

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

## Request for Reconsideration after Final Action

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<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD <b>REQUEST FOR RECONSIDERATION</b>	
Applicant: Ross Anapolle Serial No.: 85/284,613 Mark: BOMBER Class: 28 Office Action Date: December 30, 2011 Examiner: Katherine Stoides (L.O. 101)	
<p>This is submitted in support of a Request for Reconsideration of a Final Office Action issued on December 30, 2011 (the "Office Action") regarding the application by Ross Anapolle ("Applicant") for registration of the mark BOMBER ("Applicant's Mark") in Class 28 covering "ski bags; ski poles; skis; snowboards" ("Applicant's Goods"). The Examining Attorney ("Examiner") has refused registration of Applicant's Mark under Section 2(d) of the Lanham Act due to an alleged likelihood of confusion with a registered mark. Applicant respectfully submits that there is no likelihood of confusion between Applicant's and the registered mark, as discussed in detail below, and therefore requests that the Examiner withdraw the refusal and approve the Application for publication on the Principal Register. Applicant incorporates, by reference, the Office Action Response filed on September 9, 2012 (the "Response").</p> <p style="text-align: center;"><b><u>DISCUSSION</u></b></p> <p><b>Confusion Between Applicant's Mark and the Cited Mark is Unlikely.</b></p> <p>In the Office Action, the Examining Attorney has issued a final refusal to register Applicant's Mark under Section 2(d) due to an alleged likelihood of confusion with the mark BOMBER, U.S.</p>	

Registration No. 2000494, ("Registrant's Mark") registered for "hats" ("Registrant's Goods") in Class 25 owned by Brent R. Reynolds dba Mad Bomber ("Registrant").

When evaluating likelihood of confusion, a number of factors, when of record, must be considered:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- (4) The conditions under which and buyers to whom sales are made, *i.e.* "impulse" vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.
- (7) The nature and extent of any actual confusion.
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- (9) The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
- (10) The market interface between applicant and the owner of a prior mark.
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods.
- (12) The extent of potential confusion, *i.e.*, whether *de minimis* or substantial.
- (13) Any other established fact probative of the effect of use.

*In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Not all *Du Pont* factors are relevant in every case, and each case must be decided on its own facts. *Du Pont*, 476 F.2d at 1362.

The Response squarely addressed factors 2, 3, 4, and 7. Applicant hereby submits arguments focusing on the additional *Du Pont* factors and providing additional information and evidence relevant to all factors. When taken as a whole, the Response and this additional response clearly set forth that the balance of *Du Pont* factors clearly weigh against consumer confusion between the Applicant's Mark and Registrant's Mark.

**1. Registrant's Mark is Arguably Descriptive and, Therefore, Weak and Entitled to a Narrow Scope of Protection.**

The Registered Mark is arguably descriptive of Registrant's Goods, *i.e.*, a style of hat. Wikipedia notes that a "bomber" or "aviator" hat is a particular type of hat with a number of features, including large ear flaps and a chin strap and usually made of leather or felt. Wikipedia, AVIATOR HAT, [http://en.wikipedia.org/wiki/Aviator\\_hat](http://en.wikipedia.org/wiki/Aviator_hat) (last visited July 1, 2012). Numerous uses of the term BOMBER were found online to describe hats of this style. Representative examples were found at the following websites:

1. <http://www.amazon.com/b?ie=UTF8&node=2474974011>
2. [http://www.menswearhouse.com/shop/p\\_woolrich-gray-&-red-&-black-plaid-bomber-hat\\_12001\\_700000439\\_12751\\_700166278\\_-1\\_700000439\\_\\_\\_noSpecialSizes?cm\\_mmc=Channel%20Advisor\\_-\\_Comparison%20Shopping\\_-\\_Nextag\\_-\\_Shopping%20Feed](http://www.menswearhouse.com/shop/p_woolrich-gray-&-red-&-black-plaid-bomber-hat_12001_700000439_12751_700166278_-1_700000439___noSpecialSizes?cm_mmc=Channel%20Advisor_-_Comparison%20Shopping_-_Nextag_-_Shopping%20Feed)

3. <http://www.crocs.com/faux-fur-lined-bomber/32102%2Cdefault%2Cpd.html>
4. <http://www.uniformstoyou.com/carharttbomberhat.aspx>
5. [http://www.spencersonline.com/accessories\\_hats\\_laplander/](http://www.spencersonline.com/accessories_hats_laplander/)
6. <http://www.etsy.com/listing/72354096/crochet-baby-aviator-hat-infant-bomber>
7. <http://www.sportsmansguide.com/net/cb/ice-armor-bomber-hat.aspx?a=716470>
8. <http://www.ravelry.com/patterns/library/penguin-bomber-hat>
9. <http://www.amazon.com/Dickies-Mens-Nylon-Bomber-Hat/dp/B00698O24W>

Copies of web pages showing the aforementioned uses of the term BOMBER are attached as **Exhibit**

A. To Applicant's knowledge, none of these uses appear to be under direct license with, or related to, the Registrant. Indeed, Registrant's own specimen submitted on or around September 18, 2006, reflects a style of hat consistent with the descriptive style of a "bomber" hat. **Id.**

Descriptive marks are "weak" and therefore provided only a limited scope of protection against subsequent applications for closely similar marks covering closely similar or related goods or services. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005) (weak marks are "entitled to only a narrow scope of protection"); *In re Hunke & Jochheim*, 185 USPQ 188, 189 (T.T.A.B. 1975) (merely descriptive or even highly suggestive terms are accorded a lesser scope of protection than an arbitrary or coined mark); and *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 350 (9th Cir. 1979) (weak marks are entitled to "restricted range" of protection such that marks must be "quite similar" and goods "closely related" for there to be a likelihood of confusion); *see also* J. Thomas McCarthy, 2 McCarthy on Trademarks and Unfair Competition § 11:73 (4th ed. 2001) ("relatively weak marks are given a relatively narrow range of protection both as to products and format variations") and TMEP § 1207.01(b)(ix).

## **2. Registrant's Mark Co-Exists on the Registry in a Crowded Field for Hats and Apparel Products.**

Not only is Registrant's Mark descriptive/weak for "hats" by definition, the mark also co-exists in a crowded field of BOMBER marks for more directly overlapping hat and related apparel

products, which is a further indication of the mark's weakness for said products. *Western Publishing Co. v. Rose Art Industries, Inc.*, 910 F.2d 57, 61, 15 U.S.P.Q.2d 1545 (2d Cir. 1990) (finding that the strength of a mark is weakened by coexistence on the federal trademark registry with a number of similar marks in the same field). In a crowded field of marks, customers are unlikely be confused between any two of the crowd. *See, e.g., In re Lucky Co.*, 209 U.S.P.Q. 422 (T.T.A.B. 1980) (finding a crowded field for stripe designs for athletic footwear).

Moreover, the Registrant's Mark currently co-exists on the Registry with other BOMBER marks covering sport equipment products, suggesting that the Registrant's Mark should equally be able to co-exist with the Applicant's Mark, particularly bearing in mind the weak nature of the Registrant's Mark for hat/apparel goods. These marks are shown in the table below.[1]

**Representative Examples of Registered BOMBER Marks**

Mark	Serial No.	Goods	Registrant
<b>Use-Based Registrations for BOMBER marks covering "hats"</b>			
	85322134	Class 25: Clothing, namely, shirts, <b>hats</b> , sweaters, jackets, socks, bandanas, beanies, shoes, underwear, pants, swimwear, shorts, skirts, dresses, ties, belts, long sleeve shirts, jackets, sports bras, visors, scarves and dress suits.	Ink Bombers
SAYREVILLE BOMBERS	77510885	Class 25: Athletic apparel, namely, shirts, pants, jackets, footwear, <b>hats</b> and caps, athletic uniforms.	Sayreville Board of Education
LONG HAUL BOMBERS	76663918	Class 25: Men's, Women's and Children's clothing, namely t-shirts, sleeveless t-shirts, shirts, pull-overs, sweatshirts, sweatpants, jerseys, jackets, shorts, <b>hats</b> , caps, visors, wristbands Class 41: Entertainment and educational services in the nature of performing, participating, and competing in sporting events in the field of softball; arranging for and conducting exhibitions, clinics, camps, and training events in the field of softball; providing electronic publications, namely newsletters, photographs, and posters in the field of softball.	Long Haul Productions, Inc.
		Class 25: clothing, namely, jerseys,	

	75728445	jackets, coats, sweat pants, warm-up suits, hats, caps, sweaters, shirts, t-shirts, sweatshirts; and infantwear and toddler clothing, namely, jumpers, t-shirts, cloth bibs, and fleece sets, namely, tops and bottoms	Dayton Hockey Club, Inc.
<b>Use-Based Registrations for BOMBER marks in Class 28</b>			
BASELINE BOMBER	78921236	Class 28: Basketball training apparatus used to improve shooting accuracy.	Perfect Jumper, LP PJ Management, LLC
BICEP BOMBER	85243335	Class 28: Exercise equipment, namely, Weight lifting harness that allows users to localize bicep curls with weights	Nutraloid Labs Inc.
BOMBER WALKIE TALKIE	77484125	Class 28: Artificial fishing lures.	EBSCO Industries, Inc.
BOMBER WALKIE TALKIE	71507882	Class 28: Artificial fishing lures.	EBSCO Industries, Inc.
BELLY-BOMBER	74543556	Class 28: coin-operated amusement game machines.	NAMCO BANDI GAMES INC.

Because consumers are attuned to the fact that the term BOMBER is used to identify hats, other apparel, and sporting goods, they are particularly careful to distinguish one from another, and are therefore unlikely to be confused. This is especially true for consumers of Applicant's goods, which are sophisticated, discriminating, and exercise a high degree of care when purchasing the goods that Applicant offers. *See Section 4 infra.*

In the Office Action, the Examiner indicates that confusion between Applicant and Registrant's Marks is likely in part because the parties' respective goods are provided through the same trade channels and are complementary goods.<sup>[2]</sup> Co-existence of the above shown marks illustrates, however, that these factors are not sufficient for confusion to be likely between the specific marks at bar.

**3. Applicant and Registrant's Goods are Neither Identical nor Competitive.**

Even identical marks may coexist on the Registry as long as the goods or services in question are sufficiently different to avoid a likelihood of confusion. *See Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 U.S.P.Q.2d 1169, 1171 (T.T.A.B. 1987) (HI-COUNTRY for beef jerky not

confusingly similar to HI-COUNTRY for fruit juices, even though both are edible food products); *In re Mars, Inc.*, 222 U.S.P.Q. 938 (Fed. Cir. 1984) (Use of CANYON for fresh citrus fruits and candy bars not likely to cause confusion); *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854 (T.T.A.B. 1984) (no confusion between PLAYERS, for men's underwear, and PLAYERS, for shoes). Moreover, even where goods are used together, it does not automatically follow that they are related. *See, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 73 U.S.P.Q.2d 1350, 1355 (Fed. Cir. 2004) (finding no likelihood of confusion between marks that include RITZ for kitchen textiles and cooking classes, and stating, "[t]hat two goods are used together, however, does not, in itself, justify a finding of relatedness."). Instead, "[i]n analyzing the similarity of products, the question is 'whether the products are the kind the public attributes to a single source.'" *Knaack Mfg. Co. v. Rally Accessories Inc.*, 42 U.S.P.Q.2d 1649, 1656-57 (N.D. Ill, 1997).

As discussed in Section 1 *supra*, Applicant's Goods are strictly confined to ski and snowboard equipment, do not include hats or any other apparel, and are thus distinct and dissimilar to Registrant's Goods. Further, Applicant's Goods and Registrants' Goods are substantially more distinct than those in the cases cited above. Thus, this factor weighs in favor of a finding of no likelihood of confusion.

#### **4. Purchasers of Applicant's Goods are Discriminating Consumers Who Make Careful Buying Decisions.**

Goods of the kind provided by Applicant are marketed to a highly discriminating clientele, further reducing any likelihood of confusion. *See CMM Cable Rep. v. Ocean Coast Props., Inc.*, 888 F. Supp. 192, 36 U.S.P.Q.2d 1458 (Dist. Me. 1995), *aff'd*, 97 F.3d 1504, 41 U.S.P.Q.2d 1065 (1<sup>st</sup> Cir. 1996) (sophisticated professional buyers "less likely to be confused as to the source or origin of a product than ordinary consumers of inexpensive goods or services"). Skis and snowboards can vary widely in terms of design, purpose and function. For example, there are at least four types of skiing disciplines – cross-country, ski jumping, Telemark, and Alpine – and there are different types of skis used to maximize performance for skiers when engaging in each of these types of ski. Given the variation in the types of skis and snowboards on the market, and the differences in their design, purpose, function, and performance, purchasers of skis and snowboards are sophisticated consumers that are generally quite knowledgeable about the maker of the goods, as well as the goods themselves.[3] Accordingly, purchasers of Applicant's Goods are unlikely to be confused. *See, e.g., Dynamics Research Corp. v. Langenau Mfg. Co.*, 217 U.S.P.Q. 649 (Fed. Cir. 1983) (parties' uses of the mark DRC –for press brake components on the one hand and sheet metal fabric on the other – held unlikely to cause confusion).

Further, Applicant's Goods, i.e., skis and snowboards, commonly retail in the range of \$500 to \$1,200.[4] The substantial cost of Applicant's goods alone makes any likelihood of confusion

unlikely. *See, e.g., Magnaflux Corp. v. Sonoflux Corp.*, 231 F.2d 669, 109 USPQ 313 (C.C.P.A. 1956). "The greater the value of an article the more careful the typical consumer can be expected to be . . ." *McGregor-Doniger, Inc. v. Drizzle, Inc.*, 202 U.S.P.Q. 81, 92 (2d Cir. 1979) (holding purchasers of women's overcoats and raincoats priced from \$100-\$900 to be sophisticated.). In making purchasing decisions regarding "expensive" goods, the reasonably prudent person standard is elevated to the standard of the "discriminating purchaser." *Weiss Assoc., Inc. v. HRL Assoc., Inc.*, 14 U.S.P.Q.2d 1840 (Fed. Cir. 1990); *see also, L. J. Mueller Furnace Co. v. United Conditioning Corp.*, 222 F.2d 755, 106 U.S.P.Q. 112 (C.C.P.A. 1955) (holding buyers of air conditioning units were "discriminating"). A discriminating purchaser of expensive goods or services does not buy them casually, but only after careful consideration, so confusion is less likely than where the goods are inexpensive. *Weiss Assoc., Inc.*, 14 U.S.P.Q.2d at 1840.

Given the cost, and the variety of product specifications consumers of Applicant's goods must evaluate when purchasing Applicant's Goods discussed above, consumers of Applicant's Goods are "discriminating," exercise a markedly higher standard of care than an ordinarily prudent purchaser, and will proceed to purchase goods like Applicant's only after careful consideration of the source and reputation of the ski and snowboards they are seeking to purchase. Accordingly, consumers of Applicant's goods are unlikely to be confused and this factor strongly weighs in Applicant's favor.

#### **5. Applicant and Registrant's Marks Co-Exist Without Evidence of Consumer Confusion.**

Concurrent use of two marks without consumer confusion is probative evidence that confusion of the marks is unlikely. *Du Pont*, 476 F.2d at 1361. Applicant has been using the mark since at least as early as October 2010. Declaration of Ross Anapolle (the "Anapolle Decl.") at ¶ 2. Since that time, Applicant has sold Applicant's Goods in twenty states, as well as in Canada and Europe. Anapolle Decl. at ¶ 3. Applicant has encountered no instances of actual confusion with Registrant's Mark. Anapolle Decl. at ¶ 4. Thus, this *DuPont* factor also indicates that confusion between Applicant's and Registrant's mark is not only unlikely, but also not occurring in the marketplace.

