

ESTTA Tracking number: **ESTTA478941**

Filing date: **06/19/2012**

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	DaveDamato
Granted to Date of previous extension	06/20/2012
Address	8485 wolcott rd clarence center, NY 14032 UNITED STATES

Attorney information	Anthony N, Elia The Law Firm of Anthony N, Elia, P.C. 325 Broadway Suite 201 New York, NY 10007 UNITED STATES anthony@anelaw.com Phone:(212) 233-5300
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**Applicant Information**

Application No	85421579	Publication date	02/21/2012
Opposition Filing Date	06/19/2012	Opposition Period Ends	06/20/2012
Applicant	ECHL, Inc. Suite 230 116 Village Blvd. Princeton, NJ 08540 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. All goods and services in the class are opposed, namely: Clothing goods, namely, hats, visors, jerseys, t shirts, shirts, sweatshirts, and infant wear, namely, bibs made of cloth, t shirts, shirts, and one piece clothing wear
Class 041. All goods and services in the class are opposed, namely: Entertainment services, namely, professional hockey exhibitions

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Opposer is the owner of matter which is the subject of United States Copyright Registrations No. VAU 166,467, and VAU 163,834.

## Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	"SOLAR BEARS" and graphics: United States Copyright Registration No. VAU 166,467 United States Copyright Registration No. VAU 163,834		
Goods/Services	Adults and children#s apparel, including but not limited to, hats, T-shirts, sweats and bibs.		

Related Proceedings	91204361
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Attachments	Opposition 85421579 v2.pdf ( 5 pages )(132080 bytes ) Exhibits to Opposition.pdf ( 12 pages )(971566 bytes ) Certificate of Service of Opposition v2.pdf ( 1 page )(184986 bytes ) Certificate of Service of Opposition.pdf ( 1 page )(186034 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/ane/
Name	Anthony N, Elia
Date	06/19/2012

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

In the matter of United States Trademark Application:

Applicant: ECHL, Inc.

Serial Number: 85421579

Mark: ORLANDO SOLAR BEARS

Published: 2/21/2012

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DAVID D'AMATO, : **OPPOSITION**  
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Opposer, : :  
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: :  
-against- : :  
: :  
ECHL, INC., : :  
: :  
: :  
Applicant. : :  
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As grounds for opposition, Opposer alleges as follows:

1. OPPOSER DAVID D'AMATO and his predecessors in interest first used the trademark SOLAR BEARS in commerce in the United States as early as 1985 in association with adults and children's apparel, including but not limited to, hats, T-shirts, sweats and bibs (hereinafter OPPOSER'S GOODS).
2. Since at least as early as 1985, OPPOSER and his predecessors and their licensees have continuously engaged in the advertising, manufacture, distribution and sale of OPPOSER'S GOODS in association with its SOLAR BEARS trademark.

3. Since at least as early as 1985, OPPOSER'S GOODS bearing the SOLAR BEARS trademark have been continuously sold to distributors, retailers and consumers throughout the United States of America.
4. On September 28, 1989, one of OPPOSER's predecessors in interest, Champion Graphics, Inc., of Ft. Lauderdale, Florida, received United States Copyright Registration No. VAU 163,834 (Exhibit A) for its silk screen reproductions entitled, "SOLAR BEARS - Group I; Windsurfer, Jet Skier, Fisher bear, Standing Surfer, Balloon Bears."
5. On October 31, 1989, one of OPPOSER's predecessors in interest, Champion Graphics, Inc. of Ft. Lauderdale, Florida, received United States Copyright Registration No. VAU 166,467 (Exhibit B) for its silk screen reproductions entitled, "Skin Diver Bear, Soccer Bear, Skateboard Bear, Standing Surfer Bear, Surfing Bear, Family Bears."
6. At least as early as 1989, OPPOSER's predecessors in interest were engaged in the manufacture, distribution and sale of clothing bearing the above-identified copyrighted silk screen designs in Florida.
7. OPPOSER is the sole beneficial and legal owner of all right, title and interest in and to the Solar Bear Mark and the bear images and the goodwill associated therewith.
8. OPPOSER is the sole successor to the interests of Champion Graphics, Inc. and Logo Connections, Inc. in and to the Solar Bear Mark and the bear images and the goodwill associated therewith.
9. Upon information and belief, APPLICANT is a corporation, and in addition to the ownership and management of professed sports teams, is engaged or has a *bone fide* intention to manufacture, embroider, distribute, and sell clothing, namely T-shirts, sweatshirts, hats and polo shirts bearing the proposed ORLANDO SOLAR BEARS.

