

ESTTA Tracking number: **ESTTA555228**

Filing date: **08/21/2013**

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	Varsity Spirit Corporation
Granted to Date of previous extension	08/28/2013
Address	6745 Lenox Center Court Suite 500 Memphis, TN 38115 UNITED STATES

Attorney information	Arlana S. Cohen Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES asc@cll.com, rje@cll.com, trademark@cll.com, sbi@cll.com, jaj@cll.com Phone:212-790-9200
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Applicant Information

Application No	85791996	Publication date	04/30/2013
Opposition Filing Date	08/21/2013	Opposition Period Ends	08/28/2013
Applicants	Cash-Mabry, Ronald 822 Hillside Ave Bethlehem, PA 18015 UNITED STATES Simpkins, Leroy 822 Hillside Ave Bethlehem, PA 18015 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Hooded sweatshirts; Jackets; Jeans; Pants; Shirts; Shorts; Sweaters; Sweatpants
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Grounds for Opposition

Other	see attached pleading
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Attachments	Varsity v. Cash-Mabry and Simpkins - NOO.pdf(294530 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	/Arlana S. Cohen/
Name	Arlana S. Cohen
Date	08/21/2013

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

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 VARSITY SPIRIT CORPORATION)
)
 Opposer,)
)
 v.) Opposition No. _____
)
 RONALD CASH-MABRY and)
 LEROY SIMPKINS)
)
 Applicants.)
 -----x

NOTICE OF OPPOSITION

In the matter of trademark application Serial No. 85/791,996, for the trademark VSM (VARSITY SMACKED MOVEMENT) filed November 30, 2012 and published for opposition in the Official Gazette of April 30, 2013, Varsity Spirit Corporation, a Tennessee corporation, having a business address at 6745 Lenox Center Court, Memphis, TN 38115, believes it will be damaged and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicants, Ronald Cash-Mabry and Leroy Simpkins, (“Applicants”), by the application herein opposed, seeks to register “VSM (VARSITY SMACKED MOVEMENT)” as a trademark for use with respect to “Hooded sweatshirts; Jackets; Jeans; Pants; Shirts; Shorts; Sweaters; Sweatpants” in Class 25” (hereinafter referred to as “Applicants’ Mark”), with an alleged date of first use of November 30, 2012.

2. Opposer, together with Varsity Spirit Fashions & Supplies, Inc. and Varsity Brands, Inc., all of whom are in direct privity with one another (hereinafter referred to individually and collectively as the “Varsity Companies”), is engaged in the business of, *inter*

alia, selling clothing products including, without limitation, apparel for men, women and children, using its trademark and trade name “Varsity” (“Opposers’ Trade Name”).

3. Opposer, itself or through its licensees, has used, since long before Applicant’s alleged date of first use, and continues to use in commerce, Opposer’s Trade Name and the mark “VARSITY” for, *inter alia*, various clothing products and related accessories. Opposer has long sold its VARSITY clothing products online at “www.varsity.com” and through catalogs (“Opposer’s Common Law Rights”).

4. Opposer, through the Varsity Companies, is the owner of the following trademark and service mark registrations in the United States without limitation:

MARK	REG. NO.	REG. DATE	GOODS/SERVICES
VARSITY	2,082,554	7/22/97	Mens underwear; T-shirts, briefs; athletic shirts; undergarments; pajamas; robes; nightshirts; loungewear and boxer shorts sold through retail outlets.
VARSITY	2,526,564	1/08/02	Athletic shirts, athletic shorts, athletic tops, body suits, dresses, hats, jackets, jerseys, jumpers, leotards, pants, skirts, sweaters, sweat pants, sweat shirts, T-shirts, unitards, and warm-up suits sold to colleges, high schools and school-affiliated teams, clubs, groups and individuals by direct sales through sales representatives or employees of applicant, through mail order catalog services or through campus book stores or other retail outlets located at colleges and high schools; uniforms for cheerleaders, drill teams, pompon squads, pep squads, mascots, bands and booster clubs
JUNIOR VARSITY SPIRIT FASHIONS	1,575,830	1/02/90	Mail order catalog services in the field of cheerleader uniforms for younger age groups
VARSITY SPIRIT FASHIONS	1,680,452	3/24/92	Men’s and women’s cheerleader and dance team clothing; namely, skirts, sweats, sweaters, tops, pants, shoes
VARSITY SPIRIT	1,796,645	10/05/93	Conducting cheerleading, dance teams and