#### **6. Other *Du Pont* factors are Neutral or Favor Applicant.**

Applicant knows of no instances of actual confusion, nor is there any evidence that the cited mark is famous or used for a wide range of goods or services. These factors each favor finding that there is no likelihood of confusion.

### CONCLUSION

As shown above, an analysis of the *DuPont* factors relevant to this case demonstrate that confusion between Applicant's and Registrant's Marks is unlikely. Registrant's Mark is a descriptive/weak mark for a style of "hats" that co-exists in a crowded field with a number of other BOMBER marks. Registrant's Mark is therefore entitled to a limited scope of protection that does not extend to bar registration of Applicant's Mark given the differences in the parties' goods and high degree of care consumers are likely to exercise when purchasing Applicant's products. Indeed, Applicant's and Registrant's marks have co-existed in the marketplace for at least twenty-one months with no evidence of actual confusion, which further demonstrates that confusion is unlikely. As confusion between the marks is unlikely, Registrant's Mark should not bar Applicant's Mark from proceeding to registration.

Accordingly, Applicant respectfully requests that the Examiner withdraw the refusal to register Applicant's Mark and that the Application be approved for publication. Please contact the undersigned with questions.

[1] Copies of the TARR records for the aforementioned registrations are attached as **Exhibit B**.

[2] The Examiner has also argued that the classes of consumers to which Applicant and Registrant's Goods are used by are similar. Applicant discusses consumers for its goods and the degree of care those consumers take in purchasing its products in Section 4 *infra*

[3] Copies of online resources describing the variety of ski disciplines, ski types, and factors to consider when purchasing skis, are attached as **Exhibit C**.

[4] Copies of web pages showing online retail prices for skis and snowboards are attached as **Exhibit D**.

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<b>ORIGINAL PDF FILE</b>	<u>evi_198221004-215456758 . Declaration of R Anapolle.pdf</u>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<u>\\TICRS\EXPORT16\IMAGEOUT16\852\846\85284613\xml3\RFR0093.JPG</u>
<b>DESCRIPTION OF EVIDENCE FILE</b>	A copy of Applicant's Arguments as well as the Declaration of Ross Anapolle and Exhibits A, B, C, and D referenced in Applicant's Arguments

<b>CORRESPONDENCE SECTION</b>	
<b>ORIGINAL ADDRESS</b>	ROSS ANAPOLLE NEWTON Massachusetts (MA) US 02465
<b>NEW CORRESPONDENCE SECTION</b>	
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<b>FIRM NAME</b>	Perkins Coie LLP
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<b>AUTHORIZED EMAIL COMMUNICATION</b>	Yes
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/Makalika Naholowaa/
<b>SIGNATORY'S NAME</b>	Makalika Naholowaa
<b>SIGNATORY'S POSITION</b>	Attorney of Record, Washington state bar member
<b>SIGNATORY'S PHONE NUMBER</b>	206-359-8000
<b>DATE SIGNED</b>	07/02/2012
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Mon Jul 02 22:27:15 EDT 2012
	USPTO/RFR-198.22.100.4-20

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OMB No. 0651-0050 (Exp. 4/30/2009)

## Request for Reconsideration after Final Action

### To the Commissioner for Trademarks:

Application serial no. **85284613** has been amended as follows:

#### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

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

Applicant:	Ross Anapolle
Serial No.:	85/284,613
Mark:	BOMBER
Class:	28
Office Action Date:	December 30, 2011
Examiner:	Katherine Stoides (L.O. 101)

**REQUEST FOR  
 RECONSIDERATION**

This is submitted in support of a Request for Reconsideration of a Final Office Action issued on December 30, 2011 (the "Office Action") regarding the application by Ross Anapolle ("Applicant") for registration of the mark BOMBER ("Applicant's Mark") in Class 28 covering "ski bags; ski poles; skis; snowboards" ("Applicant's Goods"). The Examining Attorney ("Examiner") has refused registration of Applicant's Mark under Section 2(d) of the Lanham Act due to an alleged likelihood of confusion with a registered mark. Applicant respectfully submits that there is no likelihood of confusion between Applicant's and the registered mark, as discussed in detail below, and therefore requests that the Examiner withdraw the refusal and approve the Application for publication on the Principal Register. Applicant incorporates, by reference, the Office Action Response filed on September 9, 2012 (the "Response").

#### DISCUSSION

#### **Confusion Between Applicant's Mark and the Cited Mark is Unlikely.**

In the Office Action, the Examining Attorney has issued a final refusal to register Applicant's

Mark under Section 2(d) due to an alleged likelihood of confusion with the mark BOMBER, U.S. Registration No. 2000494, ("Registrant's Mark") registered for "hats" ("Registrant's Goods") in Class 25 owned by Brent R. Reynolds dba Mad Bomber ("Registrant").

When evaluating likelihood of confusion, a number of factors, when of record, must be considered:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- (4) The conditions under which and buyers to whom sales are made, *i.e.* "impulse" vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.
- (7) The nature and extent of any actual confusion.
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- (9) The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
- (10) The market interface between applicant and the owner of a prior mark.
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods.
- (12) The extent of potential confusion, *i.e.*, whether de minimis or substantial.
- (13) Any other established fact probative of the effect of use.

*In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Not all *Du Pont* factors are relevant in every case, and each case must be decided on its own facts. *Du Pont*, 476 F.2d at 1362.

The Response squarely addressed factors 2, 3, 4, and 7. Applicant hereby submits arguments focusing on the additional *Du Pont* factors and providing additional information and evidence relevant to all factors. When taken as a whole, the Response and this additional response clearly set forth that the balance of *Du Pont* factors clearly weigh against consumer confusion between the Applicant's Mark and Registrant's Mark.

### **1. Registrant's Mark is Arguably Descriptive and, Therefore, Weak and Entitled to a Narrow Scope of Protection.**

The Registered Mark is arguably descriptive of Registrant's Goods, *i.e.*, a style of hat. Wikipedia notes that a "bomber" or "aviator" hat is a particular type of hat with a number of features, including large ear flaps and a chin strap and usually made of leather or felt. Wikipedia, AVIATOR HAT, [http://en.wikipedia.org/wiki/Aviator\\_hat](http://en.wikipedia.org/wiki/Aviator_hat) (last visited July 1, 2012). Numerous uses of the term BOMBER were found online to describe hats of this style. Representative examples were found at the following websites:

1. <http://www.amazon.com/b?ie=UTF8&node=2474974011>
2. [http://www.menswearhouse.com/shop/p\\_woolrich-gray-&-red-&-black-plaid-bomber-hat\\_12001\\_700000439\\_12751\\_700166278\\_-1\\_700000439\\_\\_\\_\\_\\_noSpecialSizes?cm\\_mmc=Channel%20Advisor\\_-\\_Comparison%20Shopping\\_-\\_Nextag\\_-\\_Shopping%20Feed](http://www.menswearhouse.com/shop/p_woolrich-gray-&-red-&-black-plaid-bomber-hat_12001_700000439_12751_700166278_-1_700000439_____noSpecialSizes?cm_mmc=Channel%20Advisor_-_Comparison%20Shopping_-_Nextag_-_Shopping%20Feed)

3. <http://www.crocs.com/faux-fur-lined-bomber/32102%2Cdefault%2Cpd.html>
4. <http://www.uniformstoyou.com/carharttbomberhat.aspx>
5. [http://www.spencersonline.com/accessories\\_hats\\_laplander/](http://www.spencersonline.com/accessories_hats_laplander/)
6. <http://www.etsy.com/listing/72354096/crochet-baby-aviator-hat-infant-bomber>
7. <http://www.sportsmansguide.com/net/cb/ice-armor-bomber-hat.aspx?a=716470>
8. <http://www.ravelry.com/patterns/library/penguin-bomber-hat>
9. <http://www.amazon.com/Dickies-Mens-Nylon-Bomber-Hat/dp/B00698O24W>

Copies of web pages showing the aforementioned uses of the term BOMBER are attached as **Exhibit**

A. To Applicant's knowledge, none of these uses appear to be under direct license with, or related to, the Registrant. Indeed, Registrant's own specimen submitted on or around September 18, 2006, reflects a style of hat consistent with the descriptive style of a "bomber" hat. **Id.**

Descriptive marks are "weak" and therefore provided only a limited scope of protection against subsequent applications for closely similar marks covering closely similar or related goods or services. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005) (weak marks are "entitled to only a narrow scope of protection"); *In re Hunke & Jochheim*, 185 USPQ 188, 189 (T.T.A.B. 1975) (merely descriptive or even highly suggestive terms are accorded a lesser scope of protection than an arbitrary or coined mark); *and AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 350 (9th Cir. 1979) (weak marks are entitled to "restricted range" of protection such that marks must be "quite similar" and goods "closely related" for there to be a likelihood of confusion); *see also* J. Thomas McCarthy, 2 McCarthy on Trademarks and Unfair Competition § 11:73 (4th ed. 2001) ("relatively weak marks are given a relatively narrow range of protection both as to products and format variations") *and* TMEP § 1207.01(b)(ix).

## **2. Registrant's Mark Co-Exists on the Registry in a Crowded Field for Hats and Apparel Products.**

Not only is Registrant's Mark descriptive/weak for "hats" by definition, the mark also co-exists in a crowded field of BOMBER marks for more directly overlapping hat and related apparel products, which is a further indication of the mark's weakness for said products. *Western Publishing Co. v. Rose*

*Art Industries, Inc.*, 910 F.2d 57, 61, 15 U.S.P.Q.2d 1545 (2d Cir. 1990) (finding that the strength of a mark is weakened by coexistence on the federal trademark registry with a number of similar marks in the same field). In a crowded field of marks, customers are unlikely be confused between any two of the crowd. *See, e.g., In re Lucky Co.*, 209 U.S.P.Q. 422 (T.T.A.B. 1980) (finding a crowded field for stripe designs for athletic footwear).

Moreover, the Registrant's Mark currently co-exists on the Registry with other BOMBER marks covering sport equipment products, suggesting that the Registrant's Mark should equally be able to co-exist with the Applicant's Mark, particularly bearing in mind the weak nature of the Registrant's Mark for hat/apparel goods. These marks are shown in the table below.[1]

#### Representative Examples of Registered BOMBER Marks

Mark	Serial No.	Goods	Registrant
<b>Use-Based Registrations for BOMBER marks covering "hats"</b>			
	85322134	Class 25: Clothing, namely, shirts, <b>hats</b> , sweaters, jackets, socks, bandanas, beanies, shoes, underwear, pants, swimwear, shorts, skirts, dresses, ties, belts, long sleeve shirts, jackets, sports bras, visors, scarves and dress suits.	Ink Bombers
SAYREVILLE BOMBERS	77510885	Class 25: Athletic apparel, namely, shirts, pants, jackets, footwear, <b>hats</b> and caps, athletic uniforms.	Sayreville Board of Education
LONG HAUL BOMBERS	76663918	Class 25: Men's, Women's and Children's clothing, namely t-shirts, sleeveless t-shirts, shirts, pull-overs, sweatshirts, sweatpants, jerseys, jackets, shorts, <b>hats</b> , caps, visors, wristbands Class 41: Entertainment and educational services in the nature of performing, participating, and competing in sporting events in the field of softball; arranging for and conducting exhibitions, clinics, camps, and training events in the field of softball; providing electronic publications, namely newsletters, photographs, and posters in the field of softball.	Long Haul Productions, Inc.
	75728445	Class 25: clothing, namely, jerseys, jackets, coats, sweat pants, warm-up suits, hats, caps, sweaters, shirts, t-shirts, sweatshirts; and	Dayton Hockey Club, Inc.

		infantwear and toddler clothing, namely, jumpers, t-shirts, cloth bibs, and fleece sets, namely, tops and bottoms	
<b>Use-Based Registrations for BOMBER marks in Class 28</b>			
BASELINE BOMBER	78921236	Class 28: Basketball training apparatus used to improve shooting accuracy.	Perfect Jumper, LP PJ Management, LLC
BICEP BOMBER	85243335	Class 28: Exercise equipment, namely, Weight lifting harness that allows users to localize bicep curls with weights	Nutraloid Labs Inc.
BOMBER WALKIE TALKIE	77484125	Class 28: Artificial fishing lures.	EBSCO Industries, Inc.
BOMBER WALKIE TALKIE	71507882	Class 28: Artificial fishing lures.	EBSCO Industries, Inc.
BELLY-BOMBER	74543556	Class 28: coin-operated amusement game machines.	NAMCO BANDI GAMES INC.

Because consumers are attuned to the fact that the term BOMBER is used to identify hats, other apparel, and sporting goods, they are particularly careful to distinguish one from another, and are therefore unlikely to be confused. This is especially true for consumers of Applicant's goods, which are sophisticated, discriminating, and exercise a high degree of care when purchasing the goods that Applicant offers. *See* Section 4 *infra*.

In the Office Action, the Examiner indicates that confusion between Applicant and Registrant's Marks is likely in part because the parties' respective goods are provided through the same trade channels and are complementary goods.<sup>[2]</sup> Co-existence of the above shown marks illustrates, however, that these factors are not sufficient for confusion to be likely between the specific marks at bar.

### **3. Applicant and Registrant's Goods are Neither Identical nor Competitive.**

Even identical marks may coexist on the Registry as long as the goods or services in question are sufficiently different to avoid a likelihood of confusion. *See Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 U.S.P.Q.2d 1169, 1171 (T.T.A.B. 1987) (HI-COUNTRY for beef jerky not confusingly similar to HI-COUNTRY for fruit juices, even though both are edible food products); *In re Mars, Inc.*, 222 U.S.P.Q. 938 (Fed. Cir. 1984) (Use of CANYON for fresh citrus fruits and candy bars not likely to cause confusion); *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854 (T.T.A.B. 1984) (no confusion between

PLAYERS, for men's underwear, and PLAYERS, for shoes). Moreover, even where goods are used together, it does not automatically follow that they are related. *See, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 73 U.S.P.Q.2d 1350, 1355 (Fed. Cir. 2004) (finding no likelihood of confusion between marks that include RITZ for kitchen textiles and cooking classes, and stating, "[t]hat two goods are used together, however, does not, in itself, justify a finding of relatedness."). Instead, "[i]n analyzing the similarity of products, the question is 'whether the products are the kind the public attributes to a single source.'" *Knaack Mfg. Co. v. Rally Accessories Inc.*, 42 U.S.P.Q.2d 1649, 1656-57 (N.D. Ill, 1997).

As discussed in Section 1 *supra*, Applicant's Goods are strictly confined to ski and snowboard equipment, do not include hats or any other apparel, and are thus distinct and dissimilar to Registrant's Goods. Further, Applicant's Goods and Registrants' Goods are substantially more distinct than those in the cases cited above. Thus, this factor weighs in favor of a finding of no likelihood of confusion.

#### **4. Purchasers of Applicant's Goods are Discriminating Consumers Who Make Careful Buying Decisions.**

Goods of the kind provided by Applicant are marketed to a highly discriminating clientele, further reducing any likelihood of confusion. *See CAM Cable Rep. v. Ocean Coast Props., Inc.*, 888 F. Supp. 192, 36 U.S.P.Q.2d 1458 (Dist. Me. 1995), *aff'd*, 97 F.3d 1504, 41 U.S.P.Q.2d 1065 (1<sup>st</sup> Cir. 1996) (sophisticated professional buyers "less likely to be confused as to the source or origin of a product than ordinary consumers of inexpensive goods or services"). Skis and snowboards can vary widely in terms of design, purpose and function. For example, there are at least four types of skiing disciplines – cross-country, ski jumping, Telemark, and Alpine – and there are different types of skis used to maximize performance for skiers when engaging in each of these types of ski. Given the variation in the types of skis and snowboards on the market, and the differences in their design, purpose, function, and performance, purchasers of skis and snowboards are sophisticated consumers that are generally quite knowledgeable about the maker of the goods, as well as the goods themselves.[3] Accordingly, purchasers of Applicant's Goods are unlikely to be confused. *See, e.g., Dynamics Research Corp. v. Langenau Mfg. Co.*, 217 U.S.P.Q. 649 (Fed. Cir. 1983) (parties' uses of the mark DRC –for press brake components on the one hand and sheet metal fabric on the other – held unlikely to cause confusion).

