

ESTTA Tracking number: **ESTTA346614**

Filing date: **05/10/2010**

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	Major League Baseball Properties, Inc.
Granted to Date of previous extension	05/09/2010
Address	245 Park Avenue New York, NY 10167 UNITED STATES
Attorney information	Maryann E. Licciardi Cowan, Liebowitz and Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES mel@cll.com, trademark@cll.com Phone:212-790-9200

**Applicant Information**

Application No	77766387	Publication date	11/10/2009
Opposition Filing Date	05/10/2010	Opposition Period Ends	05/09/2010
Applicant	MacLavery, Michael 205 Oxford Rd Kenilworth, IL 60043 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. All goods and services in the class are opposed, namely: Hats; Shirts; Sweat shirts; T-shirts
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**Grounds for Opposition**

Other	See attached pleading.
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Attachments	Man With Baseball Cap (MacLavery) - Letter to Commissioner.pdf ( 1 page ) (80917 bytes ) Man With Baseball Cap (MacLavery) - Notice of Opposition.pdf ( 6 pages ) (60660 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	/Maryann E. Licciardi/
Name	Maryann E. Licciardi
Date	05/10/2010

# Cowan, Liebowitz & Latman, P.C.

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**Maryann E. Licciardi**  
Direct (212) 790-9218  
mel@cll.com

May 10, 2010

## **By Electronic Filing**

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

Re: Major League Baseball Properties, Inc.'s  
Notice of Opposition Against  
Michael MacLaverly's  
Application to Register Design Mark  
Attorney Ref. No. 21307.000

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Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/766,387 published in the Official Gazette on 77/766,387. 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.

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

Respectfully submitted,

/Maryann E. Licciardi/

Maryann E. Licciardi

Enclosures

cc: Diane Kovach (w/encs.)  
Mary L. Kevlin, Esq. (w/encs.)  
Richard S. Mandel, Esq. (w/encs.)

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

In re Application Serial No. 77/766,387  
Filed: June 23, 2009  
For Mark: Design Mark  
Published in the Official Gazette: November 10, 2009

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MAJOR LEAGUE BASEBALL	:	Opposition No.
PROPERTIES, INC.,	:	
Opposer,	:	
	:	<b><u>NOTICE OF OPPOSITION</u></b>
v.	:	
MICHAEL MACLAVERTY,	:	
Applicant.	:	
-----X	:	

Commissioner for Trademarks  
Attn: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

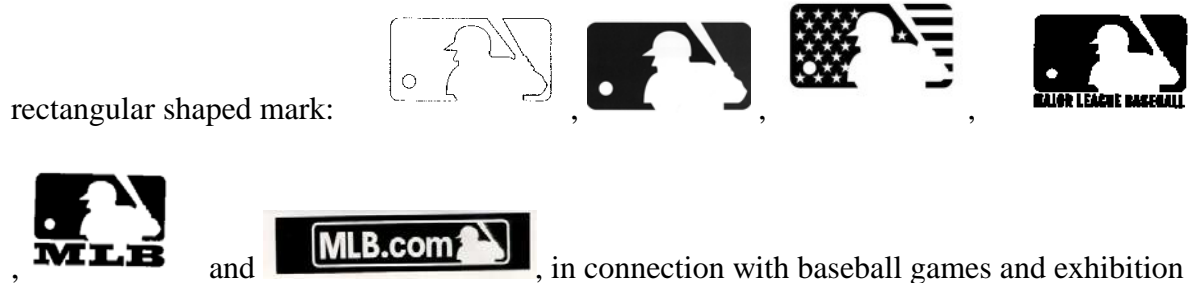
Opposer, Major League Baseball Properties, Inc. (“Opposer”), a New York corporation, with offices at 245 Park Avenue, New York, New York 10167, believes that it will be damaged



by registration of the following design mark: (“Applicant’s Mark”) in International Class 25 for “Hats; Shirts; Sweat shirts; T-shirts” as shown in Application Serial No. 77/766,387 (the “Application”), and having been granted extensions of time to oppose up to and including May 9, 2010, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Since long prior to June 23, 2009, Applicant's constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have used a well-known rectangular shaped mark featuring a silhouetted batter, alone or with other word, letter and/or design elements, including, but not limited to, the following versions of the



services and a wide variety of goods and services, including, but not limited to, apparel, including, without limitation, hats, toys and sporting goods, paper goods and printed matter and novelty items ("Opposer's Rectangular Marks"), and have long placed Opposer's Rectangular Marks on the center of the back of baseball caps which are sold, distributed and promoted by Opposer, and Opposer's Rectangular Marks and the placement of such marks on Opposer's headwear is well-known to consumers, fans, press, media and the public.

