

ESTTA Tracking number: **ESTTA227028**

Filing date: **07/29/2008**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Chomp, Inc.
Granted to Date of previous extension	08/06/2008
Address	225 S. Aviation Bl. El Segundo, CA 90245 UNITED STATES

Name	Dwindle, Inc.
Granted to Date of previous extension	08/06/2008
Address	225 S. Aviation Bl El Segundo, CA 90245 UNITED STATES

Attorney information	Paul F. Rafferty Sheppard Mullin Richter & Hampton LLP 650 Town Center DriveFourth Floor Costa Mesa, CA 92626 UNITED STATES uspto-tm-oc@sheppardmullin.com Phone:714.513.5100
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Applicant Information

Application No	77284828	Publication date	04/08/2008
Opposition Filing Date	07/29/2008	Opposition Period Ends	08/06/2008
Applicant	Welter, Nathan 5532 E. La Palma Avenue Anaheim, CA 92807 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. All goods and services in the class are opposed, namely: PRINTED MATTER, NAMELY, STICKERS, TEMPORARY TATTOOS, SHOW SCHEDULES IN THE NATURE OF PRINTED SPORTS AND TOURNAMENT SCHEDULES, EVENT BROCHURES ABOUT MIXED MARTIAL ARTS TOURNAMENTS AND POSTERS
Class 018. All goods and services in the class are opposed, namely: BOOK BAGS, TOTE BAGS, TRAVEL BAGS, CARRY-ON BAGS, FANNY PACKS; WALLETS; LEATHER KEY CHAINS; GYM BAGS, ATHLETIC BAGS, ALL-PURPOSE SPORT BAGS

Class 025.

All goods and services in the class are opposed, namely: WEARING APPAREL, NAMELY, T-SHIRTS, SHIRTS, SHORTS, PANTS, SWEATSHIRTS, SWEATPANTS, HATS, VISORS, SHOES, SANDALS AND BELTS

Applicant Information

Application No	77284816	Publication date	04/01/2008
Opposition Filing Date	07/29/2008	Opposition Period Ends	
Applicant	Welter, Nathan 5532 E. La Palma Avenue Anaheim, CA 92807 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 2005/05/01 First Use In Commerce: 2005/05/01

All goods and services in the class are opposed, namely: PRINTED MATTER, NAMELY, STICKERS, TEMPORARY TATTOOS, SHOW SCHEDULES IN THE NATURE OF PRINTED SPORTS AND TOURNAMENT SCHEDULES, EVENT BROCHURES ABOUT MIXED MARTIAL ARTS TOURNAMENTS, AND POSTERS

Class 018. First Use: 2005/05/01 First Use In Commerce: 2005/05/01

All goods and services in the class are opposed, namely: BOOK BAGS, TOTE BAGS, TRAVEL BAGS, CARRY-ON BAGS, FANNY PACKS; WALLETS; LEATHER KEY CHAINS; GYM BAGS, ATHLETIC BAGS, ALL-PURPOSE SPORT BAGS

Class 025. First Use: 2005/05/01 First Use In Commerce: 2005/05/01

All goods and services in the class are opposed, namely: WEARING APPAREL, NAMELY, T-SHIRTS, SHIRTS, SHORTS, PANTS, SWEATSHIRTS, SWEATPANTS, HATS, VISORS, SHOES, SANDALS AND BELTS

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77335252	Application Date	11/21/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a depiction of a helmet with three horns.		
Goods/Services	Class 025. First use: First Use: 1997/02/17 First Use In Commerce: 1997/04/01 Clothing, namely, t-shirts and sweatshirts; headwear, caps, hats, and beanies; and belts Class 028. First use: First Use: 1997/02/17 First Use In Commerce: 1997/04/01 Skateboards, skateboard wheels, and skateboard decks		

U.S. Registration No.	3467442	Application Date	11/28/2007
Registration Date	07/15/2008	Foreign Priority Date	NONE

Word Mark	NONE
Design Mark	
Description of Mark	The mark consists of a depiction of a helmet with three horns protruding from the head, and two horns protruding from each shoulder.
Goods/Services	Class 025. First use: First Use: 1997/02/17 First Use In Commerce: 1997/04/01 Clothing, namely, t-shirts and sweatshirts; hats and caps; and belts Class 028. First use: First Use: 1997/02/17 First Use In Commerce: 1999/10/00 Skateboard decks

Attachments	77335252#TMSN.jpeg (1 page)(bytes) 77339360#TMSN.jpeg (1 page)(bytes) dwindle oppo notice.PDF (5 pages)(164152 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/pfr/
Name	Paul F. Rafferty
Date	07/29/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Dwindle, Inc., a California corporation,

and

Chomp, Inc., a California corporation,

Opposers,

v.