Further, Applicant's Goods, i.e., skis and snowboards, commonly retail in the range of \$500 to \$1,200.[4] The substantial cost of Applicant's goods alone makes any likelihood of confusion unlikely. *See, e.g., Magnaflux Corp. v. Sonoflux Corp.*, 231 F.2d 669, 109 USPQ 313 (C.C.P.A. 1956). "The greater the value of an article the more careful the typical consumer can be expected to be . . . ." *McGregor-Doniger, Inc. v. Drizzle, Inc.*, 202 U.S.P.Q. 81, 92 (2d Cir. 1979) (holding purchasers of women's overcoats and raincoats priced from \$100-\$900 to be sophisticated.). In making purchasing

decisions regarding "expensive" goods, the reasonably prudent person standard is elevated to the standard of the "discriminating purchaser." *Weiss Assoc., Inc. v. HRL Assoc., Inc.*, 14 U.S.P.Q.2d 1840 (Fed. Cir. 1990); *see also, L. J. Mueller Furnace Co. v. United Conditioning Corp.*, 222 F.2d 755, 106 U.S.P.Q. 112 (C.C.P.A. 1955) (holding buyers of air conditioning units were "discriminating"). A discriminating purchaser of expensive goods or services does not buy them casually, but only after careful consideration, so confusion is less likely than where the goods are inexpensive. *Weiss Assoc., Inc.*, 14 U.S.P.Q.2d at 1840.

Given the cost, and the variety of product specifications consumers of Applicant's goods must evaluate when purchasing Applicant's Goods discussed above, consumers of Applicant's Goods are "discriminating," exercise a markedly higher standard of care than an ordinarily prudent purchaser, and will proceed to purchase goods like Applicant's only after careful consideration of the source and reputation of the ski and snowboards they are seeking to purchase. Accordingly, consumers of Applicant's goods are unlikely to be confused and this factor strongly weighs in Applicant's favor.

**5. Applicant and Registrant's Marks Co-Exist Without Evidence of Consumer Confusion.**

Concurrent use of two marks without consumer confusion is probative evidence that confusion of the marks is unlikely. *Du Pont*, 476 F.2d at 1361. Applicant has been using the mark since at least as early as October 2010. Declaration of Ross Anapolle (the "Anapolle Decl.") at ¶ 2. Since that time, Applicant has sold Applicant's Goods in twenty states, as well as in Canada and Europe. Anapolle Decl. at ¶ 3. Applicant has encountered no instances of actual confusion with Registrant's Mark. Anapolle Decl. at ¶ 4. Thus, this *DuPont* factor also indicates that confusion between Applicant's and Registrant's mark is not only unlikely, but also not occurring in the marketplace.

**6. Other *Du Pont* factors are Neutral or Favor Applicant.**

Applicant knows of no instances of actual confusion, nor is there any evidence that the cited mark is famous or used for a wide range of goods or services. These factors each favor finding that there is no likelihood of confusion.

**CONCLUSION**

As shown above, an analysis of the *DuPont* factors relevant to this case demonstrate that confusion between Applicant's and Registrant's Marks is unlikely. Registrant's Mark is a descriptive/weak mark for a style of "hats" that co-exists in a crowded field with a number of other BOMBER marks. Registrant's Mark is therefore entitled to a limited scope of protection that does not

extend to bar registration of Applicant's Mark given the differences in the parties' goods and high degree of care consumers are likely to exercise when purchasing Applicant's products. Indeed, Applicant's and Registrant's marks have co-existed in the marketplace for at least twenty-one months with no evidence of actual confusion, which further demonstrates that confusion is unlikely. As confusion between the marks is unlikely, Registrant's Mark should not bar Applicant's Mark from proceeding to registration.

Accordingly, Applicant respectfully requests that the Examiner withdraw the refusal to register Applicant's Mark and that the Application be approved for publication. Please contact the undersigned with questions.

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[1] Copies of the TARR records for the aforementioned registrations are attached as **Exhibit B**.

[2] The Examiner has also argued that the classes of consumers to which Applicant and Registrant's Goods are used by are similar. Applicant discusses consumers for its goods and the degree of care those consumers take in purchasing its products in Section 4 *infra*.

[3] Copies of online resources describing the variety of ski disciplines, ski types, and factors to consider when purchasing skis, are attached as **Exhibit C**.

[4] Copies of web pages showing online retail prices for skis and snowboards are attached as **Exhibit D**.

#### **EVIDENCE**

Evidence in the nature of A copy of Applicant's Arguments as well as the Declaration of Ross Anapolle and Exhibits A, B, C, and D referenced in Applicant's Arguments has been attached.

#### **Original PDF file:**

[evi\\_198221004-215456758\\_ Exhibit A.PDF](#)

#### **Converted PDF file(s) (25 pages)**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

[Evidence-13](#)

[Evidence-14](#)

[Evidence-15](#)

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- Evidence-21
- Evidence-22
- Evidence-23
- Evidence-24
- Evidence-25

**Original PDF file:**

evi\_198221004-215456758 . Exhibit B.PDF

**Converted PDF file(s) (31 pages)**

- Evidence-1
- Evidence-2
- Evidence-3
- Evidence-4
- Evidence-5
- Evidence-6
- Evidence-7
- Evidence-8
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- Evidence-30
- Evidence-31

**Original PDF file:**

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**Converted PDF file(s) (19 pages)**

- Evidence-1
- Evidence-2
- Evidence-3
- Evidence-4
- Evidence-5

- Evidence-6
- Evidence-7
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- Evidence-9
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- Evidence-16
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- Evidence-18
- Evidence-19

**Original PDF file:**

evi\_198221004-215456758 . Exhibit D.PDF

**Converted PDF file(s) (5 pages)**

- Evidence-1
- Evidence-2
- Evidence-3
- Evidence-4
- Evidence-5

**Original PDF file:**

evi\_198221004-215456758 . Request for Reconsideration - BOMBER Mark.pdf

**Converted PDF file(s) (11 pages)**

- Evidence-1
- Evidence-2
- Evidence-3
- Evidence-4
- Evidence-5
- Evidence-6
- Evidence-7
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- Evidence-9
- Evidence-10
- Evidence-11

**Original PDF file:**

evi\_198221004-215456758 . Declaration of R Anapolle.pdf

**Converted PDF file(s) (1 page)**

- Evidence-1

**CORRESPONDENCE ADDRESS CHANGE**

Applicant proposes to amend the following:

**Current:**

ROSS ANAPOLLE

NEWTON

Massachusetts (MA)

US

02465

**Proposed:**

Makalika Naholowaa of Perkins Coie LLP, having an address of  
1201 Third Avenue, Suite 4900 Seattle, Washington 98101-3099  
United States

pctrademarks@perkinscoie.com;mnaholowaa@perkinscoie.com

206-359-8000

206-359-9000

The attorney docket/reference number is 79620-4000.0002.US001.

**SIGNATURE(S)****Request for Reconsideration Signature**

Signature: /Makalika Naholowaa/ Date: 07/02/2012

Signatory's Name: Makalika Naholowaa

Signatory's Position: Attorney of Record, Washington state bar member

Signatory's Phone Number: 206-359-8000

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Mailing Address: Makalika Naholowaa  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101-3099

Serial Number: 85284613

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436-85284613-490eab71144f83cbefda31fae85

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**Exhibit A**

# Aviator hat

From Wikipedia, the free encyclopedia

An **aviator hat**, also known as a **bomber hat**, is a usually leather cap with large earflaps, a chin strap and, often, a short brim that is commonly turned up at the front to show the lining (often fleece or fur). It is often worn with goggles. It may be made of other materials, such as felt.

Aviator hats became popular in the early days of the 20th century as open-cockpit airplanes grew in use. Pilots needed a hat to keep their heads and ears warm, as well as goggles to protect their eyes in flight. With the advent of closed-cockpits, hats became less necessary (note that Charles Lindbergh still wore one when he crossed the Atlantic in 1927, though his Spirit of St. Louis monoplane had a closed cockpit). None the less, Aviator's Hats continued in popularity as a fashion accessory and winter hat. Aviator's hats continued in aviation use through the Second World War, until the age of jet fighters, when solid plastic and, later, carbon fiber helmets replaced leather caps in the cockpits of planes.



Eugene Ely, head and shoulders, (8 - facing right - right side of face is most visible); wearing aviator's hat and goggles.

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Categories: Hats Clothing stubs

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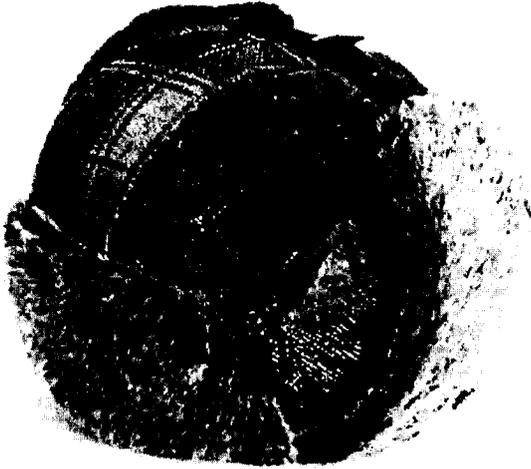




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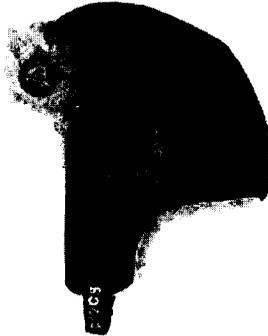
1. Lay the pants on their side on a flat surface, keeping the legs together
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Carhartt Bomber Hat



Price: \$19.99

Manufacturer: Carhartt

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Our bomber cap is made of 100% nylon with a Teflon® water-resistant finish to help keep you dry. For warmth, its lined in 100% quilted polyester fleece and features flip-down/fold-over ear flaps with a chin-strap and hook-and-loop closure.

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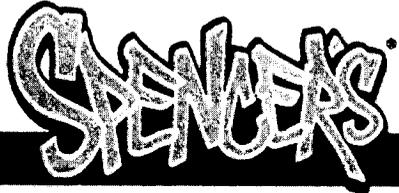
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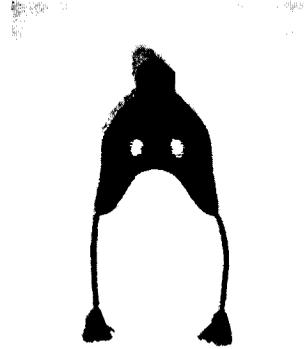
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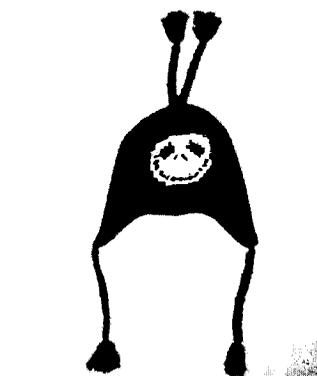
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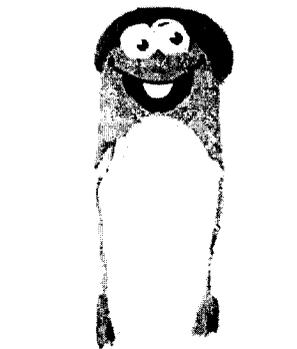
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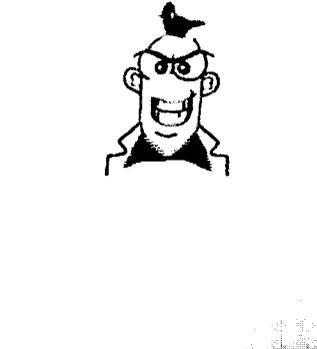
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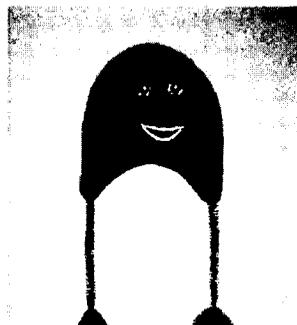
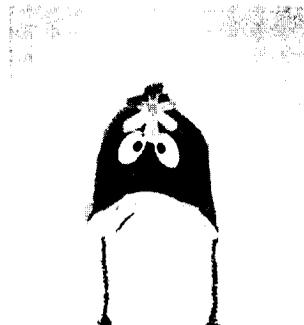
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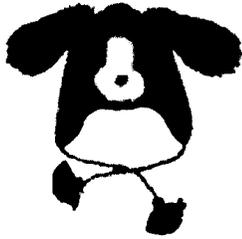
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Jacqueline New York, New York

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This sweet aviator hat was made using super soft acrylic yarn in pink and Ivory. Boy version of same hat was made using acrylic yarn in hot green and navy blue. Hats are embellished with two buttons (buttons may vary depending on what's in stock). Your little girl will look absolutely precious! Wonderful homecoming hat, baby shower gift or new baby gift. Also makes a wonderful prop for professional photos.

Sizes available. Specify size and which hat in note to seller.

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### Penguin Bomber Hat

by [Micah York](#)

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Published in Micah Makes  
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This pattern is available for **\$5.95 USD**  
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The Penguin Bomber Hat is a great hat to keep you toasty during the cold weather. This hat is adorable for little ones but can also be great for Pittsburgh Penguins hockey fans, Linux Tux lovers, or anyone else with a penguin for a mascot. It is a unique and seamless design featuring a front flap in the shape of a penguin face and wing-shaped earflaps. This unisex hat pattern works up quickly in bulky yarn, and contains 6 sizes so that everyone in the family can get a great fit.

© Micah York

For more information, see:  
<http://www.micahmakes.com/pattern-store/penguin-hat-...>

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About this pattern

Penguin Bomber Hat  
 by Micah York

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Dickies Dickies Men's Nylon Bomber Hat

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(27)

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Dickies Men's Faux Wax Bomber Hat

\$24.98 - \$24.99



Dickies Men's Carvas Bomber Hat

\$24.99

### Product Description

Black nylon bomber with faux fur

### Product Details

**Shipping Weight:** 1 pounds ([View shipping rates and policies](#))

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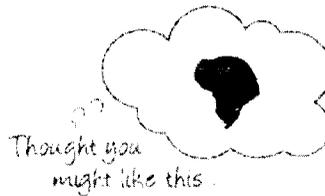
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For Your Pet

Warehouse Deals  
Open-Box  
Discounts

Woot  
Never Gonna  
Give You Up

Yoyo.com  
A Happy Place  
To Shop For Toys

Zappos  
Shoes &  
Clothing

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- Bomber Hats
- Kids Bomber Hats
- Non Fur Hats
- Rabbit Fur Hats
- Troopers
- Home
- Specials
- About Us
- Links
- Sizing
- Returns/Exchanges
- Search the Store
- Shopping Cart
- Your Account
- Help
- Fans
- True

# MAD BOMBER

BECAUSE IT'S COOL OUT THERE



**303N03**  
Product #: 303N03  
SUPPLEX MAD  
BOMBER®  
[\[More Info\]](#)

**Our Price: \$40.00**

Quantity:

[Bomber Hats](#)  
[Kids Bomber Hats](#)  
[Non Fur Hats](#)  
[Rabbit Fur Hats](#)  
[Troopers](#)  
[Home](#)  
[Specials](#)  
[About Us](#)  
[Links](#)  
[Sizing](#)  
[Returns/Exchanges](#)  
[Search the Store](#)  
[Shopping Cart](#)  
[Your Account](#)  
[Help](#)  
[Fans](#)  
[True](#)



## About the Mad Bomber® Company



The Mad Bomber® Company is outerwear manufacturer creating unique products that combine natural resources with innovative high-tech fabrics.

