

ESTTA Tracking number: **ESTTA580703**

Filing date: **01/08/2014**

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	Spy Optic Inc.
Granted to Date of previous extension	01/15/2014
Address	2070 Las Palmas Drive Carlsbad, CA 92011 UNITED STATES
Correspondence information	Kit M. Stetina Stetina Brunda Garred & Brucker 75 Enterprise, Suite 250 Aliso Viejo, CA 92656 UNITED STATES opposition@stetinalaw.com

Applicant Information

Application No	77314876	Publication date	09/17/2013
Opposition Filing Date	01/08/2014	Opposition Period Ends	01/15/2014
Applicant	SPIN MASTER LTD. 450 FRONT STREET WEST TORONTO, ONTARIO, CAX M5V 1B6 CAX		

Goods/Services Affected by Opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bicycle speedometers; compact discs and DVDs featuring spy adventures; computergame cartridges, computer game cassettes, computer game discs, computer game joysticks, computer game programs, computer game software; video game cartridges, video game cassettes, video game discs, video game joysticks, video game programs, video game software; interactive gamecartridges, interactive game cassettes, interactive game discs, interactive game joysticks, interactive game programs, interactive game software; decorative magnets; DVD players; electronic game software for cellular telephones; electronicgame software for wireless devices; electronic game software for handheld electronic devices</p>
<p>Class 012. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bicycles; bicycle accessories, namely, bicycle bells, bicycle handlebar grips, bicycle horns, bicycle kickstands, bicycle pedals, bicycle pumps, bicycle saddlecovers, bicycle water bottle cages, fitted bicycle covers; go-carts; non-motorized scooters; tricycles; wagons</p>
<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, baseball caps; coats; jackets; fleece pullovers; fleece shorts; jogging suits; hooded sweatshirts; sweatpants;</p>

sweatshirts; t-shirts; shirts;shorts; gloves; hats; head sweatbands; headbands; wristbands; Halloween costumes and masks sold in connection therewith; pajamas; sleepwear; socks; underwear; shoes; sneakers

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.	1981513	Application Date	04/07/1994
Registration Date	06/18/1996	Foreign Priority Date	NONE
Word Mark	SPY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1994/09/00 First Use In Commerce: 1995/01/00 glasses and sunglasses		

U.S. Registration No.	1989431	Application Date	04/07/1994
Registration Date	07/30/1996	Foreign Priority Date	NONE
Word Mark	EYESPY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1985/01/00 First Use In Commerce: 1985/01/00 eyeglasses, sunglasses, eyeglass cords and eyeglass cases		

U.S. Registration No.	3700605	Application Date	05/07/2002
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	SPY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2001/05/30 First Use In Commerce: 2001/05/30 BAGS, NAMELY, BACKPACKS AND SPORTS BAGS		

U.S. Registration No.	3750166	Application Date	10/31/2006
Registration Date	02/16/2010	Foreign Priority Date	NONE
Word Mark	SPY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/11/16 First Use In Commerce: 2006/11/16 Retail store services and on-line retail store services featuring sunglasses, sports goggles, and wearing apparel		

U.S. Registration No.	3218701	Application Date	02/02/2005
Registration Date	03/13/2007	Foreign Priority Date	NONE
Word Mark	SPYOPTIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/07/00 First Use In Commerce: 2004/07/00 WEARING APPAREL NAMELY T-SHIRTS, SHIRTS, SWEATSHIRTS, PANTS, SHORTS, JACKETS, HATS, VISORS, CAPS, BELTS AND SHOES		

U.S. Registration No.	3648121	Application Date	06/04/2007
Registration Date	06/30/2009	Foreign Priority Date	NONE
Word Mark	SPYOPTIC		

Design Mark	SPYOPTIC
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 SUNGLASSES AND SPORTS GOGGLES Class 018. First use: First Use: 2001/09/01 First Use In Commerce: 2001/09/01 BAGS, NAMELY, BACKPACKS AND SPORTS BAGS

