

ESTTA Tracking number: **ESTTA517293**

Filing date: **01/22/2013**

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	NHS, Inc.		
Entity	Corporation	Citizenship	California
Address	104 Bronson Street, #9 Santa Cruz, CA 95062 UNITED STATES		

Attorney information	Stephanie O. Sparks Hoge Fenton Jones & Appel, Inc. 60 South Market Street, Suite 1400 San Jose, CA 95113 UNITED STATES uspto@hogefenton.com Phone:408.287.9501		
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Applicant Information

Application No	85683890	Publication date	12/25/2012
Opposition Filing Date	01/22/2013	Opposition Period Ends	01/24/2013
Applicant	ERIK BUELL RACING, LLC 2799 Buell Drive, Unit C East Troy, WI 53120 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Jackets; leather jackets; textile jackets; motorcycle jackets; fleece tops; sweatshirts; hooded sweatshirts; shirts; woven shirts; dress shirts; long and short sleeved t-shirts; sleeveless t-shirts; long and short-sleeved shirts; sleeveless shirts; turtle neck shirts; tank tops; moisture-wicking long and short-sleeved shirts; golf shirts; uniforms; liveries; headwear; beanies; baseball caps; hats; neck gators; neck tubes; scarves; motorcycle suits; leather motorcycle suits; textile motorcycle suits; motorcycle rain suits; vests; leather vests; underwear; wicking underwear tops; wicking underwear bottoms; footwear; boots; shoes; sandals; motorcycle boots; socks; wicking socks; gloves; motorcycle gloves; belts; leather belts; textile belts; pants; motorcycle pants; leather pants; textile pants; jeans
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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.	1547467	Application Date	05/31/1988
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Registration Date	07/11/1989	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of Mark	THE MARK COMPRISES THE WORDS "INDEPENDENT TRUCK COMPANY" INCLUDING DESIGN ELEMENTS AS SHOWN IN THE ACCOMPANYING DRAWING, THE WORD "INDEPENDENT" ENCLOSED WITHIN A STYLIZED CROSS AND THE WORDS "TRUCK COMPANY" SITUATED BELOW THE STYLIZED CROSS, ALL THREE WORDS BEING SUBSTANTIALLY ENCLOSED WITHIN A CIRCLE.		
Goods/Services	Class 025. First use: First Use: 1977/03/00 First Use In Commerce: 1977/03/00 CLOTHING; NAMELY T-SHIRTS, SHORTS, AND JACKETS		

U.S. Registration No.	1640578	Application Date	04/30/1990
Registration Date	04/09/1991	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark	<p style="text-align: center;">INDEPENDENT TRUCK COMPANY</p>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 T-shirts, sweatshirts, [sweatpants,] and hats		

U.S. Application No.	85558592	Application Date	03/02/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	INDEPENDENT		

Design Mark	<h1>INDEPENDENT</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 Clothing, namely, tops, tank tops, t-shirts, long-sleeve shirts; pants, jeans, shorts; sweatshirts and jackets; swimwear; belts; headwear, caps and beanies; socks		

U.S. Registration No.	1644388	Application Date	04/30/1990
Registration Date	05/14/1991	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 decals and paper banners		

U.S. Registration No.	3002979	Application Date	07/25/2003
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1995/06/00 First Use In Commerce: 1995/06/00 Watches		

U.S. Registration No.	3335842	Application Date	07/25/2003
Registration Date	11/13/2007	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1998/06/00 First Use In Commerce: 1998/06/00 Jewelry		

U.S. Registration No.	1524699	Application Date	05/31/1988
Registration Date	02/14/1989	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK CO.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1977/03/00 First Use In Commerce: 1977/03/00 SKATEBOARDS, AND SKATEBOARD TRUCK ASSEMBLY		

