

ESTTA Tracking number: **ESTTA507685**

Filing date: **11/27/2012**

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	Clinch, LLC
Granted to Date of previous extension	11/28/2012
Address	800 Englewood Parkway Suite C200 Englewood, CO 80110 UNITED STATES

Attorney information	Alan Blum Moses & Singer LLP The Chrysler Building 405 Lexington Avenue New York, NY 10174-1299 UNITED STATES trademark@mosessinger.com, dshapiro@mosessinger.com, ablum@mosessinger.com, mschorr@mosessinger.com Phone:212-554-7800
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Applicant Information

Application No	85563762	Publication date	07/31/2012
Opposition Filing Date	11/27/2012	Opposition Period Ends	11/28/2012
Applicant	Cradle Gear Inc. 3049 Nationwide Parkway Brunswick Hills, OH 44212 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2011/12/00 First Use In Commerce: 2011/12/00 All goods and services in the class are opposed, namely: Athletic apparel, namely shorts, pants, long- and short-sleeved T-shirts, jackets, hooded sweatshirts, singlet uniforms, athletic uniforms

Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85003491	Application Date	03/31/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLINCH GEAR		

Design Mark	
Description of Mark	The mark consists of the wording "CLINCH GEAR" with a design containing two circles signaling motion in between.
Goods/Services	<p>Class 025. First use: Apparel, namely, t-shirts, shirts, shorts, boardshorts, swim suits, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, jackets, underwear, socks, and belts</p> <p>Class 026. First use: Embroidered patches for clothing</p> <p>Class 028. First use: Athletic equipment in the nature of hand wraps, boxing gloves, shin guards and elbow guards for athletic use, punching bags, punching bag stands, jump ropes, medicine balls, kettle balls for exercise and fitness purposes, stretch bands used for yoga and physical fitness purposes, personal exercise mats, toy action figures, trading card games</p>

U.S. Application No.	85165002	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	CLINCH GEAR		
Design Mark			
Description of Mark	The mark consists of the words "CLINCH" and "GEAR" separated by two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure.		
Goods/Services	<p>Class 025. First use: Clothing, namely, men's, women's, and children's footwear, robes, gloves, sweaters, sleepwear, knit headwear, knit scarves, mittens, suspenders; Apparel related to working out for martial arts, namely, men's and women's trunks used for fighting and boxing, t-shirts, sweatpants, sweatshirts, jogging suits, tank tops, workout tops, shorts, wrist bands, head bands, hats, beanies, bandanas, visors, boxing shoes, tennis shoes, athletic shoes, athletic boots, socks, aerobic belts, boxing jerseys, briefs, elastic belts, exercise suits, muscle shirts, sauna suits, thermal underwear</p>		

U.S. Application No.	85164889	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	CLINCH GEAR
Design Mark	
Description of Mark	The mark consists of the word "CLINCH", in a downward curving form; above two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure, above the word "GEAR" in an upward curving form; with a five-pointed star on either side of the human forms dividing the words "CLINCH" and "GEAR".
Goods/Services	Class 025. First use: Clothing, namely, men's, women's, and children's footwear, socks, pants, robes, shirts, shorts, gloves, jackets, sweaters, sleepwear, underwear, knit headwear, knit scarves, mittens, suspenders, swimwear; Apparel related to working out for martial arts, namely, men's and women's trunks used for fighting and boxing, t-shirts, sweatpants, sweatshirts, jogging suits, tank tops, workout tops, shorts, wrist bands, head bands, hats, beanies, bandanas, visors, boxing shoes, tennis shoes, athletic shoes, athletic boots, socks, aerobic belts, boxing jerseys, briefs, elastic belts, exercise suits, muscle shirts, sauna suits, thermal underwear

