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Filing date: **10/22/2007**

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

Proceeding	91168674
Party	Plaintiff Pro-Football Inc. and NFL Properties LLC
Correspondence Address	Jonathan A. Scharf QUINN EMANUEL URQUHART OLIVER & HEDGES LLP 51MADISON AVENUE, 22ND FLOOR NEW YORK, NY 10010 UNITED STATES jonathanscharf@quinnemanuel.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Jonathan Scharf
Filer's e-mail	jonathanscharf@quinnemanuel.com
Signature	/Jonathan Scharf/
Date	10/22/2007
Attachments	Motion for Leave to Amend Notice of Opposition.pdf (34 pages)(977414 bytes)

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

Mark:

PRO-FOOTBALL, INC. and NFL PROPERTIES LLC, Opposers, -against- PEAK PERFORMANCE PRODUCTION AB, Applicant.	Opposition No. 91/168,674

OPPOSERS' MOTION FOR LEAVE
TO AMEND THE NOTICE OF OPPOSITION

Opposers Pro-Football, Inc. and NFL Properties LLC. move the Board for Leave to Amend the Notice of Opposition pursuant to TBMP § 507.01.[1] Information recently uncovered during discovery provides additional grounds on which Opposers can oppose Application Serial No. 76/570,322 (the "Application"). Specifically, Opposers seek to add the claim that Applicant does not have a *bona-fide* intent to use the

designation in commerce. As Applicant will not be prejudiced by the amendment and as the motion is timely filed, the Motion for Leave to Amend the Notice of Opposition should be granted.

[1] Pursuant to 37 C.F.R. § 2.127(a) and TBMP § 502.02(b), Opposer's supporting brief is embodied in its Motion for Leave to Amend.

FACTS

Opposers filed the Notice of Opposition against the Application on January 9, 2006. Based on the information available at the time, Opposers alleged that registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's use of the designation would falsely suggest a connection between Applicant and Opposer; pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that the designation so resembles Opposers' Redskins trademarks that its use in connection with the goods identified in the Application is likely to cause confusion or mistake; and pursuant to Sections 2(f) and 13(a) of the Lanham Act, 15 U.S.C. § 1052(f) and 1063(a), on the grounds that the registration sought by Applicant would dilute the distinctive and famous quality of Opposers' Redskins trademarks.

The discovery period opened on February 7, 2006, and after several extensions and suspensions, closed on March 23, 2007, on which date both parties served document requests, interrogatories, and requests for admission. After additional extensions and suspensions, the parties' discovery responses were due on September 24, 2007, on which date both parties served their responses. Opposers' testimony period is set to close on October 22, 2007, and Applicant's testimony period will close on December 21, 2007.

The discovery process revealed new grounds, previously unknown to Opposers, for opposing the instant application: specifically, that when Applicant filed its application, Applicant did not have a *bona-fide* intent to use the Peak Performance designation in the United States on the goods and services listed in the application. During discovery, Applicant did not produce a single document evidencing an intent to use the designation in the United States, nor did its responses to Opposers' interrogatories and requests for admission indicate such an intent.

(Applicant's responses to Opposers' interrogatories and requests for admission are attached hereto as Exhibits A and B, respectively.) On October 4, 2007, Opposers sent a letter to Applicant (1) insisting that Applicant notify Opposers whether it possessed any responsive documents, and if so, to produce them, and (2) asking Applicant to identify which of Opposers' interrogatories it believed to contain multiple questions so as to justify Applicant's objection that Opposers' interrogatories were excessive in number. (*See* letter from Scharf to Cuccias, dated October 4, 2007, attached hereto as Exhibit C.) Opposers followed up with Applicant by email on October 12, 2007, attempting to elicit a response to its letter. (*See* email from Scharf to Cuccias dated October 12, 2007, attached hereto as Exhibit D.) Applicant has failed to respond.

Applicant's failure to produce a single document – or answer a single interrogatory or request for admission – indicating a *bona-fide* intent to use the Peak Performance designation in the United States gives rise to a colorable claim that Applicant lacks a *bona-fide* intent to use the Peak Performance designation in U.S. commerce. Opposers should be granted leave to amend the Notice of Opposition to include this newly discovered claim.

