

ESTTA Tracking number: **ESTTA537888**

Filing date: **05/15/2013**

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	Climbing Rock Enterprises, Inc.
Granted to Date of previous extension	08/07/2013
Address	1195 Tallevast Rd Sarasota, FL 34243 UNITED STATES
Attorney information	Matthew H. Swyers, Esq. The Trademark Company 344 Maple Avenue West, Suite 151 Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com Phone:800-906-8626 x100

**Applicant Information**

Application No	85754863	Publication date	04/09/2013
Opposition Filing Date	05/15/2013	Opposition Period Ends	08/07/2013
Applicant	Fathead, LLC 1046 Woodward Avenue Legal Team Detroit, MI 48226 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 016. All goods and services in the class are opposed, namely: Posters; adhesive plastic film with removable paper for mounting images for decorative purposes; high density foam core poster board featuring portable image cutouts
--

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FOR REAL		
Goods/Services	life-size wall graphics, custom life-size cardboard cutouts, large format printing services, removable graphics for miscellaneous use		

	(i.e. laptop skins, skins, signage), and business graphic design services, mainly for the purpose of creating wall graphics or cardboard cutouts for business trade-shows and events.
--	---

Attachments	notice of opposition.pdf(26899 bytes )
-------------	--

### **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	/Matthew H. Swyers/
Name	Matthew H. Swyers, Esq.
Date	05/15/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the Matter of Serial No. 85/754,863, for the trademark application  
FOR REAL,

Climbing Rock Enterprises, Inc.,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. _____
	:	
Fathead, LLC,	:	
	:	
Applicant.	:	

**NOTICE OF OPPOSITION**

COMES NOW Climbing Rock Enterprises, Inc., a Florida Corporation, with its principal place of business located at 1195 Tallevast Rd., Sarasota FL 34243 (hereinafter, “Opposer”), by counsel, The Trademark Company, states that it believes it will be damaged by the registration of the trademark FOR REAL as more fully set forth in Serial No. 85/754,863 as filed for by Fathead, LLC, a Delaware Limited Liability Company, with its principal place of business located at 1050 Woodward Ave. Detroit, MI 48226 (hereinafter “Applicant”) and, accordingly, hereby opposes the granting of said registration.

1. For many years, Climbing Rock Enterprises, Inc. (referred to as “Opposer”) has been, and now is engaged in the production and distribution of life-size wall graphics, custom life-size cardboard cutouts, large format printing services, removable graphics for miscellaneous use (i.e. laptop skins, skins, signage), and business graphic design services, mainly for the purpose of creating wall graphics or cardboard cutouts for business tradeshow and events (hereinafter “Opposer’s Goods”).

2. Opposer is the owner of the common law trademark FOR REAL used in connection with Opposer's goods in commerce since as early as June 30, 2010.

3. As a result of Opposer's longstanding use of Opposer's Mark and the high quality of goods, Opposer has established an excellent quality in identifying and distinguishing Opposer's goods.

4. On October 6, 2012, Applicant filed an application to register the trademark FOR REAL (hereinafter "Applicant's Mark) used in connection with "Posters; adhesive plastic film with removable paper for mounting images for decorative purposes; high density foam core poster board featuring portable image cutouts" in International Class 16. (hereinafter "Applicant's goods"). This application was assigned Application No. 85/754,863.

5. Upon information and belief, the Applicant's application was filed on an Intent-to-Use basis, and has yet to be used in commerce.

6. There is no issue of priority. Upon information and belief, Applicant acquired no rights in Applicant's Mark before Opposer acquired rights in Opposer's Mark.

7. Upon information and belief, Applicant's goods will be offered to the same consumers and at least through some of the same channels of trade as Opposer's goods. As applied to Applicant's goods, Applicant's Mark so resembles the Opposer's Mark that it is likely to cause confusion, or cause to mistake, or to deceive as to the source of the services.

8. Opposer has spent time and money and effort in in promoting its goods under its Mark, which are associated exclusively with Opposer and its goods. The goodwill of the business connected with the use of, and symbolized by, Opposer's Mark is an asset of incalculable value.

9. Upon information and belief, registration of Applicant's Mark will diminish and dilute the distinctive quality of Opposer's Mark. One viewing Applicant's Mark will associate the mark with Opposer's services, resulting in damage to Opposer.

10. Opposer will be damaged by Applicant's registration of Applicant's Mark for the services identified in US Serial No. 85/754,863 as a result of the aforementioned confusion, mistake, and deception.

11. By reason of the foregoing, Applicant is not entitled to registration of Applicant's Mark, Serial No. 85/754,863 in International Class 16.

WHEREFORE, Opposer respectfully requests that the Application, Serial No. 85/754,863 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer.

Respectfully submitted this 15<sup>th</sup> day of May, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/  
Matthew H. Swyers, Esq.  
344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
Tel. (800) 906-8626  
Facsimile (270) 477-4574  
mswyers@thetrademarkcompany.com  
Counsel for Opposer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the Matter of Serial No. 85/754,863, for the trademark application  
FOR REAL,

Climbing Rock Enterprises, Inc.,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. _____
	:	
Fathead, LLC,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 15<sup>th</sup> day of May, 2013 to be served, via first class mail, postage prepaid, upon:

PAUL JUSTIN  
FATHEAD, LLC  
LEGAL TEAM  
1050 WOODWARD AVE  
DETROIT, MICHIGAN 48226

/Matthew H. Swyers/  
Matthew H. Swyers