U.S. Application No.	85165060	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLINCH GEAR		
Design Mark			
Description of Mark	The mark consists of the words "CLINCH" and "GEAR" separated by two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure.		
Goods/Services	Class 028. First use: Mixed martial arts equipment, namely, fighting gloves, workout gloves, grappling gloves, bag gloves, training gloves, thai pads, mouth guards and odonto-guards for athletic use, head guards, ear and eyebrow protectors for boxers, boxing masks, bands, pads, braces and guards for ankles, knees, wrists, and elbows, striking bags, striking-bag platforms, training dummies, dumbbells, grip developers, training bags, skip ropes, athletic supporters, shoe guards, boxing and wrestling rings, weight benches, and weightlifting gloves and weight lifting		

	belts, punch mitts, groin protectors, body protectors, body striking shields, squeeze balls, hand weights; coined operation video games; arcade-type electronic video games; hand-held unit for playing video games other than those adapted for use with an external display screen or monitor; hand-held games with liquid crystal displays; and stand-alone video game machines all related to the field of mixed martial arts
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U.S. Application No.	85164897	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	CLINCH GEAR
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Design Mark	
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Description of Mark	The mark consists of the word "CLINCH", in a downward curving form; above two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure, above the word "GEAR" in an upward curving form; with a five-pointed star on either side of the human forms dividing the words "CLINCH" and "GEAR".
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Goods/Services	Class 028. First use: Mixed martial arts equipment, namely, fighting gloves, workout gloves, grappling gloves, bag gloves, training gloves, thai pads, mouth guards and odonto-guards for athletic use, head guards, ear and eyebrow protectors for boxers, boxing masks, bands, pads, braces and guards for ankles, knees, wrists, and elbows, striking bags, striking-bag platforms, training dummies, dumbbells, grip developers, training bags, skip ropes, athletic supporters, shoe guards, boxing and wrestling rings, weight benches, and weightlifting gloves and weight lifting belts, punch mitts, groin protectors, body protectors, body striking shields, squeeze balls, hand weights; coined operation video games; arcade-type electronic video games; hand-held unit for playing video games other than those adapted for use with an external display screen or monitor; hand-held games with liquid crystal displays; and stand-alone video game machines all related to the field of mixed martial arts
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U.S. Application No.	85164986	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	CLINCH GEAR
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Design Mark	
Description of Mark	The mark consists of the words CLINCH and GEAR separated by two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure.
Goods/Services	Class 018. First use: Leather and imitations of leather, and goods made of these materials, namely, all purpose athletic bags, sports bags, general purpose bags for holding athletic equipment, duffel bags, backpacks, school bags, fanny packs, travel bags, gym bags, and book bags

U.S. Application No.	85164880	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	CLINCH GEAR
Design Mark	
Description of Mark	The mark consists of the word CLINCH, in a downward curving form; above two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure, above the word GEAR in an upward curving form; with a five-pointed star on either side of the human forms dividing the words CLINCH and GEAR.
Goods/Services	Class 018. First use: Leather and imitations of leather, and goods made of these materials, namely, all purpose athletic bags, sports bags, general purpose bags for holding athletic equipment, duffel bags, backpacks, school bags, fanny packs, travel bags, gym bags, and book bags

U.S. Application No.	85164931	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLINCH GEAR		

Design Mark	
Description of Mark	The mark consists of the words "CLINCH" and "GEAR" separated by two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure.
Goods/Services	Class 009. First use: Protective wear, namely, protective helmets for wrestling and boxing; Eyewear, namely, eyeglasses, sunglasses, eyewear cases; Pre-recorded electronic media, namely, video game cartridges; video game discs; computer game software, computer game cartridges; computer game discs; video game software, computer game programs; electronic game software designed to be used with a television receiving device; interactive multimedia computer game programs; multimedia software recorded on CD-ROMS featuring video game software and computer game programs, CDs and DVDs featuring training, cross training, instructions, entertainment and instructional books sold therewith, all in the field of mixed martial arts

