

TTAB

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 30, 2004

Opposition No 91163166
Serial No. 76127048

WYLIE J KYNARD
12441 NW 15TH ST, SUITE 5-203
SUNRISE, F 33323

CELLO HOLDINGS, L.L.C.

v.

KYNARD, WYLIE J.

KATHLEEN E. FULLER
DOW LOHNES & ALBERTSON, PLLC
1200 NEW HAMPSHIRE AVENUE, N.W., SUITE 800
WASHINGTON, DC 20036

Monique Tyson, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the



12-14-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open:	December 20, 2004
Discovery period to close:	June 18, 2005
30-day testimony period for party in position of plaintiff to close:	September 16, 2005
30-day testimony period for party in position of defendant to close:	November 15, 2005
15-day rebuttal testimony period for plaintiff to close:	December 30, 2005

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

**TTAB NOTICE CONCERNING CORRESPONDENCE ADDRESS
(TRADEMARK RULE 2.18)**

The Trademark Trial and Appeal Board will mail correspondence to only one address for each party.

If a party is located in the U.S., correspondence will be sent to the party's own address, unless (1) papers filed with the Board are filed by a party's attorney, (2) a written power of attorney is filed, (3) a written authorization of some other person entitled to be recognized is filed, or (4) the party requests in writing that correspondence be sent to another address. In these situations, correspondence will be sent, respectively, to (1) the attorney filing papers, (2) the attorney named in the power of attorney, (3) the other person designated in the written authorization, or (4) the other address specified by the party.

When one attorney or other authorized representative makes an appearance on behalf of a party, his address is noted on the proceeding file as the correspondence address. If a second attorney or other authorized representative makes an appearance on behalf of the party, and requests that correspondence be directed to him, the correspondence address on the proceeding file will be changed, and future correspondence will be sent to the second attorney or other authorized representative, rather than to the first one. If the second attorney or other authorized representative does not request that correspondence be sent to him, the Board will continue to send correspondence to the first attorney or authorized representative.

If a power of attorney from a party to one attorney has been filed, and thereafter another attorney or authorized representative makes an appearance on behalf of the party and asks that correspondence be sent to him, the second attorney or authorized representative will be required to submit authorization, from the party or from the first attorney, for the requested change in correspondence address.

If a power of attorney from a party to one attorney has been filed, and thereafter a power of attorney from the party to another attorney is filed, the second power of attorney will be construed as a written request to change the correspondence address from the first attorney to the second one, even if there is no revocation of the first power, unless the party or the first attorney directs otherwise. Likewise, if an attorney makes an appearance on behalf of a party, and thereafter the party files a written power of attorney to another attorney, the Board will send subsequent correspondence to the appointed attorney.

If a power of attorney from a party to one attorney has been filed, and thereafter that attorney files an "associated power of attorney" to another attorney, the correspondence address will remain unchanged, and the Board will continue to send correspondence to the first attorney, unless the first attorney or the party directs otherwise.

In the case of a party whose application is the subject of a Board proceeding, any appearance or power of attorney (or designation of other authorized representative) of record in the application file at the time of the commencement of the Board proceeding is considered to be effective for purposes of the proceeding, and correspondence will be sent initially to that address. Thereafter, the correspondence address may be changed as described in Trademark Rule 2.18.

In the case of a party whose registration is the subject of a Board proceeding, any representative which may be of record in the registration file at the time of the commencement of the Board proceeding is not considered to be effective for purposes of the Board proceeding. Rather, correspondence is sent to the registrant itself unless and until another correspondence address is established in the manner described in Trademark Rule 2.18.

