

ESTTA Tracking number: **ESTTA344891**

Filing date: **04/29/2010**

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	NHS, Inc.		
Entity	Corporation	Citizenship	California
Address	104 Bronson Street, #9 Santa Cruz, CA 95062 UNITED STATES		

Attorney information	Stephanie O. Sparks HOGE FENTON JONES & APPEL, INC. 60 S. Market Street, Ste. 1400 San Jose, CA 95113 UNITED STATES uspto@hogefenton.com Phone:408-287-9501		
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### Applicant Information

Application No	77841685	Publication date	03/30/2010
Opposition Filing Date	04/29/2010	Opposition Period Ends	04/29/2010
Applicant	The Independent, LLC 628 Divisadero Street San Francisco, CA 94117 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. First Use: 2004/01/28 First Use In Commerce: 2004/01/28 All goods and services in the class are opposed, namely: Clothing, namely, shirts, T-shirts, tank tops, sweatshirts, denim shirts, pants, shorts, jeans, jackets and sports jerseys; headwear, namely, caps, visors, hats
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### 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. Registration No.	1640578	Application Date	04/30/1990
Registration Date	04/09/1991	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		

Design Mark	<b>INDEPENDENT TRUCK COMPANY</b>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 T-shirts, sweatshirts, sweatpants, and hats

U.S. Registration No.	1644388	Application Date	04/30/1990
Registration Date	05/14/1991	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 decals and paper banners		

U.S. Registration No.	1524699	Application Date	05/31/1988
Registration Date	02/14/1989	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK CO.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1977/03/00 First Use In Commerce: 1977/03/00 SKATEBOARDS, AND SKATEBOARD TRUCK ASSEMBLY		

U.S. Registration No.	3002979	Application Date	07/25/2003
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1995/06/00 First Use In Commerce: 1995/06/00 Watches		

U.S. Registration No.	3335842	Application Date	07/25/2003
Registration Date	11/13/2007	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 014. First use: First Use: 1998/06/00 First Use In Commerce: 1998/06/00 Jewelry

U.S. Registration No.	1559780	Application Date	05/31/1988
Registration Date	10/10/1989	Foreign Priority Date	NONE

Word Mark	INDEPENDENT TRUCK COMPANY
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 016. First use: First Use: 1977/03/00 First Use In Commerce: 1977/03/00 DECALCOMANIAS
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U.S. Registration No.	1547467	Application Date	05/31/1988
Registration Date	07/11/1989	Foreign Priority Date	NONE

Word Mark	INDEPENDENT TRUCK COMPANY
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Design Mark	
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Description of Mark	THE MARK COMPRISES THE WORDS "INDEPENDENT TRUCK COMPANY" INCLUDING DESIGN ELEMENTS AS SHOWN IN THE ACCOMPANYING DRAWING, THE WORD "INDEPENDENT" ENCLOSED WITHIN A STYLIZED CROSS AND THE WORDS "TRUCK COMPANY" SITUATED BELOW THE STYLIZED CROSS, ALL THREE WORDS BEING SUBSTANTIALLY ENCLOSED WITHIN A CIRCLE.
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Goods/Services	Class 025. First use: First Use: 1977/03/00 First Use In Commerce: 1977/03/00 CLOTHING; NAMELY T-SHIRTS, SHORTS, AND JACKETS
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Attachments	74054502#TMSN.gif ( 1 page )( bytes ) 73731873#TMSN.gif ( 1 page )( bytes ) 73731422#TMSN.gif ( 1 page )( bytes ) The Independent word opposition.pdf ( 8 pages )(368720 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	/Stephanie O. Sparks/
Name	Stephanie O. Sparks
Date	04/29/2010

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

In the matter of Trademark Application Serial No. 77/841,685 for the word mark  
THE INDEPENDENT

NHS, INC., a California corporation

Opposer,

vs.

THE INDEPENDENT, LLC, a California  
limited liability company

Applicant.

Opposition No.:

I hereby certify that this correspondence is being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through its website located at <http://estta.uspto.gov/> on:

*April 29, 2010*

(date)

*Stephanie O. Sparks*  
Stephanie O. Sparks

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
ATT: BOX TTAB FEE

**NOTICE OF OPPOSITION**

NHS, INC., a California corporation ("Opposer"), located and doing business at 104 Bronson Street, #9, Santa Cruz, California 95062-3487, believes that it will be damaged by the registration of the mark "THE INDEPENDENT" in International Class 25 for "clothing, namely, shirts, T-shirts, tank tops, sweatshirts, denim shirts, pants, shorts, jeans, jackets and sports jerseys; headwear, namely, caps visors, hats" as shown in U.S. Trademark Application Serial No. 77/841,685 (hereinafter referred to as "Application") submitted by THE INDEPENDENT, LLC, a California limited-liability corporation ("Applicant"), who states its address to be 628 Divisadero Street, San Francisco, California, 94117.

Opposer therefore hereby opposes the Application.

