

ESTTA Tracking number: **ESTTA920220**

Filing date: **09/05/2018**

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	Western Valve Inc.
Granted to Date of previous extension	09/05/2018
Address	P.O. Box 2446 Amarillo, TX 79105-2446 UNITED STATES

Attorney information	Sorana G. Ban Clark Hill Strasburger 901 Main Street Suite 6000 Dallas, TX 75202 UNITED STATES Bill.Cramer@ClarkHillStrasburger.com, Sorana.Ban@ClarkHillStrasburger.com, IPDocketing@ClarkHillStrasburger.com, IPDocket@ClarkHill.com 214-651-2038
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Applicant Information

Application No	87730611	Publication date	05/08/2018
Opposition Filing Date	09/05/2018	Opposition Period Ends	09/05/2018
Applicant	Admiral Valve, LLC 503 School House Rd. Kennett Square, PA 19348 UNITED STATES		

Goods/Services Affected by Opposition

Class 006. First Use: 1962/01/15 First Use In Commerce: 1962/01/15 All goods and services in the class are opposed, namely: Fittings of metal for pipes; Manually operated metal valves
Class 009. First Use: 1962/01/15 First Use In Commerce: 1962/01/15 All goods and services in the class are opposed, namely: Automatic valves

Grounds for Opposition

No use of mark in commerce before application or amendment to allege use was filed	Trademark Act Sections 1(a) and (c)
Failure to function as a mark	Trademark Act Sections 1, 2 and 45
Applicant not rightful owner of mark for identified goods or services	Trademark Act Section 1

Other	Trademark Act Section 2.51(a)- lack of specimen for each goods. Trademark Act Section 2.34(a)- special form drawing is required.
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Attachments	Notice of Opposition.pdf(58358 bytes) Exhibit A.pdf(538485 bytes)
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Signature	/Sorana G. Ban/
Name	Sorana G. Ban
Date	09/05/2018

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

Western Valve, Inc.)	
)	
Opposer,)	Opposition No. _____
)	
v.)	Serial No. 87/730,611
)	
Admiral Valve, LLC)	
)	Docket No. 89402.0120
Applicant.)	

NOTICE OF OPPOSITION

Western Valve, Inc., a corporation duly organized and existing under the laws of the State of Texas, with a principal place of business at 6401 McCormick Road, Amarillo, Texas 79118 (“Opposer”), believes that it will be damaged by registration of Application Serial No. 87/730,611 for CPV and hereby opposes the same.

As grounds for opposition, the Opposer alleges on knowledge and belief, as follows:

1. According to the Trademark Office records, on or about December 21, 2017, Applicant Admiral Valve, LLC d/b/a CPV Manufacturing (the “Applicant”) applied to register CPV (the “Mark”), which was subsequently assigned Application Serial No. 87/730,611 (the “Application”) for “automatic valves,” in class 9, “fitting of metal for pipes,” in class 6, and “manually operated metal valves,” in class 9, based on Applicant’s alleged used in commerce since January 15, 1962 for the aforementioned goods (the “Goods”). The Application was published in the May 8, 2018 edition of the Official Gazette.
2. Opposer is, *inter alia*, engaged in the business of manufacturing and selling or otherwise providing vales.

3. Opposer was sued by Applicant for common law trademark violation involving the letters “CPV” in the United States District Court for Northern District of Texas, Fort Worth Division. The case is titled *Admiral Valve LLC v. Western Valve Inc. and Western Sales & Testing of Amarillo Inc.*, Civil Action 4:18-cv-347-A.
4. On or about June 5, 2018, Opposer filed a First 30 Day Request for Extension of Time to Oppose Applicant’s Mark, and the time period within which to file an opposition was extended to July 7, 2018.
5. On or about July 6, 2018, Opposer filed a 60 Day Request for Extension of Time to Oppose Applicant’s Mark, and the time period within which to file an opposition was extended to September 5, 2018.
6. On information and belief, Applicant is a limited liability company organized on or about May 7, 2013 under the laws of the State of Delaware. *Exhibit A.*
7. On information and belief, Applicant began to produce and/or sell goods on or after May 7, 2013.
8. The Application alleges as first use and use in commerce the date of January 15, 1962, decades prior to Applicant’s formation.
9. Pursuant to Section 1(a)(1) of the Trademark Act, 15 U.S.C. §1051(a)(1), a trademark or service mark application based on use in commerce must be filed by the owner of the mark. A §1(a) application must include a verified statement that the applicant believes the applicant is the owner of the mark sought to be registered. 15 U.S.C. §1051(a)(3)(A); 37 C.F.R. §2.33(b)(1). An application that is not filed by the owner is void. TMEP §1201.02(b).
10. On information and belief, the Application was filed in the name of the wrong party.
11. When an application is filed in the name of the wrong party, the defect cannot be cured

by amendment or assignment. 37 C.F.R. §2.71(d); TMEP §803.06.

12. Because the record indicates that the Applicant is not the owner of the Mark, the Board should refuse registration.

13. A further review of the Application, drawing and specimens submitted on December 21, 2017, reveal additional defects that warrant refusal or finding the Application void.

14. Applicant provided two specimens on the record as follows:



(Specimen for Class 6)



(Specimen for Class 9)

15. A careful inspection of the specimen submitted with Class 9 exposes an unintelligible mark. Although, the Application maintains that the specimen depicts an “air activated valve;” the Mark may not be identified in the picture.

16. Additionally, Applicant did not submit specimen for “fittings of metal for pipes” claimed in Class 6.

17. Applicant must submit specimen for each of the goods identified in the Application.

18. An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods identified in the application or amendment to allege use. (emphasis added) 15 U.S.C. §1051(a)(1); 37 C.F.R.