ARGUMENT

Opposers are legally permitted to amend their Notice of Opposition at this time. Under TBMP 507.01 and Fed. R. Civ. P. 15, a party may amend its pleading, with leave of the Board, after the adverse party has filed its responsive pleading. The Board "liberally grant[s] leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties." TBMP § 507.02; *see Focus Int'l v. Pola Kasei Kogyo Kabusi Kaisha*, No. 19,611,

1992 WL 76584, at *2 (T.T.A.B. Feb. 27, 1992); *Flatley v. Trump*, 11 U.S.P.Q. 2d 1284,1286 (T.T.A.B. 1989); *Bufett v. Chi-Chi's, Inc.*, 226 U.S.P.Q. 428,43 1 (T.T.A.B. 1985). The timing of the motion to amend plays a large role in determining whether leave should be granted. *See* TBMP 5 507.02(a).

Amending The Pleadings Will Not Prejudice Applicant

Applicant will not be prejudiced by amendment of the Notice of Opposition. Because the claim is based solely on information in the possession of Applicant, its addition will not require any further discovery, nor will it delay trial. *See Metromedia Steakhouses, Inc. v. Pondco II Inc.*, 28 U.S.P.Q.2d 1205,1206-07 (T.T.A.B. 1993) (granting motion for leave to amend where facts were known to Applicant and no further discovery would be necessary). Applicant's testimony period has yet to open. *See US. Olympic Comm. v. O-M Bread, Inc.*, 26 U.S.P.Q.2d 1221, 1223 (T.T.A.B. 1993) (no prejudice to applicant because opposition still in pre-trial stages); *Focus Int'l*, 1992 WL 76584, at *2 (no prejudice to registrant where registrant's testimony period had yet to open). Allowing the additional claim to be added at this time would have no effect on Applicant's ability or capacity to enter testimony into the record or prove its case.

Opposers' Motion Is Timely

The timing of Opposer's motion is proper. When a motion to add a claim is filed shortly after the claim becomes available or known to the party, the Board has granted the motion. *See Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701,1703-04 (T.T.A.B. 2000). The information forming the basis of Opposer's new claim was only recently discovered through document discovery. Opposer was not in possession of the information until September 24, 2007, when Applicant failed to produce a single document in response to Opposers' document requests and

its written discovery responses failed to demonstrate an intent to use the

designation in the United States. *See US. Olympic Comm.,* 26 U.S.P.Q.2d at 1223 (granting motion to amend based on newly discovered evidence); *Metromedia Steakhouses*, 28 U.S.P.Q.2d at 1206-07 (granting motion to amend when new information arose after the filing of the notice of opposition); *Focus Int'l*, 1992 WL 76584, at *2 (granting motion to amend when opposer was not aware of grounds for new claim when opposer filed original pleadings); *Marmark Ltd. v. Nutrexpa, S. A.,* 12 U.S.P.Q.2d 1 843,1844 (T.T.A.B. 1989) (same). Opposers are filing the instant motion less than one month after Applicant's document production was due and a mere ten days after Opposers' follow-up correspondence with Applicant. Accordingly, Opposer has not delayed in bringing this motion.

<u>The New Claim Is Legally Proper</u>

The lack of a *bona-fide* intent to use the designation at issue on the goods and services listed in an application is proper grounds for opposition. S*ee Century 21 Real Estate Corp. v. Century Life of America,* 10 U.S.P.Q.2d 2034,2035-6 (T.T.A.B. 1989). The statutory requirements for an application under section 44(e) of the Lanham Act include the applicant's "*bona-fide* intent to use the mark in commerce" on or in connection with the goods and services listed in the application. 15 U.S.C. § 1126(e); *see* 37 C.F.R. §2.34(a)(3). The absence of evidence of an Applicant's intent to use its applied-for mark demonstrates the lack of a *bona-fide* intent to use the mark in commerce. In this case, where Applicant has not produced any documents whatsoever or responded to any interrogatories demonstrating an intent to use the

designation, opposing the Application on this ground is proper.

