

ESTTA Tracking number: **ESTTA489041**

Filing date: **08/14/2012**

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	Platypus Wear, Inc.
Granted to Date of previous extension	08/15/2012
Address	2411 Second Avenue San Diego, CA 92101 UNITED STATES
Correspondence information	Gregory S. Gilchrist Kilpatrick Townsend & Stockton LLP Two Embarcadero Center, 8th Floor San Francisco, CA 94111 UNITED STATES ggilchrist@kiltown.com, jgreenacre@kiltown.com, tmadmin@kiltown.com Phone:4155760200

Applicant Information

Application No	76707515	Publication date	04/17/2012
Opposition Filing Date	08/14/2012	Opposition Period Ends	08/15/2012
Applicant	Bronsord, Kirk 38171 Columbine P1. Newark, CA 94560 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: CLOTHING, NAMELY, SHIRTS, PANTS, SKIRTS
Class 043. All goods and services in the class are opposed, namely: CATERING BARBECUE PARTIES

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.	2045529	Application Date	09/18/1995
Registration Date	03/18/1997	Foreign Priority Date	NONE

Word Mark	BAD BOY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1982/01/00 First Use In Commerce: 1983/01/00 men's [women's] and children's clothing, namely shirts, knit tops, woven tops, pants, shorts, [volleyball shorts,] hats, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands [, vests,] and shoes

U.S. Registration No.	2060484	Application Date	09/18/1995
Registration Date	05/13/1997	Foreign Priority Date	NONE

Word Mark	BAD BOY
Design Mark	
Description of Mark	The mark consists, in part, of a face between the words "BAD" and "BOY" with the "D" in the "BAD" and "B" in "BOY" forming the eyes and the eyebrows of the left and right eyes, respectively, and the nose and mouth directly below the eyes.
Goods/Services	Class 025. First use: First Use: 1991/12/18 First Use In Commerce: 1991/12/18 [men's, women's and children's clothing, namely, shirts, knit tops, woven tops, pants, shorts, volleyball shorts,] hats [, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, vests, and shoes]

U.S. Registration No.	3667065	Application Date	04/28/2000
Registration Date	08/11/2009	Foreign Priority Date	NONE

Word Mark	BAD BOY
Design Mark	

Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2008/11/20 First Use In Commerce: 2008/11/20 boxing gloves; fight gloves used for fighting, mixed martial arts and other combat sports; focus mitts used for training boxers, fighters, mixed martial artists and other combat athletes; training gloves used for training boxers, fighters, mixed martial artists and other combat athletes; elbow pads, knee pads, shin guards, wrist guards, arm guards and mouth guards all for athletic use

U.S. Registration No.	3865270	Application Date	03/30/2009
Registration Date	10/19/2010	Foreign Priority Date	NONE

Word Mark	BAD BOY
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 All-purpose athletic bags; Back packs

U.S. Registration No.	3746515	Application Date	06/30/2009
Registration Date	02/09/2010	Foreign Priority Date	NONE

Word Mark	BAD BOY
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 035. First use: First Use: 1993/03/20 First Use In Commerce: 1995/01/17 Promotional services, namely, promoting and sponsoring athletes and promoting and sponsoring athletic and sporting competitions; publicity agents
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U.S. Registration No.	3702967	Application Date	07/24/2008
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 Decals; stickers		

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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	/Gregory S. Gilchrist/
Name	Gregory S. Gilchrist
Date	08/14/2012

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

In re application of:

KIRK BRONSORD

For: **BAD BOYZ OF BBQ TAILGATERS
BARBECUE PARTY**

Serial No.: 76/707,515

Filed: May 5, 2011

Published: April 17, 2012

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir or Madam:

Platypus Wear, Inc. dba Bad Boy Brands (“Opposer” or “Bad Boy Brands”) will be damaged by the registration of the BAD BOYZ OF BBQ TAILGATERS BARBECUE PARTY mark covered by Application Serial No. 76/707,515, filed on May 5, 2011 by Kirk Bronsord (hereinafter “Applicant’s mark”), and, for that reason, opposes such registration.

