

# TTAB

Attorney Dkt. No. 800857



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

LARRY LEE KOHSE, JR., )  
 )  
 Opposer, )  
 )  
 v. )  
 )  
 STEVE VARNER, )  
 )  
 Applicant. )

Opposition No. \_\_\_\_\_

### NOTICE OF OPPOSITION

Opposer, Larry Lee Kohse, Jr., an individual with an address at 3547 Syracuse Avenue, San Diego, California 92122, (hereinafter "Opposer"), believes that he will be damaged or injured by the registration of the trademark KINDERGOTH, Serial Number 78/206,935 applied for by Steve Varner (hereinafter "Applicant") and hereby opposes the same.

As grounds in support of this opposition, Opposer alleges as follows:

1. Opposer is now, and has been for many years, engaged in creating, marketing and selling comic books, other printed material, clothing and related items under its trademark KINDERGOTH (hereinafter "Opposer's Mark").
2. Opposer is the owner of United States federal trademark Application Serial No. 78/413,217 for KINDERGOTH for "comic books - printed material" in International Class 16, and "T-shirts," in International Class 25.
3. Opposer's Mark is distinctive, and as a result of Opposer's extensive use of its Mark and its extensive advertising and promotion of printed material, clothing and related items

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under its Mark, Opposer's Mark has become extremely well-known as exclusively identifying products originating with Opposer.

4. Opposer has used its Mark in commerce in the United States since a time prior to the time that Applicant filed its application and prior to any time that Applicant can establish use of its mark in the United States, and has built substantial goodwill in the Mark with the purchasing public.

5. Notwithstanding Opposer's prior use of its Mark for printed material, clothing and related items, on January 24, 2003, Applicant filed an application for the mark KINDERGOTH. That application covers the goods described as "motion picture films, and pre-recorded video tapes, cassettes, and discs featuring Gothic popular culture, fashion, and music," in International Class 09, "figurines of plastic," in International Class 20, "figurines of ceramic," in International Class 21, "clothing, namely t-shirts and hats," in International Class 25, and "toys, namely, dolls," in International Class 28.

6. The goods in connection with which Applicant intends to use the alleged mark KINDERGOTH are identical to, or similar to, and compete with, or are complementary, or are in the natural zone of expansion, to the goods offered by Opposer, and are therefore related.

7. Applicant's goods are or could be, upon information and belief, offered to the same target market in and through some of the same advertising and marketing channels, are or could be purchased by the same purchasers, are or could be used in the same environment and for the same purposes, at least in part, as Opposer's goods.

8. Contemporaneous use of Applicant's alleged mark KINDERGOTH and the KINDERGOTH mark of Opposer as described herein, is likely to cause confusion of the purchasing public as to the source or origin of the goods bearing Applicant's mark, and/or the

Notice of Opposition  
Mark: KINDERGOTH  
Serial No: 78/206,935

relationship between Applicant and Opposer, and/or whether Applicant is related to, licensed by or operates and sells its goods under the authority of Opposer when in truth and fact Applicant's goods do not originate with Opposer, Opposer is not related to Applicant, and Opposer has not approved or licensed Applicant's use of the mark.

9. Registration of the mark of the opposed application is barred by the provisions of Section 2(d) of the Trademark Act of 1946, as amended, for the reason that it consists of or comprises a mark which so resembles a mark previously used or registered in the United States by Opposer, and not abandoned, as to be likely, when applied to the goods of applicant, to cause confusion, mistake or deception.

10. On information and belief, Applicant adopted the trademark KINDERGOTH with full knowledge of Opposer's use of its Mark, and notwithstanding this knowledge, adopted and applied for registration of the mark KINDERGOTH recognizing that the public would erroneously believe that the Applicant's goods were made by Opposer with the intent to capitalize on Opposer's good name and the goodwill associated therewith.

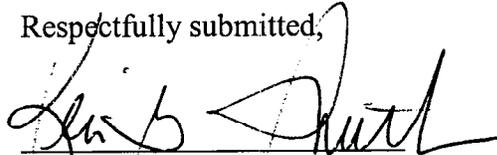
WHEREFORE, Opposer believes it will be damaged by the registration of the Applicant's mark and prays that this Opposition be sustained and the registration of Application Serial No. 78/206,935 be denied.

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Mark: KINDERGOTH  
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**PAYMENT OF FILING FEE**

Attached is a check in the amount of \$1,500.00 in payment of the requisite filing fee for this Notice of Opposition. If the check becomes disassociated from this filing, or if the amount is insufficient, any deficiencies in the fee should be charged to Deposit Account No. 19-4880.

Respectfully submitted,



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