Attachments	76404043#TMSN.gif(bytes) 77033245#TMSN.jpeg(bytes) 78558706#TMSN.jpeg(bytes) 77197062#TMSN.jpeg(bytes) [01 08 14] 443M.NoticeOfOpposition.pdf(226169 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	/Kit M. Stetina/
Name	Kit M. Stetina
Date	01/08/2014

Case: SPYNO-443M
Trademark Application

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 77/314,876

Spy Optic Inc.,)	Opposition No.:
)	
Opposer)	
)	
vs.)	
)	
Spin Master, Ltd.,)	
)	
Applicant)	

NOTICE OF OPPOSITION

In the matter of the application of Spin Master, Ltd. of Toronto, Ontario, Canada (hereinafter "Applicant") for registration of the trademark SPY GEAR (PLUS DESIGN), Application Serial No. 77/314,876, published in the Official Gazette of September 17, 2013, at TM 5, Spy Optic Inc., a California corporation, with offices at 2070 Las Palmas Drive, Carlsbad, California 92011 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 77/314,876, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the extensive development, advertising, and marketing of among other things, sunglasses, sunglass products, wearing apparel, bags and sporting goods as well as retail store services. In connection therewith, Opposer has used, or filed federal applications with an intent to

use, in interstate commerce, the marks SPY, EYESPY and SPYOPTIC (hereinafter the "SPY Trademarks"), for the aforementioned goods since long prior to Applicant's filing date of Application Serial No. 77/314,876 for the mark SPY GEAR (AND DESIGN).

2. Since at least as early as the dates set forth in the attached registrations, Opposer has made use of its SPY Trademarks throughout the United States in interstate commerce. Since adoption of its SPY Trademarks, Opposer has continuously used such marks in connection with the manufacture and sale of its goods and services throughout the United States in interstate commerce.

3. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its products, and has created valuable goodwill among the purchasing public under its SPY Trademarks.

4. As a result of the continuous and extensive use of the SPY Trademarks by Opposer, such marks have become and continue to function as a valuable business and marketing asset of Opposer, and serves to indicate to the trade and consuming public the products and services originating from Opposer and its authorized representative.

5. Opposer has obtained United States Trademark Registration No. 1,981,513, registered June 18, 1996, for the mark SPY for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit A**.

6. Opposer has obtained United States Trademark Registration No. 1,989,431, registered July 30, 1996, for the mark EYESPY for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit B**.

7. Opposer has obtained United States Trademark Registration No. 3,700,605, registered October 27, 2009, for the mark SPY for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit C**.

8. Opposer has obtained United States Trademark Registration No. 3,750,166, registered February 16, 2010, for the mark SPY for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit D**.

9. Opposer has obtained United States Trademark Registration No. 3,218,701, registered March 13, 2007, for the mark SPYOPTIC for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit E**.

10. Opposer has obtained United States Trademark Registration No. 3,648,121, registered June 30, 2009, for the mark SPYOPTIC for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit F**.

11. Notwithstanding Opposer's rights in and to said SPY trademarks, Applicant, on information and belief, filed an application for registration of SPY GEAR (PLUS DESIGN) in International Classes 009, 012, 016, 018, 020, 024, 025, 041 on October 26, 2007. Said application was published for opposition in the Official Gazette of September 17, 2013 at TM 5.

12. Pursuant to Trademark Rules of Practice 2.102, Opposer filed a Request to Extend Time for Filing this Notice of Opposition to January 15, 2014. A copy of said Request to Extend Time is attached hereto as **Exhibit G**.

13. The mark SPY GEAR (PLUS DESIGN) set forth in the subject application for the goods and services listed therein, specifically in International Classes 009, 012 and 025, are confusingly similar to Opposer's SPY trademarks, and its

registration and use by Applicant on the goods claimed in the subject application in International Classes 009, 012 and 025 are likely to cause confusion, deception and mistake.