10. On September 13, 2011, APPLICANT filed a federal trademark application under Serial No. 85421579 for the trademark ORLANDO SOLAR BEARS for use in association with clothing goods, namely, hats, visors, jerseys, t shirts, shirts, sweatshirts and infant wear namely, bibs made of cloth, t shirts, shirts and one piece outfits and the service mark ORLANDO SOLAR BEARS for use in association with entertainment services, namely professional ice hockey exhibitions.

11. APPLICANT's proposed mark ORLANDO SOLAR BEARS was published for opposition in the Official Gazette of the United States Patent and Trademark Office on 2/21/2012.

12. APPLICANT's goods as recited in its application for federal registration are very similar, if not identical to OPPOSER'S GOODS.

13. APPLICANT's services as recited in its application for federal registration are confusingly similar to OPPOSER'S GOODS.

14. Upon information and belief, APPLICANT's goods are sold in the same channels of trade as OPPOSER'S GOODS.

15. The APPLICANT's use of the proposed mark in connection with its goods and services is likely to confuse and deceive the public.

16. OPPOSER owns a famous mark that is distinctive.

17. The consuming public recognizes SOLAR BEARS as a famous mark and associates the mark with OPPOSER.

18. APPLICANT'S proposed mark will dilute the OPPOSER's famous mark.

19. The APPLICANT's use of its proposed mark will begin after the OPPOSER's mark became famous.

20. OPPOSER's mark became famous by 1995 at the latest.
21. The APPLICANT's use of its proposed mark is likely to cause dilution by blurring.
22. The APPLICANT's use of its proposed mark is likely to cause dilution by blurring. APPLICANT's goods and services will dilute the OPPOSER'S trademark.
23. APPLICANT's proposed mark ORLANDO SOLAR BEARS contains the words SOLAR BEARS.
24. OPPOSER's trademark contains the words SOLAR BEARS.
25. APPLICANT disclaimed exclusive rights to the use of the word "Orlando" apart from the proposed mark. Thus, APPLICANT claims exclusive rights only in the words "SOLAR BEARS."
26. Thus, APPLICANT's proposed mark ORLANDO SOLAR BEARS is essential identical to OPPOSER's trademark SOLAR BEARS, and is similar to OPPOSER's trademark SOLAR BEARS as it has been and continues to be used in combination with various designs on clothing.
27. APPLICANT had constructive notice of OPPOSER's rights in the trademark SOLAR BEARS by virtue of, among other things, OPPOSER's federal copyright registrations identified in above in addition to the OPPOSER's lawsuit with the International Hockey League over the "solar bears" mark.
28. The owners of the International Hockey League settled the lawsuit with the OPPOSER which fact was also public record.
29. APPLICANT's attempted registration and proposed use of the mark ORLANDO SOLAR BEARS in association with: a) clothing, namely T-shirts, sweatshirts, hats and polo shirts, and, b) its entertainment services, is likely to cause confusion, or to cause mistake or to deceive the public in view of OPPOSER's prior use and ownership of its arbitrary and distinctive

mark SOLAR BEARS, both standing alone and in combination with - various designs in association with clothing, namely T-shirts, sweatshirts, hats and polo shirts.

30. By reason of OPPOSER's prior, continuous and exclusive use of the SOLAR BEARS trademark in association with OPPOSER'S GOODS, and OPPOSER's ownership of the mark SOLAR BEARS, OPPOSER has rights superior to any rights of APPLICANT.

31. Registration to APPLICANT of the proposed mark ORLANDO SOLAR BEARS on the Principal Register will interfere with OPPOSER's enjoyment of its rights in its mark SOLAR BEARS to OPPOSER's substantial detriment.

**WHEREFORE**, OPPOSER prays that its opposition be sustained and that the registration sought by APPLICANT be refused.

Respectfully submitted,

Dated: June 19, 2012  
New York, New York

THE LAW OFFICE OF  
ANTHONY N. ELIA, P.C.



