

ESTTA Tracking number: **ESTTA267425**

Filing date: **02/18/2009**

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	brandbase USA, Inc.
Granted to Date of previous extension	02/18/2009
Address	452 Burbank Street Broomfield, CO 80020 UNITED STATES

Attorney information	Christopher M. Parent Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202 UNITED STATES cparent@bhfs.com Phone:303.223.1148
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Applicant Information

Application No	79010370	Publication date	10/21/2008
Opposition Filing Date	02/18/2009	Opposition Period Ends	02/18/2009
International Registration No.	0847908	International Registration Date	03/10/2005
Applicant	Nomis Sports AG Baarer mattstrasse 6 CH-6340 Baar SWITZERLAND		

Goods/Services Affected by Opposition

<p>Class 025. All goods and services in the class are opposed, namely: Clothing, namely, t-shirts, polo shirts, pants, shorts, jackets, warm up suits, socks; Footwear; Headwear, namely, headbands, caps and hats</p>
<p>Class 028. All goods and services in the class are opposed, namely: Games and playthings; gymnastic and sporting articles not included in other classes, namely, baseball bat grips, tennis racquet grips, hockey stick grips, Sports grips, namely, Squash rackets grips, cricket bat grips, badminton rackets grips, Lacrosse stitch grips, and golf clubs grips; Gloves, namely, baseball gloves, baseball batting gloves, batting gloves, bowling gloves, boxing gloves, gauntlets, namely, gloves for archery; goalkeepers' gloves, golf gloves, handball gloves, hockey gloves, karate gloves, racquet ball gloves, rugby gloves, sky diving gloves, softball gloves, water ski gloves, weight lifting gloves, windsurfing gloves</p>

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.	78614932	Application Date	04/22/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NOMIS		
Design Mark			
Description of Mark	<p>"The mark consists of , in part, a design made up of five non-connecting shapes. Three circular shapes and two triangular. The inner larger circular shape (the "body") of the logo is surrounded by a thin shape creating an outline. The top of the logo has an eye-shaped appearance made up of two triangular shapes with a small circle between both, all of which are equally spaced."</p>		
Goods/Services	<p>Class 025. First use: clothing, namely jeans, hooded sweat shirts, t-shirts, zip hooded sweat shirts, tank tops, collar shirts, polo shirts, sports jackets, suits, khakis pants, jackets, dresses, skirts, hats, toques, beanies, balaclavas, scarves, socks, underwear, swimwear; belts.</p>		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NOMIS		
Goods/Services	<p>clothing, namely jeans, hooded sweat shirts, t-shirts, zip hooded sweat shirts, tank tops, collar shirts, polo shirts, sports jackets, khakis pants, jackets, hats, toques, beanies, swimwear; belts</p>		

Attachments	78614932#TMSN.jpeg (1 page)(bytes) OppositionNotice.PDF (5 pages)(56347 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	/christopherparent/
Name	Christopher M. Parent
Date	02/18/2009

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

In the Matter of the Trademark Application Serial No. 79/010,370
For the Trademark: NOMIS in International Class 25 and 28
Published in the Official Gazette on October 21, 2008

brandbase USA, Inc.
Opposer

v.

Nomis Sports AG,
Applicant

OPPOSITION NO. _____

NOTICE OF OPPOSITION

brandbase USA, Inc. ("brandbase"), a Delaware corporation having its principal place of business at 452 Burbank Street, Broomfield, Colorado 80020, believes it will be damaged by the registration of U.S. Trademark Application Serial No. 79/010,370 for the mark, NOMIS, owned by Nomis Sports AG ("NSAG"), in International Classes 25 and 28, for use with, among other things, clothing and sporting equipment, namely athletic gloves and grips.

As grounds for the opposition, brandbase alleges the following:

A. brandbase and its Trademarks

1. brandbase is a leading manufacturer, distributor, and provider of snowboard equipment, clothing, and related products.

2. One of brandbase's most successful brands is "NOMIS", under which brandbase sells primarily clothes.

3. Since at least as early as 2004, and prior to NSAG's application for its Nomis Mark, brandbase has continuously and extensively used the mark, NOMIS, in interstate commerce to advertise, promote, and market its lines of clothing nationwide.

4. On April 22, 2005, brandbase filed an application for the mark, NOMIS (in conjunction with a design element), for use with "clothing, namely jeans, hooded sweat shirts, t-shirts, zip hooded sweat shirts, tank tops, collar shirts, polo shirts, sports jackets, suits, khakis pants, jackets, dresses, skirts, hats, toques, beanies, balaclavas, scarves, socks, underwear, swimwear; belts" in International Class 25, under U.S. Serial Number 78/614,932.

5. Because of brandbase's significant investment in its NOMIS Mark, as well as the widespread success of the NOMIS brand, brandbase's NOMIS mark has acquired distinctiveness and goodwill throughout the United States.

6. brandbase owns all rights in the NOMIS mark for use in conjunction with clothing.

B. NSAG's Trademark

7. Upon information and belief, NSAG, a Swiss corporation having an address of Baarerstattstrasse 6 CH-6340 Baar Switzerland seeks to register the trademark NOMIS (the "NSAG Nomis Mark") (U.S. Serial No. 79/010,370) for use with, among other things, "clothing, namely, t-shirts, polo shirts, pants, shorts, jackets, warm up suits, socks; footwear; headwear, namely, headbands, caps and hats," in International Class 25, and "games and playthings; gymnastic and sporting articles not included in other classes, namely, baseball bat grips, tennis racquet grips, hockey stick grips, sports grips, namely, squash rackets grips, cricket bat grips, badminton rackets grips, lacrosse stick grips, and golf clubs grips; gloves, namely, baseball gloves, baseball batting gloves, batting gloves, bowling gloves, boxing gloves, gauntlets, namely,

gloves for archery; goalkeepers' gloves, golf gloves, handball gloves, hockey gloves, karate gloves, racquet ball gloves, rugby gloves, sky diving gloves, softball gloves, water ski gloves, weight lifting gloves, windsurfing gloves," in International Class 28.

8. The opposed application for the NSAG Nomis Mark was filed under Section 66A of the Lanham Act on an intent-to-use basis on March 10, 2005, well after brandbase's rights in the NOMIS Mark first arose.

9. NSAG's application for the NSAG Nomis Mark published for opposition on October 21, 2008.

C. brandbase's Claim for Trademark Infringement

10. The NSAG Nomis Mark and brandbase's NOMIS Mark are exactly the same in sound, appearance, and meaning. The Nomis marks at issue, therefore, offer the same commercial impression to potential consumers.

11. NSAG intends to use the NSAG Nomis Mark in connection with the same or similar goods brandbase has sold under the NOMIS Mark since 2004. Accordingly, the goods for which NSAG seeks registration under the NSAG Nomis Mark are competitive, complementary, and/or related to the goods already offered by brandbase under its NOMIS Mark.

12. Since brandbase is the senior user of the NOMIS mark for clothing; the NSAG Nomis Mark is exactly the same in sight and sound as the brandbase NOMIS mark; the products in connection with which NSAG seeks to register the NSAG Nomis Mark are competitive, complementary and/or related to those goods sold by brandbase under its NOMIS mark; and the channels of trade and customer base for brandbase's and NSAG's goods appear to be the same or overlapping, NSAG's mark is squarely in conflict with brandbase's NOMIS Mark, and is,

therefore, likely to cause confusion, or mistake among consumers pursuant to 15 U.S.C. §§ 1052(d) and 1125.

13. Registration of the NSAG Nomis Mark is likely to cause confusion or mistake in the minds of the public and lead the public and prospective purchasers into believing that NSAG's goods are those of brandbase, or are endorsed or sponsored by, or otherwise affiliated or connected with brandbase, or that brandbase's goods are associated with NSAG's, all to the damage and injury of the purchasing public and to the damage and injury of brandbase.

D. Conclusion

14. Because brandbase's trademark rights are prior and senior to NSAG's rights in its mark, and a likelihood of confusion exists between these marks, NSAG's Nomis mark should be denied registration.

WHEREFORE, brandbase prays that NSAG's USPTO application for the NSAG Nomis Mark be rejected, that no registration be issued thereon to NSAG, and that this opposition be sustained in brandbase's favor.

Respectfully submitted,

Dated: February 18, 2009

By: 
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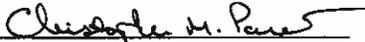
PROOF OF SERVICE

Christopher M. Parent, an attorney at Brownstein Hyatt Farber Schreck, LLP, says that on February 18, 2009, he served a copy of this NOTICE OF OPPOSITION upon:

Riederer Hasler & Partner
Patentanwälte AG
Elestastrasse 8
CH-7310 Bad Ragaz, Switzerland

by enclosing the same in a First Class postage paid envelope and depositing it in the U.S. mail.

I declare that the statement above is true to the best of my information, knowledge and belief.



Christopher M. Parent