U.S. Application No.	85164866	Application Date	10/29/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLINCH GEAR		
Design Mark			
Description of Mark	The mark consists of the word "CLINCH", in a downward curving form; above two stylized human forms which face each other, toe to head, with the feet and arms wrapping around the opposite figure forming a circular figure, above the word "GEAR" in an upward curving form; with a five-pointed star on either side of the human forms dividing the words "CLINCH" and "GEAR".		
Goods/Services	Class 009. First use: Protective wear, namely, protective helmets for wrestling and boxing; Eyewear, namely, eyeglasses, sunglasses, and eyewear cases. Pre-recorded electronic media, namely, video game cartridges; video game discs; computer game software, computer game cartridges; computer game discs; video game software, computer game programs; electronic game software designed to be used with a television receiving device; interactive multimedia computer game		

	programs; multimedia software recorded on CD-ROMS featuring video game software and computer game programs, CDs and DVDs featuring training, cross training, instructions, entertainment and instructional books sold therewith, all in the field of mixed martial arts
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Attachments	85003491#TMSN.jpeg (1 page)(bytes) 85165002#TMSN.jpeg (1 page)(bytes) 85164889#TMSN.jpeg (1 page)(bytes) 85165060#TMSN.jpeg (1 page)(bytes) 85164897#TMSN.jpeg (1 page)(bytes) 85164986#TMSN.jpeg (1 page)(bytes) 85164880#TMSN.jpeg (1 page)(bytes) 85164931#TMSN.jpeg (1 page)(bytes) 85164866#TMSN.jpeg (1 page)(bytes) DOCS-#940713-v2-Notice_of_Opposition__Clinch_v__Cradle_Gear 85563762.pdf (11 pages)(85080 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	/Alan Blum/
Name	Alan Blum
Date	11/27/2012

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

In the Matter of Trademark Application Serial No. 85/563,762

For the mark:



Published in the Official Gazette on July 31, 2012

CLINCH, LLC,

Opposer,

Opposition No. _____

-against-

CRADLE GEAR INC.,

Applicant.

NOTICE OF OPPOSITION

Opposer, Clinch, LLC, a limited liability company organized and existing under the laws of Delaware, having its principal place of business at 800 Englewood Parkway, Suite C200, Englewood, Colorado, believes that it will be damaged by the registration of the design that is the subject of Application Serial No. 85/563,762, , and hereby opposes the same pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1063(a).

As grounds for its opposition, Opposer, by its attorneys Moses & Singer, LLP, alleges that:

1. Opposer Clinch, LLC ("Clinch"), has manufactured and distributed apparel and training gear for mixed martial arts, wrestling and other high-intensity sports

since 2003. Clinch was acquired by two-time Greco-Roman Olympian and two-time mixed martial arts world champion Dan Henderson in 2006.

2. Clinch is one of the oldest and most respected brands in the mixed martial arts industry. Clinch currently has a number of champion athlete endorsements, including that of Green Bay Packers' linebacker A.J. Hawk and former NFL running back Herschel Walker.

3. For many years and long before December 2011, the alleged dates of first use and first use in commerce of the application herein opposed, Clinch has used its circle and wave design, both alone and with the word element CLINCH GEAR (the "Clinch Gear Marks") for apparel, headgear, footwear, gear bags, protective and training gear, and on its web site, www.clinchgear.com. The Clinch Gear Marks contain a design consisting of two circles connected by a "wave" element suggesting motion:



CLINCH GEAR



4. Clinch owns several applications for the Clinch Gear Marks for goods in International Class 25, namely, U.S. Serial No. 85/003,491, filed March 31, 2010, and, U.S. Serial Nos. 85/165,002, and 85/164,889, filed October 29, 2010. The details of these applications are outlined in Exhibit A.

5. Clinch also owns the following applications for the Clinch Gear Marks in related classes of goods: Serial Nos. 85/165,060 and 85/164,897 (Class 28), Serial Nos. 85/164,986 and 85/164,880 (Class 18), Serial Nos. 85/164,931 and 85/164,866 (Class 9). The details of these applications are also outlined in Exhibit A.

6. Additionally, by virtue of its use in interstate commerce across the country since at least July 2007, Clinch owns common law trademark rights throughout the United States for the Clinch Gear Marks.