CONCLUSION

For the foregoing reasons, Opposers respectfully request that the Board issue an order granting leave to amend the Notice of Opposition, as revised in the Amended Notice of Opposition attached hereto as Exhibit E.

Dated: October 22, 2007
New York, New York

Respectfully submitted,

Quinn Emanuel Urquhart Oliver & Hedges, LLP

By: _____
Robert L. Raskopf
Claudia T. Bogdanos
Jonathan A. Scharf

51 Madison Avenue
New York, New York 10010
Tel: (212) 849-7000
Fax: (212) 849-7100

ATTORNEYS FOR OPPOSERS PRO-FOOTBALL, INC. AND NFL PROPERTIES, LLC

CERTIFICATE OF SERVICE

I certify that on October 22, 2007, I caused to be served a copy of OPPOSERS' MOTION FOR LEAVE TO AMEND THE NOTICE OF OPPOSITION by first-class mail to Matthew Cuccias, of Jacobson Homan PLLC, at 400 Seventh Street, N.W., Washington DC 20004.

Jonathan A. Scharf

EXHIBIT A

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

PRO-FOOTBALL, INC. and NFL PROPERTIES, LLC., Opposer, v. PEAK PERFORMANCE PRODUCTION AB Applicant.	Opposition No. 91168674

APPLICANT'S GENERAL OBJECTION TO
OPPOSERS' FIRST SET OF INTERROGATORIES

Pursuant to Trademark Rule 2.120(d), Applicant hereby serves its General Objection to Opposers' First Set of Interrogatories as excessive in number.

PEAK PERFORMANCE PRODUCTION AB

By: _____

Simor L. Moskowitz
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

Dated: September 24, 2007
Attorney Docket No. I-5428

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2007, a true copy of the Applicant's General Objection to Opposers' First Set of Interrogatories was served by first-class mail, postage prepaid, upon counsel for Opposer:

Claudia T. Bogdanos
Jonathan A. Scharf
Quinn Emanuel Urquhart Oliver & Hedges, LLP
51 Madison Avenue
New York, NY 10010

EXHIBIT B

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

PRO-FOOTBALL, INC. and NFL PROPERTIES, LLC., Opposer, v. PEAK PERFORMANCE PRODUCTION AB Applicant.	Opposition No. 91168674

APPLICANT'S RESPONSES AND OBJECTIONS TO
OPPOSERS' FIRST REQUESTS FOR ADMISSION

Applicant, Peak Performance Production AB, hereby submits the following responses and objections to Opposers' First Requests for Admissions ("Requests").

GENERAL OBJECTIONS

A. Applicant objects to the "Definitions and Instructions" and the Requests to the extent they seek to require Applicant to provide information for any non-party to this opposition.

B. Applicant objects to the "Definitions and Instructions" and the Requests to the extent that they seek to impose any obligation beyond that required under the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

C. Applicant objects to the "Definitions and Instructions" and the Requests to the extent that they seek to impose any obligation to supplement Applicant's discovery responses beyond that required under the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

D. Applicant objects to the "Definitions and Instructions" and the Requests to the extent that they are vague, overly broad, unduly burdensome, and to the extent they seek the

confidential and/or attorney-client privileged and/or attorney work product information and/or materials of Applicant.

E. Applicant objects to Request definition of "PEAK PERFORMANCE Design" and "Native American Design Marks".

F. Applicant objects to "Definition and Instruction" No. 29 as an improper interrogatory.

RESPONSES TO REQUESTS FOR ADMISSION

1. The Redskins Club owns the REDSKINS Marks and the Native American Design Marks.

Response: Applicant objects to this request as compound. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this request.

2. The Redskins Club first used the REDSKINS Marks in commerce in 1933 in connection with its goods and services.

Response: Applicant objects to this request as vague. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this request.

3. The Redskins Club first used the Native American Design Marks in commerce in 1941 in connection with its goods and services.

Response: Applicant objects to this Request as vague. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this Request.

4. The Redskins Club has not abandoned the REDSKINS Marks or the Native American Design Marks.

Response: Applicant objects to this Request as compound. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this Request.

