ESTTA Tracking number: **ESTTA437971**
Filing date: **10/26/2011**

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	Marvel Characters, Inc.
Granted to Date of previous extension	10/26/2011
Address	1600 Rosecrans Avenue Manhattan Beach, CA 90266 UNITED STATES

Attorney information	Meichelle R. MacGregor Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES mrm@cll.com,mmh@cll.com,trademark@cll.com Phone:212-790-9200

Applicant Information

Application No	85206798	Publication date	06/28/2011
Opposition Filing Date	10/26/2011	Opposition Period Ends	10/26/2011
International Registration No.	NONE	International Registration Date	NONE
Applicant	YING-FEN CHANG 2F., #18, Sec.2, Xinsheng S. Rd. Da'an Dist Taipei City, TAIWAN		

Goods/Services Affected by Opposition

Class 028. First Use: 2010/06/29 First Use In Commerce: 2010/06/29
All goods and services in the class are opposed, namely: Balls for sports; Cases specially adapted for sports equipment; Knee pads for athletic use; Wrist guards for athletic use; Chest protectors for sports; Hand pads for athletic use; Elbow guards for athletic use; Leg guards for athletic use; Head Guards for athletic use; Accessory for manually-operated exercise equipment, namely, accessory attachment to increase muscle resistance; Work-out gloves; Nets for sports; Body-training apparatus; Athletic sporting goods, namely, athletic wrist and joint supports; Athletic equipment, namely, guards for Men's athletic supporters; Pumps especially adapted for use with balls for games; Pumps for inflating sports equipment, namely, basketballs, footballs, volleyballs and soccer balls; Sport balls; Covers for golf clubs; Golf accessories, namely, carriers and dispensers for golf balls; Golf accessory pouches; Golf accessory, namely, support for holding a golf club; Golf bags with or without wheels; Golf club heads; Golf club holders for use on a driving range or golf course; Golf gloves; Non-motorized golf carts; Trolley bags for golf equipment; Archery bow bags; Athletic equipment, namely, striking bags; Bags specially adapted for sports equipment; Bowling bags; Bowling balls; Bowling gloves; Bowling apparatus and machinery; Bowling ball covers; Bowling ball returns; Bowling pins; Bowling deflectors; Bowling pinsetters and parts therefor; Bowling pit mats; Baseball bat bags; Trolley

bags specially adapted for football equipment; Basketball tube bags; Table tennis balls; Table tennis paddle cases; Billiard game playing equipment; Softball bat bags; Cases for tennis balls; Badminton sets; Lacrosse ball bags; Trolley bags specially adapted for rugby equipment

Grounds for Opposition

Other	See attached pleading.

Attachments	MARVEL&DESIGN.pdf (10 pages)(37033 bytes)

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	/Meichelle R. MacGregor/
Name	Meichelle R. MacGregor
Date	10/26/2011

Ref No. 24580.023

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

In re Application Serial No. 85/206,798
Filed: December 28, 2010
For Mark: MARVEL & DESIGN
Published in the Official Gazette: June 28, 2011

MARVEL CHARACTERS, INC., Opposer, v. YING-FEN CHANG, Applicant.	Opposition No. **NOTICE OF OPPOSITION**

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

Opposer, Marvel Characters, Inc. ("Opposer"), a Delaware corporation, with offices at 1600 Rosecrans Avenue, Manhattan Beach, California 90266, believes that it will be damaged by registration of the mark MARVEL & DESIGN ("Applicant's Mark") as shown in Application Serial No. 85/206,798 (the "Application") filed by Ying-Fen Chang ("Applicant"), and, having been granted extensions of time to oppose up to and including October 26, 2011, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is one of the world's most prominent character-based entertainment companies with operations in the comic book publishing, movie and television businesses. Opposer has published comic books for over 70 years in the United States and abroad and is the owner of over 8,000 proprietary characters. Opposer's publishing operations are a substantial portion of the comic book market.

2. Opposer engages in a vast licensing program under which it licenses the use of its trademarks, service marks and proprietary characters in connection with a wide variety of products and services, including, without limitation, comic books, sporting goods and accessories, toys, apparel, food, video games, theme parks, motion pictures, housewares, backpacks and school supplies.

3. Since long prior to June 29, 2010, Applicant's claimed first use date, and December 28, 2010, Applicant's filing date, Opposer and/or its licensees have used marks comprising or containing the word MARVEL, alone or with other word, letter and/or design elements, in the United States for comic books, sporting goods and accessories, including, but not limited to balls, bowling equipment, golf equipment and protective gear, toys, apparel, food, video games, theme parks, motion pictures, housewares, backpacks, school supplies and a wide variety of other goods and services (the "Opposer's MARVEL Marks"). For at least ten years prior to Applicant's claimed first use date and Applicant's filing date, and continuing continuously through the present, Opposer and/or its licensees have used Opposer's MARVEL Marks in connection with sporting goods and accessories.

