounded veterans".

These registrations are valid and subsisting.

7. By consent of Military Order of the Purple Heart of the United States of America, Incorporated, Military Order of the Purple Heart Service Foundation, Inc. is the owner of U.S. Trademark Registration Nos.:

- 2208425 (issued December 8, 1998) for MILITARY ORDER OF THE PURPLE HEART SERVICE FOUNDATION and Design, used in connection with "providing scholarships, tuition assistance and financial aid to combat-wounded veterans, their dependents and survivors" and "association services, namely, promoting the interests of combat-wounded veterans, their dependents and survivors"; and
- 4015788 (issued June 7, 2011) for PURPLE HEART, used in connection with "charitable fundraising".

These registrations are valid and subsisting.

8. Opposers' federal priority date under Section 7(c) of the Trademark Act (15 U.S.C. §1057(c), as amended) is prior to the date that Applicant filed Application Serial No. 85/596245. Opposers have continuously used the PURPLE HEART mark for the above-listed goods and services in commerce since prior to the date that Applicant filed Application Serial No. 85/596245 and, upon information and belief, since prior to any use by Applicant of its mark.

9. Applicant's goods are closely related to Opposers' goods and services.

Opposers: Military Order of the Purple Heart of the United States of America, Incorporated and Military Order Of The Purple Heart Service Foundation, Inc.

Applicant: Jewelry Exchange Of Delaware Inc.

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10. Applicant's mark so resembles Opposers' PURPLE HEART mark as to be likely, when used in connection with Applicant's goods, to cause confusion and to cause mistake and to deceive. Specifically, and without limitation, members of the public seeing Applicant's mark are likely to believe or assume that said mark identifies goods that are provided by or otherwise associated with or sponsored by Opposers.

11. By reason of the foregoing, registration of Applicant's mark will result in irreparable injury to Opposers and their rights in the PURPLE HEART mark.

WHEREFORE, Opposers pray that this opposition be sustained and that registration of Applicant's mark be refused.

Opposers: Military Order of the Purple Heart of the United States of America, Incorporated and Military Order Of The Purple Heart Service Foundation, Inc.

Applicant: Jewelry Exchange Of Delaware Inc.

Application Serial No. 85/596245

Dated: December 21, 2012

Respectfully submitted,

MILITARY ORDER OF THE PURPLE HEART
OF THE UNITED STATES OF AMERICA,
INCORPORATED

and

MILITARY ORDER OF THE PURPLE HEART
SERVICE FOUNDATION, INC.

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David R. Cross

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Certificate of Service and Transmittal: I hereby certify that this correspondence is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below, with a copy sent by first class mail, postage prepaid, to: Keith A. Weltsch, Scully, Scully, Scott, Murphy & Presser, P.C, 400 Garden City Plaza, Ste 300, Garden City, New York 11530-3319.

Date: December 21, 2012

Marta Levine
Marta S. Levine