U.S. Registration No.	1559780	Application Date	05/31/1988
Registration Date	10/10/1989	Foreign Priority Date	NONE
Word Mark	INDEPENDENT TRUCK COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1977/03/00 First Use In Commerce: 1977/03/00 DECALCOMANIAS		

U.S. Registration No.	4267251	Application Date	03/02/2012
Registration Date	01/01/2013	Foreign Priority Date	NONE
Word Mark	INDEPENDENT		
Design Mark	<h1>INDEPENDENT</h1>		
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 skateboards; skateboard accessories consisting of risers, bearings, axles and mounting hardware; skateboard grip tapes; skateboard decks and flying discs for toss games		

Attachments	73731422#TMSN.gif (1 page)(bytes) 74054502#TMSN.gif (1 page)(bytes) 85558592#TMSN.jpeg (1 page)(bytes) 73731873#TMSN.gif (1 page)(bytes) 85558600#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (10 pages)(378533 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	/Stephanie O. Sparks/
Name	Stephanie O. Sparks
Date	01/22/2013

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

In the matter of Trademark Application Serial No. 85-683,890 for the standard character mark FIERCELY INDEPENDENT.

NHS, INC., a California corporation,

Opposer,

vs.

ERIK BUELL RACING, LLC, a Wisconsin limited-liability company,

Applicant.

Opposition No.:

I hereby certify that this correspondence is being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through its website located at <http://estta.uspto.gov/> on:

1/22/13

(date)

Stephanie O. Sparks
Stephanie O. Sparks

NOTICE OF OPPOSITION

NHS, INC., a California corporation ("Opposer"), located and doing business at 104 Bronson Street, #9, Santa Cruz, California 95062, believes it will be damaged by registration of the mark FIERCELY INDEPENDENT in International Class 25 for "jackets; leather jackets; textile jackets; motorcycle jackets; fleece tops; sweatshirts; hooded sweatshirts; shirts; woven shirts; dress shirts; long and short sleeved t-shirts; sleeveless t-shirts; long and short-sleeved shirts; sleeveless shirts; turtle neck shirts; tank tops; moisture-wicking long and short-sleeved shirts; golf shirts; uniforms; liveries; headwear; beanies; baseball caps; hats; neck gators; neck tubes; scarves; motorcycle suits; leather motorcycle suits; textile motorcycle suits; motorcycle rain suits; vests; leather vests; underwear; wicking underwear tops; wicking underwear bottoms; footwear;

boots; shoes; sandals; motorcycle boots; socks; wicking socks; gloves; motorcycle gloves; belts; leather belts; textile belts; pants; motorcycle pants; leather pants; textile pants; jeans,” as shown in U.S. Trademark Application Serial No. 85-683,890 (hereinafter the “Application”) submitted by Erik Buell Racing, LLC, a Wisconsin limited-liability company (“Applicant”) with an address of 2799 Buell Drive, Unit C, East Troy, Wisconsin 53120. Opposer hereby opposes the Application.

A partial description of Applicant’s mark in its Application is as follows:

Mark:	FIERCELY INDEPENDENT
Serial No.:	85-683,890
Class:	025
Goods:	Jackets; leather jackets; textile jackets; motorcycle jackets; fleece tops; sweatshirts; hooded sweatshirts; shirts; woven shirts; dress shirts; long and short sleeved t-shirts; sleeveless t-shirts; long and short-sleeved shirts; sleeveless shirts; turtle neck shirts; tank tops; moisture-wicking long and short-sleeved shirts; golf shirts; uniforms; liveries; headwear; beanies; baseball caps; hats; neck gators; neck tubes; scarves; motorcycle suits; leather motorcycle suits; textile motorcycle suits; motorcycle rain suits; vests; leather vests; underwear; wicking underwear tops; wicking underwear bottoms; footwear; boots; shoes; sandals; motorcycle boots; socks; wicking socks; gloves; motorcycle gloves; belts; leather belts; textile belts; pants; motorcycle pants; leather pants; textile pants; jeans.
Filed:	July 23, 2012
Filing Basis:	1B

