

ESTTA Tracking number: **ESTTA1237488**

Filing date: **09/23/2022**

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	Fisher & Paykel Healthcare Limited
Granted to date of previous extension	09/24/2022
Address	15 MAURICE PAYKEL PLACE EAST TAMAKI AUCKLAND, 2013 NEW ZEALAND
Attorney information	RICHARD LEHV FROSS ZELNICK LEHRMAN & ZISSU, P.C. 151 WEST 42ND STREET 17TH FLOOR NEW YORK, NY 10036 UNITED STATES Primary email: rlehv@fzlz.com Secondary email(s): aricketts@fzlz.com, ttabfiling@fzlz.com 2128135928
Docket no.	FPHL 1903756

Applicant information

Application no.	97030323	Publication date	07/26/2022
Opposition filing date	09/23/2022	Opposition period ends	09/24/2022
Applicant	EDOUARD, CHRISTEDENE 52 SUNNYSIDE AVE. HEMPSTEAD, NY 11550 UNITED STATES		

Goods/services affected by opposition

Class 010. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Fitted covers for medical equipment, namely, spirometers and medical apparatus for diagnosing or treating respiratory conditions

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.	5841782	Application date	10/18/2018
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Register	Principal		
Registration date	08/27/2019	Foreign priority date	05/16/2018
Word mark	CAPFIT		
Design mark			
Description of mark	NONE		
Goods/services	Class 010. First use: First Use: None First Use In Commerce: None Facial masks, oral masks, nasal masks, nasal cannula, mouthpieces and headgear,all being for medical purposes; headgear for medical respiratory masks; parts and fittings for all the aforementioned goods		

Attachments	CapFit.PDF(81010 bytes)
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Signature	/Richard Lehv/
Name	Richard Lehv
Date	09/23/2022

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

FISHER & PAYKEL HEALTHCARE LIMITED,

Opposer,

-against-

CHRISTEDENE EDOUARD,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Fisher & Paykel Healthcare Limited, a company organized and existing under the laws of New Zealand, located and doing business at 15 Maurice Paykel Place, East Tamaki, Auckland 2013 New Zealand, believes it will be damaged by the registration of the mark shown in Application Serial No. 97030323 and opposes that application under Section 13(a) of the Trademark Act of 1946, 15 U.S.C. § 1063(a).

As grounds for its opposition, Opposer, by its attorneys, Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer owns and is using the mark CAPFIT in commerce on and in connection with “Facial masks, oral masks, nasal masks, nasal cannula, mouthpieces and headgear, all being for medical purposes; headgear for medical respiratory masks; parts and fittings for all the aforementioned goods.”

2. Opposer is the owner of the U.S. Registration No. 5841782 for the mark CAPFIT for the foregoing goods in Class 10. The Registration was issued on August 27, 2019, with a priority date of May 16, 2018.

3. The foregoing Registration is valid and subsisting, and in full force and effect.

4. In view of the foregoing, Opposer is the owner of statutory and common law rights in the CAPFIT mark in the United States.

5. Applicant on September 16, 2021, filed Application Serial No. 97030323 for the mark CAP IT, for “Fitted covers for medical equipment, namely, spirometers and medical apparatus for diagnosing or treating respiratory conditions” in Class 10.

6. Applicant’s mark is confusingly similar to Opposer's mark. Applicant’s CAP IT mark is virtually identical to Opposer’s CAPFIT mark, and the parties’ marks create confusingly similar commercial impressions and are confusingly similar in spelling and appearance.

7. Not only are the marks confusingly similar, but also the parties’ goods are closely related and complementary and could be used by the same consumers and end users.

8. Upon information and belief, Applicant applied to register the CAP IT mark with full knowledge of Opposer’s prior rights in the CAPFIT mark and with full knowledge of Opposer’s existing federal trademark registration for closely related goods. Further, under 15 U.S.C. § 1072, the registration of Opposer’s marks constituted constructive notice of Opposer’s claim of ownership of its marks.

9. Applicant’s application and the presumption of exclusivity that would come from granting a registration to Applicant are inconsistent with the prior rights of Opposer in its mark and the rights of Opposer flowing from its own federal trademark registration.

10. Applicant's use and registration of a mark confusingly similar to Opposer's mark for closely related goods is likely to create the mistaken impression that Applicant's goods are made by, come from, or are otherwise associated with Opposer or that Applicant's goods are approved, licensed, endorsed, sponsored, or in some other way connected with Opposer. Any use of the mark in Application Serial No. 97030323 on or in connection Applicant's goods is likely to cause confusion or mistake or to deceive the public into the belief that the goods offered by Applicant under Applicant's mark come from or are otherwise authorized or sponsored by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. By reason of all the foregoing, Opposer will be damaged by the registration of the mark CAP IT to Applicant.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that the registration of the mark in Application Serial No. 97030323 be denied.

Dated: New York, New York
September 23, 2022

Respectfully submitted,

FROSS ZELNICK
LEHRMAN & ZISSU, P.C.

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