THE TRADEMARK TRIAL AND APPEAL BOARD WOULD

LIKE YOU TO KNOW:

The TTAB Customer Service Center is available to

- *answer telephone inquiries
- *explain pertinent legal provisions and related administrative practices as they apply to specific cases
- *provide status information on pending cases
- *provide access to the files of pending cases
- *resolve problems

The telephone number for the TTAB Customer Service Center is (703) 308-9300, extension 0 [zero]

The Patent and Trademark Office has two special boxes for expedited processing and distribution of documents filed with the TTAB. Envelopes and transmittal letters for TTAB should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, followed by one of the following designations

“Box TTAB Fee”: for papers filed with the TTAB that include filing fees, such as notices of opposition, petitions to cancel, and notices of ex parte appeal
and

“Box TTAB”: for all non-fee papers filed with the TTAB, such as requests for extensions of time to file notices of opposition and motions.

The TTAB Customer Service Center makes every effort to provide public access to application files, opposition files, cancellation files and concurrent use files immediately upon request for access. Files located will be made available in a central storage area accessible to the public. You can also access information about TTAB proceeding files online. Go to <http://www.uspto.gov/web/offices/dcom/ttab/> and click the “BISX LINK”.

Any questions, comments, or suggestions concerning TTAB service should be directed to Jean Brown, TTAB Technical Program Manager, at (703) 308-9300, extension 123 or Afendi Ziad, Supervisory Legal Assistant at (703) 308-9300, extension 205 or Angela Pope, Supervisory Legal Assistant at (703) 308-9300, extension 144.

NOTICE CONCERNING ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Trademark Trial and Appeal Board encourages you to consider alternative dispute resolution as a means of settling the issues raised in this opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), alternative dispute resolution techniques might produce an earlier, mutually agreeable resolution of your dispute or might, at least, narrow the scope of discovery or the issues for trial. In either case, alternative dispute resolution might save you time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are given for your convenience; the Board does not sponsor nor endorse any particular organization's alternative dispute resolution services.

International Trademark Association Telephone: (212) 642-1726 Fax: (212) 768-7796 www.inta.org/adr/index.shtml e-mail: lstigliano@inta.org	CPR Institute for Dispute Resolution Telephone: (212) 949-6490 Fax: (212) 949-8859 www.cpradr.org e-mail: info@cpradr.org
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786	
American Arbitration Association (AAA) Headquarters 140 West 51 st Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387	

Finally, if the parties consider using alternative dispute resolution in this proceeding, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution in Trademark Trial and Appeal Board proceedings.

PROCEEDING SYNOPSIS

United States Patent and Trademark Office - Trademark Trial and Appeal Board

Trademark Opposition and Cancellation Proceedings Under 15 USC 1063, 1064; 37 CFR 2.101 et. seq.

FILING OPPOSITION/CANCELLATION

- ❖ Any person (Opposer) may file a Notice of Opposition within 30 days against any mark published under 15 USC 1062(a) in Official Gazette; may oppose in whole or part.¹
- ❖ Time for filing Notice may be extended by written request to TTAB. A first extension for not more than 30 days will be granted upon request. Further extensions may be granted for good cause. Extensions aggregating more than 120 days from pub. date not granted unless consented to by applicant or extraordinary circumstances. 37 CFR 2.102(c). Request should be in triplicate. 37 CFR 2.102(d).
- ❖ Any person (Petitioner) may file a Petition to cancel a registration in whole or in part, but only under conditions set forth in 15 USC 1064. Geographic limitation will be considered by TTAB only in concurrent use proceeding. 37 CFR 2.99(h), 2.133(c).
- ❖ Opposer/Petitioner is in position of Plaintiff and Applicant/Respondent is Defendant. 37 CFR 2.116(b).
- ❖ Notice/Petition corresponds to complaint in civil action. 37 CFR 2.116(c).
- ❖ Amendment to pleadings in accord with Rule 15, Fed. Rules of Civil Procedure (FRCP). 37 CFR 2.107, 2.115.

MAILING PROCEDURES

- ❖ Certificate of Mailing or Transmission and Express Mail procedures effective for all papers. 37 CFR 1.9, 1.10.