The grounds for opposition are as follows:

1. Since as early as March 1977, Opposer has been, and is, engaged in the business of manufacturing, marketing and selling goods in the United States

and worldwide, including but not limited to t-shirts, tops, tank tops, long-sleeve shirts, pants, jeans, sweatshirts, shorts, jackets, vests, hats, visors, swimwear, belts, headwear, caps and beanies, socks, footwear, jewelry, watches, decalcomanias, decals, paper banners, skateboards, and skateboard truck assembly, in connection with its INDEPENDENT-related marks, including without limitation INDEPENDENT, INDEPENDENT & CO., INDEPENDENT TRUCK CO., INDEPENDENT TRUCK COMPANY, and INDEPENDENT TRUCK COMPANY & design (e.g., ) , INDEPENDENT & design (e.g., , , , and ) (“Opposer’s INDEPENDENT Marks”), many of which have registered at the United States Patent and Trademark Office (“PTO”) and at similar offices of other countries abroad.

2. Opposer is the owner of, and has established statutory and common-law rights through prior use of Opposer’s INDEPENDENT Marks in the U.S. in connection with the sale of numerous goods within International Class 25 for clothing, namely, shirts, t-shirts, tank tops, athletic shirts, short-sleeved shirts, long-sleeved shirts, flannel shirts, polo shirts, sweat shirts, jackets; shorts, board shorts, pants, jeans; socks; hats, caps, beanies, bandanas; belts and belt buckles for clothing.

3. Opposer is the owner of, and relies on, U.S. Trademark Registration No. 1,547,467 for the mark , with the words INDEPENDENT TRUCK COMPANY, in International Class 25 for clothing, namely, t-shirts, shorts, and jackets. This registration, which registered on the Principal Register on July 11, 1989, is based on an application filed with the PTO on May 31, 1988, and claims a date of first use in interstate commerce of March 1977. Thus, the dates of first use, application and registration of this mark are all prior to the filing of Applicant’s Application on July 23, 2012. This registration is incontestable and,

moreover, on April 15, 2009, a Section 8 Declaration and Section 9 Renewal were accepted by the PTO.

4. Opposer is the owner of, and relies on, U.S. Trademark Registration No. 1,640,578 for the mark INDEPENDENT TRUCK COMPANY in International Class 25 for t-shirts, sweatshirts, and hats. This registration, which registered on the Principal Register on April 9, 1991, is based on an application filed with the PTO on April 30, 1990, and claims a date of first use in interstate commerce of January 1978. Thus, the dates of first use, application and registration of this mark are all prior to the filing of Applicant's Application on July 23, 2012. This registration is incontestable and, moreover, on March 8, 2011, a Section 8 Declaration and Section 9 Renewal were accepted by the PTO.

5. Opposer is the owner of U.S. Trademark Application No. 85-558,592 for the mark INDEPENDENT in International Class 25 for clothing, namely, tops, tank tops, t-shirts, long-sleeve shirts; pants, jeans, shorts; sweatshirts and jackets; swimwear; belts; headwear, caps and beanies; socks. This application was filed on March 2, 2012 and claims a date of first use in interstate commerce of January 1978. Thus, the dates of first use and application of this mark are both prior to the filing of Applicant's Application on July 23, 2012. Opposer notes that on November 27, 2012, this application was published at the PTO, and no oppositions or requests for extensions in which to file oppositions against this application were filed with the PTO.

6. Opposer is the owner of, and relies on, U.S. Trademark Registration No. 1,644,388 for the mark INDEPENDENT TRUCK COMPANY in International Class 16 for decals and paper banners, which registered on the Principal Register on May 14, 1991. This registration is based on an application filed with the PTO on April 30, 1990, and claims a date of first use in interstate commerce of January 1978. Thus, the dates of first use, application and

registration of this mark are all prior to the filing of Applicant's Application on July 23, 2012. This registration is incontestable and, moreover, on March 17, 2011, a Section 8 Declaration and Section 9 Renewal were accepted by the PTO.