5. Opposers and/or their licensees use the REDSKINS Marks and/or the Native American Design Marks in connection with a wide array of goods and services.

Response: Applicant objects to this Request as vague, indefinite, compound and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this Request.

6. Opposers use the REDSKINS Marks and/or the Native American Design Marks in connection with advertising and promoting the Redskin's Club's goods and services.

Response: Applicant objects to this Request as vague, indefinite, compound and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this Request.

7. The REDSKINS Marks are distinctive and strong as applied to the Redskins Club's goods and services.

Response: Applicant objects to this Request as vague, compound, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant states that the REDSKINS Marks are disparaging of American Indians/Native Americans and thus infamous; Applicant otherwise lacks sufficient information to admit or deny this Request.

8. The Native American Design Marks are distinctive and strong as applied to the Redskins Club's goods and services.

Response: Applicant objects to this Request as vague, compound, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant states that the Native American Design Marks are disparaging of American Indians/Native Americans and thus infamous; Applicant otherwise lacks sufficient information to admit or deny this Request.

9. The REDSKINS Marks have acquired secondary meaning in the mind of the public.

Response: Applicant objects to this Request as vague, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant states that the REDSKINS Marks are disparaging of American Indians/Native Americans and thus infamous; Applicant otherwise lacks sufficient information to admit or deny this Request.

10. The Native American Design Marks have acquired secondary meaning in the mind of the public.

Response: Applicant objects to this Request as vague, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant states that the Native American Design Marks are disparaging of American Indians/Native Americans and thus infamous; Applicant otherwise lacks sufficient information to admit or deny this Request.

11. Persons recognize the Redskins, NFL, NFLP and/or their licensees as the source of goods and services bearing the REDSKINS Marks and/or the Native American Design Marks.

Response: Applicant objects to this Request as vague, compound, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this Request.

12. The REDSKINS Marks are famous.

Response: Applicant states that the REDSKINS Marks are disparaging of American Indians/Native Americans and thus infamous; otherwise, Applicant lacks sufficient information to admit or deny this Request.

13. The Native American Design Marks are famous.

Response: Applicant states that the Native American Design Marks are disparaging of American Indians/Native Americans and thus infamous; otherwise, Applicant lacks sufficient information to admit or deny this Request.

14. Applicant does not possess a valid license, or any authorization, by either or both Opposers to use any of the REDSKINS Marks and/or the Native American Design Marks.

Response: Applicant objects to this Request as vague, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant denies that a valid license or any authorization is required.

15. Applicant had knowledge of the Redskins Club prior to January 16, 2004.

Response: Applicant objects to this Request as vague. Subject to, and without waiver of Applicant's objections, Applicant, a Danish company not versed in American football, denies the Request.

16. Applicant had knowledge of Opposers' use of the REDSKINS Marks and/or the Native American Design Marks prior to January 16, 2004.

Response: Applicant objects to this Request as assuming facts not in evidence, vague, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant, a Danish company not versed in American football, denies the Request.

17. Applicant is not aware of any entity or person other than Opposer that uses, or has used, the REDSKINS Marks and/or the Native American Design Marks.

Response: Applicant objects to this Request as vague, compound, indefinite, irrelevant, and to the extent that it seeks to impose upon Applicant a duty to undertake third party discovery. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient

information to admit or deny this Request.

18. Applicant uses, has used, or intends to use, the PEAK PERFORMANCE Design in connection with advertising, promoting, and/or selling goods or services, specifically clothing apparel and sportswear, in the United States.

Response: Applicant objects to this Request as vague, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant admits only that it intends to use the mark of the opposed application in connection with the goods listed in the opposed application in the United States.

19. Applicant uses, has used, or intends to use, the PEAK PERFORMANCE Design in connection with advertising, promoting and/or selling goods or services, specifically clothing apparel and sportswear, internationally.

Response: Applicant objects to this Request as vague, indefinite, irrelevant, and to the extent that it seeks information on an international basis.