INSTITUTION OF PROCEEDING; WITHDRAWAL

- ❖ TTAB examines Notice/Petition for formal requirements and sends notification to Defendant, generally within few weeks of filing date. Duplicate copy of Notice/Petition and Exhibits sent to Defendant. 37 CFR 2.105, 2.113.
- ❖ Notice/Petition may be withdrawn without prejudice before Defendant files Answer. 37 CFR 2.106(c), 2.114(c). With written consent of Defendant, later withdrawal may be without prejudice.
- ❖ Defendant may not abandon application or surrender registration without prejudice except with written consent of Plaintiff. 37 CFR 2.135, 2.134.

ANSWER; MOTIONS

- ❖ Time for Answer set by TTAB for 40 days from Notification mailing date.³ Counterclaim should be filed with answer or promptly upon discovery of information supporting Counterclaim. 37 CFR 2.106(b), 2.114(b).

- ❖ Time for reply to Counterclaim set by TTAB for not less than 30 days from TTAB action mailing date. 37 CFR 2.106(b), 2.114(b).
- ❖ Motions may be brought before TTAB in writing and with Brief in support. Brief in opposition thereto, 15 days (30 days for summary judgment motion). Briefs limited to 25 pages. Reply Brief, if filed, 15 days, limited to 10 pages. Reconsideration 30 days after decision; Opposition Brief, 15 days. 37 CFR 2.127. Most motions used in Federal practice are applicable.
- ❖ Motions for Summary Judgment, to Compel, and to Test Sufficiency of Responses to Requests for Admissions, if filed, due before Plaintiff testimony period opens. 37 CFR 2.127(e), 2.120(e), 2.120(h).

TRIAL DATES

- ❖ TTAB issues Order setting opening and close of Discovery and Trial dates. Discovery set for period of 180 days; 30-day Pl. Testimony period closes 90 days after close of Discovery period; 30-day Def. Test. period closes 60 days after Pl. Test. period; 15-day Pl. Rebuttal Test. period closes 45 days after Def. Test. period. 37 CFR 2.120(a), 2.121.
- ❖ In cases where Counterclaim filed, TTAB sets additional time periods for testimony and briefing.

DISCOVERY PERIOD

- ❖ Interrogatories, Reqs. for Prod. Of Docs. & Things, and Reqs. for Adm., if served, must be served by last day of Discovery period. Written Responses within 30 days from date of service of Disc. Reqs. FRCP apply except as otherwise provided. 37 CFR 2.116, 2.120(a). Extension of Time to respond to discovery granted upon cause or by stipulation.⁴
- ❖ Interrogatories limited to proceeding total of 75, counting subparts; additional interrogatories allowed upon motion for good cause or by stipulation. 37 CFR 2.120(d)(1).
- ❖ Discovery Depositions (noticed and taken within Disc. Period) in District where deponent resides or is employed. 37 CFR 2.120(a), 2.120(b). Either party may request designation of witnesses under FRCP 30(b)(6), 31(a).

PLAINTIFF'S TRIAL PERIOD

- ❖ Plaintiff's Testimony-In-Chief. Opens 60 days after Discovery Period closes, and runs for 30 days (refer to Order).

- ❖ Testimony taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.
- ❖ Plaintiff serves Transcript of testimony and copies of documentary exhibits on adverse party within 30 days after completion of taking testimony. Certified transcript and exhibits filed with TTAB. 37 CFR 2.125.
- ❖ Notice of Reliance as appropriate on Discovery Deps., Adms. and Int. Answers, with copies of same, due before close of Test. 37 CFR 2.120.⁵
- ❖ Involved app. or reg. files are in evidence for relevant and competent purposes. Publications in gen. Circ. or in libraries, and official records, may be received if appropriate Notice of Reliance is filed and copies submitted within Test. period. 37 CFR 2.122.
- ❖ Motion under 37 CFR 2.132, if filed, due after close of Pl.'s Test. period & before opening of Def.'s.

