

ESTTA Tracking number: **ESTTA149589**

Filing date: **07/05/2007**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Benito, Inc.		
Entity	Corporation	Citizenship	California
Address	2707 South Alameda Street Los Angeles, CA 90058 UNITED STATES		

Attorney information	Dax F. Alvarez, Esq. BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 12400 Wilshire Boulevard Suite 700 Los Angeles, CA 90025-1040 UNITED STATES Dax_Alvarez@bstz.com, Marie_Monsod@bstz.com, BSTZ_Mail@bstz.com Phone:(310) 207-3800		
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Applicant Information

Application No	78901243	Publication date	07/03/2007
Opposition Filing Date	07/05/2007	Opposition Period Ends	08/02/2007
Applicant	Black Box, Inc. 2777 Loker Ave. W. Ste. A Carlsbad, CA 92010 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 1996/01/05 First Use In Commerce: 1996/01/05 All goods and services in the class are opposed, namely: Clothing and headwear, namely shirts, pants, shorts, jackets, sweatshirts, sweatbands, socks, belts, caps and beanies
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Grounds for Opposition

Dilution	Trademark Act section 43(c)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1439274	Application Date	09/15/1986
Registration Date	05/12/1987	Foreign Priority Date	NONE
Word Mark	POINT ZERO		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 025. First use: First Use: 1984/08/29 First Use In Commerce: 1984/08/29 MEN'S AND WOMEN'S GARMENTS, NAMELY SWEATSHIRTS, PANTS, SHIRTS, T-SHIRTS AND JACKETS AND MEN'S AND BOY'S WEAR, NAMELY SWEATERS, PANTS, SHIRTS, T-SHIRTS, SHORTS, SUITS, OUTERWEAR JACKETS, RAINCOATS, SOCKS, BELTS, SLACKS, JEANS, DRESS PANTS AND JACKETS		
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U.S. Application No.	78400129	Application Date	04/12/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POINT ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: Jewelry, watches		

U.S. Application No.	78400123	Application Date	04/12/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POINT ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Sunglasses and eyeglasses		

U.S. Application No.	78409822	Application Date	04/28/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POINT ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: Footwear, namely, boots, shoes, running shoes, sports shoes, sandals, slippers, gloves, caps, hats, headwear, undergarments, underwear, mittens		

U.S. Application No.	78400137	Application Date	04/12/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POINT ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use:		

	Wallets, leather key chains, traveling bags, backpacks, garment bags, handbags, school bags, beach bags, luggage, purses, and umbrellas
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Attachments	78400129#TMSN.jpeg (1 page)(bytes) 78400123#TMSN.jpeg (1 page)(bytes) 78409822#TMSN.jpeg (1 page)(bytes) 78400137#TMSN.jpeg (1 page)(bytes) 2007-07-05 - Notice of Opposition with Exhibits.pdf (18 pages)(143825 bytes)
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Signature	/dax alvarez/
Name	Dax F. Alvarez, Esq.
Date	07/05/2007

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

Trademark: ZERO
Serial No.: 78/901,243
Filed: June 6, 2006
Published: July 3, 2007

_____)	
Beniko, Inc.)	
	Opposer,)	Opposition Number _____
)	Serial Number 78/901,243
	v.)	
Black Box, Inc.)	
	Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, Beniko, Inc. (hereinafter "Opposer" or "Beniko"), which has its principal place of business at 2707 South Alameda Street, Los Angeles, California 90058, believes that it would be damaged by registration of the mark ZERO shown in United States Trademark Application Serial No. 78/901,243, filed by Black Box, Inc. (hereinafter "Applicant") and published for opposition in the *Official Gazette* dated July 3, 2007, and therefore Opposer opposes such application for registration. The application as published in the *Official Gazette* may be summarized as follows:

In re trademark application: 78/901,243
Filed: June 6, 2006
Applicant: Black Box, Inc.
For: "Clothing and headwear, namely shirts, pants, shorts, jackets, sweatshirts, sweatbands, socks, belts, caps and beanies."
International Classes: 25
Published: July 3, 2007

The grounds for this opposition are as follows:

1. Opposer is a California corporation in the business of designing, manufacturing and distributing a wide variety of apparel and accessories.
2. Upon information and belief, Applicant is a California corporation.
3. Applicant seeks to register the mark ZERO (hereinafter "Applicant's Mark") for "Clothing and headwear, namely shirts, pants, shorts, jackets, sweatshirts, sweatbands, socks, belts, caps and beanies" (hereinafter "Applicant's Goods").
4. Commencing as early as August 29, 1984, well prior to the June 6, 2006 filing date in the Applicant's application, Opposer used and has continued to use POINT ZERO as a trademark and trade name to promote its products.