20. The items of apparel in connection with which Applicant uses, has used, or intends to use, the PEAK PERFORMANCE Design are relatively inexpensive.

Response: Applicant objects to this Request as vague and indefinite as to the term "relatively inexpensive".

21. Applicant intends to or does advertise, promote and/or sell goods or services bearing the PEAK PERFORMANCE Design, within the United States, to fans of the NFL.

Response: Applicant objects to this Request as vague, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, Applicant lacks sufficient information to admit or deny this Request, and further states that it does not use the subject mark in the United States.

22. Applicant intends to or does advertise, promote and/or sell goods or services bearing the PEAK PERFORMANCE Design, internationally, to fans of the NFL internationally.

Response: Applicant objects to this Request as vague, indefinite, irrelevant, and to the extent that it seeks information on an international basis.

23. Applicant uses, has used, or intends to use, the PEAK PERFORMANCE Design in connection with the sport of American football.

Response: Applicant objects to this Request as vague as to the phrase "in connection with the sport of American football", indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, as understood, Applicant denies the Request.

24. Applicant sells, has sold, or intends to sell, products bearing the PEAK PERFORMANCE Design in a wide varity of retail outlets and/or sporting-goods stores, over the Internet, through direct mail catalogs, and/or in outside football stadiums.

Response: Applicant objects to this Request as vague, compound, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, as understood, Applicant does not sell goods bearing the subject mark in the United States.

25. All documents and things Applicant has provided, or will provide, to Opposers in connection with Opposers' First Set of Requests for Production of Documents and Things and Opposers' First Set of Interrogatories, each dated March 23, 2007, are authentic.

Response: Applicant objects to this Request as vague, compound, indefinite and irrelevant. Subject to, and without waiver of Applicant's objections, *see* Applicant's General Objection to Opposers' First Set of Interrogatories and Applicant's Responses to Opposers' First Set of Requests for Production of Documents and Things.

PEAK PERFORMANCE PRODUCTION AB

By: _____

Simor L. Moskowitz
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

Dated: September 24, 2007
Attorney Docket No. I-5428

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2007, a true copy of the Applicant's Responses and Objections to Opposers' First Requests for Admission was served by first-class mail, postage prepaid, upon counsel for Respondent:

Claudia T. Bogdanos
Jonathan A. Scharf
Quinn Emanuel Urquhart Oliver & Hedges, LLP
51 Madison Avenue
New York, NY 10010

EXHIBIT C

quinn emanuel trial lawyers | new york

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WRITER'S DIRECT DIAL NO.
(212) 849-7173

WRITER'S INTERNET ADDRESS
jonathanscharf@quinnemanuel.com

October 4, 2007

VIA E-MAIL AND U.S. MAIL

Matthew J. Cuccias, Esq.
Jacobson Holman, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004

Re: Pro-Football, Inc. and NFL Properties, LLC ("Opposers) v. Peak Performance Production AB ("Applicant") (91/168,764)

Dear Mr. Cuccias:

I am writing to address Applicant's written responses to Opposers' discovery requests. First, Applicant's responses to Opposers' First Set of Requests for Production of Documents and Things were not accompanied by a production of documents. Rather, in paragraph A of the General Objections, Applicant objected "to the production of documents at a place other than where such documents are usually kept." This objection is extremely unreasonable in light of the universal custom in TTAB proceedings of exchanging copies of bates-stamped documents in response to document requests. *See* Trademark Rule 2.120(d)(2) ("[I]n Board cases, parties often extend each other the courtesy of producing requested documents by copying documents and forwarding them to the requesting party."). Indeed, Opposers' have extended this common courtesy to Applicant by responding to its ninety-eight document requests by copying, bates-stamping, and producing – at its own expense – 3,719 pages of documents.

In this case, Applicant's objection is particularly egregious in light of the fact that it has failed even to state whether it is in possession of responsive documents or to offer a time and place for inspection of such documents where they "usually are kept." We therefore demand that Applicant notify Opposers whether it is in possession of responsive documents and, if Applicant is unwilling to rescind its objection, to identify when and where the documents will be made

quinn emanuel urquhart oliver & hedges, llp

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SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL 650-801-5000 FAX 650-801-5100

available for inspection. Furthermore, to the extent that Applicant has withheld or will withhold any documents on the basis of the attorney-client or attorney-work product privileges, please produce a privilege log identifying any such documents.

