

ESTTA Tracking number: **ESTTA718759**

Filing date: **01/06/2016**

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	SWI-DE, LLC
Granted to Date of previous extension	01/06/2016
Address	12415 SW 136TH AVENUE, SUITE 7 MIAMI, FL 33186 UNITED STATES

Attorney information	DONALD C. LUCAS LUCAS & MERCANTI, LLP 30 Broad Street, 21st Floor NEW YORK, NY 10004 UNITED STATES info@lmiplaw.com Phone:212-661-8000
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Applicant Information

Application No	86654243	Publication date	09/08/2015
Opposition Filing Date	01/06/2016	Opposition Period Ends	01/06/2016
Applicant	Papukyan, Narek 1172 Justin Ave Glendale, CA 91201 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Flavored tobacco; Flavorings for tobacco substitutes; Herbal molasses; Herbs for smoking; Hookah tobacco; Leaf tobacco; Molasses tobacco; Pipe tobacco; Smoking tobacco; Tobacco substitutes

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2252336	Application Date	12/04/1996
Registration Date	06/15/1999	Foreign Priority Date	NONE
Word Mark	HEAVEN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 1996/02/00 First Use In Commerce: 1996/02/00 cigars

U.S. Registration No.	2747335	Application Date	09/12/2002
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	HEAVENLY CIGAR COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2000/07/00 First Use In Commerce: 2000/07/00 Cigars		

U.S. Registration No.	3105961	Application Date	05/25/2004
Registration Date	06/20/2006	Foreign Priority Date	NONE
Word Mark	HEAVEN FINE CIGAR		
Design Mark			
Description of Mark	The mark consists in part of a winged crest design with two humans intertwined in front of a horse and a cherub shooting a bow and arrow.		
Goods/Services	Class 034. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Cigars; cigarillos; cigar tubes; [humidors;] and cigar accessories not made of precious metals, namely, cigar boxes [and tins]		

Attachments	78424719#TMSN.png(bytes) Notice of Opposition.pdf(305220 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	/DCL/
Name	DONALD C. LUCAS
Date	01/06/2016

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

In re Application Serial No. 86/654,243
Trademark: HEAVENLEAF and Design in Class 34

<p>SWI-DE, LLC,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p>PAPUKYAN, NAREK, Individual</p> <p style="text-align: center;">Applicant.</p>	Opposition No.
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NOTICE OF OPPOSITION

Opposer, SWI-DE, LLC, a Delaware corporation, having a place of business at 12415 SW 136TH AVENUE, SUITE 7, Miami, Florida 33186, believes that it will be damaged by registration of the mark HEAVENLEAF and Design, which is the subject of Application Serial No. 86/654,243, published on September 8, 2015, and hereby opposes same.

As grounds for the opposition, opposer alleges as follows:

1. Applicant, PAPUKYAN, NAREK, an individual of Glendale, California, filed an application to register the trademark HEAVENLEAF and Design for “Flavored tobacco; Flavorings for tobacco substitutes; Herbal molasses; Herbs for smoking; Hookah tobacco; Leaf tobacco; Molasses tobacco; Pipe tobacco; Smoking tobacco; Tobacco substitutes” based on intened use of the mark in commerce on June 7, 2015.

2. Opposer owns the following U.S. trademark registrations:

<u>Mark</u>	<u>Reg. No.</u>	<u>Goods/Services</u>
HEAVEN	Reg. No. 2,252,336	Cigars
HEAVENLY CIGAR COMPANY	Reg. No. 2,747,335	Cigars

HEAVEN FINE CIGAR & Design	Reg. No.: 3,105,961	Cigars; cigarillos; cigar tubes; and cigar accessories not made of precious metals, namely, cigar boxes
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3. The mentioned registrations are valid and subsisting. Documents showing the pertinent information from the USPTO database about such registrations are attached as Exhibit A.

4. Opposer, by itself, its predecessors and affiliated companies, commenced use of the trademark HEAVEN in interstate commerce on at least as early as February 1996, the trademark HEAVENLY CIGAR COMPANY in interstate commerce on at least as early as July 2000, and the trademark HEAVEN FINE CIGAR and Design in interstate commerce on at least as early as December 1999. Opposer has continuously used the marks HEAVEN, HEAVENLY CIGAR COMPANY and HEAVEN FINE CIGAR & Design in connection with cigars and other listed goods since the respective commenced use dates in interstate commerce. As a result of the widespread use in interstate commerce by Opposer, in connection cigars, the marks HEAVEN, HEAVENLY CIGAR COMPANY and HEAVEN FINE CIGAR & Design have acquired extensive goodwill, and are well known and recognized by the public.