4. The term MARVEL is the primary distinctive element in Opposer's corporate name and serves as a house mark on virtually all goods and services provided by Opposer and Opposer's many licensees.

5. The term MARVEL in Opposer's MARVEL Marks is usually depicted in the color red or in the color white against a red background.

6. Opposer owns U.S. federal registrations and applications for Opposer's MARVEL Marks in International Classes 3, 5, 9, 14, 16, 18, 20, 21, 24, 25, 28, 35, 41 and 42, namely, Registration Nos. 3602027, 870506, 2918286, 1754033, 3602026, 1741813, 3602028,

2070250, 976419, 2253189, 1301604, 2285853, 913594, 1832654, 1751227, 1834680, 3523878, 3800897, 3608877, 2234331, 3116241, 2740541, 3102283, 3102284, 3054187, 3913516, 2276421, 4020651, 1073580, 1106657, 3382778, 1272677, 3148821, 3929407 and 3708691 and Application Serial Nos. 85/319119, 85/319123, 85/319232, 85/319110, 85/270625, 85/270617, 85/225656, 77/851360, 85/319238, 85/319117, 85/319220, 85/319248, 85/319251, 85/319128, 85/319130, 85/319257, 85/319113, 77/788671, 77/788672, 77/788674 and 85/229135. Registration Nos. 976419, 870506, 2918286, 1754033, 1741813, 2070250, 1301604, 2285853, 1832654, 1751227, 1834680, 2234331, 2740541, 2276421, 1106657 and 1272677 are incontestable.

7. Since long prior to June 29, 2010, Applicant's claimed first use date, and December 28, 2010, Applicant's filing date, Opposer and/or its licensees have extensively promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's MARVEL Marks, including, but not limited to, comic books, sporting goods and accessories, including, but not limited to, balls, bowling equipment, golf equipment and protective gear, toys, apparel, food, video games, theme parks, motion pictures, housewares, backpacks, school supplies and a wide variety of other goods and services, and have offered such goods and rendered such services in commerce.

8. As a result of the extensive sales and promotion of goods and services bearing or offered in connection with Opposer's MARVEL Marks, Opposer has built up highly valuable goodwill in Opposer's MARVEL Marks and said goodwill has become closely and uniquely identified and associated with Opposer.

9. Opposer's MARVEL Marks are distinctive and famous and were so long prior to June 29, 2010, Applicant's claimed first use date, and December 28, 2010, Applicant's filing date.

10. On December 28, 2010, Applicant filed the Application in the United States Patent and Trademark Office ("USPTO") for the mark MARVEL & DESIGN, which features a lightening bolt design depicted in the color red, for "Balls for sports; Cases specially adapted for sports equipment; Knee pads for athletic use; Wrist guards for athletic use; Chest protectors for sports; Hand pads for athletic use; Elbow guards for athletic use; Leg guards for athletic use; Head Guards for athletic use; Accessory for manually-operated exercise equipment, namely, accessory attachment to increase muscle resistance; Work-out gloves; Nets for sports; Body-training apparatus; Athletic sporting goods, namely, athletic wrist and joint supports; Athletic equipment, namely, guards for Men's athletic supporters; Pumps especially adapted for use with balls for games; Pumps for inflating sports equipment, namely, basketballs, footballs, volleyballs and soccer balls; Sport balls; Covers for golf clubs; Golf accessories, namely, carriers and dispensers for golf balls; Golf accessory pouches; Golf accessory, namely, support for holding a golf club; Golf bags with or without wheels; Golf club heads; Golf club holders for use on a driving range or golf course; Golf gloves; Non-motorized golf carts; Trolley bags for golf equipment; Archery bow bags; Athletic equipment, namely, striking bags; Bags specially adapted for sports equipment; Bowling bags; Bowling balls; Bowling gloves; Bowling apparatus and machinery; Bowling ball covers; Bowling ball returns; Bowling pins; Bowling deflectors; Bowling pinsetters and parts therefor; Bowling pit mats; Baseball bat bags; Trolley bags specially adapted for football equipment; Basketball tube bags; Table tennis balls; Table tennis paddle cases; Billiard game playing equipment; Softball bat bags; Cases for tennis balls;

Badminton sets; Lacrosse ball bags; Trolley bags specially adapted for rugby equipment" in International Class 28.

11. Applicant filed the Application based on use pursuant to Section 1(a), claiming a first use date of June 29, 2010, and a foreign registration pursuant to Section 44(e), *i.e.*, Taiwan Registration No. 099036762.