Applicant has also objected to Opposers' First Set of Interrogatories as "excessive in number." Trademark Rule 2.120(d)(1) permits a party to propound interrogatories containing up to seventy-five separate questions. Each of Opposers' fifty-two interrogatories asks a separate, discrete question. Applicant's objection, therefore, is without merit. To the extent Applicant believes otherwise, please identify at least twenty-four interrogatories which Applicant believes pose multiple questions.

Please feel free to contact me if you have any questions.

Very truly yours,

Jonathan Scharf

EXHIBIT D

Jonathan Scharf

From: Jonathan Scharf
Sent: Friday, October 12, 2007 1:19 PM
To: 'Matthew Cuccias'
Cc: 'smoskowitz@jhip.com'; Claudia Bogdanos; Michael Levick
Subject: RE: Correspondence

Mr. Cuccias,

I am writing to follow up on my letter of October 4, 2007. Please let us know whether Applicant is in possession of any responsive documents, and if so, when they will be produced. Further, please indicate which of Opposers' interrogatories Applicant believes to contain multiple questions.

Regards,
Jonathan Scharf

From: Jonathan Scharf
Sent: Thursday, October 04, 2007 6:45 PM
To: 'Matthew Cuccias'
Cc: 'smoskowitz@jhip.com'; Claudia Bogdanos; Michael Levick
Subject: Correspondence

Please see the attached letter.

Regards,

Jonathan Scharf
Quinn Emanuel Urquhart Oliver & Hedges, LLP
51 Madison Avenue, 22nd Floor
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EXHIBIT E

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

In the Matter of Application Serial No. 76/570,322
Published in the Official Gazette on July 12, 2005

Mark:

PRO-FOOTBALL, INC. and NFL PROPERTIES LLC, Opposers, -against- PEAK PERFORMANCE PRODUCTION AB, Applicant.	Opposition No. 91/168,674 **AMENDED NOTICE OF OPPOSITION**

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS:

Opposers Pro-Football, Inc. and NFL Properties LLC. believe they will be damaged by registration of the mark

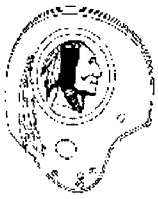
as shown in the above-identified application and hereby oppose the same pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1063(a).

As grounds for the opposition, Opposers allege that:

1. Opposer Washington Redskins (the "Redskins" or the "Redskins Club"), a corporation organized and existing under the laws of Maryland with its principal place of business at 21300 Redskin Park Drive, Ashburn, Virginia 22011, owns and operates the Washington Redskins football franchise, providing entertainment services to the public in the form of competitive

professional football games. The Washington Redskins football franchise is one of the thirty-two member clubs (the "Member Clubs") of the National Football League ("NFL").

2. Opposer NFL Properties LLC ("NFLP"), a limited liability company organized and existing under the laws of Delaware with its principal place of business at 280 Park Avenue, New York, New York 10017, has been authorized by the NFL and the Redskins Club to use their respective trademarks for commercial purposes, to promote the NFL and its Member Clubs and to protect their trademarks.

3. For many years and long before January 16, 2004, the filing date of the intent-to-use application herein opposed, Opposers have used the marks , , , , WASHINGTON REDSKINS , and  (the "REDSKINS Marks") in connection with their business of organizing, conducting, and promoting the Washington Redskins football franchise.

4. For many years and long before January 16, 2004, the filing date of the intent-to-use application herein opposed, Opposers and their authorized business partners, sponsors, and licensees have used the REDSKINS Marks on or in connection with the sale of a wide variety of goods and services, including clothing.

5. Opposers actively seek to identify and stop perceived infringers of the REDSKINS Marks.

6. During their long, widespread and continuous use of the REDSKINS Marks, Opposers and their authorized business partners, sponsors, and licensees have expended considerable time, effort, and money in advertising and publicizing the sale of goods and services bearing the REDSKINS Marks.

