

ESTTA Tracking number: **ESTTA381472**

Filing date: **12/01/2010**

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	TYR Sport, Inc.
Granted to Date of previous extension	12/01/2010
Address	15391 Springdale Street Huntington Beach, CA 92649 UNITED STATES

Correspondence information	TYR Sport, Inc. 15391 Springdale Street Huntington Beach, CA 92649 UNITED STATES para@rubelmann.com Phone:310-379-2715
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### Applicant Information

Application No	77955633	Publication date	08/03/2010
Opposition Filing Date	12/01/2010	Opposition Period Ends	12/01/2010
Applicant	Dushey, Marc 2220 Avenue J Brooklyn, NY 112103628 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Bottled water; Drinking water; Spring water
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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.	2842240	Application Date	04/17/2002
Registration Date	05/18/2004	Foreign Priority Date	NONE
Word Mark	TYR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1987/00/00 First Use In Commerce: 1987/00/00 SPORTS MARKETING SERVICES IN THE NATURE OF SPONSORSHIP AND ENDORSEMENT OF ATHLETES IN SPORT COMPETITIONS

U.S. Registration No.	1458467	Application Date	02/26/1987
Registration Date	09/22/1987	Foreign Priority Date	NONE
Word Mark	TYR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1985/10/03 First Use In Commerce: 1985/10/03 CLOTHING, NAMELY [ UNDERSHIRTS, ] T-SHIRTS, SHORTS, BIKE SHORTS, FITNESS SHORTS AND WARM UP TIGHTS, AND SWIMWEAR, NAMELY SWIMSUITS, SWIM CAPS, BATHING SUITS AND BATHING TRUNKS Class 028. First use: First Use: 1985/10/06 First Use In Commerce: 1985/10/06 SWIM ACCESSORIES, NAMELY GOGGLES, HAND PADDLES, TRAINING PADDLES, KICK BOARDS, NOSE CLIPS, AND EARPLUGS		

U.S. Registration No.	3768232	Application Date	04/29/2008
Registration Date	03/30/2010	Foreign Priority Date	NONE
Word Mark	TYR.COM		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 035. First use: First Use: 2004/10/01 First Use In Commerce: 2004/10/31 On-line retail store services featuring sportswear, equipment and accessories		
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U.S. Registration No.	3603480	Application Date	09/04/2007
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Registration Date	04/07/2009	Foreign Priority Date	NONE
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Word Mark	TYRFIT		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 028. First use: First Use: 2007/12/12 First Use In Commerce: 2007/12/12 SPORTS EQUIPMENT, namely, AQUATIC BUOYS FOR RECREATIONAL USE, FLOTATION BELTS, SWIM BELTS, FITNESS GLOVES, AND AQUATIC KICKBOARDS		
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U.S. Registration No.	3101184	Application Date	10/20/2003
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Registration Date	06/06/2006	Foreign Priority Date	NONE
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Word Mark	TYR FUSION 2		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 025. First use: First Use: 2004/06/01 First Use In Commerce: 2004/09/01 CLOTHING, FOOTWEAR AND HEADGEAR, NAMELY, COATS AND JACKETS; SHIRTS AND TOPS INCLUDING TANK TOPS AND T-SHIRTS; SWEATSHIRTS AND SWEAT PANTS; SHORTS; CAPS AND HATS; GLOVES AND MITTENS; SKIRTS; TROUSERS; JEANS; HOSIERY; DRESSES; ROMPERS; OVERALLS; SHOES; SANDALS; BOOTS; HOUSE SHOES; SLIPPERS; VESTS; BLOUSES; BANDANAS; SCARVES; TIES; NECKWEAR; BELTS; HEAD BANDS; JOGGING AND WARM-UP SUITS; SWEAT BANDS; SOCKS; SLEEPWEAR, NAMELY PAJAMAS, SLEEP SHIRTS AND ROBES;		
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	DORM SHIRTS; UNDERWEAR; LINGERIE; BOXERS; SWIMWEAR		
U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TYR		
Goods/Services	Water bottles, sports bags and accessories.		

Attachments	76397630#TMSN.gif ( 1 page )( bytes ) 77461174#TMSN.jpeg ( 1 page )( bytes ) 77270830#TMSN.jpeg ( 1 page )( bytes ) 76552667#TMSN.gif ( 1 page )( bytes ) TYR 2.pdf ( 5 pages )(1277282 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	/dr/
Name	Donna Rubelmann, Esq.
Date	12/01/2010

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

In re Application of:	)	TYR Sport, Inc.
	)	Opposer
Dushey, Marc	)	
	)	v.
Mark:        TYR	)	Dushey, Marc
	)	Applicant
	)	
App. No.:    77,955,633	)	
	)	
App. Filed:  March 10, 2010	)	Opposition No. _____

**Notice of Opposition**

United States Patent and Trademark Office  
Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Attention:    Trademark Trial and Appeal Board

Sir:

TYR Sport, Inc. (“Opposer”), a corporation of California with a business address of 15391 Springdale Street, Huntington Beach, California 92649, by and through its attorney, believes that TYR Sport, Inc. will be damaged by Application No. 77,955,633 of the mark TYR, which was filed March 10, 2010 and hereby opposes the application.