14. Applicant's use of the mark SPY GEAR (PLUS DESIGN) interferes with Opposer's use of its SPY trademarks and dilutes the strength of Opposer's SPY trademarks, and use of, or registration of, the mark SPY GEAR (PLUS DESIGN) by Applicant will seriously damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by said registration and prays that the registration of the mark SPY GEAR (PLUS DESIGN) to Applicant be denied.

The filing fee for this Opposition in the amount of \$900 (three international classes) is enclosed. Opposer's representative authorizes the charging of any additional fees to its Deposit Account No. 19-4330.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: 1/8/14

By: 

Kit M. Stetina, Reg. No. 29,445

William J. Brucker, Reg. No. 35,462

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Counsel for Opposer

Spy Optic Inc.

EXHIBIT A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 1,981,513

Registered June 18, 1996

**TRADEMARK
PRINCIPAL REGISTER**

SPY

**NO FEAR, INC. (CALIFORNIA CORPORATION)
2251 PARADAY AVE.
CARLSBAD, CA 92008**

**FIRST USE 9-0-1994; IN COMMERCE
1-0-1995.**

SN 74-515,876, FILED 4-7-1994.

**FOR: GLASSES AND SUNGLASSES, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

IRENE D. WILLIAMS, EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 9

Prior U.S. Cls.: 2 and 26

Reg. No. 1,989,431

United States Patent and Trademark Office Registered July 30, 1996

**TRADEMARK
PRINCIPAL REGISTER**

EYESPY

SPY OPTICS, INC. (CALIFORNIA CORPORATION)
2251 FARADAY AVENUE
CARLSBAD, CA 92008 , ASSIGNEE OF MIZ-
RAHI, ELLIOT (UNITED STATES CITIZEN)
WEST LONG BRANCH, NJ 07764

FIRST USE 1-0-1985; IN COMMERCE
1-0-1985.

SER. NO. 74-512,106, FILED 4-7-1994.

FOR: EYEGLASSES, SUNGLASSES, EYE-
GLASS CORDS AND EYEGASS CASES, IN
CLASS 9 (U.S. CLS. 2 AND 26).

IRENE D. WILLIAMS, EXAMINING ATTOR-
NEY

EXHIBIT C

United States of America

United States Patent and Trademark Office

SPY

Reg. No. 3,700,605 SPY OPTIC, INC. (CALIFORNIA CORPORATION)
Registered Oct. 27, 2009 1260 AVENIDA CHELSEA
VISTA, CA 92083

Int. Cl.: 18 FOR: BAGS, NAMELY, BACKPACKS AND SPORTS BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3,
22 AND 41).

TRADEMARK FIRST USE: 5-30-2001; IN COMMERCE 5-30-2001.
PRINCIPAL REGISTER

SER. NO. 76-404,043, FILED 5-7-2002.

HENRY S. ZAK, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

EXHIBIT D

United States of America
United States Patent and Trademark Office

SPY

Reg. No. 3,750,166 SPY OPTIC, INC. (CALIFORNIA CORPORATION)
Registered Feb. 16, 2010 2070 LAS PALMAS DRIVE
CARLSBAD, CA 92009

Int. Cl.: 35 FOR: RETAIL STORE SERVICES AND ON-LINE RETAIL STORE SERVICES FEATURING
SUNGLASSES, SPORTS GOGGLES, AND WEARING APPAREL, IN CLASS 35 (U.S. CLS.
100, 101 AND 102).

SERVICE MARK
PRINCIPAL REGISTER FIRST USE 11-16-2006, IN COMMERCE 11-16-2006.

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

OWNER OF U.S. REG. NO. 1,981,513.

SN 77-033,245, FILED 10-31-2006.