A description of Applicant's mark in its Application is as follows:

Mark:	THE INDEPENDENT
Serial No.:	77/841,685
Goods:	clothing, namely, shirts, T-shirts, tank tops, sweatshirts, denim shirts, pants, shorts, jeans, jackets and sports jerseys; headwear, namely, caps visors, hats
Class:	25
Filed:	October 5, 2010
Filing Basis:	1A

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the business of manufacturing, marketing and selling goods including but not limited to t-shirts, sweatshirts, sweatpants, shorts, jackets, hats, decalcomanias, decals, paper banners, skateboards, skateboard truck assembly, jewelry, watches, sunglasses, spectacles, cases, parts and accessories for sunglasses and spectacles such as cords, frames, lenses, and ear stems, in connection with its mark, INDEPENDENT TRUCK COMPANY (referred to hereinafter as the "Opposer's Mark").

2. Opposer is the owner of, and relies on U.S. Trademark Registration No. 1,640,578 for Opposer's word mark, INDEPENDENT TRUCK COMPANY in Class 25, which registered on the Principal Register on April 9, 1991. This registration is based on an application filed in the United States Patent and Trademark Office ("PTO") on April 30, 1990, and claims a date of first use in interstate commerce of January 1978. Thus, the dates of first use, application and registration of Opposer's Mark are all prior to the filing of Applicant's Application on October 5, 2009, and its claimed first use of January 28, 2004. Moreover, with regard to Opposer's Mark, on April 7, 1997, a Section 8 and 15

Declaration was filed and accepted and, accordingly, said registration is incontestable.

3. Opposer is the owner of, and relies on U.S. Trademark Registration No. 1,644,388 for Opposer's Mark for INDEPENDENT TRUCK COMPANY in Class 16, which registered on the Principal Register on May 14, 1991. This registration is based on an application filed in the PTO on April 30, 1990, and claims a date of first use in interstate commerce of January 1978. Thus, the dates of first use, application and registration of Opposer's Mark are all prior to the filing of Applicant's Application on October 5, 2009, and its claimed first use of January 28, 2004. Moreover, with regard to Opposer's Mark, on May 8, 1997, a Section 8 and 15 Declaration was filed and accepted and, accordingly, said registration is incontestable.

4. Opposer is the owner of, and relies on U.S. Trademark Registration No. 1,524,699 for Opposer's Mark for INDEPENDENT TRUCK CO. in Class 28, which registered on the Principal Register on February 14, 1989. This registration is based on an application filed in the PTO on May 31, 1988, and claims a date of first use in interstate commerce of March 1977. Thus, the dates of first use, application and registration of Opposer's Mark are all prior to the filing of Applicant's Application on October 5, 2009, and its claimed first use of January 28, 2004. Moreover, with regard to Opposer's Mark, on February 24, 1994, a Section 8 and 15 Declaration was filed and accepted and, accordingly, said registration is incontestable.

5. Opposer is the owner of, and relies on U.S. Trademark Registration No. 3,002,979 for Opposer's Mark for INDEPENDENT TRUCK COMPANY in Class 14 for watches, which registered on the Principal Register on September 27, 2005. This registration is based on an application filed in the PTO on July 25, 2003, and claims a date of first use in interstate commerce of June 1995. Thus,

the dates of first use, application and registration of Opposer's Mark are all prior to the filing of Applicant's Application on October 5, 2009.

7. Opposer is the owner of, and relies on U.S. Trademark Registration No. 3,335,842 for Opposer's Mark for INDEPENDENT TRUCK COMPANY also in Class 14 for jewelry, which registered on the Principal Register on November 13, 2007. This registration is based on an application filed in the PTO on July 25, 2003, and claims a date of first use in interstate commerce of June 1998. Thus, the dates of first use, application and registration of Opposer's Mark are all prior to the filing of Applicant's Application on October 5, 2009.

8. Opposer is the owner of, and relies on U.S. Trademark Registration No. 1,559,780 for Opposer's  Mark with the words INDEPENDENT TRUCK COMPANY in Class 16, which registered on the Principal Register on October 10, 1989. This registration is based on an application filed in the PTO on May 31, 1988, and claims a date of first use in interstate commerce of March 1977. Thus, the dates of first use, application and registration of Opposer's Mark are all prior to the filing of Applicant's Application on October 5, 2009, and its claimed first use of January 28, 2004. Moreover, with regard to Opposer's Mark, on October 17, 1994, a Section 8 and 15 Declaration was filed and accepted and, accordingly, said registration is incontestable.

9. Opposer is the owner of, and relies on U.S. Trademark Registration No. 1,547,467 for Opposer's  Mark in Class 25, which registered on the Principal Register on July 11, 1989. This registration is based on an application filed in the PTO on May 31, 1988, and claims a date of first use in interstate commerce of March 1977. Thus, the dates of first use, application and registration of Opposer's Mark are all prior to the filing of Applicant's Application on October 5, 2009, and its claimed first use of January 28, 2004. Moreover, with regard to Opposer's Mark, on July 25, 1994, a Section 8 and 15 Declaration

was filed and accepted and, accordingly, said registration is incontestable.

Opposer's registered marks described in paragraphs 2 through 9 above are hereinafter collectively referred to as its "Marks."