Opposer Bad Boy Brands is a Nevada corporation with its principal place of business at 2411 Second Avenue, San Diego, California 92101. Applicant, Kirk Bronsford, is, according to the application, an individual with an address at 38171 Columbine Place, Newark, California 94560. Bad Boy Brands timely filed and was granted an extension of time to oppose Applicant’s

mark until August 15, 2012. Accordingly, this Notice of Opposition is timely filed. As grounds of opposition, Bad Boy Brands alleges as follows:

1. As illustrated in the Official Gazette dated April 17, 2012, Applicant seeks to register the BAD BOYZ OF BBQ TAILGATERS BARBECUE PARTY mark that is the subject of Application Serial No. 76/707,515 in International Classes 25 and 43.

2. Opposer Bad Boy Brands is the owner of the distinctive trademark BAD BOY® and is the owner of the following registrations issued on the Principal Register, among others, which are valid and subsisting and in full force and effect. Some have become incontestable pursuant to 15 U.S.C. § 1065.

Trademark	Reg. No.	Goods	Reg. Date
BAD BOY	2,045,529	Class 25: Men's, children's clothing, namely shirts, knit tops, woven tops, pants, shorts, hats, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, and shoes	Mar. 18, 1997
	2,060,484	Class 25: Hats	May 13, 1997
BAD BOY	3,667,065	Class 28: Boxing gloves; fight gloves used for fighting, mixed martial arts and other combat sports; focus mitts used for training boxers, fighters, mixed martial artists and other combat athletes; training gloves used for training boxers, fighters, mixed martial artists and other combat athletes; elbow pads, knee pads, shin guards, wrist guards, arm guards and mouth guards all for athletic use	Aug. 11, 2009
BAD BOY	3,865,270	Class 18: All-purpose athletic bags; back packs	Oct. 19, 2010
BAD BOY	3,746,515	Class 35: Promotional services, namely, promoting and sponsoring athletes and promoting and sponsoring athletic and sporting competitions; publicity agents	February 9, 2010
BAD BOY	3,702,967	Class 16: Decals; stickers	Oct. 27, 2009

3. At all relevant times, Opposer Bad Boy Brands has also been the owner of the following relevant valid and subsisting United States copyright registrations, among others:

Copyright	Reg. No.	Title	Registration Date
	VA 734-334	BAD BOY FACE DESIGN	Reg.: Sept. 27, 1995

	VA 740-282	BAD BOY CORPORATE DESIGN	Reg.: Sept. 18, 1995
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	VA 734-333	BAD BOY – BOY FIGURE	Reg.: Sept. 27, 1995
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4. Bad Boy Brands has used the registered marks and copyrighted images as common law trademarks on a variety of goods and services, including clothing, entertainment services and websites, among others. Opposer Bad Boy Brands’ federal and common law rights in and to the family of marks containing these images and the words “bad boy” are collectively referred to as the “BAD BOY Marks.”

5. Since at least the early to mid-1980s, Opposer Bad Boy Brands’ BAD BOY Marks have been used continually on a variety of goods and services including, at various times, clothing, swimsuits, hats, belts, accessories, footwear, sporting goods accessories, entertainment and other products and services, and in other ways customary in the trade. This pattern of use reflects a high likelihood of expansion of the BAD BOY Marks on related and complementary goods and services.

6. No issue of priority exists with respect to Opposer Bad Boy Brands' BAD BOY Marks and Applicant's mark. Bad Boy Brands, its related companies, predecessors and/or licensees' dates of adoption and first use of Bad Boy Brands' BAD BOY Marks long precede the date of Applicant's first use, if any.

7. Since adoption and first use of Opposer Bad Boy Brands' BAD BOY Marks, Bad Boy Brands, its related companies, predecessors and/or licensees have extensively advertised and promoted their products and services making clear and prominent use of Bad Boy Brands' BAD BOY Marks to identify and distinguish their products and services from those of others. As a result of such advertising and promotion, Bad Boy Brands, its related companies, predecessors and/or licensees have enjoyed widespread sales of the products and services offered and sold under Bad Boy Brands' BAD BOY Marks, such that Bad Boy Brands' BAD BOY Marks are widely recognized as an indicator of source for their products and services, and represent assets of enormous goodwill and inestimable value to Bad Boy Brands.

