

ESTTA Tracking number: **ESTTA847256**

Filing date: **09/20/2017**

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	Philip Morris USA Inc.
Granted to Date of previous extension	09/20/2017
Address	6601 West Broad Street Richmond, VA 23230 UNITED STATES

Attorney information	Ann K. Ford DLA Piper LLP (US) 500 8th Street NW Washington, DC 20004 UNITED STATES Email: dctrademarks@dlapiper.com, ann.ford@dlapiper.com, thomas.zutic@dlapiper.com, john.nading@dlapiper.com, ashley.joyce@dlapiper.com, eunice.chung@dlapiper.com, alberto.zacapa@dlapiper.com Phone: 2027994000
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Applicant Information

Application No	87294730	Publication date	05/23/2017
Opposition Filing Date	09/20/2017	Opposition Period Ends	09/20/2017
International Registration No.	NONE	International Registration Date	NONE
Applicant	CHINA NATIONAL TOBACCO CORPORATION 55, Yue Tan Nan Jie, Xichengqu Beijing 100045 CHINA		

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: Ashtrays for smokers; Cigarette cases; Cigarette filters; Cigarettes; Lighters for smokers; Matches; Snuff boxes; Tobacco; Tobacco pipes; Pocket apparatus for rolling cigarettes
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Applicant Information

Application No	87294749	Publication date	05/23/2017
Opposition Filing Date	09/20/2017	Opposition Period Ends	
International Re-	NONE	International Re-	NONE

gistration No.		gistration Date	
Applicant	CHINA NATIONAL TOBACCO CORPORATION 55, Yue Tan Nan Jie, Xichengqu Beijing 100045 CHINA		


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: Cigarette cases; Cigarette filters; Cigarette paper; Cigarettes; Cigars; Lighters for smokers; Matches; Snuff; Tobacco

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.	5096795	Application Date	09/21/2015
Registration Date	12/06/2016	Foreign Priority Date	NONE
Word Mark	D		
Design Mark			
Description of Mark	The mark consists of the letter "D" with the negative space thereof forming a leaf design.		
Goods/Services	Class 034. First use: First Use: 2016/09/12 First Use In Commerce: 2016/09/12 Tobacco products, namely, cigarettes		

Attachments	86762648#TMSN.png(bytes) Opposition - C and Leaf Design Marks - NOO Exhibit and COS.pdf(261937 bytes)
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Signature	/Ann K. Ford/
Name	Ann K. Ford
Date	09/20/2017

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

In the matter of Trademark
Application Serial No. 87/294,730
Mark: C & Leaf Stripes Design
Filing Date: January 10, 2017
Published for Opposition: May 23, 2017

In the matter of Trademark
Application Serial No. 87/294,749
Mark: C & Leaf Black Design
Filing Date: January 10, 2017
Published for Opposition: May 23, 2017

PHILIP MORRIS USA INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
CHINA NATIONAL TOBACCO)	
CORPORATION,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer Philip Morris USA Inc., (hereinafter “Philip Morris” or “Opposer”) believes that it is or will be damaged by the registration of United States Trademark Application Serial Nos. 87/294,730 and 87/294,749 (collectively, hereinafter the “Applications” or the “C & Leaf Design Marks”) as filed with the United States Patent and Trademark Office (hereinafter “USPTO”), on January 10, 2017, by China National Tobacco Corporation (hereinafter “Applicant”), for the trademark C & Leaf Stripes Design in connection with “Ashtrays for smokers; Cigarette cases; Cigarette filters; Cigarettes; Lighters for smokers; Matches; Snuff boxes; Tobacco; Tobacco

pipes; Pocket apparatus for rolling cigarettes” in International Class 34 and C & Leaf Black Design in connection with: “Cigarette cases; Cigarette filters; Cigarette paper; Cigarettes; Cigars; Lighters for smokers; Matches; Snuff; Tobacco” in International Class 34 (collectively, hereinafter “Applicant’s Goods”). Philip Morris hereby opposes said Applications under the provisions of Section 13 of the Trademark Act of 1946 (hereinafter “Lanham Act”), 15 U.S.C. § 1063.

As grounds for the Opposition, Philip Morris alleges the following:

(1) Philip Morris USA Inc., is a Virginia corporation with a principal place of business at 6601 West Broad Street, Richmond, Virginia 23230.

(2) Since 1883, Philip Morris and its predecessors-in-interest have manufactured, marketed, and sold tobacco products in the United States.

(3) Philip Morris is the largest cigarette company in the United States (“Philip Morris’ Goods”) with total cigarette shipment volume in the United States of approximately 125.4 billion units in 2014, for example.