7. Opposer is the owner of, and relies on, U.S. Trademark Registration No. 3,002,979 for the mark INDEPENDENT TRUCK COMPANY in International Class 14 for watches, which registered on the Principal Register on September 27, 2005. This registration is based on an application filed with the PTO on July 25, 2003, and claims a date of first use in interstate commerce of June 1995. Thus, the dates of first use, application and registration of this mark are all prior to the filing of Applicant's Application on July 23, 2012. Moreover, with regard to this mark, on March 19, 2011, a Section 8 and 15 Declaration was accepted by the PTO, and accordingly, said registration is incontestable.

8. Opposer is the owner of, and relies on, U.S. Trademark Registration No. 3,335,842 for the mark INDEPENDENT TRUCK COMPANY in International Class 14 for jewelry, which registered on the Principal Register on November 13, 2007. This registration is based on an application filed with the PTO on July 25, 2003, and claims a date of first use in interstate commerce of June 1998. Thus, the dates of first use, application and registration of this mark are all prior to the filing of Applicant's Application on July 23, 2012.

9. Opposer is the owner of, and relies on, U.S. Trademark Registration No. 1,524,699 for the mark INDEPENDENT TRUCK CO. in International Class 28 for skateboards, and skateboard truck assembly, which registered on the Principal Register on February 14, 1989. This registration is based on an application filed with the PTO on May 31, 1988, and claims a date of first use in interstate commerce of March 1977. Thus, the dates of first use, application and registration of this mark are all prior to the filing of Applicant's Application on July 23, 2012. This registration is incontestable and, moreover,

on February 2, 2009, a Section 8 Declaration and Section 9 Renewal were accepted by the PTO.

10. Opposer is the owner of, and relies on, U.S. Trademark Registration No. 1,559,780 for the mark  with the words INDEPENDENT TRUCK COMPANY in International Class 16 for decalcomanias, which registered on the Principal Register on October 10, 1989. This registration is based on an application filed with the PTO on May 31, 1988, and claims a date of first use in interstate commerce of March 1977. Thus, the dates of first use, application and registration of this mark are all prior to the filing of Applicant's Application on July 23, 2012. This registration is incontestable and, moreover, on February 4, 2009, a Section 8 Declaration and Section 9 Renewal were accepted by the PTO.

11. Opposer is the owner of, and relies on, U.S. Registration No. 4,267,251 for the mark INDEPENDENT in International Class 28 for skateboards; skateboard accessories consisting of risers, bearings, axles and mounting hardware; skateboard grip tapes; skateboard decks and flying discs for toss games, which registered on the Principal Register on January 1, 2013. This registration is based on an application filed with the PTO on March 2, 2012, and claims a date of first use in interstate commerce of January 1978. Thus, the dates of first use, application and registration of this mark are all prior to the filing of Applicant's Application on July 23, 2012.

12. Opposer's INDEPENDENT Marks and the registrations therefor have been continuously used prior to the filing date of Applicant's Application and have not been abandoned. The registrations of Opposer's INDEPENDENT Marks are valid, subsisting, unrevoked and uncanceled. As such, they constitute *prima facie* evidence of the validity of the registrations of Opposer's INDEPENDENT Marks, of Opposer's ownership of the Opposer's

INDEPENDENT Marks shown therein, and of Opposer's exclusive right to use Opposer's INDEPENDENT Marks in commerce in connection with the goods named therein. The registrations of Opposer's INDEPENDENT Marks also constitute notice to Applicant of Opposer's claim of ownership of Opposer's INDEPENDENT Marks shown therein as provided in Sections 7(b), 22 and 33(a) of the Trademark Act of 1946, 15 U.S.C. §§ 1057, 1072 and 1115, as amended.