Welter, Nathan, an individual,

Applicant.

OPPOSITION NO.: _____

**NOTICE OF TRADEMARK
OPPOSITION**

In re the Applications of Welter, Nathan

Serial No.: 78/284816
Filed: 9/20/07
Mark: **Helmet Design**
Published: 4/1/08

Serial No.: 77/284828
Filed: 9/20/07
Mark: **Helmet Design**
Published: 4/8/08

Dwindle, Inc., a California corporation, and Chomp, Inc., a California corporation having principal offices at 225 S. Aviation Boulevard, El Segundo, California 90245 (collectively, "Dwindle"), believes that it will be damaged by registration of the

above Helmet Design marks owned by Nathan Welter (“Applicant”) . Therefore, Dwindle opposes the application for the above marks in accordance with the provisions of Section 13 of the Trademark Act. (15 U.S.C. § 1063).

The grounds for opposition are as follows:

1. Dwindle owns the design marks **Dwindle Helmet Design** and **Large Helmet Design** (the “Marks”) in connection with stickers, brochures, and belts, clothing, and headgear.

2. Dwindle owns federal trademark application Serial No. 77/335252 for the **Dwindle Helmet Design** mark in connection with “t-shirts and sweatshirts; headwear, caps, hats, and beanies; and belts,” having a first use date of at least as early as February 17, 1997.

3. Dwindle owns federal trademark registration No. 3,467,442 for the **Large Helmet Design** mark in connection with “t-shirts and sweatshirts; hats and caps; and belts,” having a first use date of at least as early as February 17, 1997.

4. Dwindle has been and is now engaged in using the Marks, and has continuously made use of these Marks, in connection with the recited goods since the stated use dates.

5. Dwindle has continuously used the Marks in interstate commerce in connection with the recited goods since their adoption and first use.

6. Applicant filed its application (Serial No. 77/284816) for the **Helmet Design** mark on September 20, 2007 in connection with similar products, namely

“printed matter, namely, stickers, temporary tattoos, show schedules in the nature of printed sports and tournament schedules, event brochures about mixed martial arts tournaments, and posters; book bags, tote bags, travel bags, carry-on bags, fanny packs; wallets; leather key chains; gym bags, athletic bags, all-purpose sport bags; wearing apparel, namely, t-shirts, shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, sandals and belts.” Application No. 77/284816 asserts a first use date of May 1, 2005.

7. Applicant filed its application (Serial No. 77/284828) for the **Helmet Design** mark on September 20, 2007 in connection with similar products, namely “printed matter, namely, stickers, temporary tattoos, show schedules in the nature of printed sports and tournament schedules, event brochures about mixed martial arts tournaments and posters; book bags, tote bags, travel bags, carry-on bags, fanny packs; wallets; leather key chains; gym bags, athletic bags, all-purpose sport bags; wearing apparel, namely, t-shirts, shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, sandals and belts.” Application No. 77/284828 was filed on an intent to use basis. An amendment to allege use has not been filed by Applicant.

8. Upon information and belief, Applicant did not use the Helmet Design marks in connection with “printed matter, namely, stickers, temporary tattoos, show schedules in the nature of printed sports and tournament schedules, event brochures about mixed martial arts tournaments and posters; book bags, tote bags, travel bags, carry-on bags, fanny packs; wallets; leather key chains; gym bags, athletic bags, all-purpose sport bags; wearing apparel, namely, t-shirts, shirts, shorts, pants, sweatshirts,

sweatpants, hats, visors, shoes, sandals and belts” prior to Dwindle’s first commercial use of its Marks in connection with the recited goods.

9. By virtue of its efforts, and the expenditure of considerable sums for advertising and promotional activities, as well as the excellence of the quality of its goods, Dwindle’s Marks have gained valuable reputation and goodwill.

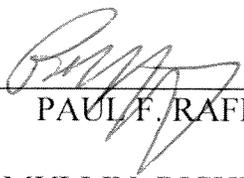
10. Dwindle believes that it will be damaged by the registration of Applicant’s proposed marks because the marks are confusingly similar to Dwindle’s senior Marks, and are used on similar goods. Such similarity is likely to cause confusion, to cause mistake, and to deceive the public, injuring Dwindle and the consuming public.

11. Dwindle further believes that Applicant will use its marks in the same fields of commerce as Dwindle, namely the Action Sports market. Applicant has already advertised its products and marks alongside Dwindle at at least one Action Sports Retailer (ASR) convention in San Diego, California.

12. THEREFORE, Dwindle prays that Applicant’s proposed trademarks be denied registration.

DATED: July 29, 2008

Respectfully submitted,

By  _____
PAUL F. RAFFERTY

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