By: \_\_\_\_\_  
Anthony N. Elia, Esq.  
325 Broadway, Suite 201  
New York, New York 10007  
(212) 233-5300

Attorneys for OPPOSER  
DAVID D'AMATO

**"A"**

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**FORM VA**  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER  
**VA 163 834**  
RESPECTIVE DATE OF REGISTRATION  
**SEP 28 1989**

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK **Windsurfer, Jet Skier, Fisherman, Standing Surfer, Balloon Bears.**  
NATURE OF THIS WORK **Drawing for silk screen reproduction**  
PREVIOUS OR ALTERNATIVE TITLES **SOLAR BEARS- Group I**

PUBLICATION AS A CONTRIBUTION: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared.

If published in a periodical or serial give Volume Number Issue Date No. Pages

NAME OF AUTHOR **CHAMPION GRAPHICS, INC.**  
DATE OF BIRTH AND DEATH

Was this contribution to the work a work made for hire?  Yes  No  
AUTHOR'S NATIONALITY OR DOMICILE: Name of Country **USA** or Citizen of **USA** or Resided in **Florida**  
WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous?  Yes  No Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP: Briefly describe nature of the material created by this author in which copyright is claimed. **Drawings for silk screen reproduction**

NAME OF AUTHOR  
DATE OF BIRTH AND DEATH

Was this contribution to the work a work made for hire?  Yes  No  
AUTHOR'S NATIONALITY OR DOMICILE: Name of Country or Citizen of or Resided in  
WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous?  Yes  No Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP: Briefly describe nature of the material created by this author in which copyright is claimed.

NAME OF AUTHOR  
DATE OF BIRTH AND DEATH

Was this contribution to the work a work made for hire?  Yes  No  
AUTHOR'S NATIONALITY OR DOMICILE: Name of Country or Citizen of or Resided in  
WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous?  Yes  No Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP: Briefly describe nature of the material created by this author in which copyright is claimed.

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED **1989**  
DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK: Country and Year

COPYRIGHT CLAIMANT'S Name and address shall be given even if the claimant is the author given in space 2.  
**CHAMPION GRAPHICS, INC.**  
**10905 S.W. 59 Street**  
**Ft. Lauderdale, Florida 33328**

SEE 28 1989  
ONE DEPOSIT RECEIVED  
SEP 28 1989  
TWO DEPOSITS RECEIVED

TRANSFER: If claimant(s) named here is/are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

MORE ON BACK: Copyright or separate notice (Sections 54) on the reverse side of this page. See detailed instructions. DO NOT WRITE IN THESE SPACES

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BILICKIRINSON

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Leave the blank for name of film and other data.

See instructions before completing this section.

COPYRIGHT SECTION

08/08/97 FRI 14:53 FAX

YAU 163 834

EXAMINED BY \_\_\_\_\_  
 CHECKED BY \_\_\_\_\_  
 CORRESPONDENCE  
 FOR COPYRIGHT OFFICE USE ONLY

**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.**

**PREVIOUS REGISTRATION** This registration is for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box)

This is the first published edition of a work previously registered in unpublished form.

This is the first application submitted by this author as copyright claimant.

This is a changed version of the work, as shown by space 6 on this application.

Your answer is "No," give Previous Registration Number  Year of Registration

**DERIVATIVE WORK OR COMPILATION** Complete both space 4a & 4b for a derivative work; complete only 4a for a compiler.

4a. Translating Material Identify any preceding work or works that this work is based on or incorporates.

4b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent.

**BARRY M. MANKES, ESQ.**  
 2450 N.E. Miami Gardens Drive  
 Suite 100  
 North Miami Beach, Florida 33180

Area Code & Telephone Number (305) 935-6300

**CERTIFICATION** I, the undersigned, hereby certify that I am the

- Check only one
- author
  - other copyright claimant
  - owner of exclusive right(s)

Authorized agent of CHAMPION GRAPHICS, INC.  
Name of holder of the Copyright Office's record of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are true to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

Barry M. Mankes, Esq. Date 9/2/89

Handwritten signature of Barry M. Mankes

MAIL CERTIFICATE

Name Barry M. Mankes, Esq.