13. Opposer's INDEPENDENT Marks, by virtue of Opposer's substantial use and promotion, have acquired great value as an identifier of Opposer and its goods, and distinguish Opposer and its goods from the goods of others.

14. Opposer, through decades of advertising and marketing of its goods under Opposer's INDEPENDENT Marks, has built up, at great expense and effort, valuable goodwill symbolized by Opposer's INDEPENDENT Marks, and the public has come to associate Opposer's INDEPENDENT Marks with Opposer.

15. Opposer has invested and continues to invest substantial amounts of time, effort and money in Opposer's INDEPENDENT Marks throughout the United States and the rest of the world. Opposer began and has continued its use of Opposer's INDEPENDENT Marks throughout the United States and worldwide long before the July 23, 2012 filing date of Applicant's Application. As such, in addition to the protection afforded Opposer by its trademark registrations, Opposer has extensive statutory and common-law rights in Opposer's INDEPENDENT Marks for its goods throughout the United States.

16. Opposer's INDEPENDENT Marks are not only well known both nationwide and worldwide, but also are famous as defined in Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c)(2). The registration of Applicant's mark is likely to dilute the distinctive quality of Opposer's INDEPENDENT Marks under

Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c)(2)(B).

17. If Applicant's Application is permitted to proceed to registration, Applicant's corresponding *prima facie* exclusive right to use Applicant's mark in commerce will conflict with Opposer's lawful and *prima facie* exclusive right to use Opposer's INDEPENDENT Marks nationwide, as well as its common-law right to use Opposer's INDEPENDENT Marks nationwide.

18. The registrations of Opposer's INDEPENDENT Marks are derived from applications filed with the PTO prior to the July 23, 2012 filing date of Applicant's Application. Said registrations of Opposer are valid and subsisting. In view of, *inter alia*, the similarity of Opposer's INDEPENDENT Marks to Applicant's mark, and the similarity of the clothing items of the Opposer and Applicant, it is alleged that Applicant's mark so resembles Opposer's INDEPENDENT Marks previously used in the United States and not abandoned, as to be likely to cause confusion, to cause mistake, or to deceive, within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

19. Applicant's mark is substantially similar to Opposer's INDEPENDENT Marks. As such, Applicant's mark, and the use thereof, is likely to deceive the public into believing that Applicant's clothing items originate from Opposer or are otherwise authorized by, licensed by, sponsored by, or somehow affiliated with Opposer. In view of Opposer's prior rights in Opposer's INDEPENDENT Marks, Applicant is not entitled to registration of its mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

20. Opposer will be damaged by registration of Applicant's mark, as registration will support and assist Applicant in continuing its misleading use of Applicant's designation, will give the color of exclusive statutory right to Applicant in violation and derogation of the prior superior rights of Opposer, and will impair the distinctiveness of Opposer's INDEPENDENT Marks.

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 85-683,890 be rejected and stricken, that no registration thereon issue in favor of Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer submits herewith payment in the amount of \$300.00 to cover the opposition fee against the Application. Please charge the account of Hoge, Fenton, Jones and Appel, Inc., for any additional fees that may be required, or credit any overpayment to this account.

DATED: January 22, 2013

Respectfully submitted,

HOGUE, FENTON, JONES & APPEL, INC.

By Stephanie O. Sparks

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San Jose, California 95113
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Attorneys for Opposer NHS, Inc.

CERTIFICATE OF SERVICE

I, Martha R. Lopez, of HOGE FENTON JONES & APPEL, INC., attorneys for Opposer, hereby certify that a true and complete copy of the foregoing:

NOTICE OF OPPOSITION

was served via First-Class U.S. Mail, postage prepaid, on January 22, 2013, upon Applicant's counsel:

ROBERT T.S. LATTA
HAHN LOESER & PARKS LLP
65 E STATE ST STE 1400
COLUMBUS, OHIO 43215-4209

Executed on January 22, 2013, at San Jose, California.


Martha R. Lopez