DEFENDANT'S TRIAL PERIOD

- ❖ Opens 30 days after close of Pl.'s Test. period. Runs for 30 days.
- ❖ Test. taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.
- ❖ Notice of Reliance on Discovery responses also due within Test. period, if filed. 37 CFR 2.120.
- ❖ Notice of Reliance on gen. circ. publ. and official records due within Test. period, if filed. 37 CFR 2.122.
- ❖ Def. serves Test. transcript on Pl. within 30 days and files certified transcript and exhibits with TTAB. 37 CFR 2.125.

PLAINTIFF'S REBUTTAL PERIOD

- ❖ Rebuttal Test. period for Pl. opens 30 days after close of Def.'s Test. period and runs for 15 days.
- ❖ Pl. may file Notice of Reliance under 37 CFR 2.120, 2.122, with matter relied on, and take Test. to rebut Def. Test. and other evidence.
- ❖ Pl. serves and files Transcript of Rebuttal Test. and exhibits in accordance with 37 CFR 2.125.

BRIEFS; ORAL HEARING

- ❖ Pl. Brief due 60 days after Rebuttal period closing.⁶
- ❖ Def. Brief, if filed, due 30 days after Pl. Brief due.
- ❖ Pl. Reply Brief, if filed, due 15 days after Def. Brief due. 37 CFR 2.128.

- ❖ Separate Request for Oral Hearing, if filed, due not later than 10 days after Reply Brief due. 37 CFR 2.129.
- ❖ Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129.
- ❖ DECISION; RECONSIDERATION; APPEAL
- ❖ TTAB Deliberation. Writing of Opinion and Decision in due course.
- ❖ Request for rehearing, reconsideration or modification, if filed, due within one month. Brief in opposition due within 15 days. 37 CFR 2.129(c).
- ❖ Any Appeal from TTAB Decision due within two months of Decision or two months after denial of req. for recon. See especially 37 CFR 2.129(d).
- ❖ TTAB Notice of Oral Hearing sent to all parties.

NOTE: *Footnotes and TTAB addresses and telephone number appear on the back of this sheet.*

FOOTNOTES

- (1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be damaged by registration of the mark and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$300 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-In-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$300 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(ii).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8½ x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

ADDRESSES AND TELEPHONE

All papers not requiring a fee should be mailed to:

Box TTAB No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

NOTE: For papers with fee, use "Box TTAB Fee"

TTAB Office Location and Telephone Number

2900 Crystal Drive
South Tower, Suite 9B40
Arlington, Virginia 22202-3513

Telephone: (703) 308-9300

TTAB

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

In the matter of
Serial No.: 76/127,048
Date of Publication: July 20, 2004 at Page TM 339
Mark: CELO SPORT

CELLO HOLDINGS, L.L.C.)
)
)
Opposer,)
)
v.)
)
WYLIE J. KYNARD,)
)
)
Applicant.)

Opposition No. 91163166



11-16-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #66

NOTICE OF OPPOSITION

Opposer, Cello Holdings, L.L.C., a limited liability company, having its principal place of business at 2941 Fairview Park Drive, Falls Church, Virginia 22042 ("Cello Holdings"), believes it will be damaged by registration of the mark shown in Application Serial No. 76/127,048 filed by Applicant, Wylie J. Kynard on September 11, 2000 and published in the *Official Gazette* of July 20, 2004, at TM 339. Pursuant to 15 U.S.C. §§ 1052(d) and 1063, by and through its attorneys, Cello Holdings opposes the registration of this mark.

As grounds for the Opposition, Cello Holdings alleges:

1. Opposer Cello Holdings, a Delaware limited liability company having its principal place of business at 2941 Fairview Park Drive, Falls Church, Virginia 22042.
2. Upon information and belief, Applicant Wylie J. Kynard is an individual residing at 1434 NW 81st Terrace, Plantation, Florida 33322 ("Applicant").

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3. Cello Holdings has used its CELLO[®] and CELLO[®] (Stylized) marks in connection with a variety of audio and video equipment since 1985. Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks are arbitrary marks that are entitled to extensive protection.

4. Cello Holdings also adopted and began using the marks CELLO[®] and CELLO[®] (Stylized) for clothing, namely, hats, shirts, t-shirts, polo shirts, sweat shirts and jackets, at least as early as 1995 and has been using the marks for such goods in interstate commerce continuously since at least as early as 1995.

5. In the United States, Cello Holdings has registered or has pending applications for:

(a) its CELLO[®] (Stylized) trademark for amplifiers, preamplifiers, tone controls, speakers, switchboxes, power supplies, and associated accessories, U.S. Reg. No. 1,913,134;

(b) its CELLO[®] service mark for restaurant and bar services, U.S. Reg. No. 2,291,452;

(c) its CELLO[®] trade mark for sound amplifiers and preamplifiers, antennas, audio mixers, audio tape recorders, electrical cables and wires, video cassette recorders, blank audio cassettes, blank video cassettes, compact disc players and recorders, digital audio tape players and recorders, DVD players and recorders, television sets, loudspeakers, loudspeaker cabinets, video monitors, video cameras, motion picture cameras, optical discs, phonographs, cameras, movie projectors, radios, receivers, tuners, transceivers, tone controls, electric switch boxes, audio speakers, and electrical power supplies, and accessories therefor; wireless remote control for use in accessing and controlling audio and video systems, namely, video projectors, film projectors, projection

screens, sound amplifiers, sound preamplifiers, tone controls, time delay processors, switch boxes, compact disc players and recorders, DVD players and recorders, laser disc players, turntables, audio cassette players and recorders, video cassette players and recorders, audio speakers, radios, stereo tuners and receivers, video monitors and cameras, telephones, antennas, lighting and satellites, U.S. Reg. No. 2,464,794;

(d) its CELLO[®] trade mark for timepieces, namely watches and clocks, U.S. Reg. No. 2,413,551;

(e) its CELLO[®] service mark for entertainment services, namely, presentation of live and recorded performances by a musical group or artist, U.S. Reg. No. 2,360,870; and

(f) the CELLO[®] mark for other goods and/or services.

6. Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks symbolize the extensive and valuable goodwill and customer recognition built up through substantial amounts of advertising, promotional expenditures and other corporate resources. By virtue of these efforts and the excellence of its products and services, Cello Holdings has created a reputation of considerable value in the CELLO[®] and CELLO[®] (Stylized) marks.

7. Cello Holdings and/or its licensees have so used its CELLO[®] and CELLO[®] (Stylized) marks in connection with its goods and services that the public has come to associate the CELLO[®] and CELLO[®] (Stylized) marks with Cello Holdings and/or Cello Holdings' licensees, and the public recognizes the marks as indicating that the products and services so marked originate with Cello Holdings and/or its licensees.

8. Applicant seeks registration of the mark CELO SPORT in International Class 25 for 'men's, women's, and children's clothing, namely, sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, visors, caps, dresses, shoes,

sneakers, boots, wristbands, socks, t-shirts, belts undergarments, neckties, dress shirts, collared shirts, rugby shirts, shorts, sandals.”

9. Applicant’s application to register the CELO SPORT mark was filed on September 11, 2000 and is based on an intent to use the mark in commerce. Accordingly, because Cello Holdings’ date of first use and date of first use in commerce for its CELLO[®] and CELLO[®] (Stylized) marks for clothing, as well as for its other products, pre-date the filing of Applicant’s intent-to-use application to register its CELO SPORT mark, Cello Holdings has priority. Cello Holdings’ CELLO[®] and CELLO[®] (Stylized) marks are valid and subsisting, and its use has been continuous. Cello Holdings’ legal rights with respect to its CELLO[®] and CELLO[®] (Stylized) marks are, therefore, superior to Applicant’s rights with respect to its CELO SPORT mark.