(4) In connection with such activities, Philip Morris uses in interstate commerce and owns United States Trademark Registration No. 5,096,795 for the trademark D & Leaf Design in connection with “Tobacco products, namely, cigarettes” in International Class 34 (hereinafter, the “D & Leaf Design Mark”). Phillip Morris’ application for the D & Leaf Design Mark was filed with the USPTO on September 21, 2015 and the USPTO issued a Certificate of Registration on December 6, 2016. Attached hereto as **Exhibit A** and made part of the record are true and correct copies of the Certificate of Registration for the D & Leaf Design Mark and TSDR and TESS print-outs from the USPTO website.

(5) The above referenced U.S. trademark registration for the D & Leaf Design Mark, clearly establishes that Philip Morris has senior trademark rights in its D & Leaf Design Mark and consequently there is no question of priority of rights, as such priority clearly belongs to Philip Morris.

(6) Notwithstanding Philip Morris' exclusive rights in and to the D & Leaf Design Mark, on January 10, 2017, Applicant, a Chinese corporation having an address at 55 Yue Tan Nan Jie, Xichengqu, Beijing 100045, China, filed two foreign registration-based applications under Section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e), with the USPTO to register the C & Leaf Design Marks. The Applications were assigned Serial Nos. 87/294,730 and 87/294,749.

(7) Philip Morris' United States trademark application for the D & Leaf Design Mark was filed on September 21, 2015; therefore, there is no issue as to priority as Philip Morris has prior rights.

(8) Upon information and belief, Applicant knew or had reason to know of Philip Morris' D & Leaf Design Mark when Applicant filed the Applications.

LIKELIHOOF OF CONFUSION
Section 2 (d) of the Lanham Act, 15 U.S.C. §1052(d)

(9) Philip Morris re-alleges the allegations contained in Paragraphs 1 through 8 of this Notice of Opposition.

(10) The trademarks that Applicant seeks to register so resemble Philip Morris' D & Leaf Design Mark in appearance, meaning, and overall commercial impression, such that the use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's Goods in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and will injure and damage Philip Morris and the goodwill and reputation symbolized by Philip Morris' D & Leaf Design Mark.

(11) Applicant's Goods under the C & Leaf Design Marks are so related to the goods offered under Philip Morris' D & Leaf Design Mark that the public is likely to be confused, deceived, and to assume erroneously that Applicant's Goods are those of Philip Morris or that Applicant is in some way connected with, licensed, or sponsored by or affiliated with Philip Morris, all to Philip Morris' irreparable damage.

(12) Likelihood of confusion is enhanced by the fact that Applicant's Goods are nearly identical to Philip Morris' Goods.

(13) Likelihood of confusion is further enhanced by the fact that Applicant's C & Leaf Design Marks are visually closely similar to the D & Leaf Design Mark due to, among other things, the visual similarity between the letters "C" and "D," the nearly identical stylization of these letters in shape and detail, the placement of the design of a leaf in the center of each mark in nearly identical proportions and prominence, all resulting in a confusingly similar overall commercial impression.

(14) Likelihood of confusion is also enhanced by the fact that the Parties will likely market their goods in the same or similar channels of trade.

(15) Applicant is not affiliated or connected with Philip Morris and has not been endorsed or sponsored by Philip Morris, nor has Philip Morris approved any of the goods offered or sold or intended to be sold by Applicant under its C & Leaf Design Marks.

(16) Applicant has never sought or obtained Philip Morris' permission to use the C & Leaf Design Marks, nor has Philip Morris approved any of Applicant's Goods under the C & Leaf Design Marks.

(17) Philip Morris' United States Trademark Registration for the D & Leaf Design Mark provides, at the very least, constructive notice to Applicant of Philip Morris' rights in and to the D & Leaf Design Mark.

If Applicant obtains such rights as conferred under the Principal Register of the Lanham Act, it will obtain at least a *prima facie* exclusive right to use its trademarks, and Philip Morris will be subjected to great and irreparable damage, and Applicant will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act.

WHEREFORE, Philip Morris believes and avers that it will be damaged by the registration of the Applications, and respectfully requests that the Applications be rejected, that no registration be issued thereon to Applicant, and that the Opposition be sustained in favor of Philip Morris.

Philip Morris hereby appoints Ann K. Ford, a member of the Bar of the District of Columbia; Thomas E. Zutic, a member of the Bar of the District of Columbia; John M. Nading, a member of the Bar of the District of Columbia; Ashley H. Joyce, a member of the Bar of the District of Columbia; and Eunice R. Chung, a member of the Bar of the District of Columbia; and all of the law firm of DLA Piper LLP (US), 500 8th Street, N.W., Washington, D.C. 20004, telephone number (202) 799-4000, to transact all business in the USPTO in connection with this Opposition Proceeding and hereby revokes all previous powers of attorney herein.