Number 2450 N.E. Miami Gardens Drive, Suite 100

City North Miami Beach, Florida 33180

Certificates will be mailed in window envelopes

Copyright Office  
 Library of Congress  
 Copyright Office  
 Washington, DC 20540

\* 17 U.S.C. 109: In any case where the knowledge of a false registration of a copyright has been obtained by the Copyright Office, the registration shall be null and void. See also 17 U.S.C. 109. Date Filed: 10/20/99

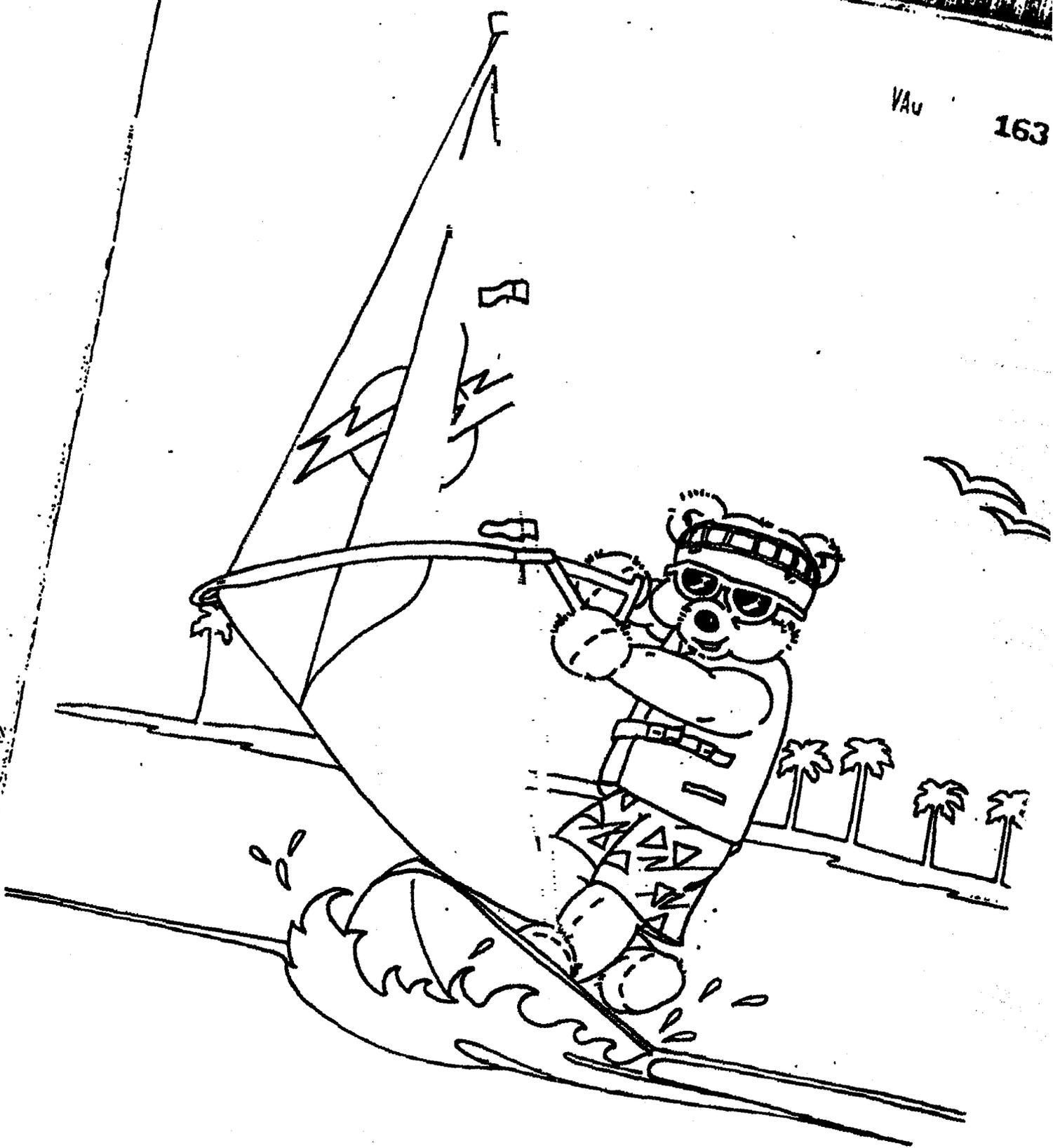
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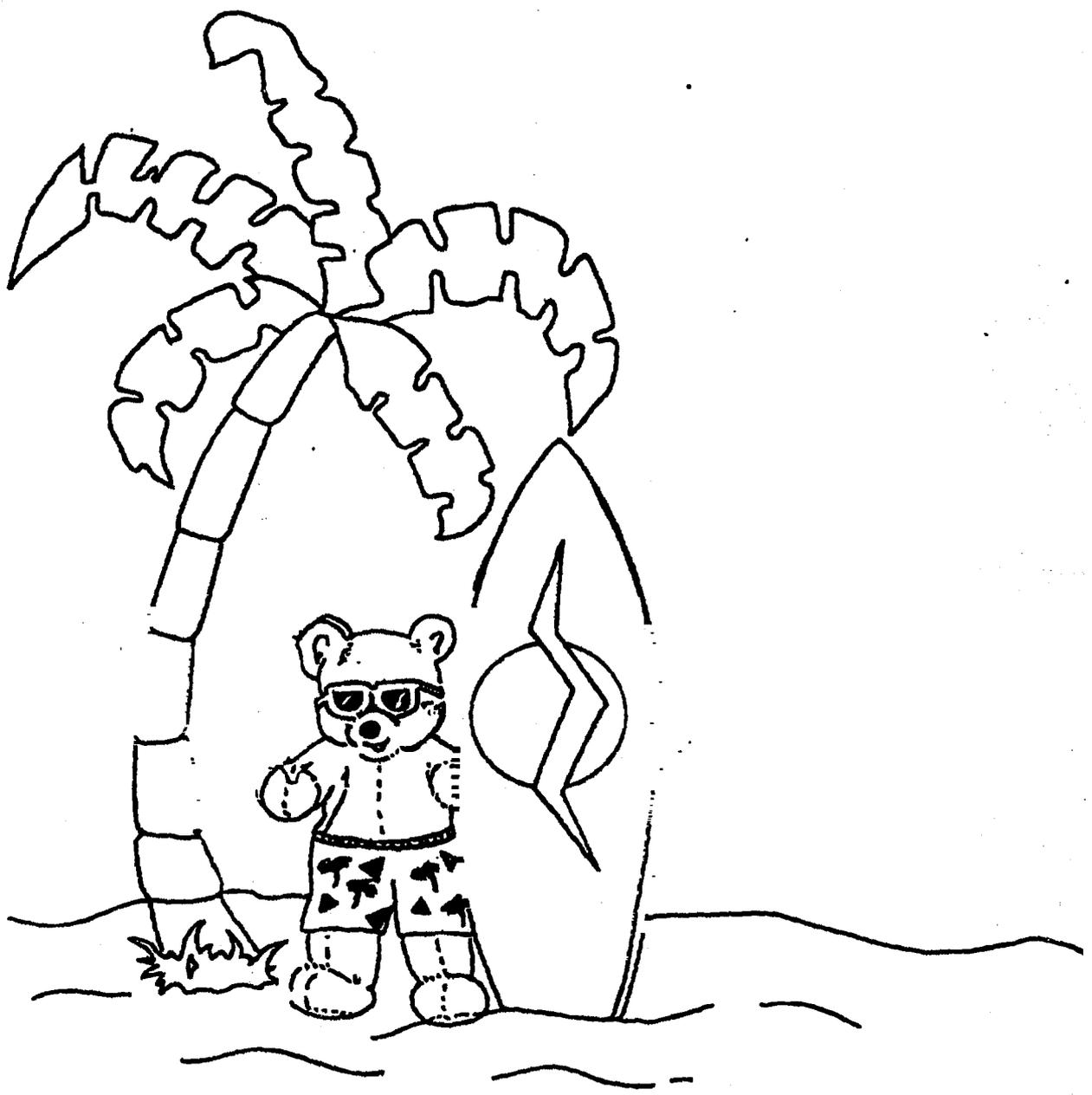
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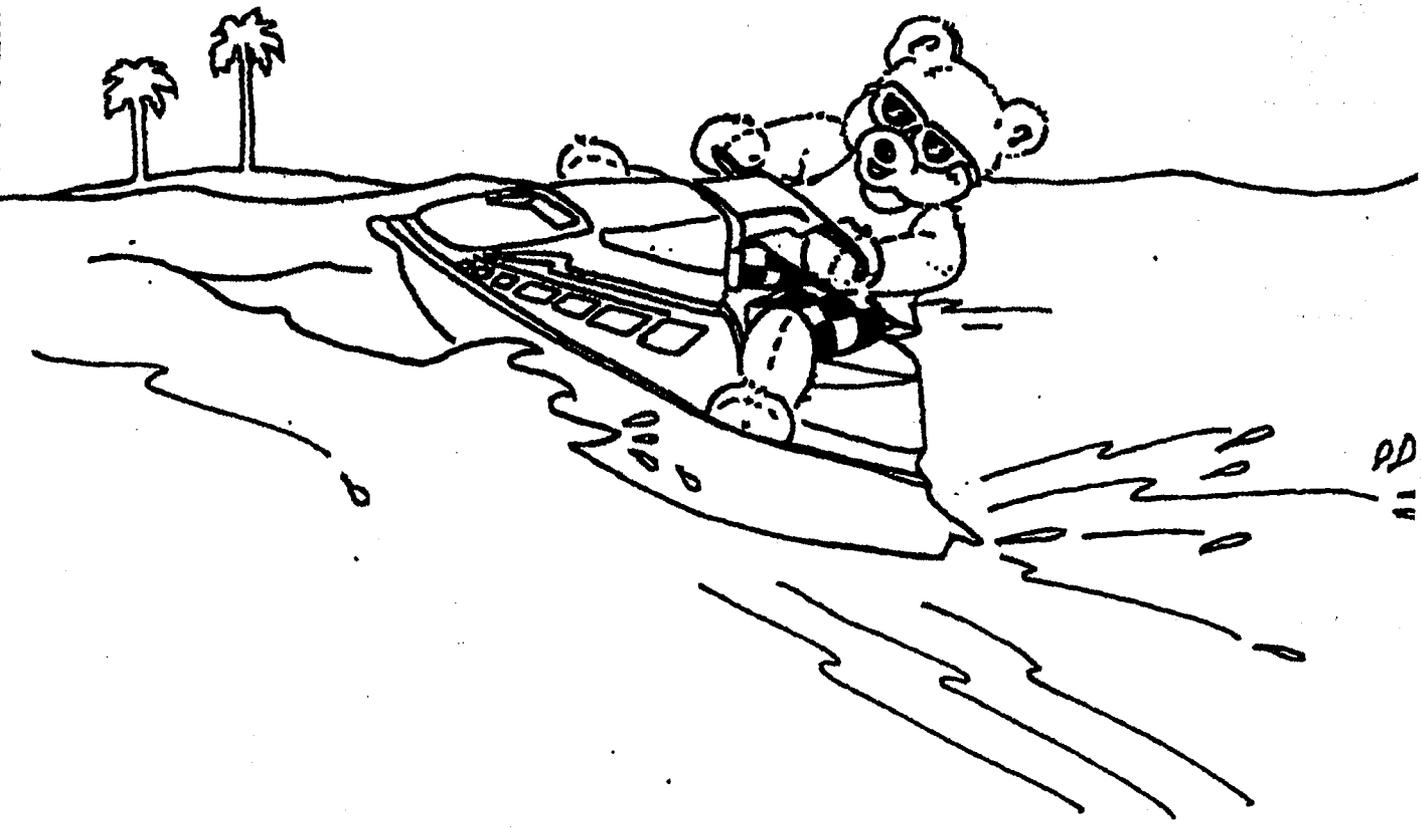