8. Registration of Applicant's mark will likely lead the public to conclude, incorrectly, that Applicant is or has been, and Applicant's goods and services displaying the mark are or have been, authorized, sponsored, or licensed by Opposer Bad Boy Brands. Issuance of any registration to Applicant for the mark at issue in the specified classes is therefore contrary to the provisions of 15 U.S.C. § 1052(a) and will result in damage to Bad Boy Brands and the public.

9. Applicant's mark so resembles Bad Boy Brands' BAD BOY Marks and the goods and services identified in Applicant's application are so related to the goods and services that Bad Boy Brands, its related companies, predecessors and/or licensees, provide under its BAD BOY Marks as to be likely, when used in connection with Applicant's goods and services, to confuse, to deceive, or to cause consumers to mistake Applicant's goods and services for goods and services authorized by, sponsored by or otherwise associated with Bad Boy Brands.

10. Opposer Bad Boy Brands' BAD BOY Marks and Applicant's mark are identical or substantially similar and are so close to one another as to be likely to confuse, to cause mistake or to deceive the public as to the origin, affiliation, sponsorship or connection of Applicant's goods and services bearing Applicant's mark. Therefore, registration of Applicant's mark in the specified classes is prohibited by 15 U.S.C. § 1052(d).

11. Because Applicant's mark is not associated with Opposer Bad Boy Brands and creates the same, or essentially the same, commercial impression as Bad Boy Brands' BAD BOY Marks, registration of Applicant's mark is likely to cause confusion, or to cause mistake or to deceive the public as to the source of Applicant's goods and services, to the harm and damage of Bad Boy Brands and the public. Therefore, registration of Applicant's mark in the specified classes is prohibited by 15 U.S.C. § 1052(d).

12. Registration of Applicant's mark in the specified classes would constitute prima facie evidence of the validity of such registration, Applicant's ownership of the mark, and Applicant's exclusive right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b). Such registration would be a source of damage and injury to Opposer Bad Boy Brands and the public, and would be contrary to the principles of registration set out in 15 U.S.C. §§ 1051 *et seq.*

13. The goods and services with which Applicant is using and/or intends to use Applicant's mark fall within the current description of goods or the natural zone of expansion of the goods and services for which Opposer Bad Boy Brands already has obtained senior rights.

14. The products and services involved are highly-related, and appeal to the same class of purchasers. Also, these products and services will be advertised and sold in the same or similar markets and through the same or similar channels of trade.

15. The registration and use by Applicant of the mark BAD BOY will impair Opposer Bad Boy Brands' trademark rights and may result in a lack of designation or indication of origin and loss of distinctiveness or exclusivity of Opposer's BAD BOY Marks.

16. Opposer Bad Boy Brands will be damaged by the registration sought by Applicant within the meaning of 15 U.S.C. § 1063, because such registration would support and assist Applicant in the confusing and misleading use of the mark BAD BOY, and would give color of exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Bad Boy Brands.

WHEREFORE, Opposer Bad Boy Brands prays that this Opposition be sustained, and that registration to Applicant for the BAD BOYZ OF BBQ TAILGATERS BARBECUE PARTY mark covered in Application Serial No. 76/707,515 in International Classes 25 and 43 be denied.

Please charge any necessary fee regarding this Opposition to the Deposit Account of Kilpatrick Townsend & Stockton LLP, No. 20-1430 2165, and credit any overpayment to such deposit account.

Please direct all notices, pleadings and process regarding this matter to:

Gregory S. Gilchrist, Esq.
KILPATRICK TOWNSEND & STOCKTON LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Telephone: (415) 576-0200
Facsimile: (415) 576-0300

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

Dated: August 14, 2012

By: /s/ Gregory S. Gilchrist
Gregory S. Gilchrist
Attorneys for Opposer
Platypus Wear, Inc. dba Bad Boy Brands

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PROOF OF SERVICE

On August 14, 2012, I served the foregoing **NOTICE OF OPPOSITION** on Counsel for Applicant by depositing a true copy thereof with the United States Postal Service as first class mail, postage prepaid, at San Francisco, California, enclosed in a sealed envelope addressed as follows:

JEROME J. NORRIS
1901 PENNSYLVANIA AVE NW STE 305N.W
WASHINGTON, DC 20006-3405

Dated: August 14, 2012

By: /Jillian Greenacre/
Jillian Greenacre