

ESTTA Tracking number: **ESTTA773553**

Filing date: **09/28/2016**

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	Cap-it International		
Entity	Corporation	Citizenship	Canada
Address	700 - 4954 275th Street Langley, BC V4W 0A3 CANADA		

Attorney information	Michael Heilbronner IdeaLegal, PC 1631 NE Broadway No. 443 Portland, OR 97232 UNITED STATES MHeilbronner@IdeaLegal.com Phone:503-449-9084
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Applicant Information

Application No	86168306	Publication date	08/30/2016
Opposition Filing Date	09/28/2016	Opposition Period Ends	09/29/2016
Applicant	Elmonte Camper Center 10927 Garvey Ave Elmonte, CA 91733 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Retail automobile parts and accessories; Retail stores featuring camper shells, running boards, fitted truck bedliners, mechanisms for adapting rigid load bed covers to the rear lift access of trucks, truck bed storage organizers, truck bed extenders, and storage boxes
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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. Registration No.	1867369	Application Date	04/17/1992
Registration Date	12/13/1994	Foreign Priority Date	01/21/1992
Word Mark	CAP-IT		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	<p>Class 012. First use: First Use: 1994/02/28 First Use In Commerce: 1994/02/28 light truck accessories; namely, truck canopies, bed-mounted tool boxes, runningboards, [bed liners, roof racks,] plastic shields to deflect bugs, rock guards, [slider windows, tube bumpers,] push guards, brush guards, side bars, plate steps, tow straps, tailgate nets and box rails</p> <p>Class 037. First use: First Use: 1994/02/28 First Use In Commerce: 1994/02/28 [installation of light truck accessories; namely, truck canopies, bed-mounted tool boxes, runningboards, bed liners, roof racks, plastic shields to deflect bugs, rock guards, slider windows, tube bumpers, push guards, brush guards, side bars, plate steps, tow straps, tailgate nets, box rails and bed mats]</p>

Attachments	Cap-it Notice of Opposition v Kenneth Kindt and CAPIT-LA mark.pdf(103612 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	/Michael Heilbronner/
Name	Michael Heilbronner
Date	09/28/2016

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

In the Matter of Application Serial No. 86/168,306
Mark: CAPIT-LA

Cap-it International Inc.
(Opposer)

v.

Kenneth Kindt/Elmonte Camper Center
(Applicant)

Opposition No. _____

Notice of Opposition

Opposer, Cap-it International Inc., a corporation organized under the laws of Canada, having its principal place of business at 700-4954 275th Street, Langley, British Columbia, V4W 0A3, believes that it will be damaged by the registration of Application Serial No. 86/168,306 for the CAPIT-LA mark (the "Pending Application") and opposes the same.

The grounds for opposition are as follows:

1. Opposer produces and sells truck accessories and offers related goods and services, all in connection with the CAP-IT mark.
2. Opposer has used the CAP-IT mark continuously in commerce in the United States since at least as early as 1994. The CAP-IT mark is inherently distinctive and enjoys strong recognition and secondary meaning as a result of Opposer's longstanding successful

advertising and sales of truck accessories and related goods and services in connection with the mark.

3. As a result of Opposer's longstanding use of the CAP-IT mark, Opposer owns valid common law rights in the CAP-IT mark in connection with truck accessories and related goods and services.

4. In addition to Opposer's common law rights in the CAP-IT mark, Opposer owns United States federal registration 1,867,369 for the CAP-IT mark for "light truck accessories; namely, truck canopies, bed-mounted tool boxes, running boards, plastic shields to deflect bugs, rock guards, push guards, brush guards, side bars, plate steps, tow straps, tailgate nets and box rails. (the "CAP-IT Registration")

5. The CAP-IT Registration is valid and subsisting, and Opposer is the lawful owner of it.

6. Opposer's right to use the CAP-IT mark in connection with the goods in the CAP-IT Registration has become incontestable under Section 15 of the Lanham Act (15 USC § 1065).

7. As a result of Opposer's longstanding and extensive use of the CAP-IT mark and ownership of the CAP-IT Registration, the CAP-IT mark and Registration reflect the extensive goodwill and consumer recognition established by Opposer in the mark.

8. On information and belief, Applicant, Kenneth Kindt is a California resident and a sole proprietor doing business as Elmonte Camper Center ("Applicant").

9. Applicant filed the Pending Application on January 17, 2014. The mark in the Pending Application is CAPIT-LA.

10. The Pending Application is filed as an intent-to-use application under Section 1(b) of the Lanham Act.

11. On information and belief, Applicant either has not used or no longer uses the CAPIT-LA mark in connection with the services in the Pending Application or otherwise.

12. The services covered by the Pending Application are “Retail automobile parts and accessories stores; Retail stores featuring camper shells, running boards, fitted truck bed liners, mechanisms for adapting rigid load bed covers to the rear lift access of trucks, truck bed storage organizers, truck bed extenders, and storage boxes”

13. Opposer’s common law and registered rights in the CAP-IT mark and CAP-IT Registration are senior to any rights Applicant owns in the CAPIT-LA mark, including any “constructive use” or other rights that might derive from the Pending Application.

14. The services covered by the Pending Application are closely related to the goods and services offered in connection with and covered by the CAP-IT mark and Registration. The parties’ respective goods and services also have overlapping and similar channels of trade and consumers.

15. Opposer will be damaged by registration of the CAPIT-LA mark because the mark is likely to cause confusion, mistake and deception with the CAP-IT mark and Registration.

Prayer for Relief

WHEREFORE, Opposer prays that the CAPIT-LA mark shown by the Pending Application be refused registration pursuant to the Lanham Act (including Section 2(d), 15 USC § 1052(d)).

Respectfully submitted,

September 28, 2016

Michael Heilbronner

Michael K. Heilbronner

MHeilbronner@IdeaLegal.com

IdeaLegal, P.C.

1631 NE Broadway; No. 443

Portland, OR 97232

Telephone: (503) 449-9084

Attorney for Opposer

CERTIFICATE OF SERVICE

There being no attorney of record for Applicant, I certify that I served the foregoing Notice of Opposition on Applicant **Kenneth Kindt/Elmonte Camper Center**, to the **correspondence address of record with the USPTO** as follows:

Kenneth Kindt
Elmonte Camper Center
30863 Medinah Way
Temecula, California 92591

by causing a full, true, and correct copy thereof to be sent by mailing in a sealed, first-class postage-prepaid envelope and deposited with the United States Postal Service at Portland, Oregon.

DATED: September 28, 2016



Michael K. Heilbronner

MHeilbronner@IdeaLegal.com
IdeaLegal, P.C.
1631 NE Broadway; No. 443
Portland, OR 97232
Telephone: (503) 449-9084

Attorney for Opposer