§§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

19. Examples of specimens for goods include tags, labels, photographs that show the mark on actual goods or packaging, and displays associated with the actual goods at their point of sale. TMEP §§904.03 et. seq.

20. The Application as it is currently recorded with the Trademark Office is deficient. It lacks specimen for “fittings of metal for pipes” in Class 6 and, arguably, a legible specimen for “automatic valves” in Class 9.

21. Once again, the Examining Attorney should refuse the registration of the Application and require the Applicant to overcome the specimen refusal.

22. In fact, the Examining Attorney must review the mark depicted on the specimens to determine whether a standard character claim is appropriate, or whether a special form drawing is required.

23. Here, the mark on the specimens made of record is not a substantially exact representation of the mark as it is displayed in the drawing of record.

24. The specimens simply do not match the drawing of record. Specifically, the mark in the drawing of record shows the standard character consisting of the letters “CPV.”

25. The specimens (the legible specimen) do not support use of the mark shown in the drawing of record. In an application filed under Section 1(a) of the Trademark Act, “the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods or services,” as shown by the specimens. 37 C.F.R. §§2.51(a)(1) and 2.51(b)(1); TMEP Section 807.14.

26. A cursory viewing of the mark shown in the drawing and the mark shown in the legible specimen shows that the drawing is not a substantially exact representation of the mark as used

on the goods:

CPV



(mark shown in the drawing)

(mark as used on the goods)

27. There is a significant difference between the standard character mark shown in the drawing and the oval depiction followed by the letters “PV” as appears in the legible specimen. Design is completely absent in the mark as shown in the drawing, while the element in the legible specimen is a fanciful oval that wraps around the letters “PV.”

28. Moreover, the Applicant may not simply amend the drawing to conform to the specimen; such an amendment would constitute a material alteration of the mark. “The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to present the mark for the purposes of opposition.” *In re Light*, 662 Fed. Appx. 929, 937 (Fed. Cir. 2016), citing *In re Hacot-Colombier*, 105 F.3d 616, 620 (Fed. Cir. 1997).

29. Pursuant to 37 C.F.R. §2.72(a), should the Applicant attempt to amend the drawing, the Examining Attorney would have to complete a new search. Specifically, for a special form trademark application, an Examining Attorney uses design codes when searching special form marks as depicted in the legible specimen. No such codes were used when searching the Mark.

30. The amended mark would also have a different description of the mark. Such new

description would be necessary in an effort to capture the design elements of the newly created mark.

31. To comply with the requirements of the Section 2.51 of the Trademark Act, the Applicant must submit a substitute specimen or specimens that show the mark as it appears on the drawing. Until then, the Examining Attorney must reject the Application.

32. On information and belief and as shown by the numerous defects in the Application, Applicant may not claim the Mark as a source identifier for the Goods. On information and belief, the consumer has not been exposed to the standard character mark “CPV” in association with valves or fitters.

33. On information and belief, the Applicant does not have a line for valves or fitters that is titled “CPV” and, most certainly, the Applicant could not have had such line five decades prior to its entity formation, as claimed under the first use.

34. Opposer is entitled to stop registration of the Application based on Opposer’s stake in the industry and the pending litigation in the Northern District of Texas.

35. For the reasons set forth herein, Opposer believes that Applicant is not entitled to register the Mark. The Application should therefore be denied.

WHEREFORE, Opposer prays that this Opposition be sustained in its favor, that Application Serial No. 87/730,611 be denied and the Mark refused registration in accordance with the provisions of the Trademark Act.

Date: September 5, 2018

Respectfully submitted,

/Sorana G. Ban/
Sorana G. Ban
Texas Bar No. 24061520

EXHIBIT A



1 OF 1 RECORD(S)

DESOS Company Report

Date/Time of Results:

8/28/2018 at 16:58

File Number:

5330892

Name:

ADMIRAL VALVE, LLC

Kind:

Limited Liability Company General

Residency:

Domestic

State of Incorp:

DE

Status:

Good Standing as of 06/16/2014

Incorp/Qualify Date:

05/07/2013

Foreign Incorporation Date:

Registered Agent:

9592869

GB REGISTERED AGENTS, INC.

47 W. BELMONT DR.

HOCKESSIN, DE 19707

Registered Agent County:

New Castle

Stock Co Flag:

False

Tax Type:

Annual L.L.C. Tax

Renewal Date:

Expiration Date:

Quarterly Filing?:

False

Last Annual Report:

Bankruptcy Date:

Bankruptcy Case Number:

Bankruptcy Status:

Merged To:

Stock Information:

Amendment Number:

Stock Seq Number	Description	Series	Class	Authorized	Par Value
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Filing History (last 5 filings):

Seq Number	Filing Year	Doc Desc	Doc Pages	Dom Pages	Doc Filing Date	Doc Filing Time	Doc Effective Date	Doc Filing Status	Co Prev Name	Merger Type
1	2013	Amendment	1		08/26/2013	17:06	08/26/2013	Completed	CPV ACQUISITIO NS, LLC	
2	2013	LLC	1		05/07/2013	16:11	05/07/2013	Completed		

Tax Info:

Tax Balance:

\$300.00

TaxYear	TotalFiling	TotalTaxes	TotalPenalty	TotalInterest	TotalOther	TotalPaid	TotalBalance
2018	\$0.00	\$300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$300.00
2017	\$0.00	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00	\$0.00
2016	\$0.00	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00	\$0.00

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Important:This data is for informational purposes only. Certification may only be obtained through the Division of Corporations, or from a Delaware Registered Agent's office located within the State of Delaware

Important: This information is real time data and is subject to change at any moment

Your DPPA Permissible Use is: I have no permissible use

Your GLBA Permissible Use is: I have no permissible use

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