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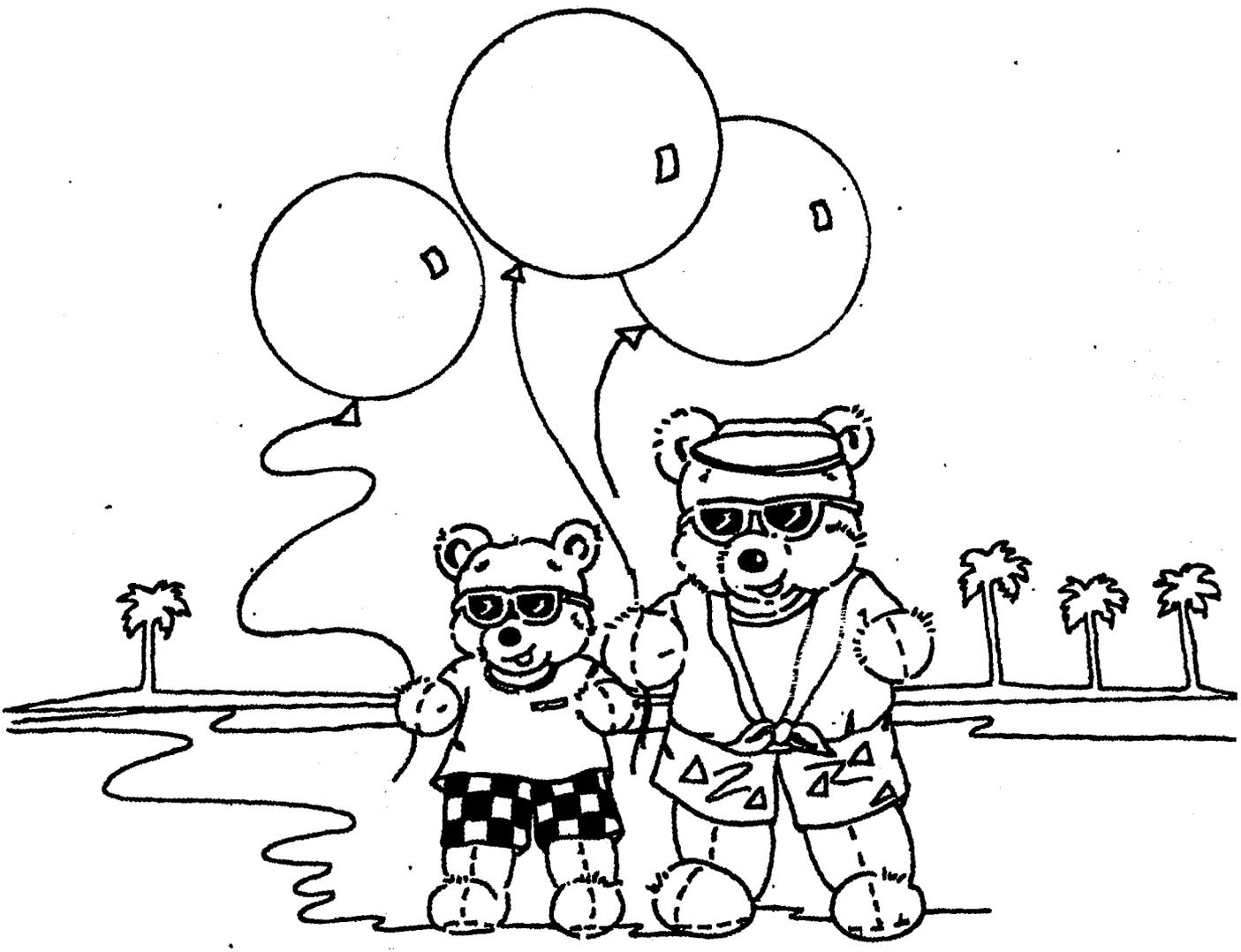
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GROUP 1-6