10. Opposer has filed an application to register its CELLO[®] (Stylized) trademark for clothing, namely hats, shirts, t-shirts, polo shirts, sweatshirts and jackets, Serial No. 76/198,755. Although Opposer’s first use of its CELLO[®] mark for clothing predates the filing date of Applicant’s intent-to-use application, said application was filed before Opposer’s application. Accordingly, Applicant’s intent-to-use application has been raised by the Trademark Examiner as a possible bar to registration of Opposer’s mark, and Opposer’s application has been suspended pending the disposition of Applicant’s application.

11. A likelihood of confusion, under Lanham Act § 2(d), exists between Cello Holdings’ CELLO[®] and CELLO[®] (Stylized) marks and Applicant’s CELO SPORT mark because the respective marks are similar in sight, sound and commercial impression.

12. Further, a likelihood of confusion under the Lanham Act § 2(d) exists between Cello Holdings' marks and Applicant's mark because both marks are used in connection with apparel.

13. Because the goods with which Cello Holdings' marks are used and the goods with which Applicant's mark is used are confusingly similar and are in the field of apparel, there is likely to be a substantial overlap in the lines of commerce and distribution of Cello Holdings' goods and services and Applicant's goods. Moreover, the consumers who are likely to buy, use, and be familiar with Cello Holdings' goods and services are substantially the same or overlap significantly with the consumers who are likely to buy, use and be familiar with Applicant's goods. Finally, on information and belief, because both Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks and Applicant's CELO SPORT mark are used in the field of apparel, the modes of advertising and promotion for Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks are likely to overlap significantly with those of Applicant's CELO SPORT mark.

14. Due to the substantially similar nature of Cello Holdings' marks and Applicant's mark and the similar commercial and marketing channels of the services and goods offered under those marks, consumers could reasonably believe that Applicant's goods and/or services originate with, or are affiliated with, endorsed or sponsored by Cello Holdings or that Cello Holdings and Applicant are affiliated or associated entities, all to the considerable detriment of Cello Holdings.

15. As a result, people familiar with Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks would be likely to use Applicant's goods and/or services believing them to be goods and services provided by Cello Holdings. Any such confusion would result in loss of trade to Cello Holdings. Furthermore, any defect, objection or fault found with

the goods and services marketed under Applicant's mark would necessarily reflect upon and seriously injure the reputation of Cello Holdings' goods and services.

16. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Cello Holdings.

17. If the Applicant were granted a registration for the CELO SPORT mark, the uniqueness of Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks would be seriously impaired and the strength of Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks would be diminished.

18. In view of the substantially similar nature of Cello Holdings' marks and Applicant's mark, the use of these marks in the same field, and the similar channels of commerce through which goods and/or services are offered or likely to be offered by Cello Holdings and Applicant, Cello Holdings alleges that Applicant's mark so resembles Cello Holdings' mark as to be likely to cause confusion, or to cause mistake or to deceive under Lanham Act § 2(d), so that the public is likely to believe Applicant's goods and/or services originate with, or are sponsored by, Cello Holdings.

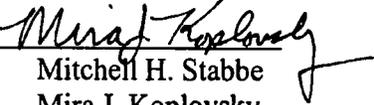
19. For all the foregoing reasons, registration of Applicant's mark CELO SPORT will result in damage to Cello Holdings, and registration should be refused.

WHEREFORE, Cello Holdings respectfully requests that the Opposition be sustained and Application Serial No. 76/127,048 be rejected and denied.

A duplicate copy of this Notice of Opposition and a fee of \$300.00, as required, are enclosed.

Respectfully submitted,

CELLO HOLDINGS, L.L.C.

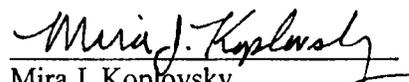
By: 
Mitchell H. Stabbe
Mira J. Koplovsky
Its Attorneys

Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

November 16, 2004

CERTIFICATE OF DELIVERY

I hereby certify that this Notice of Opposition is being hand-delivered to the Trademark Trial and Appeal Board, 2900 Crystal Drive, South Tower Building, 9th Floor, Arlington, Virginia, this 16th day of November, 2004.


Mira J. Koplowsky

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