The name "Mad Bomber®" was coined during our president's unstable ski-jumping career. Trading in China since 1978 Mad Bomber® is the original and the world's largest "Bomber®" hat manufacturer. Moving materials between Europe, America, and China we have truly become a multi-national company coordinating worldwide operations and promoting cooperation amongst diverse cultures.

Operating a joint venture factory in Manchuria reliant on thousands of self-employed Chinese, we are promoting free enterprise in China. Combined with our diverse international distribution network in Italy, Russia, Sweden, Japan, Finland, Argentina, America, France, Norway, and England we are not only promoting entrepreneurial self-reliance but also understanding between peoples.

Using hemp grown without pesticides and organic cottons allows us to support local farmers in touch with their environment.

We are a member of The Conservation Alliance, a completely volunteer organization that returns all dues, over \$2.3 million to date, to grass roots citizen action groups working to protect wild and natural rivers, trails and land areas.



We continue our yearly donations to humanitarian or other causes: The American Indian College Fund, The Bluemont Concert Series, flood victims in North Dakota, sewing machines to Russian trade schoolchildren. Along with our winter headwear donations to the homeless we are a company contributing to our society and to our earth

**Exhibit B**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-07-02 11:50:43 ET**

**Serial Number:** 85322134 [Assignment Information](#)      [Trademark Document Retrieval](#)

**Registration Number:** 4083130

**Mark**



**(words only):** INK BOMBERS

**Standard Character claim:** No

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

**Date of Status:** 2012-01-10

**Filing Date:** 2011-05-16

**Transformed into a National Application:** No

**Registration Date:** 2012-01-10

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 117

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2012-01-10

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Ink Bombers

**Composed Of:**

Daniel Arias, USA; Carlos Lopez, USA; Ricardo Ramirez, USA; Mario Ramos, Jr, USA; Veronica Ontiveros Armendariz, USA

**Address:**

Ink Bombers  
946 S. Pembroke Rd

San Dimas, CA 91773

United States

**Legal Entity Type:** Partnership

**State or Country Where Organized:** California

**Phone Number:** (626)833-6786

---

**GOODS AND/OR SERVICES**

---

**International Class:** 025

**Class Status:** Active

Clothing, namely, shirts, hats, sweaters, jackets, socks, bandanas, beanies, shoes, underwear, pants, swimwear, shorts, skirts, dresses, ties, belts, long sleeve shirts, jackets, sports bras, visors, scarves and dress suits

**Basis:** 1(a)

**First Use Date:** 2008-01-15

**First Use in Commerce Date:** 2009-08-09

---

**ADDITIONAL INFORMATION**

---

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

**Description of Mark:** The mark consists of the stylized wording "INK BOMBERS" appearing to the right of the depiction of a bomb surrounded by circle.

**Design Search Code(s):**

**23.03.12** - Land mines; Other ammunition and explosives

**26.01.02** - Circles, plain single line; Plain single line circles

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2012-01-10 - Registered - Principal Register

2011-10-25 - Official Gazette Publication Confirmation E-Mailed

2011-10-25 - Published for opposition

2011-09-16 - Law Office Publication Review Completed

2011-09-16 - Assigned To LIE

2011-08-31 - Approved for Pub - Principal Register (Initial exam)

2011-08-31 - Examiner's Amendment Entered

2011-08-31 - Notification Of Examiners Amendment E-Mailed

2011-08-31 - Examiners amendment e-mailed

2011-08-31 - Examiners Amendment -Written

2011-08-31 - Assigned To Examiner

2011-05-21 - Notice Of Design Search Code Mailed

2011-05-20 - New Application Office Supplied Data Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Correspondent**

INK BOMBERS

INK BOMBERS

946 S PEMBROKE RD

SAN DIMAS, CA 91773-3753

Phone Number: (626)833-6786

---

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-07-02 11:51:02 ET

Serial Number: 77510885 Assignment Information      Trademark Document Retrieval

Registration Number: 3572196

Mark

## SAYREVILLE BOMBERS

(words only): SAYREVILLE BOMBERS

Standard Character claim: Yes

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

Date of Status: 2009-02-10

Filing Date: 2008-06-30

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: 2009-02-10

Register: Principal

Law Office Assigned: LAW OFFICE 104

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2009-02-10

---

### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Sayreville Board of Education

**Address:**

Sayreville Board of Education

<http://tarr.uspto.gov/tarr?regser=serial&entry=77510885&action=Request+Status>

7/2/2012

820 Washington Road  
Parlin, NJ 08859  
United States

**Legal Entity Type:** BODY POLITIC AND CORPORATE

**State or Country Where Organized:** New Jersey

**Phone Number:** 732-525-1644

---

**GOODS AND/OR SERVICES**

---

**International Class:** 025

**Class Status:** Active

Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms

**Basis:** 1(a)

**First Use Date:** 1960-09-01

**First Use in Commerce Date:** 1960-09-01

---

**ADDITIONAL INFORMATION**

---

**Disclaimer:** "SAYREVILLE"

**Section 2(f)**

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-10-10 - Attorney Revoked And/Or Appointed

2011-10-10 - TEAS Revoke/Appoint Attorney Received

2009-02-10 - Registered - Principal Register

2008-11-25 - Published for opposition

2008-11-05 - Notice of publication

2008-10-21 - Law Office Publication Review Completed

2008-10-21 - Assigned To LIE

2008-10-07 - Approved for Pub - Principal Register (Initial exam)

2008-10-07 - Examiner's Amendment Entered

2008-10-07 - Notification Of Examiners Amendment E-Mailed

2008-10-07 - EXAMINERS AMENDMENT E-MAILED

2008-10-07 - Examiners Amendment -Written

2008-10-07 - Notification Of Non-Final Action E-Mailed

2008-10-07 - Non-final action e-mailed

2008-10-07 - Non-Final Action Written

2008-10-04 - Assigned To Examiner

2008-07-03 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Ira Hammer

**Correspondent**

Ira Hammer

Schwartz Simon Edelstein & Celso, LLC

100 South Jefferson Road, Suite 200

Whippany NJ 07981

Phone Number: 973-301-0001

Fax Number: 973-993-3152

---

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-07-02 11:51:19 ET

Serial Number: 76663918 Assignment Information Trademark Document Retrieval

Registration Number: 3254511

Mark

# LONG HAUL BOMBERS

(words only): LONG HAUL BOMBERS

Standard Character claim: Yes

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

Date of Status: 2007-06-26

Filing Date: 2006-08-01

Transformed into a National Application: No

Registration Date: 2007-06-26

Register: Principal

Law Office Assigned: LAW OFFICE 117

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-06-26

---

## LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. LONG HAUL PRODUCTIONS, INC.

**Address:**

LONG HAUL PRODUCTIONS, INC.  
6600 JANSEN AVENUE N.E.  
ALBERTVILLE, MN 55301  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:**(NOT AVAILABLE)

---

## GOODS AND/OR SERVICES

---

**International Class:** 025**Class Status:** Active

Men's, Women's and Children's clothing, namely t-shirts, sleeveless t-shirts, shirts, pull-overs, sweatshirts, sweatpants, jerseys, jackets, shorts, hats, caps, visors, wristbands

**Basis:** 1(a)**First Use Date:** 2005-06-30**First Use in Commerce Date:** 2005-06-30**International Class:** 041**Class Status:** Active

Entertainment and educational services in the nature of performing, participating, and competing in sporting events in the field of softball; arranging for and conducting exhibitions, clinics, camps, and training events in the field of softball; providing electronic publications, namely newsletters, photographs, and posters in the field of softball

**Basis:** 1(a)**First Use Date:** 2005-03-05**First Use in Commerce Date:** 2005-03-05

---

**ADDITIONAL INFORMATION**

---

(NOT AVAILABLE)

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2008-01-16 - Automatic Update Of Assignment Of Ownership

2007-06-26 - Registered - Principal Register

2007-04-10 - Published for opposition

2007-03-21 - Notice of publication

2007-02-21 - Law Office Publication Review Completed

2007-02-21 - Assigned To LIE

2007-01-17 - Approved for Pub - Principal Register (Initial exam)

2007-01-17 - Teas/Email Correspondence Entered

2007-01-16 - Communication received from applicant

2007-01-16 - TEAS Response to Office Action Received

2007-01-03 - Non-final action e-mailed

2007-01-03 - Non-Final Action Written

2006-12-27 - Assigned To Examiner

2006-08-08 - Application Filing Receipt Mailed

2006-08-04 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Jill A. James

**Correspondent**

JILL A. JAMES

KALINA, WILLS, GISVOLD & CLARK PLLP

6160 SUMMIT DR N STE 560

MINNEAPOLIS, MN 55430-2145

Phone Number: (763) 259-3451

Fax Number: (763) 503-7070

---

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-07-02 11:51:38 ET

Serial Number: 75728445 Assignment Information      Trademark Document Retrieval

Registration Number: 2336139

Mark



(words only): DAYTON BOMBERS

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2010-09-29

Filing Date: 1999-06-14

Transformed into a National Application: No

Registration Date: 2000-03-28

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: (NOT AVAILABLE)

Date In Location: 2010-09-29

---

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. ECHL INC.,

**Address:**

ECHL INC.,  
116 VILLAGE BLVD  
PRINCETON, NJ 08540  
United States

**Legal Entity Type:** NON PROFIT CORPORATION

**State or Country Where Organized:** Virginia

---

**GOODS AND/OR SERVICES**

---

**International Class:** 025**Class Status:** Active

clothing, namely, jerseys, jackets, coats, sweat pants, warm-up suits, hats, caps, sweaters, shirts, t-shirts, sweatshirts; and infantwear and toddler clothing, namely, jumpers, t-shirts, cloth bibs, and fleece sets, namely, tops and bottoms

**Basis:** 1(a)**First Use Date:** 1996-07-01**First Use in Commerce Date:** 1996-09-01

---

**ADDITIONAL INFORMATION**

---

**Disclaimer:** "DAYTON"**Design Search Code(s):****01.01.03** - Star - a single star with five points**Prior Registration Number(s):**

2051014

2136679

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2010-09-29 - First renewal 10 year

2010-09-29 - Section 8 (10-year) accepted/ Section 9 granted

2010-09-28 - TEAS Section 8 &amp; 9 Received

2006-07-19 - Automatic Update Of Assignment Of Ownership

2006-06-23 - Section 8 (6-year) accepted &amp; Section 15 acknowledged

2006-06-15 - Assigned To Paralegal

2006-04-18 - Case File In TICRS

2006-03-24 - Section 8 (6-year) and Section 15 Filed

2006-03-24 - TEAS Section 8 &amp; 15 Received

2005-04-08 - Attorney Revoked And/Or Appointed

2005-04-08 - TEAS Revoke/Appoint Attorney Received

2000-03-28 - Registered - Principal Register

2000-01-04 - Published for opposition

1999-12-03 - Notice of publication

1999-10-29 - Approved for Pub - Principal Register (Initial exam)

1999-10-21 - Examiner's amendment mailed

1999-10-15 - Assigned To Examiner

1999-10-12 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Kenneth C. Otis

**Correspondent**

Kenneth C. Otis  
HENDRICK & BRYANT, LLP  
723 COLISEUM DRIVE  
SUITE 101  
WINSTON-SALEM NC 27106  
Phone Number: 336-723-7200  
Fax Number: 336-723-7201

---

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-07-02 11:51:54 ET

Serial Number: 78467956 Assignment Information      Trademark Document Retrieval

Registration Number: 3105058

Mark

**BOMBER**

(words only): BOMBER

Standard Character claim: Yes

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

Date of Status: 2006-06-13

Filing Date: 2004-08-16

Transformed into a National Application: No

Registration Date: 2006-06-13

Register: Principal

Law Office Assigned: LAW OFFICE 114

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-05-02

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Peacock Golf Products, Inc.

**Address:**

Peacock Golf Products, Inc.  
23 Interstate Ave.  
Russellville, AR 72802  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Arkansas

**Phone Number:** (800) 440-5280

---

**GOODS AND/OR SERVICES**

---

**International Class:** 028

**Class Status:** Active

Sporting goods, namely golf clubs, golf club shafts, and golf club parts, namely golf club heads; golf accessories, namely covers for golf clubs

**Basis:** 1(a)

**First Use Date:** 2005-03-00

**First Use in Commerce Date:** 2005-03-00

---

**ADDITIONAL INFORMATION**

---

(NOT AVAILABLE)

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

- 2006-06-13 - Registered - Principal Register
- 2006-04-28 - Law Office Registration Review Completed
- 2006-04-21 - Assigned To LIE
- 2006-04-15 - Allowed for Registration - Principal Register (SOU accepted)
- 2006-04-15 - Statement Of Use Processing Complete
- 2006-03-28 - Use Amendment Filed
- 2006-03-28 - TEAS Statement of Use Received
- 2006-02-14 - NOA Mailed - SOU Required From Applicant
- 2005-11-22 - Published for opposition
- 2005-11-02 - Notice of publication
- 2005-10-03 - Law Office Publication Review Completed
- 2005-09-23 - Assigned To LIE
- 2005-09-16 - Approved For Pub - Principal Register

2005-09-07 - Teas/Email Correspondence Entered  
2005-08-31 - Communication received from applicant  
2005-08-31 - TEAS Response to Office Action Received  
2005-08-31 - TEAS Change Of Correspondence Received  
2005-04-02 - Non-final action e-mailed  
2005-04-02 - Non-Final Action Written  
2005-03-18 - Assigned To Examiner  
2004-08-24 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Gary N. Speed

**Correspondent**

GARY N. SPEED  
SPEED LAW FIRM  
SUITE 1200  
111 CENTER STREET  
LITTLE ROCK, AR 72201  
Phone Number: 501-219-2800  
Fax Number: 501-219-2879

---

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-07-02 11:52:09 ET

Serial Number: 78921236 Assignment Information      Trademark Document Retrieval

Registration Number: 3275027

Mark

# BASELINE BOMBER

(words only): BASELINE BOMBER

Standard Character claim: Yes

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

**Date of Status:** 2007-08-07

**Filing Date:** 2006-06-30

**Transformed into a National Application:** No

**Registration Date:** 2007-08-07

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2007-08-07

---

## LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Perfect Jumper, LP

**Composed Of:**

PJ Management, LLC, a Texas limited liability company, its General Partner

**Address:**

Perfect Jumper, LP

611 Cannon Lane

Sugar Land, TX 77479

United States

**Legal Entity Type:** Limited Partnership

**State or Country Where Organized:** Texas

---

**GOODS AND/OR SERVICES**

---

**International Class:** 028

**Class Status:** Active

Basketball training apparatus used to improve shooting accuracy

**Basis:** 1(a)

**First Use Date:** 2005-07-31

**First Use in Commerce Date:** 2005-07-31

---

**ADDITIONAL INFORMATION**

---

(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-08-07 - Registered - Principal Register

2007-05-22 - Published for opposition

2007-05-02 - Notice of publication

2007-03-21 - Law Office Publication Review Completed

2007-03-18 - Approved for Pub - Principal Register (Initial exam)

2007-03-16 - Teas/Email Correspondence Entered

2007-03-16 - Communication received from applicant

2007-03-16 - Assigned To LIE

2007-02-08 - TEAS Response to Office Action Received

2006-12-04 - Non-final action e-mailed

2006-12-04 - Non-Final Action Written

2006-12-03 - Assigned To Examiner

2006-07-07 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

D. Brit Nelson

**Correspondent**

D. BRIT NELSON

LOCKE LIDDELL & SAPP LLP

3400 JPMORGAN CHASE TOWER

600 TRAVIS STREET

HOUSTON, TX 77002-3095

Phone Number: 713-226-1200

Fax Number: 713-223-3717

---

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-07-02 11:52:22 ET**

**Serial Number:** 85243335 Assignment Information      Trademark Document Retrieval

**Registration Number:** 4085118

**Mark**

# BICEP BOMBER

**(words only):** BICEP BOMBER

**Standard Character claim:** Yes

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

**Date of Status:** 2012-01-10

**Filing Date:** 2011-02-16

**Transformed into a National Application:** No

**Registration Date:** 2012-01-10

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 101

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2011-12-05

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Nutraloid Labs Inc.

