

ESTTA Tracking number: **ESTTA456647**

Filing date: **02/15/2012**

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	DC Comics
Granted to Date of previous extension	02/15/2012
Address	1700 Broadway New York, NY 10019 UNITED STATES

Attorney information	Patrick T. Perkins Perkins Law Office, P.C. 1711 Route 9D Cold Spring, NY 10516 UNITED STATES pperkins@ptplaw.com
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Applicant Information

Application No	85327421	Publication date	10/18/2011
Opposition Filing Date	02/15/2012	Opposition Period Ends	02/15/2012
Applicant	OTG Experience, LLC Suite 120 335 West Butler Avenue Chalfont, PA 18914 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. All goods and services in the class are opposed, namely: Restaurant and bar services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1239506	Application Date	12/10/1979
Registration Date	05/24/1983	Foreign Priority Date	NONE
Word Mark	KRYPTONITE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1979/06/15 First Use In Commerce: 1979/06/15 Clothing-Namely, T-Shirts

U.S. Registration No.	2656768	Application Date	05/22/1998
Registration Date	12/03/2002	Foreign Priority Date	NONE
Word Mark	KRYPTONITE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2001/10/31 First Use In Commerce: 2001/10/31 toys and sporting goods, including games and playthings -- namely action figures and accessories therefor		

Attachments	00052398.pdf (8 pages)(33329 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	/patrickperkins/
Name	Patrick T. Perkins
Date	02/15/2012

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

In the matter of Application Serial No. 85/327,421

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DC COMICS,	:	
	:	
Opposer,	:	Opposition No.
	:	
- against -	:	
	:	
OTG EXPERIENCE, LLC	:	
	:	
Applicant.	:	
-----X	:	

NOTICE OF OPPOSITION

DC Comics (“DC” or “Opposer”), a New York partnership located at 1700 Broadway, New York, New York 10019, believes that it is or will be damaged by the issuance of a registration of the trademark KRYPTONITE as applied for in Application S.N. 85/327,421 filed on May 23, 2011 by OTG Experience, LLC (“Applicant”) for “restaurant and bar services” in Class 43 and therefore opposes the same. As grounds for the opposition, Opposer, by its attorney, Perkins Law Office, P.C., alleges as follows:

FACTS

1. DC is a New York partnership with its principal place of business at 1700 Broadway, New York, New York 10019.
2. DC Comics and its predecessors-in-interest (collectively “DC Comics”) is the publisher of comic books and magazines featuring comic characters and stories, including the world-famous character Superman. DC Comics is among the most well known and successful

publishers of comic magazines in the world. It has created and published the highly successful and well-known characters Superman, Batman, Wonder Woman, and The Flash, among others.

3. Over the many years since the Superman character was first introduced in 1938, DC Comics has focused an enormous amount of attention and effort to develop the Superman mythos, including the character, his associates, his world, and other indicia associated with him. Throughout the period of Superman's existence, DC Comics has invested a vast amount of creative energy and resources to continually update and improve the Superman property to keep the character and his adventures timely and fresh in the public's mind. Opposer's efforts in this regard have led to a vast array of literary works, television series, and feature films, which fully explore in great depth Superman himself and the fictional world inhabited by him. Due to Opposer's extraordinary nurturing of the Superman mythos, the character and his universe have captured the popular imagination and it is beyond dispute that today the Superman lore is one of a rarified group of legends known and loved throughout the world.

4. Because of DC Comics' shepherding and careful development of not just the Superman character, but also of his universe and of the things and people that populate that universe, Superman has become associated with certain symbols and indicia which in the public mind are inextricably linked with the Superman character and which function as trademarks, both for literary and entertainment works featuring Superman and for various goods and services for which Opposer has licensed others to use these marks. One of these indicia is Kryptonite. Kryptonite, as is well-known throughout the world, is an element from Superman's home planet, Krypton. While Superman is virtually invulnerable and can withstand such things as a hail of bullets, he is helpless in the face of Kryptonite radiation.

5. Kryptonite was first introduced by DC Comics in a 1943 Superman radio episode.

Kryptonite became a well-known part of the Superman lore in 1945 as a result of a radio episode in which the super villainess Scarlet Widow obtained a chunk of Kryptonite and divided it among several other villains to use against Superman. Thereafter, Kryptonite made its first comic book appearance in “Superman # 61,” published in November or December 1949. In that telling, Kryptonite is introduced as a rock from Superman’s home planet, Krypton, that has a debilitating affect on Superman’s power.

6. Since its introduction into the Superman mythos, Kryptonite has come to be recognized as a powerful symbol standing alone, and is immediately recognized as associated with and identifying the character Superman, as well as goods and services manufactured, distributed and/or licensed by or on behalf of Opposer.

7. As virtually the only thing that can stop Superman, Opposer has prominently featured Kryptonite in the Superman works and in connection with the Superman character. Through time different forms of Kryptonite were developed by Opposer and were featured in connection with Superman.