5. Opposer's dates of first use for trademarks HEAVEN, HEAVENLY CIGAR COMPANY and HEAVEN FINE CIGAR & Design all predate Applicant's Trademark application filing date of June 7, 2015 and Applicant's constructive date of first use of June 7, 2015.

6. Applicant is seeking registration for the mark HEAVENLEAF and Design in the same class as Opposer's marks, HEAVEN, HEAVENLY CIGAR COMPANY and HEAVEN FINE CIGAR & Design, and in connection with substantially similar and related goods, i.e. Flavored tobacco; Hookah tobacco; Leaf tobacco; Molasses tobacco; Pipe tobacco; Smoking tobacco. It is clear that the persons encountering them under their respective marks are likely to assume that they originate at the same source or that there is some association between their sources. Because of the substantial similarity between the marks HEAVEN, HEAVENLY CIGAR COMPANY and HEAVEN FINE CIGAR & Design and because of the substantial similarity of the goods, cigars, and cigar related products, a consumer is likely to believe that opposer has started selling "Flavored tobacco; Hookah tobacco; Leaf tobacco; Molasses tobacco; Pipe tobacco; Smoking tobacco" under the mark HEAVENLEAF and Design.

7. Additionally, the use of wings in the design of Applicant's mark also adds to the substantial similarity between Applicant's mark and Opposer's marks because Opposer uses winged images in its design in the mark in U.S. Registration No. 3,105,961 for HEAVEN FINE CIGAR and Design and uses winged humans to promote its cigars sold under the marks HEAVEN, HEAVENLY CIGAR COMPANY and HEAVEN FINE CIGAR & Design.

8. Use of the mark sought to be registered by Applicant is likely to cause confusion or to cause mistake or to deceive the purchasing public by reason of the Opposer's previously used and registered marks, by creating the mistaken belief that Applicant's goods are approved, endorsed or sponsored by Opposer, or that Opposer is the source of Applicant's goods, or that the goods of Applicant are in some way associated with Opposer, all to Opposer's grave injury and harm.

WHEREFORE, opposer respectfully requests that its opposition be sustained and that application to register the mark in Application Serial No. 86/654,243, be denied.

Should the payment accompanying this Notice of Opposition be insufficient, the Board is hereby authorized to charge counsel's Deposit Account No. 02-2275.

SWISHER INTERNATIONAL, INC.

Dated: January 6, 2016

/DCL/
Attorneys for Opposer
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Elizabeth Lee
Lucas & Mercanti, LLP
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New York, NY 10004
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2016, the foregoing Notice of Opposition was served, by first class mail on the following correspondent as set forth in the records of the U.S. Patent & Trademark Office:

Papukyan, Narek
1172 Justin Ave
Glendale, California 91201
UNITED STATES

/DCL/

Lucas & Mercanti, LLP
30 Broad Street, 21st Fl
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Email info@lmiplaw.com

EXHIBIT A

Trademark Electronic Search System (TESS) Records of
U.S. Trademark Reg. No. 2,252,336, No. 2,747,335, and Reg. No.: 3,105,961



United States Patent and Trademark Office

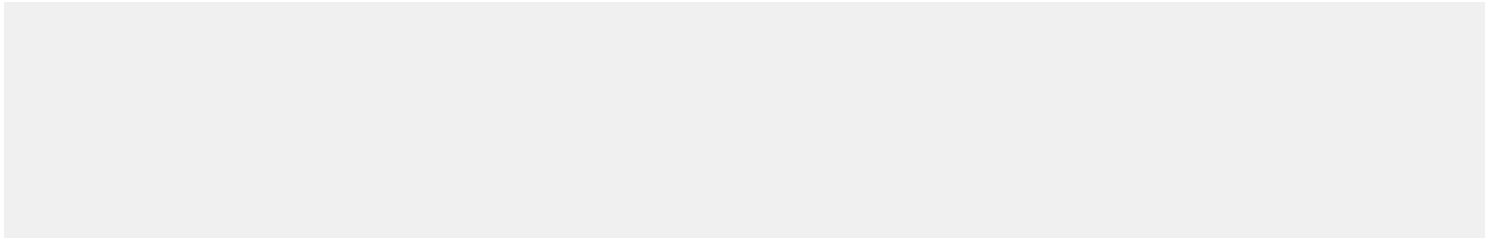
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Word Mark	HEAVEN
Goods and Services	IC 034. US 002 008 009 017. G & S: cigars. FIRST USE: 19960200. FIRST USE IN COMMERCE: 19960200
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75207694
Filing Date	December 4, 1996
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	February 17, 1998
Registration Number	2252336
International Registration Number	0843229
Registration Date	June 15, 1999
Owner	(REGISTRANT) Heaven Group, L.L.C., The LIMITED LIABILITY COMPANY FLORIDA 2950 Tamiani Trail North Naples FLORIDA 33940 (LAST LISTED OWNER) SWI-DE, LLC LIMITED LIABILITY COMPANY DELAWARE 12415 SW 136TH AVENUE, SUITE 7 MIAMI FLORIDA 33186
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	JENNIFER L. WHITELAW
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20090105.
Renewal	1ST RENEWAL 20090105
Live/Dead Indicator	LIVE