**Address:**

Nutraloid Labs Inc.  
120 Wood Rd Bld #2  
Kingston, NY 12401  
United States

**Legal Entity Type:** Corporation

<http://tarr.uspto.gov/tarr?regser=serial&entry=85243335>

7/2/2012

State or Country of Incorporation: New York

---

**GOODS AND/OR SERVICES**

---

**International Class:** 028

**Class Status:** Active

Exercise equipment, namely, Weight lifting harness that allows users to localize bicep curls with weights

**Basis:** 1(a)

**First Use Date:** 2010-01-05

**First Use in Commerce Date:** 2010-01-05

---

**ADDITIONAL INFORMATION**

---

**Disclaimer:** "BICEP"

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

- 2012-01-10 - Registered - Principal Register
- 2011-12-06 - Notice Of Acceptance Of Statement Of Use E-Mailed
- 2011-12-05 - Law Office Registration Review Completed
- 2011-11-30 - Allowed for Registration - Principal Register (SOU accepted)
- 2011-11-08 - Statement Of Use Processing Complete
- 2011-11-03 - Use Amendment Filed
- 2011-11-08 - Case Assigned To Intent To Use Paralegal
- 2011-11-03 - TEAS Statement of Use Received
- 2011-10-25 - NOA E-Mailed - SOU Required From Applicant
- 2011-08-30 - Official Gazette Publication Confirmation E-Mailed
- 2011-08-30 - Published for opposition
- 2011-07-25 - Law Office Publication Review Completed
- 2011-07-25 - Assigned To LIE
- 2011-06-29 - Approved For Pub - Principal Register

2011-06-29 - Teas/Email Correspondence Entered  
2011-06-28 - Communication received from applicant  
2011-06-28 - TEAS Response to Office Action Received  
2011-05-25 - Notification Of Non-Final Action E-Mailed  
2011-05-25 - Non-final action e-mailed  
2011-05-25 - Non-Final Action Written  
2011-05-18 - Assigned To Examiner  
2011-02-21 - New Application Office Supplied Data Entered In Tram  
2011-02-19 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Raj Abhyanker

**Correspondent**

RAJ ABHYANKER

RAJ ABHYANKER, P.C.

1580 W EL CAMINO REAL STE 8

MOUNTAIN VIEW, CA 94040-2462

Phone Number: 650 965 - 8731

Fax Number: 650 989 - 2131

---

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-07-02 11:52:33 ET

Serial Number: 77484125 Assignment Information      Trademark Document Retrieval

Registration Number: 3596423

Mark

## BOMBER WALKIE TALKIE

(words only): BOMBER WALKIE TALKIE

Standard Character claim: Yes

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

Date of Status: 2009-03-24

Filing Date: 2008-05-27

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: 2009-03-24

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2009-02-19

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### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. EBSCO Industries, Inc.

Address:

EBSCO Industries, Inc.

<http://tarr.uspto.gov/tarr?regser=serial&entry=77484125>

7/2/2012

Finance Dept. 5724 Hwy 280 East  
Birmingham, AL 35242  
United States

**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Delaware  
**Phone Number:** 205-995-1500  
**Fax Number:** 205-981-4046

---

**GOODS AND/OR SERVICES**

---

**International Class:** 028  
**Class Status:** Active  
Artificial fishing lures  
**Basis:** 1(a)  
**First Use Date:** 2008-08-29  
**First Use in Commerce Date:** 2008-08-29

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**  
428006

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2009-03-24 - Registered - Principal Register  
2009-02-19 - Law Office Registration Review Completed  
2009-02-18 - Allowed for Registration - Principal Register (SOU accepted)  
2009-02-17 - Statement Of Use Processing Complete  
2009-01-30 - Use Amendment Filed  
2009-02-17 - Case Assigned To Intent To Use Paralegal  
2009-01-30 - TEAS Statement of Use Received  
2009-01-06 - NOA Mailed - SOU Required From Applicant  
2008-10-14 - Published for opposition  
2008-09-24 - Notice of publication

2008-09-05 - Law Office Publication Review Completed

2008-09-05 - Assigned To LIE

2008-08-26 - Approved For Pub - Principal Register

2008-08-26 - Examiner's Amendment Entered

2008-08-26 - Notification Of Examiners Amendment E-Mailed

2008-08-26 - Examiners amendment e-mailed

2008-08-26 - Examiners Amendment - Written

2008-08-21 - Assigned To Examiner

2008-05-30 - New Application Entered In Tram

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Serial Number: 71507882 Assignment Information      Trademark Document Retrieval

Registration Number: 428006

Mark

# BOMBER

(words only): BOMBER

Standard Character claim: Yes

Current Status: The registration has been renewed.

Date of Status: 2006-11-24

Filing Date: 1946-08-23

Transformed into a National Application: No

Registration Date: 1947-03-04

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 830 -Post Registration

Date In Location: 2011-10-19

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LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. EBSCO INDUSTRIES, INC.

**Address:**

EBSCO INDUSTRIES, INC.  
5724 HWY. 280 EAST  
BIRMINGHAM, AL 35242  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

---

**GOODS AND/OR SERVICES**

**U.S. Class:** 022 (International Class 028)  
**Class Status:** Active  
**ARTIFICIAL FISH LURES**  
**Basis:** 1(a)  
**First Use Date:** 1946-07-13  
**First Use in Commerce Date:** 1946-07-13

**ADDITIONAL INFORMATION**

**Description of Mark:** The mark consists of standard characters, without claim to any particular font, style, size, or color.

**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

**PROSECUTION HISTORY**

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-10-21 - On Hold - Electronic Record Review Required

2011-10-19 - Section 7 amendment issued

2011-10-03 - TEAS Section 7 Request Received

2009-01-23 - Case File In TICRS

2006-11-24 - Fourth renewal 10 year

2006-11-24 - Section 8 (10-year) accepted/ Section 9 granted

2006-11-08 - Assigned To Paralcal

2006-09-12 - Combined Section 8 (10-year)/Section 9 filed

2006-09-12 - TEAS Section 8 & 9 Received

1987-03-04 - Second renewal

1987-11-02 - Response received for Post Registration action

1987-08-31 - Post Registration action mailed - Section 9

1987-03-02 - Section 9 filed/check record for Section 8

1967-03-04 - First renewal

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Serial Number: 74543556 Assignment Information      Trademark Document Retrieval

Registration Number: 1990331

Mark (words only): BELLY-BOMBER

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2007-02-23

Filing Date: 1994-06-29

Transformed into a National Application: No

Registration Date: 1996-07-30

Register: Principal

Law Office Assigned: LAW OFFICE 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-02-23

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. NAMCO BANDI GAMES INC.

**Address:**

NAMCO BANDI GAMES INC.

2-1-21 YAGUCHI OTA-KU

TOKYO 1468655

Japan

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Japan

---

**GOODS AND/OR SERVICES**

---

**International Class:** 028

**Class Status:** Active

coin-operated amusement game machines

**Basis:** 1(a)

**First Use Date:** 1995-04-01

**First Use in Commerce Date:** 1995-04-01

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-09-12 - Attorney Revoked And/Or Appointed  
2011-09-12 - TEAS Revoke/Appoint Attorney Received  
2009-08-24 - Attorney Revoked And/Or Appointed  
2009-08-24 - TEAS Revoke/Appoint Attorney Received  
2008-10-30 - TEAS Change Of Correspondence Received  
2007-02-23 - First renewal 10 year  
2007-02-23 - Section 8 (10-year) accepted/ Section 9 granted  
2006-10-30 - Response received to Post Registration action - Sections 8 & 9  
2007-02-07 - Assignment Of Ownership Not Updated Automatically  
2007-01-10 - Assignment Of Ownership Not Updated Automatically  
2006-10-30 - PAPER RECEIVED  
2006-10-10 - Post Registration action mailed Sections 8 & 9  
2006-09-26 - Assigned To Paralegal  
2006-06-29 - Combined Section 8 (10-year)/Section 9 filed  
2006-07-13 - Case File In TICRS  
2006-06-29 - PAPER RECEIVED  
2001-09-21 - Section 8 (6-year) accepted & Section 15 acknowledged  
2001-09-04 - Section 8 (6-year) and Section 15 Filed  
1996-07-30 - Registered - Principal Register

1996-06-12 - Allowed for Registration - Principal Register (SOU accepted)

1996-06-06 - Examiners Amendment -Written

1996-05-30 - Statement Of Use Processing Complete

1996-03-14 - Use Amendment Filed

1995-09-19 - NOA Mailed - SOU Required From Applicant

1995-06-27 - Published for opposition

1995-05-26 - Notice of publication

1994-12-12 - Approved For Pub - Principal Register

1994-12-07 - Assigned To Examiner

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Exhibit C

# Skiing

From Wikipedia, the free encyclopedia

**Skiing** is a way of traveling over snow, using skis strapped to one's feet. In modern times it has been mostly an athletic activity. Skis are used in conjunction with boots that connect to the ski with use of a binding. Commonly, ski poles or "stocks" are used to improve balance and timing as well as for propulsion.<sup>[1][2]</sup>

Skiing can be grouped into two general categories: Nordic and Alpine. Nordic skiing, the older of the two disciplines, originated in Scandinavia and uses free-heel bindings that attach at the toes of the skier's boots but not at the heels. Types of Nordic skiing include cross-country, ski jumping and Telemark. Alpine skiing (more often called "downhill skiing"), originated in the European Alps, and is characterized by fixed-heel bindings that attach at both the toe and the heel of the skier's boot.



Alpine skier carving a turn

## Contents

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  - 1.2 Modern history
  - 1.3 20th century
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  - 2.3 Nordic skiing
  - 2.4 Military skiing
  - 2.5 Other types
- 3 Skiing competition
- 4 Skiing for people with disabilities
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## History

*Main article: History of skiing*

### Early history



The Norse goddess Skaði hunts in the mountains on skis in an illustration (1901) by H. L. M.

The earliest people to ski may have been the distant ancestors of the modern day Sami.<sup>[3][4][5]</sup> One of the early names used for the Sami was skridfinner/scricfinni/scriefinni/σκριθίνινοι,<sup>[6]</sup> which some have translated as "skiing Sami". Pre-historic Nordic people and Sami used skis to assist in hunting, military maneuvers, and as a practical means of transportation. The oldest and most accurately documented evidence of skiing origins is found in modern day Norway and Sweden. The earliest primitive carvings circa 5000 B.C. depict a skier with one pole, located in Rødøy in the Nordland region of Norway. The first primitive ski was found in a peat bog in Hoting, Sweden which dates back to 2500 or 4500 B.C.<sup>[7][8]</sup> Joel Berglund reported in 2004 the discovery of a primitive ski, or "85cm long piece of wood", carbon tested by researchers in 1997 while excavating a Norse settlement near Nanortalik, Greenland. The primitive ski dated back to 1010, and is thought to be Greenland's oldest ski brought by Norsemen circa 980 A.D.<sup>[9]</sup>

Other accounts of early Nordic skiing are found with two modern cross-country endurance races in Norway and Sweden. These ski races were inspired by famous historic accounts of early medieval skiing in their respective countries. The oldest account involves the famous story from 1206 A.D. of the Birkebeiners during a civil war in medieval Norway. Considered the underdog, the Birkebeiners were at war against a rival faction known as the baglers. Following the death of the Birkebeiner chief, the baglers feared a rival in his young son Håkon Håkonsson. To protect him, two of the most skillful Birkebeiner skiers, with toddler in

tow, skied through treacherous conditions over the mountains from around Lillehammer to safety in Østerdalen valley. Since 1932, Norway's annual Birkebeinerrennet runs a 54 km (34 mi) cross-country ski race that pays tribute to this historic account.<sup>[10][10]</sup> Since 1922, Sweden has run their own ski marathon known as the Vasaloppet. With its longest race at 90 km (56 mi) and finishing in Mora, Sweden, it is known as the world's longest cross-country ski race. This endurance race commemorates the memory of "freedom fighter" Gustav Vasa and subsequently Swedish independence. Pursued by the Danes in 1520 A.D. (under order from King Christian of Denmark who controlled Sweden at the time), Gustav Vasa attempted to raise an army against the Danes but was forced to flee by skis northwest toward Norway. Tracked down by Mora's two best skiers, Gustav returned with them to Mora and led an uprising that eventually overthrew Danish rule.<sup>[11]</sup>

Skiing is also recorded in Norse mythology, where two deities—the god Ullr and the goddess Skaði—are attested as hunting on skis. One of the world's oldest references to skiing is by Egil Skallagrimsson's "950 AD saga describing King Haakon Adalsteinsfostre the Good's practice of sending his tax collectors out on skis".<sup>[8]</sup> Another one of the oldest written accounts of skiing is by Swedish writer Olaus Magnus in his writings *A Description of the Northern Peoples* in 1555. His accounts record early primitive skiers (presumably the Sami people) and their "climbing skins" in Scricfinnia, a country or region at the top of modern day Norway.

<sup>[12][13]</sup> Sometime around 1800 A.D. Danish traveler Father Knut Leed made reference in *Geographie* to Norwegian kids "skiing just for the fun of it, being able to pick up a hat dropped on the slope while going at full speed."<sup>[14]</sup>



Wolf hunting on skis

The word "ski" itself is one of a handful of words Norway has exported to the international community. It comes from the Old Norse word "skið" which means split piece of wood or firewood.<sup>[15][16]</sup> Previously, English speakers considered skiing to be a type of snowshoeing. In regions where loose snow dominates, the indigenous population developed snowshoes that did not slide across the snow, unlike skis. Today's forms of skiing are the

modern extensions of ancient Nordic skiing. Whether it be the Nordic forms of Cross-country skiing (a form of Telemark skiing) and Telemark skiing, Ski mountaineering or Alpine skiing, modern forms of skiing share common threads of origin from the Telemark region in Norway led by Norwegian ski innovator Sondre Norheim.<sup>[14]</sup>

## Modern history



19th century artist depiction of the two Birkebeiners with the Royal infant

Norwegian Sondre Norheim is known as the "father of modern skiing" (the originator of skiing as recreation and sport).<sup>[17]</sup> From the Telemark district of Morgedal, Norway, which is also known as the "cradle of skiing", Norheim created the design templates from which all forms of modern skiing are derived. In 1850, woodcarvers from the Telemark region introduced lighter, thinner, canibered skis.<sup>[18]</sup> These developments were accompanied by Norheim's creation of stiff bindings by fully securing the heel with a strong yet flexible strap made from birch roots. This new binding system enabled the skier to swing, jump and maneuver turns while skiing down hills.<sup>[14]</sup> These were known as "Osier" bindings.<sup>[19]</sup> Morten Lund writes, in his piece outlining the development of Alpine skiing, that "Telemark skiing marked the transition to dynamic control, changing the angle of the ski bottom on the snow and changing the direction of the ski to the line of descent—the basis of technique even today", thus the necessity for Norheim's heel binding invention. And as a result, came the "flowering of the world's first "freestyle" contests—climbing, running, making turns for the fun of it and flying off natural bumps on unprepared snow."<sup>[14]</sup>

Alpine ski racing as an organised sport commenced in both America and Australia. The first recreational ski club was formed in 1861 at Kiandra, Australia,<sup>[20]</sup> where the first documented international downhill carnival was also held.<sup>[21]</sup>

Another milestone in those years is the ignition of winter tourism in St.Moritz, Graubünden in 1864;<sup>[22]</sup> although doubted that skiing was among their activities, the presence of people for simply leisure reasons in a wintery area was essential for the development of skiing for other than utility reasons.