5. Opposer is the owner of the numerous applications for registration and a registration for the mark POINT ZERO such as:

(a) POINT ZERO for men's and women's garments, namely sweatshirts, pants, shirts, t-shirts and jackets and men's and boy's wear, namely sweaters, pants, shirts, t-shirts, shorts, suits, outerwear jackets, raincoats, socks, belts, slacks, jeans, dress pants and jackets in Class 25, registered as U.S. Registration No. 1,439,274 (attached hereto as Exhibit A and incorporated herein by reference);

(b) POINT ZERO for jewelry, watches in Class 14, allowed as U.S. Serial No. 78/400,129 (attached hereto as Exhibit B and incorporated herein by reference);

(c) POINT ZERO for sunglasses and eyeglasses in Class 9, allowed as U.S. Serial No. 78/400,123 (attached hereto as Exhibit C and incorporated herein by reference);

(d) POINT ZERO for footwear, namely, boots, shoes, running shoes, sports shoes, sandals, slippers, gloves, caps, hats, headwear, undergarments, underwear, mittens in Class 25, allowed as U.S. Serial No.

78/409,822 (attached hereto as Exhibit D and incorporated herein by reference); and

(e) POINT ZERO for wallets, leather key chains, traveling bags, backpacks, garment bags, handbags, school bags, beach bags, luggage, purses, and umbrellas in Class 18, allowed as U.S. Serial No. 78/400,137 (attached hereto as Exhibit E and incorporated herein by reference).

6. Upon information and belief, Applicant filed the application for registration of Applicant's mark on June 6, 2006 based on Section 1b of the Trademark Act and as of the date of this Notice of Opposition has not filed an Amendment to Allege Use and priority of use is resolved in Opposer's favor.

7. Opposer has offered apparel products and related accessories throughout the United States under the mark POINT ZERO. Opposer is a leading designer, manufacturer, and distributor of apparel and related accessories to a wide variety of consumers. As a result of its strong presence in the marketplace, Opposer has developed valuable goodwill in the mark POINT ZERO.

8. Opposer has further developed common-law rights in the mark POINT ZERO in addition to the rights extended by the federal registration thereof.

9. By virtue of its efforts, and the expenditure of considerable sums for advertising and other forms of promotion, and by virtue of the consistent excellence of its products, Opposer has earned an extremely valuable reputation for the above-identified mark.

10. When applied to the Applicant's Goods, Applicant's Mark conveys a highly similar overall commercial impression to Opposer's mark, and as such is likely to be confused therewith and mistaken therefor.

11. Due to the highly similar appearance of Applicant's Mark and Opposer's mark, and due further to the closely related nature of the goods intended to be offered under Applicant's Mark and presently offered under Opposer's mark, and the consumer recognition of Opposer's above-identified mark, it is alleged that Applicant's mark so resembles Opposer's above-identified mark, as to be likely to cause confusion, or to cause mistake, or to deceive.

12. If Applicant is permitted to use and register Applicant's Mark for Applicant's Goods, confusion, deception or mistake in the trade would likely occur, thereby causing damage and injury to Opposer. Persons familiar with Opposer's mark would be likely to believe that Applicant's Goods are sponsored by or associated therewith.

13. Furthermore, any defect, objection or fault found with Applicant's Goods marketed under the mark ZERO would necessarily reflect upon and seriously injure the reputation which Opposer has established for high-quality apparel products and related accessories.

14. Applicant's U.S. Application for registration of the mark ZERO is highly similar to Opposer's famous POINT ZERO mark as to be likely, when used in connection with Applicant's Goods, to cause or result in dilution of Opposer's famous trademarks and/or trade name as defined in Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(d).

WHEREFORE, the Opposer prays that the application Serial No. 78/901,243 be rejected, and that the mark sought for the Goods therein specified in International Class 25 be denied and refused.

Opposer herewith submits this Notice of Opposition along with the requisite filing fee in the amount of \$300. *Please charge any fees or credit any overpayment to our Deposit Account No. 02-2666.*

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: July 5, 2007

By: / Dax F. Alvarez /
Dax Alvarez
Counsel for Opposer
12400 Wilshire Boulevard
Suite 700
Los Angeles, California 90025-1040
Telephone: (310) 207-3800
Facsimile: (310) 820-5988
E-Mail: Dax_Alvarez@bstz.com
Marie_Monsod@bstz.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document entitled:

NOTICE OF OPPOSITION

was served on counsel for Applicant by electronic mail at the address below and first-class mail, postage prepaid, in a sealed enveloped addressed as follows:

Matthew R. Miller, Esq.
LAW OFFICES OF MATTHEW MILLER, APC
5900 La Place Court
Suite 100
Carlsbad, California 92008-8832
Telephone: (760) 804-0153
Facsimile: (760) 931-9086
E-Mail: Matt@MillerMLaw.com

Executed on July 5, 2007, at Los Angeles, California.

