

ESTTA Tracking number: **ESTTA233183**

Filing date: **08/27/2008**

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 party opposes registration of the indicated application.

Opposer Information

Name	Chicago National League Ball Club L.L.C.
Granted to Date of previous extension	08/27/2008
Address	1060 West Addison Street Chicago, IL 60613 UNITED STATES

Attorney information	Jill K. Tomlinson Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES jkt@cll.com, trademark@cll.com Phone:212-790-9200
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Applicant Information

Application No	77241301	Publication date	04/29/2008
Opposition Filing Date	08/27/2008	Opposition Period Ends	08/27/2008
Applicant	Gillard, John E. 809 Lake Ave. Wilmette, IL 60091 UNITED STATES		

Goods/Services Affected by Opposition

Class 024. All goods and services in the class are opposed, namely: Towels

Grounds for Opposition

Other	Please see attached pleadings.
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Attachments	W TOWEL NOO Cover letter.PDF (2 pages)(78920 bytes) W TOWEL Final NOO.PDF (6 pages)(41263 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	/Jill K. Tomlinson/
Name	Jill K. Tomlinson
Date	08/27/2008

Cowan, Liebowitz & Latman, P.C.

Law Offices

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Jill K. Tomlinson
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jkt@cll.com

August 27, 2008

By Electronic Filing

Commissioner for Trademarks
P.O Box 1451
Alexandria, VA 22313-1451

Attention: Trademark Trial and Appeal Board

Re: Chicago National League Ball Club L.L.C.
Notice of Opposition Against
John E. Gillard's
Application to Register CHICAGO'S ORIGINAL W TOWEL DISPLAY W
ONLY UPON VICTORY and Design
Attorney Ref. No. 21307.011

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/241,301, published in the Official Gazette of April 29, 2008. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Cowan, Liebowitz & Latman, P.C.

August 27, 2008

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Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Jill K. Tomlinson/

Jill K. Tomlinson

Enclosures

cc: Ms. Diane Kovach (w/encs. – by fax)
Mary L. Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)
Nancy Pisacano (w/encs.)

Ref. No. 21307.011

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

In re Application Serial No. 77/241,301

Filed: July 27, 2007

For Mark: CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design

Published in the Official Gazette: April 29, 2008

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CHICAGO NATIONAL LEAGUE :
BALL CLUB L.L.C., :

Opposer, :

v. :

JOHN E. GILLARD, :

Applicant. :

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NOTICE OF OPPOSITION

Opposition No.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Attention: Trademark Trial and Appeal Board

Opposer, Chicago National League Ball Club, L.L.C. ("Opposer"), a Delaware limited liability company located at 1060 West Addison Street, Chicago, Illinois 60613, believes that it will be damaged by registration of the following CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design mark:



(“Applicant’s Mark”), claiming rights to blue letters on a white background where the colors blue and white are a feature of the mark, for “Towels” in International Class 24 shown in Application Serial No. 77/241,301 (the “Application”), and having been granted an extension of time to oppose the Application up to and including August 27, 2008, hereby opposes the same.

As grounds for its notice of opposition, it is alleged that:

1. Opposer is the owner of the renowned CHICAGO CUBS MAJOR LEAGUE BASEBALL club (“the Club”).
2. Since long prior to July 27, 2007, Applicant’s constructive first use date, Opposer and its predecessors have displayed a blue letter W on a white flag atop the scoreboard at WRIGLEY FIELD ballpark, the Club’s home stadium, to represent a victory of the CHICAGO CUBS MAJOR LEAGUE BASEBALL club (“Opposer’s W Victory Flag”) and prior to Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors, have offered for sale and sold to consumers such flags bearing the widely recognized blue W for victory mark on a white background (“Opposer’s ‘W’ Victory Mark”).
3. Since long prior to July 27, 2007, Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors, have used Opposer’s “W” Victory Mark or the mark CHICAGO, alone or with other words, letters and/or designs (collectively “Opposer’s W and CHICAGO Marks”) in connection with baseball game

and exhibition services and a wide variety of goods and services, including, without limitation, fabric flags, apparel, souvenir programs, and posters.

4. Opposer owns U.S. federal registrations and an application for Opposer's W and CHICAGO Marks in International Classes 11, 16, 24, 25 and 41, namely, Registration Nos. 3,053,475, 1,538,151; 1,538,193; 1,544,313; 1,548,675 and 1,612,016 and Application Serial No. 78/832,101. Registration Nos. 1,538,151; 1,538,193; 1,544,313; 1,548,675 and 1,612,016 are incontestable.

5. Since long prior to July 27, 2007, Applicant's constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's W and CHICAGO Marks including, but not limited to, baseball game and exhibition services and a wide variety of goods and services, including, without limitation, fabric flags, apparel, souvenir programs, and posters.

6. As a result of the extensive sales and promotion of its goods and services bearing or offered in connection with Opposer's W and CHICAGO Marks, Opposer has built up highly valuable goodwill in Opposer's W and CHICAGO Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

7. On July 27, 2007, Applicant filed an application to register the design mark CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design, claiming the colors blue and white, in International Class 24 for "Towels" shown in Application Serial No. 77/241,301, based on an intent to use.

8. Upon information and belief, Applicant did not use the CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design mark in United States

commerce for the goods covered in the Application prior to his constructive first use date of July 27, 2007.

9. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's W and CHICAGO Marks.

10. Upon information and belief, CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design mark is intended to refer and will be perceived as referring to Opposer, Opposer's W Victory Flag and Opposer's W and CHICAGO Marks.

11. Applicant's intent to trade on the goodwill of the Opposer is further evidenced by Applicant's filing to register yet another mark that is associated with Opposer. In fact, Applicant applied to register the word mark 100 YEARS IN THE MAKING... in International Class 25 for "Golf shirts; Hooded sweat shirts; Long-sleeved shirts; Shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sports shirts; Sports shirts with short sleeves; Sweat shirts; T-shirts; Tank tops; Tee shirts" shown in Application Serial No. 77/498,465, based on an intent to use, on June 13, 2008. Upon information and belief, the mark 100 YEARS IN THE MAKING... is intended to refer to the well-known fact that, as of this year, it has been 100 years since Opposer has won the Major League Baseball WORLD SERIES championship.

12. Applicant's CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design mark so resembles Opposer's W and CHICAGO Marks so as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a

certificate of registration for Applicant's CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design mark.

13. Opposer would be further injured by the granting of a certificate of registration to Applicant because Applicant's CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design mark would falsely suggest a connection between Applicant and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's CHICAGO'S ORIGINAL W TOWEL DISPLAY W ONLY UPON VICTORY and Design mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Jill K. Tomlinson (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
August 27, 2008

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Jill K. Tomlinson/
Mary L. Kevlin
Richard S. Mandel
Jill K. Tomlinson
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 27, 2008, I caused a copy of the foregoing NOTICE OF OPPOSITION to be sent via First Class Mail, postage paid, to the Applicant who is also listed as the Applicant's Correspondent, John E. Gillard, 809 Lake Avenue, Wilmette, Illinois 60091.

Dated: New York, New York
August 27, 2008

/Jill K. Tomlinson/
Jill K. Tomlinson