

ESTTA Tracking number: **ESTTA574327**

Filing date: **12/03/2013**

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	Platypus Wear, Inc.
Granted to Date of previous extension	12/04/2013
Address	2411 Second Avenue San Diego, CA 92101 UNITED STATES
Correspondence information	Karen B. King, Esq. 2411 Second Avenue San Diego, CA 92101 UNITED STATES kking@badboy.com, sneuman@badboy.com Phone:(619) 525-2270

Applicant Information

Application No	85881045	Publication date	08/06/2013
Opposition Filing Date	12/03/2013	Opposition Period Ends	12/04/2013
Applicants	Danielle Gruber 1551 Oak Lawn Ave #142 Dallas, TX 75207 USX George Bradley William Vonada 1551 Oak Lawn Ave #142 Dallas, TX 75207 USX		

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: Hooded sweatshirts; Jackets; Pants; Short-sleeved or long-sleeved t-shirts; Shorts; Sweaters; Sweatshirts; T-shirts; Tank tops

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.	2045529	Application Date	09/18/1995
Registration Date	03/18/1997	Foreign Priority Date	NONE

Word Mark	BAD BOY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1982/01/00 First Use In Commerce: 1983/01/00 men's [women's] and children's clothing, namely shirts, knit tops, woven tops, pants, shorts, [volleyball shorts,] hats, visors, swim trunks, T-shirts, tanktops, jackets, sweatshirts, sweatpants,belts, headbands, wristbands [, vests,]and shoes

U.S. Registration No.	2060484	Application Date	09/18/1995
Registration Date	05/13/1997	Foreign Priority Date	NONE

Word Mark	BAD BOY
Design Mark	
Description of Mark	The mark consists, in part, of a face between the words "BAD" and "BOY" with the "D" in the "BAD" and "B" in "BOY" forming the eyes and the eyebrows of the left and right eyes, respectively, and the nose and mouth directly below the eyes.
Goods/Services	Class 025. First use: First Use: 1991/12/18 First Use In Commerce: 1991/12/18 [men's, women's and children's clothing, namely, shirts, knit tops, woven tops, pants, shorts, volleyball shorts,] hats [, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, vests, and shoes]

U.S. Registration No.	3667065	Application Date	04/28/2000
Registration Date	08/11/2009	Foreign Priority Date	NONE

Word Mark	BAD BOY
Design Mark	

Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2008/11/20 First Use In Commerce: 2008/11/20 boxing gloves; fight gloves used for fighting, mixed martial arts and other combat sports; focus mitts used for training boxers, fighters, mixed martial artists and other combat athletes; training gloves used for training boxers, fighters, mixed martial artists and other combat athletes; elbow pads, knee pads, shin guards, wrist guards, arm guards and mouthguards all for athletic use

U.S. Registration No.	3865270	Application Date	03/30/2009
Registration Date	10/19/2010	Foreign Priority Date	NONE

Word Mark	BAD BOY
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 All-purpose athletic bags; Back packs

U.S. Registration No.	3746515	Application Date	06/30/2009
Registration Date	02/09/2010	Foreign Priority Date	NONE

Word Mark	BAD BOY
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 035. First use: First Use: 1993/03/20 First Use In Commerce: 1995/01/17 Promotional services, namely, promoting and sponsoring athletes and promoting and sponsoring athletic and sporting competitions; publicity agents
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U.S. Registration No.	3702967	Application Date	07/24/2008
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 Decals; stickers		

U.S. Registration No.	4198846	Application Date	08/31/2009
Registration Date	08/28/2012	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2012/04/12 First Use In Commerce: 2012/04/12 Downloadable audio and video recordingsfeaturing documentaries of athletes, instruction in relation to fighting and mixed martial arts, interviews with athletic trainers and coaches, and interviews with athletes and other personalities		

Attachments	74730491#TMSN.gif(bytes) 76037086#TMSN.gif(bytes) 77702423#TMSN.jpeg(bytes) 77770997#TMSN.jpeg(bytes) 77530632#TMSN.jpeg(bytes) 77816252#TMSN.jpeg(bytes) Notice of Opposition.pdf(342849 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	/Karen B. King, Esq./
Name	Karen B. King, Esq.
Date	12/03/2013