7. During its long, widespread and continuous use of the Clinch Gear Marks, Clinch has expended considerable time, effort, and money in advertising and promotes the sale of goods bearing the Clinch Gear Marks.

8. Clinch has sold, and offered for sale, goods bearing the Clinch Gear Marks across the country through authorized retailers such as The Sports Authority and Finish Line, and many on-line dealers, including its own on-line shop at www.clinchgear.com/shop, as well as through wholesalers in the mixed martial arts industry, and at partner gyms throughout the United States.

9. As a result, the mark has become distinctive of Clinch's goods and services and has come to represent significant good will for Clinch.

10. On March 8, 2011, Applicant filed an application for the designation



under Serial No. 85/563,762 for “athletic apparel, namely, shorts, pants, long-and short-sleeved T-shirts, jackets, hooded sweatshirts, singlet uniforms, athletic uniforms” in International Class 25 (the “Application”).

11. The Application was filed based on use in commerce as early as December 2011.

12. Applicant's designation is nearly identical to the Clinch Gear Marks, consisting of two circles connected by a wave element signaling motion.

13. The goods for which Applicant seeks registration are identical or nearly identical to the goods offered under the Clinch Gear Marks.

14. The goods covered by the Application are offered in channels of trade, market segments, and consumer groups that are identical or closely related to those in and to which Clinch offers its goods under the Clinch Gear Marks.

15. Applicant's designation so resembles the Clinch Gear Marks as to be likely to cause confusion, or to cause mistake, or to deceive.

16. Clinch will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Clinch.

17. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's designation so closely resembles the Clinch Gear Marks as to be likely, when used on or in connection with the goods identified in the applications, to cause confusion, or to cause mistake, or to deceive, with consequent injury to Clinch, and to the public.

18. Registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's use and registration of the designation will falsely suggest a connection between the Applicant's designation and Clinch, to the damage of Clinch.

WHEREFORE, Clinch believes it will be damaged by the registration by

Applicant of the design  for the goods identified in Application Serial No. 85/563,762 and respectfully requests that this Opposition be sustained in favor of Clinch and registration of Applicant's designation be denied.

EXHIBIT A

Serial Number	Mark	International Class(es)	Filing Date
85/003,491		<p>025 (Apparel, namely, t-shirts, shirts, shorts, boardshorts, swim suits, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, jackets, underwear, socks, and belts)</p> <p>026 (Embroidered patches for clothing)</p> <p>028 (Athletic equipment in the nature of hand wraps, boxing gloves, shin guards and elbow guards for athletic use, punching bags, punching bag stands, jump ropes, medicine balls, kettle balls for exercise and fitness purposes, stretch bands used for yoga and physical fitness purposes, personal exercise mats, toy action figures, trading card games)</p>	3/31/2010
85/165,002		<p>025 (Clothing, namely, men's, women's, and children's footwear, robes, gloves, sweaters, sleepwear, knit headwear, knit scarves, mittens, suspenders; Apparel related to working out for martial arts, namely, men's and women's trunks used for fighting and boxing, t-shirts, sweatpants, sweatshirts, jogging suits, tank tops, workout tops, shorts, wrist bands, head bands, hats, beanies, bandanas, visors, boxing shoes, tennis shoes, athletic shoes, athletic boots, socks, aerobic belts, boxing jerseys, briefs, elastic belts, exercise suits, muscle shirts, sauna suits, thermal underwear)</p>	10/29/2010