In 1868, with a couple fellow skiers, Norheim attended the "second annual Centralforeningen (Central Ski Association) open ski competition whose object was to demonstrate skill at descending a particular slope in the city."<sup>[14]</sup> At the competition, Norheim demonstrated groundbreaking techniques that set the ideal benchmarks for skiing in Norway and the European Continent: the arc-like sweep of the "telemark turn" along with the skidded "stem" stop turn (commonly known as the "parallel" stop turn), which was initially known as the "Christiania" turn (original name for modern day Oslo).<sup>[14][23]</sup> The "Christiania" came to be known simply as the "Christi" turn with the formalization of ski rules in 1901.<sup>[14][24]</sup> Both turns, which originated in Telemark, mark the distinction between Telemark and Alpine skiing.<sup>[17]</sup>

Then in 1870, Norheim introduced his adaptive design of the Telemark or "narrow-waisted" ski – "the forerunner of the sidecuts used on skis today." Skis were narrowed, shortened and the sides curved inwards.<sup>[14]</sup> These refinements greatly facilitated easier ski turns and set "the standard for ski design over the next century."<sup>[14]</sup> By the 1880s, as demand for Norwegian skis increased, changes led to the development of the first laminated skis which began to appear in 1881.



Skiing in Scandinavia, 1767

These new fangled "hand-crafted" skis were constructed "with an ash sole and pine top" and first exported to Sweden in 1882.<sup>[14]</sup> Also in 1882, the first hickory skis appeared in Norway providing for a thinner more flexible ski. Ski development was continued by Norwegian I.M. Christiansen who constructed the first two-layer laminated ski in 1893, followed by fellow Norwegian Bjørn Ullevoldsæter's patented three-layer laminated ski. (Incidentally, this style was also independently developed by George Aaland in Seattle.)<sup>[18]</sup>

Collectively, these innovative designs and techniques laid the foundation for all forms of modern skiing and further developments, including one established form of skiing called Slalom by Norheim and his contemporaries in the Telemark region.<sup>[15][25]</sup> Slalom, or "slalåm" in Norwegian dialect, is a Norwegian word originating from Morgedal, Norway. "Sla" refers to slope, hill, or smooth surface while "låm" means "track down the slope".<sup>[15]</sup>

## 20th century

Although Sondre Norheim had initially invented secure heeled bindings using water-soaked, flexible birch roots,<sup>[19]</sup> the next development came in 1894 from Fritz Huitfeldt who invented a binding with a secure toe iron which allowed the heel to move freely. This became the standard industry binding through the 1930s.<sup>[7]</sup> Retired Austrian school teacher Mathias Zdarsky, like many others at the time (including famed Norwegian explorer Roald Amundsen who became the first man to "ski" to the South Pole in 1911), was intrigued by world-renowned Norwegian explorer and Telemark skier Fridtjof Nansen, and his "high-risk expedition" accounts, in the 1890 German translation of Nansen's book *On Skis Across Greenland*.<sup>[14]</sup> Inspired by Nansen's skiing exploits, Zdarsky took up the sport during his retirement by importing Norwegian skis and teaching himself to ski. Incorporating ski techniques from Norway, he developed a ski technique system, known as the "Lilienfeld Method", which he outlined in his 1896 book *Lilienfeld Skiläufer Technik* (originally published as *Lilienfelder Ski lauf-Technik*).<sup>[7][8][25]</sup> His key development, which led to enthusiastic embrace of skiing in the Alps, was the "stem" technique, or what is commonly known is skiing as the "snowplow" technique. This new technique enabled beginners to experience the slopes in a "slow, and controlled manner", beyond the more sophisticated and complicated Norwegian Telemark and Christiania techniques, which limited the slopes to more advanced and skillful skiers. By 1896, he was teaching his new methods to large groups of "stem skiers" in Austria.<sup>[8][14]</sup>

In 1908, expanding on the developments of this fellow countryman Zdarsky, a young Austrian ski guide by the name of Johannes Schneider entered the scene. With respect to skiing, Johannes (also known as Hannes) is to Austrians as Sondre Norheim and Fridtjof Nansen is to Norwegians. By the 1920s, he had worked to refine Sondre Norheim's "Christiania" stem christi turn, along with fellow countryman Mathias Zdarsky's "stem" or "snowplow" technique. He used these Norwegian and Austrian techniques to develop a logical system of ski instruction, a system which began with the easiest snowplow technique, then progressing through to more difficult ski skills. This system formed the basis for Schneider's formalized Arlberg technique, which is named for his home region, and subsequently set a foundation for professional ski instruction.<sup>[7][14]</sup> This system also incorporated a set of ethical standards to the profession of teaching. With this, the Arlberg technique spread and helped make skiing a popular recreational activity.<sup>[25]</sup>



Kiandra "Snow Shoe" (Skiing)  
Carnival, New South Wales,  
Australia, in 1900.



The skiing techniques of 19th century Morgedal known as Telemark skiing or "telemarking" underwent a revival in the 1970s. This revival of telemark skiing has been attributed by author Halvor Kleppen to five American skiers from Colorado: Doug Buzzell, Craig Hall, Greg Dalbey, Jack Marcial and Rick Borkovec, who were collectively inspired by Norwegian ski phenomenon and Olympic champion Stein Eriksen and his book *Come Ski With Me*.<sup>[26]</sup>

Theodor von Lerch, an Austrian major, teaching skiing to Japanese army as the first experience to Japan at Jōetsu, Niigata on 12 January 1911.

The biomechanical principles of alpine skiing were described in 1985 by Georg Kassat, professor at Münster University

## Types of skiing

Many different types of skiing are popular, especially in colder climates, and many types of competitive skiing events are recognized by the International Olympic Committee (IOC), the International Ski Federation (FIS), and other sporting organizations, such as the U.S. Ski and Snowboard Association in America. Skiing is most visible to the public during the Winter Olympic Games where it is a major sport.

In skiing's traditional core regions in the snowy parts of Scandinavia, as well as in places such as Alaska, both recreational and competitive skiing is as likely to refer to the cross-country variants as to the internationally downhill variants.

Skiing techniques are difficult to master, and accordingly there are ski schools that teach everything from the basics of turning and stopping safely to more advanced carving, racing, mogul or "bump" skiing and newer freestyle techniques. There are two primary types of downhill skiing – "telemark" and "alpine."

For beginning skiers learning under a trained instructor, skiing speeds are low, the terrain is not steep and is often well-manicured, and the risks are relatively low. For extreme skiers, testing their expert abilities against ever more challenging terrain, the risks may be much higher.

### Alpine skiing

Alpine skiing is also called downhill skiing. Typically, downhill skiing takes place at a ski resort with specified ski pistes or ski runs. Ski resorts that offer downhill skiing exist all over the world in cold climate areas. Non-competitive alpine skiing is recreational skiing. Also in the category of Alpine skiing are the competitions known as Slalom, Giant Slalom (GS), Super-G (Super Giant Slalom) and Downhill.

### Freestyle skiing

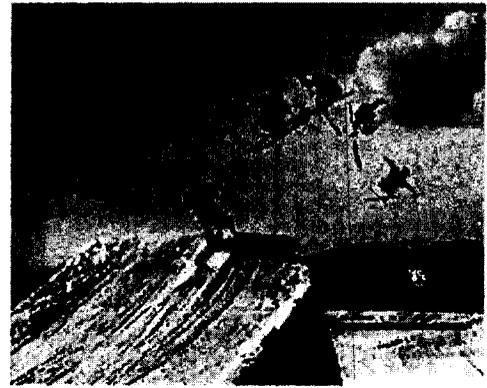
**Alpine Freestyle:** This kind of skiing employs the use of aerial acrobatics and balance, balance being necessary for rails. The use of rails is known as grinding or jibbing. Alpine freestyle was pioneered by Stein Eriksen in 1962. It developed in the 1970s into a style called Hotdogging. In this type of skiing, skiers use jumps (also called kickers or launches) or rails to do aerial tricks. These tricks are reinvented and progressed in technique and style every day.<sup>[27]</sup>



Alpine skier running a downhill course

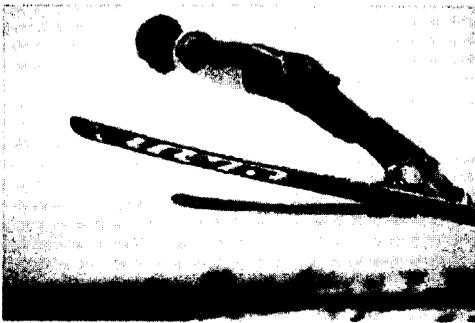
**Freestyle/Newschool:** Freestyle skiing is the type of skiing with which tricks are usually associated. The skis used are generally of a twin tip design, which allow the rider to ride switch (backwards) more easily. Tricks are generally spins and flips, that can be conjoined with a grabbing of the ski to improve the image of the trick. Freestyle skiing generally takes place in terrain parks at ski resorts, with a wide variety of jumps, rails, jibs and other features to session. Mogul skiing is also considered as freestyle skiing.

**Freeskiing/Freeride** Related to freestyle skiing in nature is freeriding, which involves taking the tricks done in the park to the rest of the mountain and the backcountry. Thus, fatter skis may be used to float on top of the powder. Freeriding often involves steep, cliffs, powder, and glades. In part due to the growing popularity of freestyle skiing in recent years and the obvious limitations in that aspect of the sport, freeride skiing has also been growing in popularity in recent years as more and more skiers have access to good backcountry gear and skis.



Freeskiing

## Nordic skiing



A ski jumper using the V-style near Calgary, Canada.

Nordic skiing is also called Cross-country skiing or Cross-country racing. The name distinguishes it from Alpine skiing. Typically after donning appropriate clothing, the skier goes outside and skis in a local park or even on a snowy street. Nordic skiing is the oldest form of skiing and was developed in Scandinavia as a way of travelling in the winter.

Telemark skiing refers to skiing downhill on Nordic skis.

Nordic jumping, also called ski-flying and ski jumping, is a competition in which skiers glide down a long ramp before becoming airborne. This is done with Nordic style skis, meaning that the heels of boot and binding are detached from the ski. The skis are much longer and wider than other types of skis and jumping is typically done without ski-poles.

## Military skiing

**Military Skiing:** In addition to its role in recreation and sport, skiing is also used as a means of transport by the military, and many armies train troops for ski warfare. Ski troops played a key role in retaining Finnish independence from Russia during the Winter War, and from Germany during the Lapland War, although the use of ski troops was recorded by the Danish historian Saxo Grammaticus in the 13th century. The winter Biathlon was developed from military skiing patrols.

## Other types



Cross country skiing : Priit Narusk in the qualification for the Tour de Ski in Prague.



Cross country skiing : Skiing tracks in snow in mountains in Sarek, Sweden.

**Telemark skiing** is a form of downhill skiing where the heel of the boot is not attached to the ski like an alpine ski binding. Telemark skiing is used quite often for backcountry ski touring as the free heel allows for easy movement while "skinning" (walking on flat ground or uphill with a specialized fabric on the bottom of the ski). However, there are comparable disciplines of telemark skiing for almost every discipline of alpine skiing; including racing, freeskiing, and freestyle/newschool. Turning telemark skis requires a specialized technique because of the heel of the boot can move up and down freely, because of this telemark skiing is usually only done by skiers with adequate alpine skiing experience (intermediate level or above).



Champion dry slope racer

**Kite skiing** is skiing done while being pulled or carried by a parasail, hang glider, or kite.

**Water skiing** is done on water and is where a skier is pulled by a leash attached to a boat, generally a speed boat, and the speed allows the skier to skim or ski across the water. Water skiing is also sometimes done with only one ski or sometimes no skis at all.

**Paraskiing** is accomplished either by jumping from a plane or starting from a high altitude on the ground (i.e. – from a mountaintop). Once the parachute is deployed, it is used heavily for steering. Paraskiing has been a competition sport for years, and can be scored for such things as speed and slalom accuracy. This is very different from kite-skiing, as gravity is the sole means of propulsion, rather than wind, thermals, or motors.

**Backcountry skiing:** Also see ski touring. **Randonnée:** See also ski touring, backcountry skiing.

**Skijoring**, also called Euro-style mushing, is skiing while being pulled by an animal(s), typically dogs or horses, or by snow machine.

**Dry Slope Skiing:** This is skiing on artificial or dry snow, or dirt. Dry slope skiing is a year-round sport in countries like the UK where the snow cover is insufficient for traditional skiing. There is a thriving race programme on British slopes. [4] (<http://www.britski.org/dry.htm>)

**Adaptive skiing** is skiing done by individuals with physical disabilities. Adaptations to standard ski equipment or accompaniment by a non-disabled guide has enabled individuals with amputations, spinal injuries, TBI, deafness and visual impairments to ski, and in some cases, even race. The venue, speed and technical difficulty associated with the sport can lead to collisions, accidents, hypothermia and other injury or illness, occasionally including death. Regional Ski Patrol organizations, such as the National Ski Patrol in the U.S., exist as a voluntary organization to provide guidance, help, medical assistance and emergency rescue to those in need of it.

## Skiing competition

Skiing competition is organized by the International Ski Federation, which is responsible for development of rules and scheduling of competitions worldwide in alpine skiing, cross country skiing, freestyle skiing, Nordic combined and ski jumping. Competition is managed in each country by its national association. The U.S. Ski and Snowboard Association is responsible for competitive skiing in America.

## Skiing for people with disabilities

Skiing for people with disabilities became popular after World War II with the return of injured veterans.<sup>[*citation needed*]</sup> It is both a recreational pastime and a competitive sport open to those with any manner of cognitive and/or physical disabilities. Adaptations include the use of outriggers, ski tip retention devices, sit-skis like monoskis and bi-skis, brightly colored guide bibs, ski guides, and inter-skier communication systems or audible clues for blind skiers. A guide skier can assist the sit-skier from behind, this is known as "bucketing".

Recreational skiing programs for people with disabilities exist at mountains across the globe.

Currently the International Paralympic Committee (IPC) and the International Ski Federation (FIS) sanction a number of regional, national, and international disabled skiing events, most notably a World Cup circuit, a Disabled Alpine Skiing World Championships, and the Paralympic Winter Games. One of the strongest disabled programs is the U.S. Disabled Ski Team, organized by the U.S. Ski and Snowboard Association and the U.S. Ski Team.

## Risks of injury

In alpine skiing, there are around three injuries per thousand skiing days.<sup>[28][29]</sup> Knee injuries are most common,<sup>[30]</sup> but broken bones and death do sometimes occur. Ski helmets, once used only by racers, are now in common use by all classes and ages of skier. There is also a risk of being caught in an avalanche.

## See also

*Main article: Outline of skiing*

- Grass skiing
- Roller skiing
- Snowboarding
- Snowshoe walking
- Wake boarding
- Water skiing
- Winter sport
- Skiing and snowboarding on film and video
- 100 Years of Skiing commemorative coin, minted on January 26, 2005
- List of ski areas and resorts

## Notes

1. ^ "How Important Are Ski Poles?" (<http://www.onthesnow.com/news/6/a/2200/how-important-are-ski-poles>). <http://www.onthesnow.com/news/6/a/2200/how-important-are-ski-poles>. Retrieved 18 December 2009.
2. ^ "Maximizing Pole Glide" (<http://www.masterskier.com/article.asp?aid=282>). <http://www.masterskier.com/article.asp?aid=282>. Retrieved 16 January 2012.
3. ^ Olaus Magnus. 1555. "Historia de Gentibus Septentrionalibus" (History of the Nordic Peoples), published in Rome.
4. ^ Fridtjof Nansen. 1961. På ski over Grønland.
5. ^ Hartvig Birkely. 1994. I Norge har lapperne først indført skierne.
6. ^ Svenska Akademien. 1971. Svenska Akademiens ordbok (SAOB)
7. ^ <sup>a</sup> <sup>b</sup> <sup>c</sup> <sup>d</sup> Chronology timeline, North American ski mountaineering backcountry skiing ([http://www.wildsnow.com/chronology/timeline\\_table.html](http://www.wildsnow.com/chronology/timeline_table.html))



A person without the use of his legs learning to ski on a sit-ski, using two outriggers.