12. Taiwan Registration No. 099036762, which was registered on December 9, 2010, is for "Billiards; bowling balls; golf ball; golf club; golf tee; golf club heads; golf club head cover; covers for golf clubs; golf ball machine for practice; bowling pins; knee pad for sports; wrist guards for sports; apparatus and machinery for sports; golf bags with or without wheels; bags for sports; balls for sports; gloves for sports; bowling apparatus and machinery; golf gloves; sporting apparatus."

13. Taiwan Registration No. 099036762 contains a narrower description of goods than the description of goods identified in the Application.

14. To support the Section 1(a) basis for the Application, at the time Applicant filed and executed the Application, Applicant claimed that Applicant's Mark had been in use in United States commerce in connection with all of the goods identified in the Application, which number more than fifty (50), and submitted specimens that purport to show use of Applicant's Mark in connection with a variety of goods.

15. To support the Section 44(e) basis for the Application, at the time that Applicant filed and executed the Application, Applicant claimed that Applicant "has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services."

16. At the time of filing and executing the Application, Applicant submitted a sworn statement that "all statements made of his/her own knowledge are true" in connection with the statements contained in the Application.

COUNT I

17. Opposer repeats and re-alleges the allegations contained in paragraphs 1 – 16 of the Notice of Opposition as if fully set forth herein.

18. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's MARVEL Marks.

19. Applicant's Mark so resembles Opposer's MARVEL Marks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer.

20. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

COUNT II

21. Opposer repeats and re-alleges the allegations contained in paragraphs 1 – 20 of the Notice of Opposition as if fully set forth herein.

22. Opposer's MARVEL Marks have achieved distinctiveness and fame long prior to Applicant's claimed first use date and the filing date the Application.

23. Applicant's use of Applicant's Mark would dilute Opposer's MARVEL Marks by rendering them less distinctive.

24. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

COUNT III

25. Opposer repeats and re-alleges the allegations contained in paragraphs 1 – 24 of the Notice of Opposition as if fully set forth herein.

26. Upon information and belief, contrary to Applicant's sworn statement in the Application that Applicant "has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services," Applicant did not have a bona fide intention to use Applicant's Mark in connection with some of the goods identified in the Application, which number more than 50, in United States commerce when Applicant filed the Application.

27. Upon information and belief, Applicant has no documentary evidence demonstrating Applicant's bona fide intent to use Applicant's Mark in connection with some of the goods identified in the Application in United States commerce as of the filing date of the Application.

28. Accordingly, the Application is void, in whole or in part, as to the goods for which Applicant did not have a bona fide intention to use Applicant's Mark in United States commerce when she filed the Application.

COUNT IV

29. Opposer repeats and re-alleges the allegations contained in paragraphs 1 – 28 of the Notice of Opposition as if fully set forth herein.

30. Applicant maintains a website at www.marvelbowling.com ("Applicant's website"). Bowling bags are the only products currently being offered for sale bearing Applicant's Mark on Applicant's website.

31. In or about September 2011, during a telephone conversation with Opposer's investigator, a representative of Applicant indicated that Applicant was taking orders for bowling bags under Applicant's Mark and that such bags would be available in October 2011. Applicant's representative indicated that other bowling products and sports equipment may be sold bearing Applicant's Mark in the future, although there was no time frame for introducing such products.

32. Contrary to Applicant's sworn statement in the Application that Applicant's Mark was in use for all of the goods identified in the Application, Applicant had not used Applicant's Mark in connection with all of the goods identified in the Application, which number more than 50, in United States commerce as of Applicant's claimed first use date of June 29, 2010 or Applicant's filing date of December 28, 2010.

33. By making a false statement that Applicant's Mark was in use for all of the goods identified in the Application, Applicant committed fraud on the USPTO in the filing of the Application by making a material false statement about Applicant's use of Applicant's Mark in United States commerce for all of the goods identified in the Application, and this false statement was made knowingly with the intent to deceive the USPTO or in reckless disregard for the truth in order to procure a broader registration of Applicant's Mark than Applicant was otherwise entitled to.

34. The USPTO relied on Applicant's false statement and passed the Application for publication.

35. The USPTO would not have published the Application for all of the goods identified in the Application but for Applicant's false statement.

36. Applicant's false statement in procuring a registration constitutes fraud, thereby invalidating the Application in its entirety. Accordingly, the Application should be declared void *ab initio*.

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 Midge M. Hyman and Meichelle R. MacGregor (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.

Please address all communications to Midge M. Hyman, Esq. at the address listed below.

Dated: New York, New York
October 26, 2011

Respectfully submitted,

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

By: /Meichelle R. MacGregor
Midge M. Hyman
Meichelle R. MacGregor

1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 26, 2011, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's Attorney and Correspondent of Record, Anthony King, WPAT, P.C., 1100 Quail Street, Suite 202, Newport Beach, CA 92660.

/Meichelle R. MacGregor
Meichelle R. MacGregor