85/164,889		<p>025 (clothing, namely, men's, women's, and children's footwear, socks, pants, robes, shirts, shorts, gloves, jackets, sweaters, sleepwear, underwear, knit headwear, knit scarves, mittens, suspenders, swimwear; Apparel related to working out for martial arts, namely, men's and women's trunks used for fighting and boxing, t-shirts, sweatpants, sweatshirts, jogging suits, tank tops, workout tops, shorts, wrist bands, head bands, hats, beanies, bandanas, visors, boxing shoes, tennis shoes, athletic shoes, athletic boots, socks, aerobic belts, boxing jerseys, briefs, elastic belts, exercise suits, muscle shirts, sauna suits, thermal underwear)</p>	10/29/2010
85/165,060		<p>028 (Mixed martial arts equipment, namely, fighting gloves, workout gloves, grappling gloves, bag gloves, training gloves, thai pads, mouth guards and odonto-guards for athletic use, head guards, ear and eyebrow protectors for boxers, boxing masks, bands, pads, braces and guards for ankles, knees, wrists, and elbows, striking bags, striking-bag platforms, training dummies, dumbbells, grip developers, training bags, skip ropes, athletic supporters, shoe guards, boxing and wrestling rings, weight benches, and weightlifting gloves and weight lifting belts, punch mitts, groin protectors, body protectors, body striking shields, squeeze balls, hand weights; coined operation video games; arcade-type electronic video games; hand-held unit for</p>	10/29/2010

		playing video games other than those adapted for use with an external display screen or monitor; hand-held games with liquid crystal displays; and stand-alone video game machines all related to the field of mixed martial arts)	
85/164,897		028 (Mixed martial arts equipment, namely, fighting gloves, workout gloves, grappling gloves, bag gloves, training gloves, thai pads, mouth guards and odonto-guards for athletic use, head guards, ear and eyebrow protectors for boxers, boxing masks, bands, pads, braces and guards for ankles, knees, wrists, and elbows, striking bags, striking-bag platforms, training dummies, dumbbells, grip developers, training bags, skip ropes, athletic supporters, shoe guards, boxing and wrestling rings, weight benches, and weightlifting gloves and weight lifting belts, punch mitts, groin protectors, body protectors, body striking shields, squeeze balls, hand weights; coined operation video games; arcade-type electronic video games; hand-held unit for playing video games other than those adapted for use with an external display screen or monitor; hand-held games with liquid crystal displays; and stand-alone video game machines all related to the field of mixed martial arts)	10/29/2010

85/164,986		018 (Leather and imitations of leather, and goods made of these materials, namely, all purpose athletic bags, sports bags, general purpose bags for holding athletic equipment, duffel bags, backpacks, school bags, fanny packs, travel bags, gym bags, and book bags)	10/29/2010
85/164,880		018 (Leather and imitations of leather, and goods made of these materials, namely, all purpose athletic bags, sports bags, general purpose bags for holding athletic equipment, duffel bags, backpacks, school bags, fanny packs, travel bags, gym bags, and book bags)	10/29/2010
85/164,931		009 (Protective wear, namely, protective helmets for wrestling and boxing; Eyewear, namely, eyeglasses, sunglasses, eyewear cases; Pre-recorded electronic media, namely, video game cartridges; video game discs; computer game software, computer game cartridges; computer game discs; video game software, computer game programs; electronic game software designed to be used with a television receiving device; interactive multimedia computer game programs; multimedia software recorded on CD-ROMS featuring video game software and computer game programs, CDs and DVDs featuring training, cross training, instructions, entertainment and instructional books sold therewith, all in the field of mixed martial arts)	10/29/2010

85/164,866		<p>009 (Protective wear, namely, protective helmets for wrestling and boxing; Eyewear, namely, eyeglasses, sunglasses, and eyewear cases. Pre-recorded electronic media, namely, video game cartridges; video game discs; computer game software, computer game cartridges; computer game discs; video game software, computer game programs; electronic game software designed to be used with a television receiving device; interactive multimedia computer game programs; multimedia software recorded on CD-ROMS featuring video game software and computer game programs, CDs and DVDs featuring training, cross training, instructions, entertainment and instructional books sold therewith, all in the field of mixed martial arts)</p>	10/29/2010
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CERTIFICATE OF SERVICE

I certify that on the 27th day of November, 2012, I caused a true copy of the attached Notice of Opposition to be served on Applicant Cradle Gear Inc., by sending same by first class mail to the Applicant's counsel at the following address:

Vincent A. Cortese
Curatolo Sidoti Co., LPA
24500 Center Ridge Road Suite 280
Cleveland, Ohio 44145-5681

/Deborah L. Shapiro/

Deborah L. Shapiro