7. Opposers and their licensees and sponsors have sold, and offered for sale, goods and services bearing the REDSKINS Marks in a trading area of broad geographical scope encompassing, inter alia, all of the states and territories of the United States.

8. Opposers and their licensees and sponsors have sold, and offered for sale, goods and services bearing the REDSKINS Marks in numerous channels of trade.

9. For many years and long before January 16, 2004, the filing date of the intent-to-use application herein opposed, the print and broadcast media and the general public have used the REDSKINS Marks many thousands of times when referring to the Washington Redskins football franchise. Such use by the media and the public inures exclusively to the benefit of Opposers.

10. Opposers' widespread use of the REDSKINS Marks on a variety of goods and services, Opposers' extensive advertising and publicity of such goods and services, and the thousands of uses by the media of the REDSKINS Marks when referring to Opposers have contributed to the powerful consumer association between the REDSKINS Marks and Opposers, and have made the REDSKINS Marks famous.

11. The REDSKINS Marks have a high degree of distinctiveness due to the duration and extent of Opposers' use, advertising, and publicity of the REDSKINS Marks.

12. In addition to Opposers' common law rights in the REDSKINS Marks, Opposer Pro-Football, Inc. owns the following federal trademark registrations for the REDSKINS Marks:

Registration Number	Mark	International Class(es)	Date of First Use
2,902,746		009	July 1972
1,861,766		016, 025	July 1972
1,086,644		041	July 1972
987,127	The Redskins	041	January 1941
986,668	WASHINGTON REDSKINS	041	January 1941
989,220		041	July 1972

Registration Nos. 1,861,766; 1,086,644; 987,127; 986,668; and 989,220 are incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

13. By the application herein opposed, Applicant seeks to register the designation Peak Performance for "handbags and traveling bags" in International Class 18 and for "sportswear, namely, shoes, shorts, pants, shirts, skirts, jeans, jerseys, polo shirts, t-shirts, sweatpants, sweatsuits, sweatshirts, jackets, caps and handbands" in International Class 25.

14. These goods and services for which Applicant seeks registration are similar to goods and services in connection with which Opposers' REDSKINS Marks are in use.

15. Applicant filed this application on January 16, 2004, many years after Opposers started using the REDSKINS Marks, and after the marks had become famous.

16. Opposers will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposers.

17. Registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's use of the designation falsely suggests a connection between Applicant and Opposers named herein, to the damage of Opposers.

18. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's designation so resembles the REDSKINS Marks used consistently by Opposers in the United States, as to be likely, when used on or in connection with paper goods and printed matter and clothing, to cause confusion, or to cause mistake, or to deceive, with consequent injury to Opposers and to the public.

19. Registration should be refused pursuant to Sections 2(f) and 13(a) of the Lanham Act, 15 U.S.C. §§ 1052(f) and 1063(a), on the grounds that Opposers will be damaged by the registration sought by Applicant because the registration will dilute the distinctive and famous quality of the REDSKINS Marks.

20. Registration should be refused on the grounds that when Applicant filed its Application, Applicant did not have a bona-fide intent to use the Peak Performance designation in commerce in the United States on the goods listed in its Application, as required by 37 C.F.R. § 2.34.

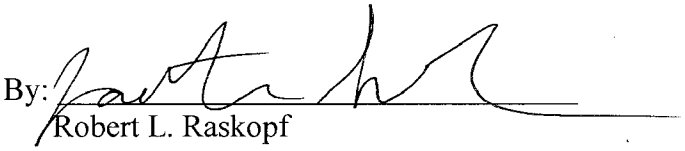
WHEREFORE, Opposers believe they will be damaged by the registration by Applicant of the designation Peak Performance for the goods identified in Application Serial Number 76/570,322 and respectfully request that the opposition be sustained and registration of said mark be denied.

All communication should be addressed to Opposers' counsel, Quinn Emanuel Urquhart Oliver & Hedges LLP, at the below

Dated: October 22, 2007
New York, New York

Respectfully submitted,

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

By: 

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