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

In re application of:

DANIELLE GRUBER and GEORGE BRADLEY
WILLIAM VONADA

For: **BAD BOYS PRAY**

Serial No.: 85/881,045

Filed: March 20, 2013

Published: August 6, 2013

Opposition No. _____

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir or Madam:

Platypus Wear, Inc. dba Bad Boy Brands (“Opposer” or “Bad Boy Brands”) believes it will be damaged by the registration of the BAD BOYS PRAY mark covered by Application Serial No. 85/881,045, filed on March 20, 2012 by Danielle Gruber and George Bradley William Vonada (hereinafter “Applicants’ mark”), and, for that reason, opposes such registration.

Opposer Bad Boy Brands is a Nevada corporation with its principal place of business at 2411 Second Avenue, San Diego, California 92101. Applicants are, according to the application, individuals with an address at 1551 Oak Lawn Avenue, # 142, Dallas, TX 75207. Bad Boy Brands timely filed and was granted an extension of time to oppose Applicants’ mark until Wednesday, December 4, 2013. Accordingly, this Notice of Opposition is timely filed. As grounds of opposition, Bad Boy Brands alleges as follows:

1. As illustrated in the Official Gazette dated August 6, 2013, Applicants seek to register the BAD BOYS PRAY mark that is the subject of Application Serial No. 85/881,045 in International Class 25.

2. Opposer Bad Boy Brands is the owner of the distinctive trademarks BAD BOY and BAD GIRL and is the owner of the following registrations issued on the Principal Register, among others, which are valid and subsisting and in full force and effect. Some have become incontestable pursuant to 15 U.S.C. § 1065.

Trademark	Reg. No.	Goods	Reg. Date
BAD BOY	2,045,529	Class 25: Men's, children's clothing, namely shirts, knit tops, woven tops, pants, shorts, hats, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, and shoes	Mar. 18, 1997
	2,060,484	Class 25: Hats	May 13, 1997
BAD BOY	3,667,065	Class 28: Boxing gloves; fight gloves used for fighting, mixed martial arts and other combat sports; focus mitts used for training boxers, fighters, mixed martial artists and other combat athletes; training gloves used for training boxers, fighters, mixed martial artists and other combat athletes; elbow pads, knee pads, shin guards, wrist guards, arm guards and mouth guards all for athletic use	Aug. 11, 2009
BAD BOY	3,865,270	Class 18: All-purpose athletic bags; back packs	Oct. 19, 2010
BAD BOY	3,746,515	Class 35: Promotional services, namely, promoting and sponsoring athletes and promoting and sponsoring athletic and sporting competitions; publicity agents	February 9, 2010
BAD BOY	3,702,967	Class 16: Decals; stickers	Oct. 27, 2009
BAD BOY	4,198,846	Class 9: Downloadable audio and video recordings featuring documentaries of athletes, instruction in relation to fighting and mixed martial arts, interviews with athletic trainers and coaches, and	Aug. 28, 2012

True and correct copies of the registration certificates for the foregoing registrations are attached hereto as Exhibit A.

3. Bad Boy Brands has used the registered marks as common law trademarks on a variety of goods and services, including clothing, entertainment services and websites, among others. Opposer Bad Boy Brands' federal and common law rights in and to the family of marks containing the words "bad boy" are collectively referred to as the "BAD BOY Marks."

4. Since at least the early to mid-1980s, Opposer Bad Boy Brands' BAD BOY Marks have been used continually on a variety of goods and services including, at various times, clothing, swimsuits, hats, belts, accessories, footwear, sporting goods accessories, and other products and services, and in other ways customary in the trade. This pattern of use reflects a high likelihood of expansion of the BAD BOY Marks on related and complementary goods and services.

5. No issue of priority exists with respect to Opposer Bad Boy Brands' BAD BOY Marks and Applicants' mark. Bad Boy Brands, its related companies, predecessors and/or licensees' dates of adoption and first use of Bad Boy Brands' BAD BOY Marks long precede the date of Applicants' first use, if any.