8. By virtue of DC Comics’ ceaseless efforts to develop the Superman character and his universe, including the introduction and continuing use of Kryptonite in intimate association with Superman, the popularity of the Superman mythos in the aforementioned Superman television series, motion pictures, and comic books and in connection with other various goods and services, and the enormous affect and goodwill associated by the public therewith, Kryptonite has become famous and instantly calls to mind Superman and such goods and products to consumers.

9. Since at least 1979, KRYPTONITE has been affixed to a wide array of products coming from or licensed by Opposer, including clothing, in addition to its prior use in

connection with Superman comic books and the previously noted television series and motion pictures.

10. KRYPTONITE is an arbitrary and famous mark and thus is strong and entitled to the broadest scope of protection.

11. Opposer owns valid and subsisting federal trademark registrations for the KRYPTONITE mark, Nos. 1,239,506 for clothing in International Class 25, and 2,656,768 for use in connection with various goods in International Class 28.

12. Opposer's foregoing registrations are valid, subsisting and in full force and effect; as such, they constitute *prima facie* evidence of the validity of the registered marks and of the registrations thereof, 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 and services named therein, without condition or limitation; they also constitute notice to Applicant of Opposer's claim of ownership of the marks shown therein; all as provided in Sections 7(b), 22 and 33(a) of the Lanham Trademark Act of 1946 as amended (the "Lanham Act").

13. Upon information and belief, Applicant adopted and applied to register KRYPTONITE with full knowledge of Opposer's rights in and to the KRYPTONITE mark and with an intent to trade off of the good will of Opposer's mark.

14. The date of the application, May 23, 2011, and the only date upon which Applicant may rely, is long after Opposer's first use of the KRYPTONITE mark and well after it became a famous mark.

15. Upon information and belief, Applicant willfully copied the KRYPTONITE mark in choosing its mark in a deliberate attempt to associate its services with Opposer and its Superman character and the overwhelming goodwill therein.

16. Applicant's mark is identical to Opposer's KRYPTONITE mark. The marks are identical in appearance, sound, and meaning and make identical commercial impressions.

17. Upon information and belief, Applicant intends to use the KRYPTONITE mark with other indicia, such as the color green, in a manner that further associates its services with Superman.

18. The services listed in Applicant's application are related to services with which Opposer has licensed some of its Superman related trademarks, including entertainment products.

19. Applicant's intended use of KRYPTONITE falsely suggests an association with or approval by Opposer of Applicant's services, and will inevitably create confusion in the marketplace, as consumers will assume that Applicant's services are authorized or endorsed by Opposer. Such false suggestion will cause irreparable harm to Opposer.

20. Applicant's intended use of its KRYPTONITE is certain to dilute Opposer's famous mark.

FIRST GROUND FOR RELIEF
UNDER 15 U.S.C. § 1052(d)

21. Opposer incorporates by reference paragraphs 1 through 20 as if fully set forth herein.

22. The KRYPTONITE mark has been used continually by Opposer since a date prior to any date on which Applicant may rely.

23. Applicant's KRYPTONITE mark is identical in appearance and in commercial impression to Opposer's KRYPTONITE mark.

24. The services of Applicant to be offered under its KRYPTONITE mark are intended and are likely to be perceived as related to Opposer's goods under the KRYPTONITE

mark and to the Superman character itself.

25. The use by Applicant of its mark for the services listed in the application is likely to create the erroneous impression that Applicant's services originate with, are sponsored or promoted by, come from, or are otherwise associated with Opposer or Opposer's goods or services provided under the KRYPTONITE or other Superman-related marks or that Applicant's services are endorsed, sponsored, or in some way connected with Opposer. Any use of KRYPTONITE by Applicant is, therefore, likely to cause confusion, cause mistake or to deceive the public into the belief that the services offered under Applicant's KRYPTONITE mark come from or are otherwise authorized or sponsored by Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

SECOND GROUND FOR RELIEF
DILUTION UNDER 15 U.S.C. § 1125(c)

26. Opposer incorporates by reference paragraphs 1 through 25 as if fully set forth herein.

27. Opposer's KRYPTONITE mark is strong and famous and has been so from a date prior to Applicant's application date.

28. Applicant's intended use of KRYPTONITE will cause dilution of the distinctive quality of Opposer's KRYPTONITE mark.

29. Applicant's registration of Applicant's KRYPTONITE mark is in violation of Section 43(c) of the Federal Trademark Act, 15 U.S.C. § 1125(c).

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application S.N. 85/327,421 be denied.

Dated: Cold Spring, New York
February 15, 2012

Respectfully submitted,

PERKINS LAW OFFICE, P.C.

By: Patrick Perkins/
Patrick T. Perkins

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*Attorney for Opposer
DC Comics*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant by mailing said copy on February 15, 2012, via First Class Mail, postage prepaid on Applicant's counsel at the following address:

Frank S. Benjamin, Esq.
McKenna Long & Aldridge LLP
303 Peachtree Street NE, Suite 5300
Atlanta, GA 30308

/Patrick Perkins/
Patrick T. Perkins