Please address all correspondence to:

Ann K. Ford, Esq.
DLA Piper LLP (US)
500 8th Street, N.W.
Washington, D.C. 20004
dctrademarks@dlapiper.com

The filing fee for this Opposition, in the amount of \$800.00, is hereby electronically transferred with the submission of the Notice of Opposition.

The undersigned, registered agent for Philip Morris herein, states that she is authorized to prosecute this Opposition, that she has read and signed the foregoing Notice of Opposition and knows the contents thereof, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of this Opposition and any decision resulting therefrom.

Dated: September 20, 2017

Respectfully submitted,

DLA Piper LLP (US)

By: /s/ Ann K. Ford
Ann K. Ford
Thomas E. Zutic
John M. Nading
Ashley H. Joyce
Eunice R. Chung
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Washington, D.C. 20004
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Fax 202-799-5000

*Attorneys for Opposer
Philip Morris USA Inc.*

Exhibit A

United States of America

United States Patent and Trademark Office



Reg. No. 5,096,795

Registered Dec. 06, 2016

Int. Cl.: 34

Trademark

Principal Register

Philip Morris USA Inc. (VIRGINIA CORPORATION)
6601 West Broad Street
Richmond, VA 23230

CLASS 34: Tobacco products, namely, cigarettes

FIRST USE 9-12-2016; IN COMMERCE 9-12-2016

The mark consists of the letter "D" with the negative space thereof forming a leaf design.

SER. NO. 86-762,648, FILED 09-21-2015
GINA M FINK, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

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Mark: D



US Serial Number: 86762648

Application Filing Date: Sep. 21, 2015

US Registration Number: 5096795

Registration Date: Dec. 06, 2016

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 06, 2016

Publication Date: Feb. 16, 2016

Notice of Allowance Date: Apr. 12, 2016

Mark Information

Mark Literal Elements: D

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the letter "D" with the negative space thereof forming a leaf design.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 05.03.01 - Tobacco leaves; 05.03.25 - Other leaves; Leaf, single

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Tobacco products, namely, cigarettes

International Class(es): 034 - Primary Class

U.S Class(es): 002, 008, 009, 017

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 12, 2016

Use in Commerce: Sep. 12, 2016

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Philip Morris USA Inc.

Owner Address: 6601 West Broad Street
Richmond, VIRGINIA 23230
UNITED STATES

Legal Entity Type: CORPORATION

State or Country VIRGINIA
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Robyn Ettricks

Attorney Primary Trademarkgroup@altria.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent ROBYN ETRICKS
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Richmond, VIRGINIA 23219-1434
UNITED STATES

Correspondent e- trademarkgroup@altria.com dctrademarks@dlapi
mail: per.com

Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 06, 2016	REGISTERED-PRINCIPAL REGISTER	
Nov. 01, 2016	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Oct. 31, 2016	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 29, 2016	STATEMENT OF USE PROCESSING COMPLETE	70565
Oct. 12, 2016	USE AMENDMENT FILED	70565
Oct. 29, 2016	CASE ASSIGNED TO INTENT TO USE PARALEGAL	70565
Oct. 12, 2016	TEAS STATEMENT OF USE RECEIVED	
Apr. 12, 2016	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Feb. 16, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 16, 2016	PUBLISHED FOR OPPOSITION	
Jan. 27, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 07, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 07, 2016	ASSIGNED TO EXAMINER	76464
Sep. 25, 2015	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Sep. 24, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 24, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Oct. 31, 2016



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Word Mark	D
Goods and Services	IC 034. US 002 008 009 017. G & S: Tobacco products, namely, cigarettes. FIRST USE: 20160912. FIRST USE IN COMMERCE: 20160912
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	05.03.01 - Tobacco leaves 05.03.25 - Leaf, single; Other leaves
Serial Number	86762648
Filing Date	September 21, 2015
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	February 16, 2016
Registration Number	5096795
Registration Date	December 6, 2016
Owner	(REGISTRANT) Philip Morris USA Inc. CORPORATION VIRGINIA 6601 West Broad Street Richmond VIRGINIA 23230
Attorney of Record	Robyn Ettricks
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the letter "D" with the negative space thereof forming a leaf design.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served via electronic mail and properly addressed to Applicant at the address listed below:

Jennifer Wang
14 Yuetan Nanjie Xichengqu, Yuexin Building 8th Floor
Beijing, 100045
China
jzwang@cntrademark.com, jzwang@ctplo.cn

this 20th day of September, 2017.

/s/ Ann K. Ford
Ann K. Ford
Attorney for Opposer
Philip Morris USA Inc.