 / Casandra J. Broome /
Casandra J. Broome

Int. Cl.: 25

Prior U.S. Cl.: 39

Reg. No. 1,439,274

United States Patent and Trademark Office Registered May 12, 1987

**TRADEMARK
PRINCIPAL REGISTER**

POINT ZERO

BENIKO, INC. (CALIFORNIA CORPORATION)
SUITE 1102
850 SOUTH BROADWAY
LOS ANGELES, CA 90014

FOR: MEN'S AND WOMEN'S GARMENTS,
NAMELY SWEATSHIRTS, PANTS, SHIRTS, T-
SHIRTS AND JACKETS AND MEN'S AND
BOY'S WEAR, NAMELY SWEATERS, PANTS,
SHIRTS, T-SHIRTS, SHORTS, SUITS, OUTER-

WEAR JACKETS, RAINCOATS, SOCKS,
BELTS, SLACKS, JEANS, DRESS PANTS AND
JACKETS, IN CLASS 25 (U.S. CL. 39).
FIRST USE 8-29-1984; IN COMMERCE
8-29-1984.

SER. NO. 619,974, FILED 9-15-1986.

RICHARD B. GORDON, EXAMINING ATTOR-
NEY

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office

Reg. No. 1,439,274

Registered May 12, 1987

**TRADEMARK
PRINCIPAL REGISTER**

POINT ZERO

BENIKO, INC. (CALIFORNIA CORPORATION)
SUITE 1102
850 SOUTH BROADWAY
LOS ANGELES, CA 90014

FOR: MEN'S AND WOMEN'S GARMENTS,
NAMELY SWEATSHIRTS, PANTS, SHIRTS, T-
SHIRTS AND JACKETS AND MEN'S AND
BOY'S WEAR, NAMELY SWEATERS, PANTS,
SHIRTS, T-SHIRTS, SHORTS, SUITS, OUTER-

WEAR JACKETS, RAINCOATS, SOCKS,
BELTS, SLACKS, JEANS, DRESS PANTS AND
JACKETS, IN CLASS 25 (U.S. CL. 39).

FIRST USE 8-29-1984; IN COMMERCE
8-29-1984.

SER. NO. 619,974, FILED 9-15-1986.

RICHARD B. GORDON, EXAMINING ATTOR-
NEY

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Jul 12, 2005

Dax Alvarez
Blakely Sokoloff Taylor & Zafman LLP
12400 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90025

ATTORNEY
REFERENCE NUMBER

008880.T008U

**** IMPORTANT INFORMATION: 6 MONTH DEADLINE ****

You filed the trademark application identified below based upon a bona fide intention to use the mark in commerce. You must use the mark in commerce and file a Statement of Use (a.k.a. Allegation of Use) before the USPTO will register the mark. You have six (6) MONTHS from the ISSUE DATE of this Notice of Allowance (NOA) to file either a Statement of Use, or if you are not yet using the mark in commerce, a Request for Extension of Time to File a Statement of use ("Extension Request"). If you file an extension request, you must continue to file a new request every six months until the Statement of Use is filed. Applicant may file a total of five (5) extension requests. FAILURE TO FILE A REQUIRED DOCUMENT DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF YOUR APPLICATION.

Please note that both the "Statement of Use " and "Extension Request" have many legal requirements including fees. Therefore, we encourage use of the USPTO forms, available online at <http://www.uspto.gov/teas/index.html> (under "File a PRE-registration form"), to avoid the possible omission of important informaton. Please note that the Trademark Electronic Application System (TEAS) provides line-by-line help instructions for completing the Extension Request or Statement of Use forms online. If you do not have access to the Internet, you may call 1-800-786-9199 to request the printed form(s).

The following information should be reviewed for accuracy:

SERIAL NUMBER: 78/400129
MARK: POINT ZERO (STANDARD CHARACTER MARK)
OWNER: Beniko, Inc.
2707 S. Alameda Street
Los Angeles , CALIFORNIA 90058

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

014 - Jewelry, watches

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Apr 19, 2005

Dax Alvarez
Blakely Sokoloff Taylor & Zafman LLP
12400 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90025

ATTORNEY
REFERENCE NUMBER

008880.T008U

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The following information should be reviewed for accuracy:

SERIAL NUMBER: 78/400123
MARK: POINT ZERO (STANDARD CHARACTER MARK)
OWNER: Beniko, Inc.
2707 S. Alameda Street
Los Angeles , CALIFORNIA 90046

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

009 - Sunglasses and eyeglasses

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Aug 30, 2005

Dax Alvarez
Blakely Sokoloff Taylor & Zafman LLP
12400 Wilshire Blvd., 7th Floor
Los Angeles, CA 90025

ATTORNEY
REFERENCE NUMBER

008880.T008U

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The following information should be reviewed for accuracy:

SERIAL NUMBER: 78/409822
MARK: POINT ZERO (STANDARD CHARACTER MARK)
OWNER: Beniko, Inc.
2707 S. Alameda Street
Los Angeles , CALIFORNIA 90058

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO Section 1(b): YES Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

025 - Footwear, namely, boots, shoes, running shoes, sports shoes, sandals, slippers, gloves, caps, hats, headwear, undergarments, underwear, mittens

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

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REFERENCE NUMBER

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MARK: POINT ZERO (STANDARD CHARACTER MARK)
OWNER: Beniko, Inc.
2707 S. Alameda Street
Los Angeles , CALIFORNIA 90058

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

018 - Wallets, leather key chains, traveling bags, backpacks, garment bags, handbags, school bags, beach bags, luggage, purses, and umbrellas

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS