

ESTTA Tracking number: **ESTTA311474**

Filing date: **10/14/2009**

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	Michelin North America, Inc.
Granted to Date of previous extension	10/14/2009
Address	One Parkway South Greenville, SC 29615 UNITED STATES
Correspondence information	Fred W. Hathaway Buchanan Ingersoll & Rooney PC 1737 King St. Suite 500 Alexandria, VA 22314 UNITED STATES fred.hathaway@bipc.com Phone:703-836-6620

**Applicant Information**

Application No	77378577	Publication date	06/16/2009
Opposition Filing Date	10/14/2009	Opposition Period Ends	10/14/2009
Applicant	Dimitrius, Steven 444-103 South Blount Street Raleigh, NC 27601 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 012. First Use: 2007/12/01 First Use In Commerce: 2007/12/01 All goods and services in the class are opposed, namely: Motorbikes that are the size and used like a skateboard
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

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

U.S. Registration No.	558774	Application Date	11/18/1950
Registration Date	05/13/1952	Foreign Priority Date	NONE
Word Mark	X		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U035 (International Class 012). First use: PNEUMATIC TIRES [ AND INNER TUBES ] FOR VEHICLES

U.S. Registration No.	2753892	Application Date	07/09/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	X-STRADDLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2002/04/00 First Use In Commerce: 2002/04/00 Pneumatic tires and tubes for vehicle wheels ; treads for recapping pneumatic tires		

U.S. Registration No.	2765039	Application Date	06/25/2001
Registration Date	09/16/2003	Foreign Priority Date	NONE
Word Mark	X-HAUL		

Design Mark	<b>X-HAUL</b>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2002/04/00 First Use In Commerce: 2002/04/00 Pneumatic tires [ and inner tubes] for earthmover vehicles [; treads for recapping pneumatic tires for earthmover vehicles; tracks for earthmover vehicles ]		

U.S. Registration No.	2571183	Application Date	02/08/2001
Registration Date	05/21/2002	Foreign Priority Date	NONE
Word Mark	X MINE		
Design Mark	<b>X MINE</b>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 Pneumatic tires and tubes for vehicle wheels; [ treads for recapping tires ]		

U.S. Registration No.	2587914	Application Date	02/08/2001
Registration Date	07/02/2002	Foreign Priority Date	NONE
Word Mark	X SNOPLUS		

Design Mark	<b>X SNOPLUS</b>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 Pneumatic tires [ and tubes ] for vehicle wheels; [ treads for recapping tires ]		

U.S. Registration No.	3370792	Application Date	06/30/2006
Registration Date	01/15/2008	Foreign Priority Date	NONE
Word Mark	X-CRANE		
Design Mark	<b>X-CRANE</b>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2006/07/00 First Use In Commerce: 2006/07/00 PNEUMATIC TIRES FOR VEHICLE WHEELS		

U.S. Registration No.	2653280	Application Date	07/26/2000
Registration Date	11/26/2002	Foreign Priority Date	02/17/2000
Word Mark	X-QUARRY		

Design Mark	<b>X-QUARRY</b>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: Pneumatic tires and tubes for vehicle wheels; treads for recapping pneumatic tires		

U.S. Registration No.	2960593	Application Date	10/10/2003
Registration Date	06/07/2005	Foreign Priority Date	NONE

Word Mark	X TERMINAL T		
Design Mark	<b>X TERMINAL T</b>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2004/07/05 First Use In Commerce: 2004/07/05 Pneumatic tires and for vehicle wheels		

U.S. Registration No.	2960591	Application Date	10/10/2003
Registration Date	06/07/2005	Foreign Priority Date	NONE

Word Mark	X STACKER		
Design Mark	<b>X STACKER</b>		

Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2004/12/18 First Use In Commerce: 2004/12/28 Pneumatic tires and for vehicle wheels

U.S. Registration No.	2948818	Application Date	05/15/2002
Registration Date	05/10/2005	Foreign Priority Date	NONE

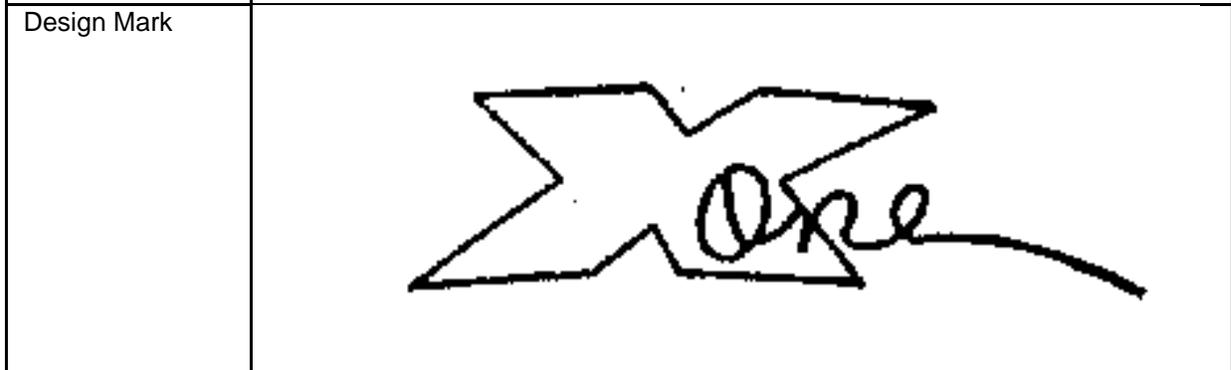
Word Mark X-ICE



Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2004/07/14 First Use In Commerce: 2004/07/14 PNEUMATIC TIRES

U.S. Registration No.	2100165	Application Date	01/19/1996
Registration Date	09/23/1997	Foreign Priority Date	NONE

Word Mark XONE



Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 tires

U.S. Registration No.	2536714	Application Date	08/06/2001
Registration Date	02/05/2002	Foreign Priority Date	NONE

Word Mark X ONE

Design Mark	<b>X ONE</b>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2000/11/00 First Use In Commerce: 2000/11/00 Pneumatic tires [ and tubes ] for vehicle wheels; treads for recapping tires		

U.S. Registration No.	2058682	Application Date	08/01/1995
Registration Date	05/06/1997	Foreign Priority Date	02/24/1995
Word Mark	STABIL'X		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: pneumatic tires and tubes for vehicle wheels; treads for recapping tires		

U.S. Registration No.	1958324	Application Date	05/09/1994
Registration Date	02/27/1996	Foreign Priority Date	NONE
Word Mark	GREEN X		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 1994/04/04 First Use In Commerce: 1994/04/04 tires		

U.S. Registration No.	3255947	Application Date	08/07/2006
Registration Date	06/26/2007	Foreign Priority Date	NONE

Word Mark	GREEN X
Design Mark	
Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 1994/04/04 First Use In Commerce: 1994/04/04 PNEUMATIC TIRES FOR VEHICLE WHEELS

Attachments	71606620#TMSN.gif ( 1 page )( bytes ) 76281742#TMSN.gif ( 1 page )( bytes ) 76276193#TMSN.gif ( 1 page )( bytes ) 76207043#TMSN.gif ( 1 page )( bytes ) 76206896#TMSN.gif ( 1 page )( bytes ) 78920755#TMSN.jpeg ( 1 page )( bytes ) 76096919#TMSN.gif ( 1 page )( bytes ) 76555848#TMSN.gif ( 1 page )( bytes ) 76555675#TMSN.gif ( 1 page )( bytes ) 76408429#TMSN.gif ( 1 page )( bytes ) 75045642#TMSN.gif ( 1 page )( bytes ) 76296066#TMSN.gif ( 1 page )( bytes ) 74520775#TMSN.gif ( 1 page )( bytes ) 78946396#TMSN.jpeg ( 1 page )( bytes ) Notice_of_Opposition.pdf ( 6 pages )(35388 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	/FWH/
Name	Fred W. Hathaway
Date	10/14/2009

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

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MICHELIN NORTH AMERICA, INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
STEVEN DIMITRIUS,	:	
	:	
Applicant.	:	

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**NOTICE OF OPPOSITION**

MICHELIN NORTH AMERICA, INC., a corporation organized and existing under the laws of the State of New York with a principal place of business at One Parkway South, Greenville, South Carolina, 92615 (“Michelin” or “Opposer”), believes that it will be damaged by registration by Steven Dimitrius (“Applicant”) of the mark X CITE BIKE X and Design which was published in the Official Gazette on June 16, 2009.

As grounds for this opposition, Michelin alleges as follows:

1. Michelin’s primary business is the manufacture and distribution of a full range of all types of tires and related goods and services. Michelin's tires include tires for motorbikes, motorcycles, and other vehicles. Michelin and its predecessors in interest, since at least as early as 1950, have continuously used the trademark “X”, either alone or in combination with other words or letters, throughout the United States, on and in association with tires and related goods and services.

2. Among others, Michelin is the owner of Reg. No. 558,774 for the mark X for pneumatic tires for vehicles. This registration issued on May 13, 1952 and the mark has been in continuous use since at least as early as that date.

3. By virtue of long term, nationwide, extensive and continuous use of the X mark in connection with tires and related goods and services, the trademark X has acquired substantial goodwill and recognition throughout the United States.

4. Michelin, as a consequence of the long use of X and voluminous advertising and promotion thereof, has established notoriety and fame in and to the mark X.

5. On information and belief, Applicant is an individual and resident of the United States, residing in Raleigh, North Carolina.

6. On January 23, 2008, Applicant filed application Ser. No. 77/378,577 for the mark X CITE BIKE X and Design; as published, the goods associated with that mark are "Motorbikes that are the size and used like a skateboard" in International Class 12. The application is based on actual use the mark in commerce and claims a first use date of December 1, 2007 ("the X CITE BIKE X application").

#### **Likelihood of Confusion**

7. Michelin has priority over Applicant because Michelin's first use and registration dates for its mark X both precede the filing date of the X CITE BIKE X application as well as the first use date claimed therein.

8. The goods covered by the X CITE BIKE X application are highly similar and closely related to the goods sold by Michelin in connection with its mark X.

9. On information and belief, the goods covered by the X CITE BIKE X application are or will be sold in highly similar, if not identical trade channels as the goods sold by Michelin in connection with its X mark and sold to the same consumers as the goods sold by Michelin in connection with its X mark

10. The X CITE BIKE X mark so resembles Michelin's mark X in Michelin's Registration No. 558,774 as to be likely, when applied to Applicant's goods, to cause confusion, mistake and deception as to the source of Applicant's goods and/or deceive consumers into the mistaken belief that Applicant's goods are connected or affiliated with Michelin and causing damage to Michelin.

11. The X CITE BIKE X mark, when applied to Applicant's goods so resembles Michelin's X mark as used by Michelin as to constitute a false designation of origin whereby the consuming public is likely to believe that: (i) Applicant's goods are approved or sponsored by Michelin; (ii) Michelin's business is connected or affiliated with Applicant, (iii) Applicant's mark is a version of Michelin's mark X and/or (iv) the respective products and services are related, thereby causing confusion and causing damage to Michelin.

**The Family of X Marks**

12. Michelin owns numerous registrations for marks prominently containing "X" in combination with other letters, numbers or words. Michelin also uses these marks and has used them since before Applicant's filing date and before Applicant's date of first use. Such registrations include, but are not limited to, the following:

<u>Mark</u>	<u>Registration</u>
X	558,774
X-STRADDLE	2,753,892
X-HAUL	2,765,039
X MINE	2,571,183
X SNOPLUS	2,587,914
X-CRANE	3,370,792
X-QUARRY	2,653,280
X TERMINAL T	2,960,593
X STACKER	2,960,591
X-ICE	2,948,818
X ONE (and Design)	2,100,165; 2,536,714
STABIL'X	2,058,682

The above registrations are valid and subsisting.

13. The foregoing marks, in various combinations, have been used and extensively advertised and promoted together by Michelin such that the purchasing public recognizes that the common characteristic X is indicative of the common origin of Michelin's goods. Thus, among the foregoing marks is a family and families of marks based on the letter "X" and are identified by the public exclusively with Michelin and its high quality tires and related goods and services.

14. As a result of Michelin's extensive use, sales, advertising, and promotion of its family of X marks, Michelin has built a well-known and valuable reputation as well as extensive goodwill in and to its family and families of X marks.

15. Michelin has priority over Applicant because its use and registration dates for its all of its above X marks precede the filing date of Applicant's application as well as its claimed first use date.

16. The goods covered by the application opposed herein are closely related to the goods sold by Michelin in connection with its family and families of X marks.

17. The X CITE BIKE X mark so resembles Michelin's family and families of X marks as collectively registered as to be likely, when applied to Applicant's goods, to cause confusion, mistake and deception as to the source of Applicant's goods and/or deceive consumers into the mistaken belief that Applicant's goods are connected or affiliated with Michelin and causing damage to Michelin.

18. Applicant's X CITE BIKE X mark so resembles Michelin's family and families of X marks as used by Michelin as to constitute a false designation of origin whereby the consuming public is likely to believe that: (i) Applicant's goods are approved or sponsored by