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Word Mark	HEAVENLY CIGAR COMPANY
Goods and Services	IC 034. US 002 008 009 017. G & S: Cigars. FIRST USE: 20000700. FIRST USE IN COMMERCE: 20000700
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78163514
Filing Date	September 12, 2002
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 13, 2003
Registration Number	2747335
Registration Date	August 5, 2003
Owner	(REGISTRANT) Heavenly Cigar Company CORPORATION FLORIDA 2154 Trade Center Way #2 Naples FLORIDA 34109 (LAST LISTED OWNER) SWI-DE, LLC LIMITED LIABILITY COMPANY DELAWARE 12415 SW 136TH AVENUE, SUITE 7 MIAMI FLORIDA 33186
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Roberta Jacobs-Meadway
Prior Registrations	2252336;2263949
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CIGAR COMPANY" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140515.

Renewal

1ST RENEWAL 20140515

**Live/Dead
Indicator**

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Word Mark HEAVEN FINE CIGAR

Goods and Services IC 034. US 002 008 009 017. G & S: Cigars; cigarillos; cigar tubes; [humidors;] and cigar accessories not made of precious metals, namely, cigar boxes [and tins]. FIRST USE: 19991200. FIRST USE IN COMMERCE: 19991200

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

- 02.01.31 - Men, stylized, including men depicted in caricature form
- 02.01.39 - Bathing suits, men wearing; Nude men, men wearing underclothes, bathing suits or brief attire; Underwear, men wearing
- 02.03.19 - Bathing suits (women wearing); Lingerie (women wearing); Nude women, women wearing underclothes, bathing suits or brief attire; Underclothes (women wearing); Underwear (women wearing)
- 02.03.24 - Women, stylized, including women depicted in caricature form
- 03.05.01 - Horses
- 03.05.24 - Stylized horses, donkeys, zebras
- 04.01.02 - Angels; Cherubs; Cupids; Halos on animals or humans; Winged personages
- 23.01.01 - Epees; Foils; Rapiers; Sabers; Swords
- 23.01.03 - Archery bows; Bows, archery; Crossbows
- 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon
- 24.09.07 - Advertising, banners; Banners
- 24.15.25 - Other arrows
- 26.03.21 - Ovals that are completely or partially shaded
- 26.15.28 - Miscellaneous designs with overall polygon shape; Polygonal shapes (miscellaneous overall shape)

Serial Number 78424719

Filing Date May 25, 2004

Current 1A

Basis**Original Filing Basis** 1A**Published for Opposition** March 28, 2006**Registration Number** 3105961**Registration Date** June 20, 2006**Owner** (REGISTRANT) Heavenly Cigar Company, Inc. CORPORATION FLORIDA 3760 Arnold Avenue Naples FLORIDA 34104

(LAST LISTED OWNER) SWI-DE, LLC LIMITED LIABILITY COMPANY DELAWARE 12415 SW 136TH AVENUE, SUITE 7 MIAMI FLORIDA 33186

Assignment Recorded ASSIGNMENT RECORDED**Attorney of Record** DONALD C. LUCAS**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CIGAR" APART FROM THE MARK AS SHOWN**Description of Mark** Color is not claimed as a feature of the mark. The mark consists in part of a winged crest design with two humans intertwined in front of a horse and a cherub shooting a bow and arrow.**Type of Mark** TRADEMARK**Register** PRINCIPAL**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150928.**Renewal** 1ST RENEWAL 20150928**Live/Dead Indicator** LIVE[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)