LIBRARY OF CONGRESS  
SEP 28 1989  
COPYRIGHT OFFICE

**"B"**

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UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

YAV 166:467

EFFECTIVE DATE OF REGISTRATION

OCT 31 1989

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

TITLE OF THIS WORK Solar Bears-Group 2 NATURE OF THIS WORK Skin Diver Bear, Soccer Bear, Skateboard Bear, Drawings for Silk Standing Surfer Bear, Surfing Bear, Family Bears Reproductions PREVIOUS OR ALTERNATIVE TITLES

PUBLISHED AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information...

If published in a collection or serial give Volume # Number # Issue Date # Of Pages #

NAME OF AUTHOR CHAMPION GRAPHICS, INC. DATES OF BIRTH AND DEATH

Was this contribution to the work a work made for hire? AUTHOR'S NATIONALITY OR DOMICILE WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

NOTE: When the work is a drawing, a photograph, or a sculpture, the author is the artist or photographer, or the sculptor, as the case may be.

NATURE OF AUTHORSHIP Drawings for Silk Screen Reproductions

NAME OF AUTHOR DATES OF BIRTH AND DEATH

Was this contribution to the work a work made for hire? AUTHOR'S NATIONALITY OR DOMICILE WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

NAME OF AUTHOR DATES OF BIRTH AND DEATH

Was this contribution to the work a work made for hire? AUTHOR'S NATIONALITY OR DOMICILE WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

COPYRIGHT CLAIMANT'S Name and address must be given even if one claimant is the same as the author given in space 2. CHAMPION GRAPHICS, INC. 10905 S.W. 59th Street Fort Lauderdale, Florida 33328

TRANSFER If one claimant has transferred his or her interest in the work, or if the claimant has obtained ownership of the copyright, in space 2, give a brief statement of how the claimant obtained ownership of the copyright.

MORE ON BACK - Consult all instructions (pages 5-9) on the reverse side of this page. - See the form at line 2.

APPLICATION RECEIVED OCT 31 1989 ONE DEPOSIT RECEIVED OCT 31 1989 TWO DEPOSITS RECEIVED REMITTANCE NUMBER AND DATE

NO MORE THAN ONE DEPOSIT PER WORK

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4

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CHECKED BY WJY  
 CORRESPONDENCE

166,467

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- Yes  No If your answer is "Yes," was it another registration being sought? (Check appropriate box)
  - This is the first published edition of a work previously registered in unpublished form.
  - This is the first application submitted by this author as copyright claimant.
  - This is a changed version of the work, as shown by space 6 on this application.
- If your answer is "No," give Previous Registration Number  Year of Registration

**DERIVATIVE WORK OR COMPILATION** Complete both spaces for derivative work compilation only for a compilation.

- a. Preexisting Material Identify any preexisting work or works that this work is based on or taken from.
- b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Zip

Barry M. Markes, Esq.  
2450 N.E. Miami Gardens Drive  
Suite 100  
North Miami Beach, Florida 33180  
(305) 935-6300

**CERTIFICATION** I, the undersigned, hereby certify that I am the

- Check only one
- Author
- author copyright claimant
- holder of related rights
- authorized agent of WILMINGTON CREDIT INC

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date  If this application gives a date of publication in space 2, do not sign and submit it before that date.

Barry M. Markes, Esq. 10-18-89

Handwritten signature (SI) [Signature]

MAIL CERTIFICATE TO

Name Barry M. Markes, Esq.  
Address 2450 N.E. Miami Gardens Drive  
Suite 100  
North Miami Beach, Florida 33180

Certificate will be mailed in window envelope

U.S. GOVERNMENT PRINTING OFFICE: 1989-0-285-500

**Certificate of Service**

It is hereby certified that a complete and accurate copy of Applicant's Notice of Opposition dated June 19, 2012, and Opposition dated June 19, 2012 was served by USPS Express Mail, postage prepaid, upon the following:

ECHL, Inc.  
Suite 230 116 Village Blvd.  
Princeton, NJ 08540  
UNITED STATES

This 19<sup>th</sup> Day of June, 2012

New York, New York

A handwritten signature in blue ink, appearing to read 'Anthony N. Elia', is written over a horizontal line.

Anthony N. Elia, Esq.

**Certificate of Service**

It is hereby certified that a complete and accurate copy of Applicant's Notice of Opposition dated June 19, 2012, and Opposition dated June 19, 2012 was served by USPS Express Mail, postage prepaid, upon the following:

Hendrick Bryant Nerhood & Otis, LLP  
723 Coliseum Drive Suite 101  
Winston-Salem, North Carolina 27106-5326

Attn: Kenneth C. Otis, Esq.

This 19<sup>th</sup> Day of June, 2012

New York, New York

A handwritten signature in blue ink, appearing to read "Anthony N. Elia", is written over a horizontal line.

Anthony N. Elia, Esq.