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# Ski Types - Alpine, Freeride, Telemark, Cross Country & Freestyle

## Ski & Snowboard Accidents

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There are a lot of different types of Skis available in the market today, and each Ski Type has its own unique features and applications. It is very important to get familiar with the various types of Skis for you to choose the kind which is suitable to where you will be skiing. Generally, Ski Types differ on where they were designed to be used. In this section, we will look into the different Ski Types:



## Most Popular Articles

- 1 Freestyle Skiing - Freestyle Ski Tricks
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- 5 Ski Carving - Common Problems, Drills, and Body Positioning
- 6 Ski Gear - What you need to go Skiing?
- 7 Skis - Parts, Anatomy, Types, Ski Length, and Buying Guide
- 8 Powder Skiing - Common Powder Problems and Basic Drills
- 9 Mogul Skiing - Common Mogul Problems and Basic Drills
- 10 Skiing Tricks - 360

### Alpine Skis

Skis used in **Alpine Skiing** are precise, fast, and excellent for hard groomed Pistes. They are designed for easy turning. The **Ski Bindings** securely fasten the foot to the Ski at toe and heel. It has a mechanism that detaches the Ski from the foot in case the force applied goes beyond the preset value. Alpine Skis are suitable for advanced to race levels.

### Freeride Skis

These are the type of Skis you should use when you have already mastered everything that the Ski area had to offer. They are excellent in tough conditions. Freeride Skis float through Powder Snow, cut through Crud Snow, and even slice through Slush Snow. This type of Ski is suited for advanced, expert race skiers.

### Telemark Skis

Telemark Skis are downhill or touring Skis. The Binding in a Telemark Ski attaches only at the toe. This type of Ski was pioneered by Sondre Norheim of Telemark, Norway, and it was the first one with a notable Waist which makes turning much easier.

### Cross Country Skis

Skis in **Cross Country Skiing** are very thin and light, and have slightly straight **Ski Edges** most of the time. Like In Telemark Skis, the binding in a **Cross-country** Ski attaches only at the toe. This type is usually coated with wax in order to decrease friction when doing a forward motion, while some models have patterns at the bottom to increase friction during a backward motion.

### Freestyle Skis

Freestyle Skis are Special Skis used, obviously, in **Freestyle Skiing**. At this time, you should always remember that each Freestyle Discipline, or any Skiing Discipline for that matter, requires its own type of Ski. For instance, aerialists make use of Skis which are lightweight and move out of the way when maneuvering in mid-air. They use these Skis for transport by skiing straight to the take-off ramp and land at the bottom. Those who are into **Mogul Skiing** need quick and responsive Skis to aic them through a Mogul field with a tight control and with many turns. Acro-skiers require the so-called "ballet skis" which work like figure skates. With ballet skis, Acro-skiers can Ski front and back, spin, swirl over the Snow, and make cross-over steps.



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### Other Types

There are models of Skis which are designed for specific skiers and Skiing situations. These include Powderhound Planks and Racing Skis.

Similar to Water Skis and Snow Skis, Powderhound Planks are fat Skis designed for deep Powder. They are ideal for Skiing in Powder or in soft, cut-up Snow.

As the name suggests, Racing Skis are used by top racers who are very meticulous when it comes to flex, stiffness, responsiveness, as well as liveliness of their Skis. Different types of Racing Skis are manufactured to meet specific needs such as for Downhill, Giant slalom, and Slalom racing.

These are just the basic Ski Types. As you go along, you will realize that there are a lot more variations as far as Skis are concerned. They may vary in their features, characteristics, and applications. Therefore, it is very essential to know the type of Skis appropriate to you and your Skiing skill. The right Ski Type will really be helpful

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### Skis & Skiing Equipment Buying Guide

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Whether you want to conquer black diamond terrain, get started on the bunny slope, or explore the backcountry, you'll find an enormous selection of downhill skis, cross country skis, ski goggles, ski boots, and ski apparel from popular brands such as Atomic, Dynastar, Elan, Oakley, Fischer, Salomon, and Volkl, on eBay.

- [Discover Which Type of Skis You Need](#)
- [Choose Your Downhill Skis and Poles](#)
- [Select Cross Country Skis and Poles](#)
- [Get Ski Boots, Apparel, & Accessories](#)
- [Find Skis on eBay](#)
- [Buy Skis & Skiing Equipment With Confidence](#)

#### Discover Which Type of Skis You Need

##### Discover Which Type of Skis You Need

Skis need to match your skills and ability, and the type of skis you buy depends on the type of terrain you plan to ski. Manufacturers design skis for two major types of skiing: alpine skiing (also called downhill skiing) and cross country skiing.

- **Downhill skis:** Take downhill skis, also called alpine skis, to the ski resort, hop on a ski lift, and feel exhilarated as you travel at high speeds down a mountain. Popular brands include Atomic downhill skis, Elan downhill skis, Rossignol downhill skis, Salomon downhill skis, Volkl downhill skis, and Fischer downhill skis. Head downhill skis offer a smooth run, while Dynastar makes technologically advanced skis that are the talk of the industry.
- **Cross country skis:** Explore the countryside with cross country skis. Telemarking skis, a type of cross country ski, are designed to help you tackle hills on your cross-country treks.

##### Buy ski gear specifically designed for women

Women's skis differ from skis designed for men. Women's skis have more flexibility than men's skis, weigh less, and have mounting points farther forward on the skis to adjust for a woman's center of gravity. Women's ski boots end lower on the leg. They're made of softer materials than men's boots, often including a fleece material that provides extra insulation.

##### Outfit the kids with junior skis

Juniors skis, primary designed for downhill skiing, come in shorter lengths

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than adult-size skis. When buying equipment for children, make sure to get them the right size skis and boots so they'll be comfortable, rather than expecting them to grow into larger sizes. Very young children often don't need poles, which can interfere with learning proper balance.

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## Choose Your Downhill Skis and Poles

### Choose Your Downhill Skis and Poles

Downhill skis have a shapelier, shorter design than ever before. Downhill "carving" skis come in lengths between 160 cm and 200 cm. Conventional straight skis are available in 5 cm increments, from 175 cm to 210 cm.

#### Select the right length for your downhill skis

It's easier for a large skier to make turns with a long ski than for a shorter skier to do the same. Longer downhill skis, recommended for skiing on fresh powder, keep you centered and make it easier to grip snow in turns. Aggressive skiers looking to ski in various conditions at high speeds may also want longer skis.

Lightweight, shorter downhill skis make it easier to change direction and carve more easily at slow speeds. Shorter downhill skis make a good choice for beginners and more cautious skiers.

The following chart will give you an idea of the right ski length for your weight.

Also factor in your height when choosing the length of your downhill skis. When placed on end the ski should reach somewhere between your chin and forehead. When barefoot, measure the distance between the floor and your nose. Add 2.54 cm to your results (roughly 1 inch) to compensate for the height of your ski boots.

#### Measure downhill ski width

Downhill ski width is typically measured in three areas: the width at the tip, at the waist, and at the tail (for example, 122/90/115). These measurements give you an accurate idea of the uses for a ski.

- **Downhill skis for beginners:** Beginners should choose downhill skis with a wide waist of 70 mm and a narrow tail measuring 80 mm.
- **Downhill skis for quick turns:** If you want responsive downhill skis for quick turns, choose a ski with a narrow 60 mm waist.
- **Downhill skis for powder skiing:** Downhill skis with a wider waist, around 80 mm, are ideal for powder skiing.

The sidecut refers to the inward curve between the front and tail end of the ski. A ski with a deep sidecut allows for quick turning. A ski with a shallow sidecut makes for wider turns.

#### Evaluate ski construction

Ski construction has an effect on overall quality. Various types of construction include:

- **Cap downhill skis:** Cap downhill skis have a wood or foam core, completely covered in fiberglass
- **Laminate downhill skis:** Laminate downhill skis, made of strips of fiberglass sandwiching a core of another material, give you a smooth ride, but do not offer the same durability as cap downhill skis.
- **Monocoque downhill skis:** All-fiberglass Monocoque downhill skis offer the most durability of the three traditional ski materials.

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Some downhill skis are made of Kevlar, titanium, carbon, and boron fibers. These materials can add to the cost of the ski.

#### Choose downhill ski poles

To get started, buy durable and cost-effective aluminum ski poles. Ski poles made from graphite or other materials weigh less than aluminum ski poles, but may break more easily.

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## Select Cross Country Skis and Poles

### Select Cross Country Skis and Poles

Cross country skiing requires skis and poles designed specifically for backcountry conditions.

#### Types of cross country skis

Your choice of cross country skis depends on where you expect to trek.

- **Traditional in-track touring skis:** Suitable for paths that have already been broken, in-track touring skis can also be used on ungroomed areas. With little sidecut, they'll stay on track. Use a kick-and-glide motion.
- **Skating skis:** Use skating skis with an inline skating style on groomed trails. Skating skis are narrower, shorter, and lighter than other traditional cross country skis.
- **Off-track skis:** Use these to navigate ungroomed terrain. They're wider than in-track skis so they're easier to move over powder.
- **Backcountry skis:** Backcountry skis have metal edges, measure as wide as most alpine skis, and work best for adventuring in variable snow conditions.

#### Examine cross country ski features

Once you know which type of cross country skis you need, look at dimensions, sidecut, camber, and waxing

- **Cross country ski dimensions:** Measure the width of a ski at three places—the tip, the waist, and the tail.
- **Cross country ski sidecut:** Sidecut is the inward curve of the ski. A ski with a deep sidecut turns more quickly than a ski with a shallow sidecut.
- **Cross country ski camber:** The camber is the space between the middle of a ski and the ground when the ski's on a flat surface. Cross country skis require more camber for the kick-and-glide motion.
- **Waxed vs. waxless cross country skis:** It's easier to take care of non-wax skis. Experts prefer waxable skis because, when cared for correctly, they outperform non-wax skis. Keep in mind that waxing skis in highly variable temperatures or at near freezing is difficult.

#### Select cross country ski poles

Ski poles are an important part of your equipment—they give you more control on the slopes. Poles come in fiberglass, aluminum, graphite, or some combination of these.

- **In-track ski poles:** Poles should reach from the ground to your armpits or a little higher. Because you ski in packed snow, the pole baskets can be small.
- **Off-track ski poles:** Pole baskets should be slightly larger than those used for skiing in trails. Another possibility is telescoping poles, which let you vary the length when moving up and down slopes.

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## Get Ski Boots, Apparel, & Accessories

### Get Ski Boots, Apparel, & Accessories

Besides skis and poles, you'll also need ski boots, bindings, and essential ski accessories before you hit the slopes.

#### Fit ski boots correctly

Besides your skis themselves, your feet and ski boots will spend the most time in direct contact with snow while you ski. Boot size is often measured in European Mondo point sizes. The following chart helps convert your shoe size into mondo size:

#### Select downhill boots and bindings

Downhill ski boots have a stiff outer shell and foam interior. Buy the smallest size that's comfortable, because the interior will mold to the shape of your foot. As you move up in ability, you'll want a stiffer boot for more aggressive skiing. Lange makes performance boots that are the choice of the World Cup.

Modern bindings release quickly when you fall. Ratings, known as DIN, indicate how easily they release. Buy boots with the correct DIN:

All downhill boots are compatible with all downhill bindings. Because women have a different center of gravity, women's bindings are usually mounted slightly forward of center. More expensive bindings tend to perform better.

#### Wear appropriate ski apparel and accessories

When you decide on your skiing outfit, consider the climate. Wear lightweight, breathable materials in warm, dry climates. Wear layers and materials graded for colder weather in colder, wetter conditions.

- **Ski jackets:** A waterproof jacket or shell protects you from the wind, cold, and moisture. Select a breathable material.
- **Ski suits:** Get a ski suit to cover your whole body.
- **Ski pants and bibs:** Choose waterproof ski pants that will fit over your ski boots. Another option is a ski bib, which have waterproof suspenders.
- **Socks for skiing:** Wear thick, warm, stretchable fabric socks.
- **Ski gloves or mittens:** Wear waterproof gloves or mittens to keep your hands warm. Also, look for gloves or mittens with a liner that you can remove if the weather becomes warmer.
- **Headwear for skiing:** Hats, beanies, and headbands keep your ears covered and warm.
- **Ski helmets:** More and more skiers are wearing ski helmets that reduce head trauma during a fall. Wear a ski helmet when skiing in rocky or wooded areas. Ski helmets should carry a CE, ASTM, or Snell RS-98 certification.
- **Sunglasses or ski goggles:** Goggles shield your eyes from snow and wind chill. Sunglasses keep the glare out of your eyes. Get a pair that offers 100% UV protection.

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## Find Skis on eBay

### Find Skis on eBay

Once you know what type of skis you want, go to the Sporting Goods portal,

<http://pages.ebay.com/buy/guides/skis-skiing-equipment-buying-guide/>

click Skiing & Snowboarding, and start searching for items on eBay.

- **Categories:** The Categories list on the left side of each page will help you narrow down your listings by item type. You'll find links for Accessories, Apparel, Cross Country Skiing, Downhill Skiing, Snowboarding, Telemarking, and Other Skiing & Snowboarding. As you dig deeper into the site you'll also be able to narrow down your choice by specific item type.
- **Keyword search:** Search eBay listing titles for specific words. For example, if you want to find Atomic skis, type "atomic" (without quotation marks) into the Search box. Click "Search title and description" to expand your results. Visit eBay's Search Tips page for more tips on searching with keywords.

If you can't find exactly what you want, try shopping eBay Stores, tell the eBay Community what you want by creating a post on Want It Now, or save a search on My eBay and eBay will email you when a match becomes available.

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## Buy Skis & Skiing Equipment With Confidence

### Buy Skis & Skiing Equipment With Confidence

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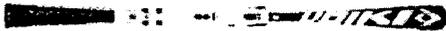


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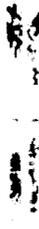


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Ross Anapolle  
Serial No.: 85/284,613  
Mark: BOMBER  
Class: 28  
Office Action Date: December 30, 2011  
Examiner: Katherine Stoides (L.O. 101)

**REQUEST FOR  
RECONSIDERATION**

This is submitted in support of a Request for Reconsideration of a Final Office Action issued on December 30, 2011 (the "Office Action") regarding the application by Ross Anapolle ("Applicant") for registration of the mark BOMBER ("Applicant's Mark") in Class 28 covering "ski bags; ski poles; skis; snowboards" ("Applicant's Goods"). The Examining Attorney ("Examiner") has refused registration of Applicant's Mark under Section 2(d) of the Lanham Act due to an alleged likelihood of confusion with a registered mark. Applicant respectfully submits that there is no likelihood of confusion between Applicant's and the registered mark, as discussed in detail below, and therefore requests that the Examiner withdraw the refusal and approve the Application for publication on the Principal Register. Applicant incorporates, by reference, the Office Action Response filed on September 9, 2012 (the "Response").

**DISCUSSION**

**Confusion Between Applicant's Mark and the Cited Mark is Unlikely.**

In the Office Action, the Examining Attorney has issued a final refusal to register Applicant's Mark under Section 2(d) due to an alleged likelihood of confusion with the

mark BOMBER, U.S. Registration No. 2000494, ("Registrant's Mark") registered for "hats" ("Registrant's Goods") in Class 25 owned by Brent R. Reynolds dba Mad Bomber ("Registrant").