6. Since adoption and first use of Opposer Bad Boy Brands' BAD BOY Marks, Bad Boy Brands, its related companies, predecessors and/or licensees have extensively advertised and promoted their products and services, making clear and prominent use of Bad Boy Brands' BAD BOY Marks to identify and distinguish their products and services from those of others. As a result of such advertising and promotion, Bad Boy Brands, its related companies, predecessors and/or licensees have enjoyed widespread sales of the products and services offered and sold under Bad Boy Brands' BAD BOY Marks, such that Bad Boy Brands' BAD BOY Marks are widely recognized as an indicator of source for their products and services, and represent assets of substantial goodwill and great value to Bad Boy Brands.

7. Registration of Applicants' mark will likely lead the public to conclude, incorrectly, that Applicants are or have been, and Applicants' goods displaying the mark are or have been, authorized, sponsored, or licensed by Opposer Bad Boy Brands. Issuance of any registration to Applicants for the mark at issue in the specified class is therefore contrary to the provisions of 15 U.S.C. § 1052(a) and will result in damage to Bad Boy Brands and the public.

8. Applicants' mark so resembles Bad Boy Brands' BAD BOY Marks and the goods identified in Applicants' application are so related to the goods and services that Bad Boy Brands, its related companies, predecessors and/or licensees, provide under its BAD BOY Marks as to be likely, when used in connection with Applicants' goods, to confuse, to deceive, or to cause consumers to mistake Applicants' goods for goods authorized by, sponsored by or otherwise associated with Bad Boy Brands.

9. Opposer Bad Boy Brands' BAD BOY Marks and Applicants' mark are identical or substantially similar and are so close to one another as to be likely to confuse, to cause mistake or to deceive the public as to the origin, affiliation, sponsorship or connection of Applicants' goods bearing Applicants' mark. Therefore, registration of Applicants' mark in the specified class is prohibited by 15 U.S.C. § 1052(d).

10. Because Applicants' mark is not associated with Opposer Bad Boy Brands and creates the same, or essentially the same, commercial impression as Bad Boy Brands' BAD BOY Marks, registration of Applicants' mark is likely to cause confusion, or to cause mistake or to deceive the public as to the source of Applicants' goods, to the harm and damage of Bad Boy Brands and the public. Therefore, registration of Applicants' mark in the specified classes is prohibited by 15 U.S.C. § 1052(d).

11. Registration of Applicants' mark in the specified class would constitute *prima facie* evidence of the validity of such registration, Applicants' ownership of the mark, and Applicants' exclusive right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b). Such registration would be a source of damage and injury to Opposer Bad Boy Brands and the public, and would be contrary to the principles of registration set out in 15 U.S.C. §§ 1051 *et seq.*

12. The goods with which Applicants are using and/or intend to use Applicants' mark fall within the current description of goods or the natural zone of expansion of the goods and services for which Opposer Bad Boy Brands already has obtained senior rights.

13. The products involved are highly-related, and appeal to the same class of purchasers. Also, these products will be advertised and sold in the same or similar markets and through the same or similar channels of trade.

14. The registration and use by Applicants of their mark will impair Opposer Bad Boy Brands' trademark rights and may result in a lack of designation or indication of origin and loss of distinctiveness or exclusivity of Opposer's BAD BOY Marks.

15. Opposer Bad Boy Brands will be damaged by the registration sought by Applicants within the meaning of 15 U.S.C. § 1063, because such registration would support and assist Applicants in the confusing and misleading use of the mark BAD BOY, and would give color of exclusive statutory right to Applicants in violation and derogation of the prior and superior rights of Bad Boy Brands.

WHEREFORE, Opposer Bad Boy Brands prays that this Opposition be sustained, and that registration to Applicants for the BAD BOYS PRAY mark covered in Application Serial No. 85/881,045 in International Class 25 be denied.

