

ESTTA Tracking number: **ESTTA570634**

Filing date: **11/13/2013**

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	Sabertooth Motorcycles, LLC
Granted to Date of previous extension	11/13/2013
Address	5 Sachem Rd. Needham, MA 02494 UNITED STATES

Attorney information	Dean C. Eyler Gray Plant Mooty Mooty & Bennett PO Box 2906 Minneapolis, MN 55402 UNITED STATES dean.eyler@gpmlaw.com, ashley.ewald@gpmlaw.com, trademark@gpmlaw.com
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**Applicant Information**

Application No	85979276	Publication date	07/16/2013
Opposition Filing Date	11/13/2013	Opposition Period Ends	11/13/2013
Applicant	Arctic Cat Inc. 601 Brooks Ave. S Thief River Falls, MN 56701 MONGOLIA		

**Goods/Services Affected by Opposition**

Class 025. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: clothing, namely, shirts, sweatshirts, T-shirts, jerseys, jackets, headwear, pants, underwear, gloves, caps, and hats

**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.	3490382	Application Date	12/27/2005
Registration Date	08/19/2008	Foreign Priority Date	NONE
Word Mark	WILDCAT		

Design Mark	<h1>Wildcat</h1>
Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2005/12/01 First Use In Commerce: 2006/02/01 motorcycles

U.S. Registration No.	3554107	Application Date	06/24/2008
Registration Date	12/30/2008	Foreign Priority Date	NONE
Word Mark	SABERTOOTH MIDNIGHT WILDCAT		
Design Mark	<h1>Sabertooth Midnight WildCat</h1>		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2005/12/01 First Use In Commerce: 2006/02/01 Motorcycles		

U.S. Registration No.	3580465	Application Date	09/05/2008
Registration Date	02/24/2009	Foreign Priority Date	NONE
Word Mark	WILDCAT X		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2005/12/01 First Use In Commerce: 2006/02/01 Motorcycles

U.S. Registration No.	3561054	Application Date	09/11/2008
Registration Date	01/13/2009	Foreign Priority Date	NONE
Word Mark	WILDCAT 427		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2005/12/01 First Use In Commerce: 2006/02/01 Motorcycles		

U.S. Registration No.	3950962	Application Date	09/23/2010
Registration Date	04/26/2011	Foreign Priority Date	NONE
Word Mark	WILDCAT 427X		

Design Mark	<b>WildCat 427X</b>
Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2006/02/01 First Use In Commerce: 2006/03/01 Motorcycles

U.S. Registration No.	4209078	Application Date	11/28/2011
Registration Date	09/18/2012	Foreign Priority Date	NONE
Word Mark	WILDCAT		
Design Mark	<b>WildCat</b>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/12/15 First Use In Commerce: 2006/03/01 Beer; Bottled water; Energy drinks; Flavored bottled water; Powders used in the preparation of isotonic sports drinks and sports beverages; Soft drinks; Soft drinks, namely, sodas; Sports drinks; Sports drinks, namely, energy drinks		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	WILDCAT		
Goods/Services	clothing, namely, t-shirts, sweatshirts, polo shirts, jackets and hats		

Attachments	78780790#TMSN.jpeg( bytes ) 77506056#TMSN.jpeg( bytes ) 77563901#TMSN.jpeg( bytes ) 77521006#TMSN.jpeg( bytes ) 85136146#TMSN.jpeg( bytes ) 85481502#TMSN.jpeg( 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	/Dean C Eyler/ smh
Name	Dean C. Eyler
Date	11/13/2013

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

Sabertooth Motorcycles, LLC,	)	Opposition No. _____
	)	Application S/N: 85/979,276
Opposer,	)	
	)	
vs.	)	Mark: WILDCAT
	)	
	)	
Arctic Cat, Inc.	)	Published: July 16, 2013
	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

In the matter of pending application Serial No. 85/979,276, filed on April 29, 2011, by Arctic Cat, Inc. (“Applicant”) for WILDCAT in International Class 25, published in the *Official Gazette* of July 16, 2013, Opposer Sabertooth Motorcycles, LLC (“Sabertooth”) believes that it will be damaged, within the meaning of Section 13 of the Lanham Trademark Act, 15 U.S.C. §1063, by the registration of the mark and hereby opposes the above application.

The grounds for opposition are as follows:

1. Opposer Sabertooth is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business at 5 Sachem Road, Needham, Massachusetts, and a production facility at 15804 Central Avenue, NE, Ham Lake, Minnesota.