MARK	REG. NO.	REG. DATE	GOODS/SERVICES
CORPORATION			gymnastics training camps, clinics, seminars, workshops, competitions, championships and tournaments; performing cheerleading at bowl games; private gymnastics, cheerleader and dance team coaching; clothing; namely, cheerleader and dance team uniforms with pom-poms, gloves, vests, tops, shirts, skirts, jumpers, warm-up suits, pants, sweaters, shoes, socks, sweatshirts, T-shirts, shorts, sweat pants, tights, leotards, unitards, dresses and jackets
VARSIY SPORT	2,293,083	11/16/99	Athletic wear, namely, sports shirts, sports shorts, gloves, vests, tops, skirts, jumpers, warm-up suits, pants, sweaters, athletic shoes, sweatshirts, T-shirts, athletic shorts, sweat-pants, tights, leotards, unitards, dresses, and jackets
V VARSITY	2,357,303	6/13/00	Cheerleader uniforms, drill team uniforms and pompon squad uniforms
VARSIY	1,812,198	12/21/93	Men's and women's sleepwear, underwear, night shirts, loungewear and boxer shorts
VARSIY (Block letters)	3,928,856	3/08/11	Footwear, namely, cheerleader shoes, dance shoes, slippers, flip-flops and sandals; athletic shoes
VARSIY (Stylized)	879,543	10/28/69	Pajama and robe sets
VARSIY	3,696,209	10/13/09	Pre-recorded videotapes and compact discs containing music and/or movies; camps, namely, children's recreational camps, cheerleading camps, and soccer camps
VARSIY	3,436,493	5/27/08	Online retail store services featuring, pre-recorded videotapes and compact discs, school supplies, jewelry, home furnishing; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network; travel agency services, namely, making reservations; providing an online database in the field of topics of interest to

MARK	REG. NO.	REG. DATE	GOODS/SERVICES
			teenage boys and girls, namely fashion.
VARSIY.COM	3,689,696	9/29/09	Camps, namely, children's recreational camps, cheerleading camps, and soccer camps
VARSIY.COM	3,418,764	4/29/08	Online retail store services featuring pre-recorded videotapes and compact discs, school supplies, jewelry and home furnishings; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network; travel agency services, namely, making reservations; and providing an online database in the field of topics of interest to teenage boys and girls, namely, fashion.
VARSIY TV	3,920,302	11/24/08	An interactive website featuring entertainment information and cheerleading videos for students and teens; online social networking services for students and teen
VARSIY WIRED	3,371,683	1/22/08	Entertainment services, namely, providing a website featuring audio and video presentations featuring cheerleading and dance, cheerleading and dance competitions, audio clips, video clips, photographs and fashion
VARSIY CHOREOGRAPHY	3,320,692	10/23/07	Providing educational and instructional courses in the fields of spirit, cheer and dance delivered both online and through the classroom
VARSIY UNIVERSITY	3,797,635	06/01/10	Providing educational and instructional courses in the fields of cheerleading routines, stunts, sequences, skills and drills, choreography and dance technique, and safety information to participants in the spirit, cheer, and dance team industries delivered both online and through the classroom.

5. Opposer's Common Law Rights, trademark/service mark applications and trademark/service mark registrations are referred to hereinafter as the "VARSITY Family of Marks."

6. By virtue of extensive use in commerce of the mark VARSITY in the United States, the relevant trade and public have come to associate goods and services bearing their VARSITY Family of Marks with Opposer.

7. Opposer's first use and registration of its VARSITY Family of Marks in connection with its goods and services long predates Applicant's filing date of its application to register Applicants' Mark herein opposed.

8. The goods of Applicants and the goods of Opposer are identical and/or substantially similar and related.

9. Applicants' Mark uses "VARSITY" as the dominant portion of Applicant's Mark and is identical to Opposer's VARSITY Family of Marks.

10. Applicants' Mark, as applied to the goods set forth in the application herein opposed, so resembles Opposer's VARSITY Family of Marks as applied to its goods and services that it is likely to cause confusion, mistake and/or deception.

11. If Applicants are permitted to register Applicants' Mark for the goods set forth in the application herein opposed, confusion of the relevant trade and public resulting in damage and injury to Opposer would be likely to result. Any persons familiar with the goods and services of Opposer would be likely to assume that Applicants' goods are sponsored by or produced under license from or otherwise affiliated with Opposer. Furthermore, any objection to or fault found with Applicants' goods provided under its mark would necessarily reflect on and

seriously injure the reputation that Opposer has established for its goods sold and services offered under the VARSITY Family of Marks.

12. If Applicants were granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that registration of the mark of application No. 85/604,393 be refused and that this opposition be sustained.

The filing fee of \$300.00 is enclosed herewith and any additional fees or deficiencies deemed to be due and owing in connection with this opposition may be charged to Deposit Account No. 03-3415 and any overpayment may be credited thereto.

Dated: August 21, 2013
New York, New York

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By Arlana S. Cohen / 
Arlana S. Cohen
Robert J. English

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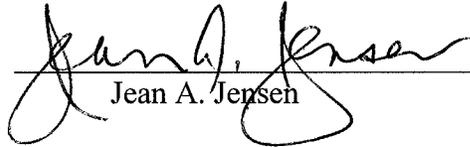
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 21, 2013 a true and correct copy of the Notice of Opposition was served by United States Mail, First Class, by depositing it, postage prepaid, in a depository under the exclusive custody and control of the United States Postal Service, addressed to:

Ronald Cash-Mabry
822 Hillside Avenue
Bethlehem, PA 18015-3416

and

Leroy Simpkins
822 Hillside Avenue
Bethlehem, PA 18015-3416



Jean A. Jensen