Opposer hereby appoints as its attorney Karen B. King, Esq., a member of the Bar of the State of California, with full power to prosecute this Opposition, transact all relevant business with the United States Patent and Trademark Office and the United States Courts, and receive all official communications, notices, pleadings and process regarding this matter.

Respectfully submitted,

Dated: December 3, 2013

/Karen B. King, Esq./
Karen B. King, Esq.
2411 Second Avenue
San Diego, CA 92101
Telephone: (619) 525-2270

Facsimile: (619) 525-2280
Email: kking@badboy.com
Attorney for Opposer
Platypus Wear, Inc. dba Bad Boy Brands

PROOF OF SERVICE

I hereby certify that a true and correct copy of the attached Notice of Opposition (Serial No. 85/881,045) was served on Applicants via first-class mail on December 3, 2013, postage prepaid, addressed to:

Danielle Gruber
1551 Oak Lawn Ave
#142
Dallas, TX 75207

George Bradley William Vonada
1551 Oak Lawn Ave
#142
Dallas, TX 75207

Dated: December 3, 2013

/Karen B. King, Esq./
Karen B. King, Esq.
2411 Second Avenue
San Diego, CA 92101
Telephone: (619) 525-2270
Facsimile: (619) 525-2280
Email: kking@badboy.com
Attorney for Opposer
Platypus Wear, Inc. dba Bad Boy Brands

**Exhibit A to Notice of Opposition
Serial No. 85/881,045**

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,045,529

United States Patent and Trademark Office

Registered Mar. 18, 1997

**TRADEMARK
PRINCIPAL REGISTER**

BAD BOY

**FLATYPUS WEAR, INC. (CALIFORNIA CORPORATION)
6100 AVENIDA ENCINAS, SUITE A
CARLSBAD, CA 92009**

FOR: MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY SHIRTS, KNIT TOPS, WOVEN TOPS, PANTS, SHORTS, VOLLEYBALL SHORTS, HATS, VISORS, SWIM TRUNKS, T-SHIRTS, TANK TOPS, JACKETS, SWEATSHIRTS, SWEATPANTS, BELTS,

**HEADBANDS, WRISTBANDS, VESTS, AND SHOES, IN CLASS 25 (U.S. CLS. 22 AND 39).
FIRST USE 1-0-1982; IN COMMERCE 1-0-1983.**

OWNER OF U.S. REG. NOS. 1,469,124, 1,564,707, AND 1,594,433.

SER. NO. 74-730,490, FILED 9-18-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,060,484

United States Patent and Trademark Office

Registered May 13, 1997

**TRADEMARK
PRINCIPAL REGISTER**



PLATYPUS WEAR, INC. (CALIFORNIA CORPORATION)
6100 AVENIDA ENCINAS, SUITE A
CARLSBAD, CA 92009

FOR: MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY, SHIRTS, KNIT TOPS, WOVEN TOPS, PANTS, SHORTS, VOLLEYBALL SHORTS, HATS, VISORS, SWIM TRUNKS, T-SHIRTS, TANK TOPS, JACKETS, SWEATSHIRTS, SWEATPANTS, BELTS, HEADBANDS, WRISTBANDS, VESTS, AND SHOES, IN CLASS 25 (U.S. CLS. 22 AND 39).
FIRST USE 12-18-1991; IN COMMERCE 12-18-1991.

OWNER OF U.S. REG. NOS. 1,469,124, 1,564,707, AND 1,594,433.

THE MARK CONSISTS, IN PART, OF A FACE BETWEEN THE WORDS "BAD" AND "BOY" WITH THE "D" IN THE "BAD" AND "B" IN "BOY" FORMING THE EYES AND THE EYEBROWS OF THE LEFT AND RIGHT EYES, RESPECTIVELY, AND THE NOSE AND MOUTH DIRECTLY BELOW THE EYES.