2. Since at least as early as 2006, long before Applicant filed its application, Opposer and its predecessors have used the mark WILDCAT in commerce in connection

with clothing, namely, t-shirts, sweatshirts, polo shirts, jackets and hats, and power sports vehicles, namely, motorcycles, throughout the United States.

3. Sabertooth's mark WILDCAT® is the subject of the following registrations in the United States Patent and Trademark Office:

<b>Mark</b>	<b>Goods/Services</b>	<b>First Use in Commerce</b>	<b>Reg. No.</b>	<b>Reg. Date</b>
WILDCAT	Motorcycles	2/1/2006	3,490,382	August 19, 2008
SABERTOOTH MIDNIGHT WILDCAT	Motorcycles	2/1/2006	3,554,107	December 30, 2008
WILDCAT X	Motorcycles	2/1/2006	3,580,465	February 24, 2009
WILDCAT 427	Motorcycles	2/1/2006	3,561,054	January 13, 2009
WILDCAT 427X	Motorcycles	3/1/2006	3,950,962	April 26, 2011
WILDCAT	Beer; Bottled water; Energy drinks; Flavored bottled water; Powders used in the preparation of isotonic sports drinks and sports beverages; Soft drinks; Soft drinks, namely, sodas; Sports drinks; Sports drinks, namely, energy drinks	3/1/2006	4,209,078	September 18, 2012

4. The USPTO has previously denied Applicant's application to register WILDCAT for use with "Side-by-side recreational off-highway vehicles (ROVs), and structural parts therefore; accessories for side-by-side recreational off-highway vehicles (ROVs), namely, bimini tops, nets, front and rear panels, doors, roofs, windshields, front

and rear bumpers, wheels, arm guards, rock sliders, and light bars” based upon Opposer’s previous registrations. *See* App. Serial No. 85308858.

5. Opposer has sold clothing, namely, t-shirts, sweatshirts, polo shirts, jackets and hats, bearing its WILDCAT mark throughout the United States continuously, without abandonment, since at least 2006.

6. The WILDCAT mark is inherently distinctive for clothing and for motorcycles.

7. Opposer’s mark WILDCAT has become associated in the minds of the consuming public with clothing associated with the powersports industry emanating from Opposer. By reason of Opposer’s continuous use of the WILDCAT mark on clothing since at least 2006, the mark has become distinctive, and signifies Opposer as the source of its clothing.

8. Opposer has extensive, non-registered statutory and common law rights in the WILDCAT mark for use with clothing. These rights substantially pre-date any rights that might be claimed by Applicant.

9. The goods and services recited in Applicant’s application are “clothing, namely, shirts, sweatshirts, T-shirts, jerseys, jackets, headwear, pants, underwear, gloves, caps, and hats.”

10. The goods recited in Applicant’s application are closely related to the goods promoted and sold by Opposer under its mark WILDCAT.

11. Upon information and belief, Applicant sells or intends to sell its goods to the same class of consumers to whom Opposer sells its goods.

12. Registration and use of the applied for mark by Applicant is likely to cause confusion, or to causer mistake, or to deceive members of the consuming public as to the source of goods within the meaning of Section 2(d) of the Lanham Trademark Act, 15 U.S.C. §1052(d).

13. Applicant has no license, consent or permission from Opposer to use or register the WILDCAT mark.

14. Opposer used the WILDCAT mark on and in connection with clothing prior to Applicant's first use of the WILDCAT mark.

15. By reason of all of the foregoing, Opposer Sabertooth will be damaged by the registration of Applicant's purported mark.

WHEREFORE, Opposer Sabertooth Motorcycles, LLC, by its undersigned attorneys, respectfully requests that its Notice of Opposition be sustained and that registration of WILDCAT, Application Serial No. 85/979,276, be refused.

Respectfully submitted,

Dated: November 13, 2013

GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.

By /s/ Ashley M. Bennett Ewald

Dean C. Eyler

Ashley M. Bennett Ewald

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Attorneys for Opposer

Sabertooth Motorcycles, LLC

CERTIFICATE OF SERVICE

I certify that I arranged for a copy of the foregoing Notice of Opposition to be served upon Applicant and Applicant's counsel by depositing copies thereof in the U.S. Mail, first-class postage prepaid, at the following addresses:

Darren J Jones  
Lowe Graham Jones  
701 Fifth Avenue  
Suite 4800  
Seattle, Washington 98104

Arctic Cat Inc.  
601 Brooks Ave. S  
Thief River Falls, Minnesota 56701

Lora Friedemann  
Laura L. Myers  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425

on the 13th of November 2013.

/s/ Ashley M. Bennett Ewald  
Ashley M. Bennett Ewald