To the best of the Opposers’s knowledge, the name and address of the above-identified Applicant is Marc Dushey, an individual doing business at 2220 Avenue J, Brooklyn, New York 11210.

The grounds for Opposition are as follows:

- (1) Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration on the Principal Register of the mark TYR (“Applicant’s Mark”) for bottled water; drinking water; and spring water in International Class 32.
- (2) Applicant is not now, and never was, entitled to registration on the Principal Register of the mark TYR, either on March 10, 2010, the date of Applicant’s filing of the intent-to-use application, or on August 3, 2010, the date of publication in the *Official Gazette*.
- (3) Opposer is the owner of numerous Principal Register trademark registrations in various International Classes, which registrations consist of or contain the word “TYR”, alone, or in conjunction with another word, including but not limited to:
  - a. TYR® (Reg. No. 2,842,240) for “sports marketing services in the nature of sponsorship and endorsement of athletes in sport competitions” in International Class 35;
  - b. TYR® (Reg. No. 1,458,467) for “clothing, namely (undershirts,) t-shirts, shorts, bike shorts, fitness shorts and warm up tights, and swimwear, namely, swimsuits, swim caps, bathing suits and bathing trunks” in International Class 25 and “Swim accessories, namely goggles, hand paddles, training paddles, kick boards, nose clips, and earplugs” in International Class 28;

c. TYR.COM® (Reg. No. 3,768,232) for “On-line retail store services featuring sportswear, equipment and accessories” in International Class 35;

d. TYRFIT® (Reg. No. 3,603,480) for “sports equipment, namely, aquatic buoys for recreational use, flotation belts, swim belts, fitness gloves, and aquatic kickboards” in International Class 28;

e. TYR FUSION 2® (Reg. No. 3,101,184) for “clothing, footwear and Headgear, namely, coats and jackets; shirts and tops including tank tops and t-shirts; sweatshirts and sweat pants; shorts; caps and hats; gloves and mittens; skirts; trousers; jeans; hosiery; dresses; rompers; overalls; shoes; sandals; boots; house shoes; slippers; vests; blouses; bandanas; scarves; ties; neckwear; belts; head bands; jogging and warm-up suits; sweat bands; socks; sleepwear, namely pajamas, sleep shirts and robes; dorm shirts; underwear; lingerie; boxers; swimwear” in International Class 25.

- (4) Opposer is the owner of the common law trademark TYR for water bottles, since at least as early as 2002.
- (5) Opposer is the owner of the common law trademark TYR for sports bags and accessories that are used to carry water bottles since at least as early as 1998.
- (6) Opposer has, since long prior to the filing date of Applicant’s intent-to-use application, sold in commerce in the United States its products using Opposer’s marks. Through usage by Opposer, Opposer’s Marks have become well-known and famous to customers and potential customers as trademarks of Opposer, and as an origin and source of the goods sold and provided by Opposer.

- (7) Because of the identity and great similarity of Opposer's Marks and Applicant's Mark and the fact that many of the respective goods and services of the parties are closely related in the sports field, Applicant's Mark is likely to cause confusion, mistake, or deception amongst the general and consuming public as to whether Applicant's goods are being offered by, or in affiliation with, Opposer causing damage to Opposer.
- (8) Applicant's registration and use of TYR also will dilute the distinctive quality of Opposer's Marks, which became famous before the filing date of Applicant's intent-to-use application, thereby lessening the ability of Opposer's Marks to distinguish Opposer's goods and causing damage to Opposer.
- (9) Moreover, Applicant's registration and use of TYR is likely to cause dilution by tarnishment of Opposer's Marks, which will harm the reputation of Opposer and Opposer's famous Marks.
- (10) Accordingly, Opposer requests that registration of the mark TYR (App. No. 77,955,633) be denied to Applicant and this Opposition be sustained.

Respectfully Submitted,

TYR Sport, Inc.

By: 

Donna Rubelmann, Esq.  
Rubelmann & Associates, P.C.  
Attorney for Opposer  
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Hermosa Beach, CA 90254  
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Fax: (310) 318-1852

**CERTIFICATE OF SERVICE**

I, Donna Rubelmann, Esq., hereby certify that on December 1, 2010, a true and correct copy of the forgoing Notice of Opposition was served via U.S. First Class Mail, postage prepaid, upon the following:

William H. Cox, Esq.  
Gordon, Herlands, Randolph & Cox LLP  
355 Lexington Ave Fl 10  
New York, NY 10017-6603



Donna Rubelmann, Esq.