SER. NO. 74-730,491, FILED 9-18-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38, and 50

United States Patent and Trademark Office

Reg. No. 3,667,065

Registered Aug. 11, 2009

**TRADEMARK
PRINCIPAL REGISTER**

BAD BOY

PLATYPUS WEAR, INC. (NEVADA CORPORATION)
701 N. GREEN VALLEY PARKWAY, SUITE 200
HENDERSON, NV 89074

FOR: BOXING GLOVES; FIGHT GLOVES USED FOR FIGHTING, MIXED MARTIAL ARTS AND OTHER COMBAT SPORTS; FOCUS MITTS USED FOR TRAINING BOXERS, FIGHTERS, MIXED MARTIAL ARTISTS AND OTHER COMBAT ATHLETES; TRAINING GLOVES USED FOR TRAINING BOXERS, FIGHTERS, MIXED MARTIAL ARTISTS AND OTHER COMBAT ATHLETES; ELBOW PADS, KNEE PADS, SHIN GUARDS, WRIST GUARDS, ARM GUARDS AND MOUTH GUARDS ALL FOR

ATHLETIC USE, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 11-20-2008; IN COMMERCE 11-20-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,469,124, 2,152,763, AND OTHERS.

SN 76-037,086, FILED 4-28-2000.

LESLEY LAMOTHE, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

BAD BOY

Reg. No. 3,865,270

Registered Oct. 19, 2010

Int. Cl.: 18

TRADEMARK

PRINCIPAL REGISTER

PLATYPUS WEAR, INC (NEVADA CORPORATION)
701 NORTH GREEN VALLEY PARKWAY, SUITE 20
HENDERSON, NV 89074

FOR: ALL-PURPOSE ATHLETIC BAGS; BACK PACKS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 0-0-1995; IN COMMERCE 0-0-1995.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,469,124, 2,045,529, AND 2,060,484.

SN 77-702,423, FILED 3-30-2009.

DAWN FELDMAN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

BAD BOY

Reg. No. 3,746,515 PLATYPUS WEAR, INC. (NEVADA CORPORATION)
Registered Feb. 9, 2010 701 NORTH GREEN VALLEY PARKWAY, STE. 200
HENDERSON, NV 89074

Int. Cl.: 35 FOR: PROMOTIONAL SERVICES, NAMELY, PROMOTING AND SPONSORING ATHLETES
AND PROMOTING AND SPONSORING ATHLETIC AND SPORTING COMPETITIONS;
PUBLICITY AGENTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SERVICE MARK
PRINCIPAL REGISTER FIRST USE 3-20-1993; IN COMMERCE 1-17-1995.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,469,124, 2,045,529, AND 2,060,484.

SER. NO. 77-770,997, FILED 6-30-2009.

ZACHARY BELLO, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

BAD BOY

Reg. No. 3,702,967 PLATYPUS WEAR, INC. (NEVADA CORPORATION)
Registered Oct. 27, 2009 701 NORTH GREEN VALLEY PARKWAY, STE 200
HENDERSON, NV 89074

Int. Cl.: 16 FOR: DECALS; STICKERS, IN CLASS 16 (U.S. CLS 2, 5, 22, 23, 29, 37, 38 AND 50).

TRADEMARK FIRST USE 0-0-1989; IN COMMERCE 0-0-1989.
PRINCIPAL REGISTER THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS 2,045,529 AND 2,060,484.

SN 77-530,632, FILED 7-24-2008.

CYNTHIA SLOAN, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

BAD BOY

Reg. No. 4,198,846

Registered Aug. 28, 2012

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

PLATYPUS WEAR, INC. (NEVADA CORPORATION)
2411 SECOND AVENUE
SAN DIEGO, CA 92101

FOR: DOWNLOADABLE AUDIO AND VIDEO RECORDINGS FEATURING DOCUMENTARIES OF ATHLETES, INSTRUCTION IN RELATION TO FIGHTING AND MIXED MARTIAL ARTS, INTERVIEWS WITH ATHLETIC TRAINERS AND COACHES, AND INTERVIEWS WITH ATHLETES AND OTHER PERSONALITIES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-12-2012; IN COMMERCE 4-12-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,469,124, 2,060,484, AND OTHERS.

SN 77-816,252, FILED 8-31-2009.

ANGELA DUONG, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office