JILL PRATER, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT E

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,218,701

Registered Mar. 13, 2007

**TRADEMARK
PRINCIPAL REGISTER**

SPYOPTIC

**SPY OPTIC, INC. (CALIFORNIA CORPORATION)
2070 LAS PALMAS DRIVE
CARLSBAD, CA 92009**

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

**FOR: WEARING APPAREL, NAMELY T-SHIRTS,
SHIRTS, SWEATSHIRTS, PANTS, SHORTS, JACK-
ETS, HATS, VISORS, CAPS, BELTS AND SHOES, IN
CLASS 25 (U.S. CLS. 22 AND 39).**

SN 78-558,706, FILED 2-2-2005.

FIRST USE 7-0-2004; IN COMMERCE 7-0-2004.

JULIE WATSON, EXAMINING ATTORNEY

EXHIBIT F

Int. Cls.: 9 and 18

Prior U.S. Cls.: 1, 2, 3, 21, 22, 23, 26, 36, 38, and 41

United States Patent and Trademark Office

Reg. No. 3,648,121

Registered June 30, 2009

**TRADEMARK
PRINCIPAL REGISTER**

SPYOPTIC

**SPY OPTIC, INC. (CALIFORNIA CORPORATION)
2070 LAS PALMAS DRIVE
CARLSBAD, CA 92009**

**FOR: SUNGLASSES AND SPORTS GOGGLES. IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

FIRST USE 9-1-2002; IN COMMERCE 9-1-2002.

**FOR: BAGS, NAMELY, BACKPACKS AND
SPORTS BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22
AND 41).**

FIRST USE 9-1-2001; IN COMMERCE 9-1-2001.

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

OWNER OF U.S. REG. NO. 1,981,513.

SN 77-197,062, FILED 6-4-2007.

RON FAIRBANKS, EXAMINING ATTORNEY

EXHIBIT G

**United States Patent and Trademark Office**

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**Electronic System for Trademark Trials and Appeals**

Request for extension of time to file notice of opposition.

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ESTTA v.3.1

PTO-2153 (Exp. 03/31/2014)

OMB No. 0651-0040 (Exp. 03/31/2014)

Signature

The request must be signed by the filer. The request will not be "signed" in the sense of a traditional paper document. To sign the request, the signer must enter any combination of printable characters that have been adopted to serve the function of a signature, preceded and followed by the forward slash(/) symbol. Acceptable "signatures" could include: /john doe/; /jd/; and /123-4567/.

Sign the request by completing the following fields**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: **SPIN MASTER LTD.**
Application Serial Number: **77314876**
Application Filing Date: **10/26/2007**
Mark: **SPY GEAR**
Date of Publication **09/17/2013**

First 90 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Spy Optic Inc., 2070 Las Palmas Drive, Carlsbad, CA 92009, UNITED STATES, a corporation organized under the laws of California, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 10/17/2013. Spy Optic Inc. respectfully requests that the time period within which to file an opposition be extended until 01/15/2014.

Respectfully submitted,

Kit M. Stetina

Stetina Brunda Garred & Brucker

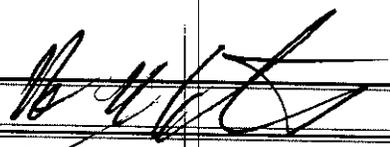
75 Enterprise Ste 250

Aliso Viejo, CA 92656

UNITED STATES

opposition@stetinalaw.com

949-855-1246

Signature: *	
Name:	Kit M. Stefina
Date:	10/08/2013

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10/08/2013 11:47 AM EDT

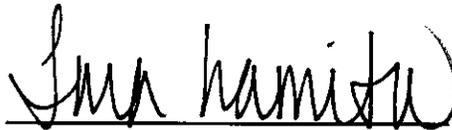
PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **January 8, 2014**, the attached **NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Katy Davis
Spin Master Ltd.
450 Front Street West
Toronto, Ontario M5V 1B6
CANADA

Executed on **January 8, 2014** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.



Tara Hamilton