10. Opposer's use of its Marks covered by the aforementioned registrations has been valid and continuous prior to the filing date of Applicant's Application and have not been abandoned. Opposer's registrations are valid, subsisting, unrevoked and uncanceled. As such they constitute *prima facie* evidence of the validity of Opposer's Marks and their registrations, of Opposer's ownership of the Marks shown therein, and of Opposer's exclusive right to use the Marks in commerce in connection with the goods named therein. Opposer's registrations also constitute notice to Applicant of Opposer's claim of ownership of Opposer's Marks shown therein as provided in Sections 7(b), 22 and 33(a) of the Trademark Act of 1946, as amended.

11. Since at least as early as January 1978, Opposer has consistently used Opposer's Mark in interstate commerce in connection with its "clothing" and other related goods in Class 25.

12. The Opposer's Marks, by virtue of Opposer's substantial use and advertising, have acquired great value as an identification of Opposer and its goods, and distinguishes Opposer and its goods from the goods of others

13. Opposer, through advertising and promotion of its goods under Opposer's Mark, has built up, at great expense and effort, valuable goodwill symbolized by Opposer's Mark and the relevant class of the public has come to associate Opposer with Opposer's Marks.

14. Opposer has invested substantial amounts of time, effort and money in Opposer's Marks throughout the United States. Opposer began its use and continued its use of its Marks throughout the United States and globally, and long before the October 5, 2009 filing date of Applicant's Application. As such, in

addition to the protection afforded Opposer by its federal trademark registrations, Opposer has extensive, non-registered statutory and common-law rights in Opposer's Marks for its goods throughout the United States. Further, Opposer's common law rights in Opposer's Mark predate the filing date of Applicant's Application.

15. If Applicant's Application is permitted to proceed to registration, Applicant's corresponding *prima facie* exclusive right to use Applicant's mark in nationwide commerce will conflict with Opposer's lawful and *prima facie* exclusive right to use Opposer's Marks nationwide.

16. The registrations of Opposer's Marks specified in paragraphs 2 through 9 above are derived from applications filed in the PTO prior to the October 5, 2009, filing of Applicant's Application. Said registrations of Opposer are valid and subsisting. In view of the similarity of Opposer's Mark and Applicant's proposed mark, and the related nature of the goods and consumers of the Opposer and Applicant, it is alleged that Applicant's mark so resembles Opposer's registered and common law Marks previously used in the United States and not abandoned, as to be likely to cause confusion, to cause mistake, or to deceive.

17. Applicant's mark is virtually identical to Opposer's Marks. As such, when the Applicant's mark is used in connection with Applicant's goods, it is likely to cause confusion, or to cause mistake or to deceive, within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Applicant's mark, and the use thereof, is likely to cause confusion in, or to cause mistake by, or to deceive the public into believing that Applicant's goods originate with Opposer or are otherwise authorized, licensed or sponsored by Opposer.

18. In view of the Opposer's prior rights in Opposer's Marks, Applicant is not entitled to registration of the mark pursuant to Section 2(d) of the

Trademark Act, 15 U.S.C. § 1052(d).

19. Through extensive use, advertising and promotion of Opposer's Marks, it has become famous for Opposer's goods.

20. Applicant's registration of its proposed mark will dilute the distinctive quality of Opposer's Marks, which are famous, within the meaning of Section 43(c) of the Trademark Act, 15 U.S.C. 1125(c) and will lessen the ability of Opposer's Marks to distinguish the goods of Opposer, regardless of the category of products or services in connection with which Applicant uses the mark.

21. Applicant has no license, consent or permission from Opposer to use or register its proposed THE INDEPENDENT mark.

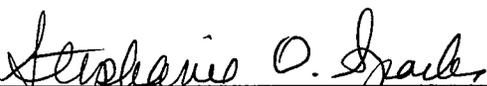
WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 77/841,685 be rejected and stricken, that no registration thereon issue in favor of Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer submits herewith payment in the amount of \$300.00 to cover the opposition fee against the Application. Please charge the account of Hoge, Fenton, Jones and Appel, Inc., for any additional fees that may be required, or credit any overpayment to this account.

DATED: April 29, 2010

Respectfully submitted,

HOGE, FENTON, JONES & APPEL, INC.

By   
Stephanie O. Sparks  
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Attorneys for Opposer NHS, Inc.

**CERTIFICATE OF SERVICE**

I, Marie Ricci, paralegal to Stephanie O. Sparks of HOGE FENTON JONES & APPEL, INC., attorneys for Opposer, hereby certify that a true and complete copy of the foregoing:

**NOTICE OF OPPOSITION**

was served via First-Class U.S. Mail, postage prepaid, on April 29, 2010, upon Applicant:

The Independent  
628 Divisadero Street  
San Francisco, CA 94117

and upon Applicant's last known attorney of record:

Elizabeth J. Rest  
Idell & Seitel, LLP  
465 California Street, Ste. 300  
San Francisco, CA 94104-1810

Executed on April 29, 2010, at San Jose, California

  
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Marie Ricci  
Paralegal