2. Opposer owns U.S. federal registrations for Opposer's Rectangular Marks in International Classes 6, 9, 11, 14, 16, 18, 20, 21, 24, 25, 28, 34, 38 and 41, namely, 955,967, 1,055,313, 1,055,317, 1,055,318, 1,055,319, 1,055,322, 1,057,260, 1,057,264, 1,057,265, 1,617,698, 1,625,617, 1,741,015, 1,797,868, 1,799,433, 1,822,830, 2,068,319, 2,569,970, 2,569,971, 2,573,096, 2,573,503, 2,604,417, 2,609,504, 2,612,388, 2,666,228, 2,669,860, 2,680,015, 2,697,473, 2,705,130, 2,776,186, 2,800,750, 2,800,751, 2,800,752, 2,802,812, 2,802,813, 2,802,814, 2,806,937, 2,806,938, 2,845,335, 2,879,840, 3,399,695, 3,542,112, 3,641,257, 3,644,958, 3,644,959 and 3,716,952. Registration Nos. 955,967, 1,055,313, 1,055,317, 1,055,318, 1,055,319, 1,055,322, 1,057,260, 1,057,264, 1,057,265, 1,617,698,

1,625,617, 1,741,015, 1,797,868, 1,799,433, 1,822,830, 2,573,096, 2,776,186, 2,800,750, 2,800,751, 2,800,752, 2,802,812 and 2,802,813 are incontestable.

3. Since long prior to June 23, 2009, 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 Rectangular Marks, including, but not limited to, baseball games and exhibition services and a wide variety of goods and services, and have sold or distributed such goods and rendered such services in commerce, including the extensive sale, distribution and promotion of baseball caps featuring Opposer's Rectangular Marks appearing on the center of the back of the baseball caps.

4. As a result of the extensive sales, distribution and promotion of goods and services bearing or offered in connection with Opposer's Rectangular Marks, Opposer has built up highly valuable goodwill in Opposer's Rectangular Marks, including, but not limited to, Opposer's Rectangular Marks as placed on the center of the back of baseball caps, and said goodwill has become closely and uniquely identified and associated with Opposer.

5. On June 23, 2009, Applicant filed the Application for Applicant's Mark for "Hats; Shirts; Sweat shirts; T-shirts" in International Class 25, based on an intent to use.

6. Upon information and belief, Applicant did not use Applicant's Mark for the goods covered in the Application in United States commerce prior to its constructive first use date of June 23, 2009.

7. Applicant's Mark features a man wearing a baseball cap bearing a rectangular shape that is identical to the rectangular shape of Opposer's Rectangular Marks, and which is positioned in the exact location that Opposer's Rectangular Marks are positioned in connection

with baseball caps. Upon information and belief, Applicant intends, and consumers and the public will understand, the rectangular shape on the hat in Applicant's Mark to be associated with Opposer.

8. In light of the foregoing, and because of the long and extensive use of Opposer's Rectangular Marks, when Applicant's Mark is used in connection with the goods covered in the Application, consumers are likely to presume a connection with Opposer.

9. Opposer is not connected with Applicant, and use or application for registration of the baseball cap featuring the rectangular shape shown in Applicant's Mark is without Opposer's consent.

10. Opposer would therefore be injured by the granting of a certificate of registration to Applicant because Applicant's Mark would falsely suggest a connection between Applicant and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's 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 Maryann E. Licciardi (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.

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

Dated: New York, New York  
May 10, 2010

Respectfully submitted,

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

By:  /Maryann E. Licciardi/

Mary L. Kevlin  
Richard S. Mandel  
Maryann E. Licciardi  
1133 Avenue of the Americas  
New York, New York 10036  
(212)790-9200



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 10, 2010, I caused a true and complete copy of the foregoing *Notice of Opposition* to be sent via First Class Mail, postage prepaid, to Applicant's Attorney of Record, Patrick J. O'Shea, Esq., O'Shea Getz P.C., 1500 Main Street, Suite 912, Springfield, Massachusetts 01115-1007.

Dated: New York, New York  
May 10, 2010

/Maryann E. Licciardi/  
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Maryann E. Licciardi