

ESTTA Tracking number: **ESTTA246901**

Filing date: **11/05/2008**

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	Set-Up, Inc.		
Entity	Corporation	Citizenship	North Carolina
Address	P. O. Box 15144 Wilmington, NC 28408 UNITED STATES		

Attorney information	William J. Mason MacCord Mason PLLC P. O. Box 1489 Wrightsville Beach, NC 28480 UNITED STATES lquinn@mmpatent.com,wmason@mmpatent.com Phone:910-313-6175		
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**Applicant Information**

Application No	77376666	Publication date	10/14/2008
Opposition Filing Date	11/05/2008	Opposition Period Ends	11/13/2008
Applicant	Kinetic Endeavors, LLC 4612 Reigalwood Rd. Durham, NC 27712 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 041. First Use: 2004/12/01 First Use In Commerce: 2004/12/01 All goods and services in the class are opposed, namely: Organizing sporting events, namely, triathlons
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**Grounds for Opposition**

Deceptiveness	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Application No.	77379714	Application Date	01/24/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VIRGINIA TRIATHLON SERIES		

Design Mark	VIRGINIA TRIATHLON SERIES
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2007/01/01 First Use In Commerce: 2007/01/01 Entertainment services, namely, organizing and conducting triathlon and duathlon athletic events

U.S. Application No.	77379756	Application Date	01/24/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	V		
Design Mark			
Description of Mark	The mark consists of The letter V.		
Goods/Services	Class 041. First use: First Use: 2007/01/01 First Use In Commerce: 2007/01/01 Entertainment services, namely, organizing and conducting triathlon and duathlon athletic events		

Attachments	77379714#TMSN.jpeg ( 1 page )( bytes ) 77379756#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 5 pages )(305288 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/William J Mason/
Name	William J. Mason

Date	11/05/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SET-UP, INC.	)	
	)	Trademark:
Opposer,	)	V Virginia Triathlon Series
	)	
v.	)	Serial No. 77376666
	)	
KINETIC ENDEAVORS, LLC	)	Opposition No. _____
Applicant.	)	

NOTICE OF OPPOSITION

Opposer, Set-Up, Inc., a North Carolina corporation, having its principal place of business at P.O. Box 15144, Wilmington, NC 28408 ("Opposer") believes that it will be damaged by the registration of Application Serial No. 77376666 for V VIRGINIA TRIATHLON SERIES and hereby opposes the same.

As grounds for the opposition, Opposer alleges that:

1. Opposer has been engaged in the business of organizing and conducting triathlon events since 1994. The triathlon events take place in North Carolina, South Carolina and Virginia.

2. Greg Hawkins, the owner of Applicant, Kinetic Endeavors, LLC, worked part-time for Opposer while attending college. In 2005 or before, Hawkins formed the Applicant company and Applicant and Opposer entered into an agreement whereby Applicant was permitted to undertake triathlon events in Virginia under the Set-Up, Inc. name and in accordance with the standards set by Opposer. Advertising, promotion and registration for the triathlon events were via Opposer's website, [www.setupevents.com](http://www.setupevents.com).

Under the Agreement, which is still in force, Opposer receives a payment for each event undertaken by Applicant.

3. In 2006, Opposer revised its website and promotions, including the development of new logos for use in connection with the events in North Carolina, South Carolina and Virginia.

4. Opposer also began using the new logos on its website in January 2007, each connected with triathlon events in the relevant state. Specifically, the "V" logo and "Virginia Triathlon Series" were used together on the website in connection with organizing, promoting and conducting triathlon events in Virginia. Artwork for the "V" logo to be used in Virginia was also provided to Applicant for use as part of the above Agreement.

4. On January 24, 2008, Opposer filed for Federal trademark applications to register VIRGINIA TRIATHLON SERIES (Serial No. 77379714) and the "V" logo (Serial No. 77379756), both for "Entertainment services, namely, organizing and conducting triathlon and duathlon events." Both of these applications are suspended in view of the application being opposed.

5. On January 21, 2008, three days earlier and unknown to Opposer, Applicant filed the application being opposed for "Organizing sporting events, namely, triathlons".

6. Applicant's application stated that the trademark consisted of "an abstract design in the form of the letter "V" and the stylized text "VIRGINIA TRIATHLON SERIES", and that the mark had been first used and first used in commerce "at least as early as December 1, 2004.

7. In fact, the "V" forming a part of the mark that Applicant seeks to register is the logo that was developed by Opposer and provided by Opposer to Applicant.

8. Moreover, the specimen submitted by Applicant in support of its "use" application are two pages from the Opposer's website which depict the exact trademark that Applicant now seeks to register as its own.

9. As a result of the above, Applicant has made multiple false statements to the U.S. Patent & Trademark Office contrary to the requirements of 35 U.S.C. § 1051(a) and the requirements of the Declaration forming a part of the application, either of which renders Applicant's application void *ab initio*. First, Applicant has alleged dates of first use and first use in commerce that are false. These dates cannot be correct for the simple reason that the "V" logo forming an essential part of Applicant's trademark did not even exist until 2006.

10. Applicant's application is also fraudulent in that the specimen presented in support of Applicant's use is in fact a specimen of Opposer's use and Applicant was clearly aware of this fact at the time the application was filed, having copied the specimen from Opposer's website.

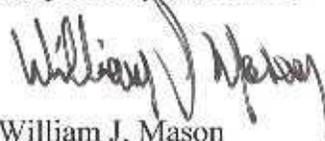
11. As a third willful false statement made in contravention of the Declaration signed by Applicant when filing the application, Applicant stated that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce". In fact, Applicant knew at the time the Declaration was signed that Opposer was already using the identical mark in commerce for the identical services.

12. In addition to the above grounds for voiding Applicant's application on the ground of fraud, the registration should be refused in view of Opposer's earlier use of the identical trademark in commerce, since the registration would cause confusion, mistake and/or deception if ownership of the mark is granted to Applicant.

13. In view of the fact that the mark and the services are identical to Opposer's mark and that services used therewith, granting of the registration of Applicant would also cause deception in violation of Section 2(a) of the Trademark act, in that the mark would misdescribe the origin of the services.

WHEREOF, Opposer respectfully requests that Application Serial No. 77376666 be held to be void or refused registration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William J. Mason". The signature is written in a cursive style with a large, sweeping initial "W".

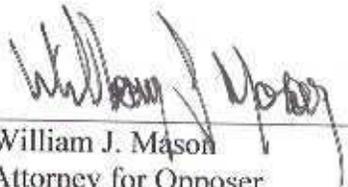
William J. Mason  
Attorney for Opposer  
MacCord Mason, PLLC  
PO Box 1489  
Wrightsville Beach, NC 28480  
(910) 313-6175

November 5, 2008

CERTIFICATE OF SERVICE

I, William J. Mason, do hereby certify that a true and correct copy of the foregoing Notice of Opposition was sent this 5th day of November, 2008, via Express United States mail, postage prepaid, to:

Greg Hawkins  
Kinetic Endeavors, LLC  
4612 Reigalwood Rd.  
Durham, North Carolina 27712

  
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William J. Mason  
Attorney for Opposer