When evaluating likelihood of confusion, a number of factors, when of record, must be considered:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- (4) The conditions under which and buyers to whom sales are made, *i.e.* "impulse" vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.
- (7) The nature and extent of any actual confusion.
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- (9) The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
- (10) The market interface between applicant and the owner of a prior mark.
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods.
- (12) The extent of potential confusion, *i.e.*, whether de minimis or substantial.
- (13) Any other established fact probative of the effect of use.

*In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A.

1973). Not all *Du Pont* factors are relevant in every case, and each case must be decided on its own facts. *Du Pont*, 476 F.2d at 1362.

The Response squarely addressed factors 2, 3, 4, and 7. Applicant hereby submits arguments focusing on the additional *Du Pont* factors and providing additional information and evidence relevant to all factors. When taken as a whole, the Response

and this additional response clearly set forth that the balance of *Du Pont* factors clearly weigh against consumer confusion between the Applicant's Mark and Registrant's Mark.

**1. Registrant's Mark is Arguably Descriptive and, Therefore, Weak and Entitled to a Narrow Scope of Protection.**

The Registered Mark is arguably descriptive of Registrant's Goods, *i.e.*, a style of hat. Wikipedia notes that a "bomber" or "aviator" hat is a particular type of hat with a number of features, including large ear flaps and a chin strap and usually made of leather or felt. Wikipedia, AVIATOR HAT, [http://en.wikipedia.org/wiki/Aviator\\_hat](http://en.wikipedia.org/wiki/Aviator_hat) (last visited July 1, 2012). Numerous uses of the term BOMBER were found online to describe hats of this style. Representative examples were found at the following websites:

1. <http://www.amazon.com/b?ie=UTF8&node=2474974011>
2. [http://www.menswearhouse.com/shop/p\\_woolrich-gray-&-red-&-black-plaid-bomber-hat\\_12001\\_700000439\\_12751\\_700166278\\_-\\_1\\_700000439\\_noSpecialSizes?cm\\_mmc=Channel%20Advisor-\\_-\\_Comparison%20Shopping-\\_-Nextag-\\_-Shopping%20Feed](http://www.menswearhouse.com/shop/p_woolrich-gray-&-red-&-black-plaid-bomber-hat_12001_700000439_12751_700166278_-_1_700000439_noSpecialSizes?cm_mmc=Channel%20Advisor-_-_Comparison%20Shopping-_-Nextag-_-Shopping%20Feed)
3. <http://www.crocs.com/faux-fur-lined-bomber/32102%2Cdefault%2Cpd.html>
4. <http://www.uniformstoyou.com/carharttbomberhat.aspx>
5. [http://www.spencersonline.com/accessories\\_hats\\_laplander/](http://www.spencersonline.com/accessories_hats_laplander/)
6. <http://www.etsy.com/listing/72354096/crochet-baby-aviator-hat-infant-bomber>
7. <http://www.sportsmansguide.com/net/cb/ice-armor-bomber-hat.aspx?a=716470>
8. <http://www.ravelry.com/patterns/library/penguin-bomber-hat>
9. <http://www.amazon.com/Dickies-Mens-Nylon-Bomber-Hat/dp/B00698O24W>

Copies of web pages showing the aforementioned uses of the term BOMBER are attached as **Exhibit A**. To Applicant's knowledge, none of these uses appear to be under

direct license with, or related to, the Registrant. Indeed, Registrant's own specimen submitted on or around September 18, 2006, reflects a style of hat consistent with the descriptive style of a "bomber" hat. **Id.**

Descriptive marks are "weak" and therefore provided only a limited scope of protection against subsequent applications for closely similar marks covering closely similar or related goods or services. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005) (weak marks are "entitled to only a narrow scope of protection"); *In re Hunke & Jochheim*, 185 USPQ 188, 189 (T.T.A.B. 1975) (merely descriptive or even highly suggestive terms are accorded a lesser scope of protection than an arbitrary or coined mark); *and AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 350 (9th Cir. 1979) (weak marks are entitled to "restricted range" of protection such that marks must be "quite similar" and goods "closely related" for there to be a likelihood of confusion); *see also* J. Thomas McCarthy, 2 McCarthy on Trademarks and Unfair Competition § 11:73 (4th ed. 2001) ("relatively weak marks are given a relatively narrow range of protection both as to products and format variations") *and* TMEP § 1207.01(b)(ix).

**2. Registrant's Mark Co-Exists on the Registry in a Crowded Field for Hats and Apparel Products.**

Not only is Registrant's Mark descriptive/weak for "hats" by definition, the mark also co-exists in a crowded field of BOMBER marks for more directly overlapping hat and related apparel products, which is a further indication of the mark's weakness for said products. *Western Publishing Co. v. Rose Art Industries, Inc.*, 910 F.2d 57, 61, 15 U.S.P.Q.2d 1545 (2d Cir. 1990) (finding that the strength of a mark is weakened by

coexistence on the federal trademark registry with a number of similar marks in the same field). In a crowded field of marks, customers are unlikely be confused between any two of the crowd. *See, e.g., In re Lucky Co.*, 209 U.S.P.Q. 422 (T.T.A.B. 1980) (finding a crowded field for stripe designs for athletic footwear).

Moreover, the Registrant's Mark currently co-exists on the Registry with other BOMBER marks covering sport equipment products, suggesting that the Registrant's Mark should equally be able to co-exist with the Applicant's Mark, particularly bearing in mind the weak nature of the Registrant's Mark for hat/apparel goods. These marks are shown in the table below.<sup>1</sup>

#### Representative Examples of Registered BOMBER Marks

Mark	Serial No.	Goods	Registrant
<b>Use-Based Registrations for BOMBER marks covering "hats"</b>			
	85322134	Class 25: Clothing, namely, shirts, <b>hats</b> , sweaters, jackets, socks, bandanas, beanies, shoes, underwear, pants, swimwear, shorts, skirts, dresses, ties, belts, long sleeve shirts, jackets, sports bras, visors, scarves and dress suits.	Ink Bombers
SAYREVILLE BOMBERS	77510885	Class 25: Athletic apparel, namely, shirts, pants, jackets, footwear, <b>hats</b> and caps, athletic uniforms.	Sayreville Board of Education
LONG HAUL BOMBERS	76663918	Class 25: Men's, Women's and Children's clothing, namely t-shirts, sleeveless t-shirts, shirts, pull-overs, sweatshirts, sweatpants, jerseys, jackets, shorts, <b>hats</b> , caps, visors, wristbands  Class 41: Entertainment and educational services in the nature	Long Haul Productions, Inc.

<sup>1</sup> Copies of the TARR records for the aforementioned registrations are attached as **Exhibit B**.

Mark	Serial No.	Goods	Registrant
		of performing, participating, and competing in sporting events in the field of softball; arranging for and conducting exhibitions, clinics, camps, and training events in the field of softball; providing electronic publications, namely newsletters, photographs, and posters in the field of softball.	
	75728445	Class 25: clothing, namely, jerseys, jackets, coats, sweat pants, warm-up suits, hats, caps, sweaters, shirts, t-shirts, sweatshirts; and infantwear and toddler clothing, namely, jumpers, t-shirts, cloth bibs, and fleece sets, namely, tops and bottoms	Dayton Hockey Club, Inc.
<b>Use-Based Registrations for BOMBER marks in Class 28</b>			
BASELINE BOMBER	78921236	Class 28: Basketball training apparatus used to improve shooting accuracy.	Perfect Jumper, LP PJ Management, LLC
BICEP BOMBER	85243335	Class 28: Exercise equipment, namely, Weight lifting harness that allows users to localize bicep curls with weights	Nutraloid Labs Inc.
BOMBER WALKIE TALKIE	77484125	Class 28: Artificial fishing lures.	EBSCO Industries, Inc.
BOMBER WALKIE TALKIE	71507882	Class 28: Artificial fishing lures.	EBSCO Industries, Inc.
BELLY-BOMBER	74543556	Class 28: coin-operated amusement game machines.	NAMCO BANDI GAMES INC.

Because consumers are attuned to the fact that the term BOMBER is used to identify hats, other apparel, and sporting goods, they are particularly careful to distinguish one from another, and are therefore unlikely to be confused. This is especially true for consumers of Applicant's goods, which are sophisticated,

discriminating, and exercise a high degree of care when purchasing the goods that Applicant offers. *See* Section 4 *infra*.

In the Office Action, the Examiner indicates that confusion between Applicant and Registrant's Marks is likely in part because the parties' respective goods are provided through the same trade channels and are complementary goods.<sup>2</sup> Co-existence of the above shown marks illustrates, however, that these factors are not sufficient for confusion to be likely between the specific marks at bar.

**3. Applicant and Registrant's Goods are Neither Identical nor Competitive.**

Even identical marks may coexist on the Registry as long as the goods or services in question are sufficiently different to avoid a likelihood of confusion. *See Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 U.S.P.Q.2d 1169, 1171 (T.T.A.B. 1987) (HI-COUNTRY for beef jerky not confusingly similar to HI-COUNTRY for fruit juices, even though both are edible food products); *In re Mars, Inc.*, 222 U.S.P.Q. 938 (Fed. Cir. 1984) (Use of CANYON for fresh citrus fruits and candy bars not likely to cause confusion); *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854 (T.T.A.B. 1984) (no confusion between PLAYERS, for men's underwear, and PLAYERS, for shoes). Moreover, even where goods are used together, it does not automatically follow that they are related. *See, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 73 U.S.P.Q.2d 1350, 1355 (Fed. Cir. 2004) (finding no likelihood of confusion between marks that include RITZ for kitchen textiles and cooking classes, and stating, "[t]hat two goods are used together, however, does not, in

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<sup>2</sup> The Examiner has also argued that the classes of consumers to which Applicant and Registrant's Goods are used by are similar. Applicant discusses consumers for its goods and the degree of care those consumers take in purchasing its products in Section 4 *infra*.

itself, justify a finding of relatedness."). Instead, "[i]n analyzing the similarity of products, the question is 'whether the products are the kind the public attributes to a single source.'" *Knaack Mfg. Co. v. Rally Accessories Inc.*, 42 U.S.P.Q.2d 1649, 1656-57 (N.D. Ill, 1997).

As discussed in Section 1 *supra*, Applicant's Goods are strictly confined to ski and snowboard equipment, do not include hats or any other apparel, and are thus distinct and dissimilar to Registrant's Goods. Further, Applicant's Goods and Registrants' Goods are substantially more distinct than those in the cases cited above. Thus, this factor weighs in favor of a finding of no likelihood of confusion.

**4. Purchasers of Applicant's Goods are Discriminating Consumers Who Make Careful Buying Decisions.**

Goods of the kind provided by Applicant are marketed to a highly discriminating clientele, further reducing any likelihood of confusion. *See CMM Cable Rep. v. Ocean Coast Props., Inc.*, 888 F. Supp. 192, 36 U.S.P.Q.2d 1458 (Dist. Me. 1995), *aff'd*, 97 F.3d 1504, 41 U.S.P.Q.2d 1065 (1<sup>st</sup> Cir. 1996) (sophisticated professional buyers "less likely to be confused as to the source or origin of a product than ordinary consumers of inexpensive goods or services"). Skis and snowboards can vary widely in terms of design, purpose and function. For example, there are at least four types of skiing disciplines – cross-country, ski jumping, Telemark, and Alpine – and there are different types of skis used to maximize performance for skiers when engaging in each of these types of ski. Given the variation in the types of skis and snowboards on the market, and the differences in their design, purpose, function, and performance, purchasers of skis and snowboards are sophisticated consumers that are generally quite knowledgeable about the

maker of the goods, as well as the goods themselves.<sup>3</sup> Accordingly, purchasers of Applicant's Goods are unlikely to be confused. *See, e.g., Dynamics Research Corp. v. Langenau Mfg. Co.*, 217 U.S.P.Q. 649 (Fed. Cir. 1983) (parties' uses of the mark DRC – for press brake components on the one hand and sheet metal fabric on the other – held unlikely to cause confusion).

Further, Applicant's Goods, i.e., skis and snowboards, commonly retail in the range of \$500 to \$1,200.<sup>4</sup> The substantial cost of Applicant's goods alone makes any likelihood of confusion unlikely. *See, e.g., Magnaflux Corp. v. Sonoflux Corp.*, 231 F.2d 669, 109 USPQ 313 (C.C.P.A. 1956). "The greater the value of an article the more careful the typical consumer can be expected to be . . ." *McGregor-Doniger, Inc. v. Drizzle, Inc.*, 202 U.S.P.Q. 81, 92 (2d Cir. 1979) (holding purchasers of women's overcoats and raincoats priced from \$100-\$900 to be sophisticated.). In making purchasing decisions regarding "expensive" goods, the reasonably prudent person standard is elevated to the standard of the "discriminating purchaser." *Weiss Assoc., Inc. v. HRL Assoc., Inc.*, 14 U.S.P.Q.2d 1840 (Fed. Cir. 1990); *see also, L. J. Mueller Furnace Co. v. United Conditioning Corp.*, 222 F.2d 755, 106 U.S.P.Q. 112 (C.C.P.A. 1955) (holding buyers of air conditioning units were "discriminating"). A discriminating purchaser of expensive goods or services does not buy them casually, but only after careful consideration, so confusion is less likely than where the goods are inexpensive. *Weiss Assoc., Inc.*, 14 U.S.P.Q.2d at 1840.

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<sup>3</sup> Copies of online resources describing the variety of ski disciplines, ski types, and factors to consider when purchasing skis, are attached as **Exhibit C**.

<sup>4</sup> Copies of web pages showing online retail prices for skis and snowboards are attached as **Exhibit D**.

Given the cost, and the variety of product specifications consumers of Applicant's goods must evaluate when purchasing Applicant's Goods discussed above, consumers of Applicant's Goods are "discriminating," exercise a markedly higher standard of care than an ordinarily prudent purchaser, and will proceed to purchase goods like Applicant's only after careful consideration of the source and reputation of the ski and snowboards they are seeking to purchase. Accordingly, consumers of Applicant's goods are unlikely to be confused and this factor strongly weighs in Applicant's favor.

**5. Applicant and Registrant's Marks Co-Exist Without Evidence of Consumer Confusion.**

Concurrent use of two marks without consumer confusion is probative evidence that confusion of the marks is unlikely. *Du Pont*, 476 F.2d at 1361. Applicant has been using the mark since at least as early as October 2010. Declaration of Ross Anapolle (the "Anapolle Decl.") at ¶ 2. Since that time, Applicant has sold Applicant's Goods in twenty states, as well as in Canada and Europe. Anapolle Decl. at ¶ 3. Applicant has encountered no instances of actual confusion with Registrant's Mark. Anapolle Decl. at ¶ 4. Thus, this *DuPont* factor also indicates that confusion between Applicant's and Registrant's mark is not only unlikely, but also not occurring in the marketplace.

**6. Other *Du Pont* factors are Neutral or Favor Applicant.**

Applicant knows of no instances of actual confusion, nor is there any evidence that the cited mark is famous or used for a wide range of goods or services. These factors each favor finding that there is no likelihood of confusion.

**CONCLUSION**

As shown above, an analysis of the *DuPont* factors relevant to this case demonstrate that confusion between Applicant's and Registrant's Marks is unlikely.

Registrant's Mark is a descriptive/weak mark for a style of "hats" that co-exists in a crowded field with a number of other BOMBER marks. Registrant's Mark is therefore entitled to a limited scope of protection that does not extend to bar registration of Applicant's Mark given the differences in the parties' goods and high degree of care consumers are likely to exercise when purchasing Applicant's products. Indeed, Applicant's and Registrant's marks have co-existed in the marketplace for at least twenty-one months with no evidence of actual confusion, which further demonstrates that confusion is unlikely. As confusion between the marks is unlikely, Registrant's Mark should not bar Applicant's Mark from proceeding to registration.

Accordingly, Applicant respectfully requests that the Examiner withdraw the refusal to register Applicant's Mark and that the Application be approved for publication. Please contact the undersigned with questions.