

ESTTA Tracking number: **ESTTA389794**

Filing date: **01/24/2011**

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	Warson Group, Inc.
Granted to Date of previous extension	01/23/2011
Address	121 Hunter Avenue Suite 204 St. Louis, MO 63124 UNITED STATES

Attorney information	Gary Pierson II Husch Blackwell LLP 190 Carondelet Plaza Suite 600 St. Louis, MO 63105 UNITED STATES dan.cohn@huschblackwell.com, gary.pierson@huschblackwell.com, jacie.steinkamp@huschblackwell.com, pto-sl@huschblackwell.com Phone:314-480-1500
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Applicant Information

Application No	77950338	Publication date	07/27/2010
Opposition Filing Date	01/24/2011	Opposition Period Ends	01/23/2011
Applicant	Implus Footcare, LLC 9221 Globe Center Drive, Suite 120 Morrisville, NC 27560 UNITED STATES		

Goods/Services Affected by Opposition

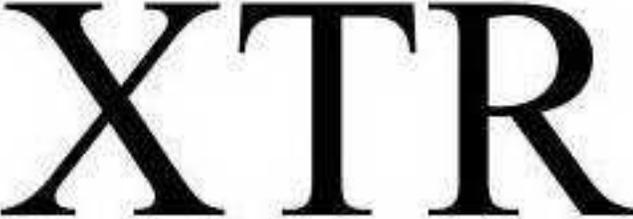
Class 028. First Use: 2010/01/04 First Use In Commerce: 2010/01/04
All goods and services in the class are opposed, namely: traction device to be attached to footwear to facilitate walking on packed snow and ice

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3848766	Application Date	07/30/2009
Registration Date	09/14/2010	Foreign Priority	NONE

		Date	
Word Mark	XTR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2010/02/00 First Use In Commerce: 2010/02/00 Toe caps		

Attachments	77793195#TMSN.jpeg (1 page)(bytes) NOO.pdf (5 pages)(1401792 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	/Gary Pierson II/
Name	Gary Pierson II
Date	01/24/2011

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on January 24, 2011.

/Gary Pierson II/

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

Mark: XTR
U.S. Application Serial No. 77/950,338

Warson Group, Inc.)	
)	
Opposer,)	
)	
v.)	
)	
Implus Footcare, LLC)	U.S. App. No. 77/950,338
)	
Applicant.)	

NOTICE OF OPPOSITION
TO APPLICATION SERIAL NO. 77/950,338

Warson Group, Inc. (“Warson” or “Opposer”), a corporation organized and existing under the laws of the State of Missouri, and having an office and place of business at 121 Hunter Avenue, Suite #204, St. Louis, MO 63124, is being and will be damaged by the potential registration of the mark shown at U.S. Application Serial No. 77/950,338.

As grounds for its opposition, it is alleged that:

1. Applicant Implus Footcare, LLC (“Implus” or “Applicant”), in U.S. Application Serial No. 77/950,338 (the “338 Application”), applied for registration of the trademark XTR on September March 4, 2010, for "traction device to be attached to footwear to facilitate walking on

packed snow and ice” in International Class 28 under Section 1(a), claiming a date of first use of January 4, 2010.

2. The ‘338 Application was published for opposition in the Official Gazette on July 27, 2010. Appropriate extensions of time to submit this Notice of Opposition were timely filed with the Board.

3. Warson is the owner of the mark XTR for toe caps, as well as the below-noted United States Trademark registration the identified filing and first use dates

MARK	U.S. REGISTRATION NUMBER	GOODS AND SERVICES DESCRIPTION	DATES OF FILING
XTR	3,848,766	Toe caps	Filed: July 30, 2009

4. In addition, Warson owns common law rights to the XTR mark (hereinafter collectively referred to with the above-noted registration as the “Warson Mark”).

5. The Warson Mark is inherently distinctive and is uniquely associated with Warson in connection with Warson's goods offered under the Warson Mark by reason of Warson's July, 2009 filing of its trademark application and the continuous use and promotion of its XTR mark since February of 2010.

6. Warson has used the Warson Mark since at least as early as February of 2010 in connection with the noted goods, and has promoted, caused to be promoted and is now promoting and causing to be promoted the Warson Mark in interstate commerce within the United States for identifying these goods.

7. Implus's application for the XTR mark herein opposed is identical to Warson's XTR mark, and as such is likely, when used in conjunction with Applicant's goods, to cause confusion, mistake or deceive customers.

8. Implus's XTR mark under the '338 Application is confusingly and deceptively similar to the Warson Mark when used in connection with Applicant's goods.

9. Warson's goods are toe cap components for shoes, i.e., the protective portion of so-called "steel toe" shoes or boots. Implus's goods are traction devices designed to be used in connection with shoes or boots to allow for easier walking through snowy or icy conditions.

10. Both Warson's and Implus's goods are designed for use in connection with similar footwear.

11. Warson's XTR mark is strong and distinctive, as few or no other marks exist on the Principle Register which utilize such XTR mark in connection with shoes or components thereof.

12. Warson's XTR mark and Implus's XTR mark are identical, and therefore create the same commercial impression. Further, both marks are used in connection with commercially related goods. As such, Implus's XTR mark under the '338 Application and Warson's XTR mark, when used in conjunction with their respective goods, are confusingly similar.

13. Applicant's use of its XTR Mark under the '338 Application, which so resembles the Warson Mark is likely to cause confusion, mistake or deception to purchasers as to the source of Applicant's goods and will inevitably falsely suggest a trade connection between Warson and Applicant.

WHEREFORE, Opposer Warson Group, Inc. prays that the registration sought by Applicant be refused and that this Notice of Opposition be sustained.

Opposer Warson Group, Inc. requests that, if there is any insufficiency in the payment of the statutory filing fee, such amount be debited from our Deposit Account No. 11-0160.

DATED: January 24, 2011.

Warson Group, Inc.

By: /Gary Pierson II/

Gary Pierson, II

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