

ESTTA Tracking number: **ESTTA588770**

Filing date: **02/22/2014**

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	Alliance Powersports Inc.
Granted to Date of previous extension	02/26/2014
Address	3788 Milliken Ave.Unit D Mira Loma, CA 91752 UNITED STATES

Attorney information	JungJin Lee Lee, Lee & Associates, P.C. 2531 Jackson Rd.Ste 234 Ann Arbor, MI 48103 UNITED STATES jj@llapc.com
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### Applicant Information

Application No	86037963	Publication date	10/29/2013
Opposition Filing Date	02/22/2014	Opposition Period Ends	02/26/2014
Applicant	Hammer Brand LLC Suite A Clearwater, FL 33762 FL		

### Goods/Services Affected by Opposition

Class 012. First Use: 2013/04/01 First Use In Commerce: 2013/04/01 All goods and services in the class are opposed, namely: Motor scooters; Motorized scooters; Motorized scooters and structural parts therefor
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86130449	Application Date	11/27/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WOLF		

Design Mark	<h1>WOLF</h1>
Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 Scooters

Attachments	86130449#TMSN.jpeg( bytes ) NoticeOppositionWolf.FINAL.pdf(325770 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	/jjl/
Name	JungJin Lee
Date	02/22/2014

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

Alliance Powersports, Inc.,	)	
Opposer,	)	Opposition No.
	)	In the Matter of
v.	)	Serial No. 86/037,963
	)	Filed: August 14, 2013
Hammer Brand, LLC.,	)	Mark: WOLF
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Alliance Powersports, Inc. (“Opposer”), a corporation organized and existing under the laws of California, with offices in 3788 Milliken Avenue, Unit D Mira Loma, California 91752, believes that it will be damaged by the registration of the trademark WOLF by Hammer Brand, LLC (“Applicant”) as applied for in Application Serial Number 86/037,963 (“Applicant’s Application”), for use in connection with “Motor scooters; Motorized scooters; Motorized scooters and structural parts therefor” in International Class 012 (“Applicant’s Goods”).

As grounds for opposition it is alleged that:

1. Opposer is the owner of the pending United States Trademark application for WOLF, Serial No. 86/130,449, for “scooters” in International class 012. As indicated in its application, since at

least as early as August 2011, Opposer has been, and is now, using in interstate commerce, the mark WOLF in connection with the sale of scooters.

2. Opposer also owns common law rights in the Opposer's mark. These common law rights cover Opposer's goods.
3. Upon information and belief and according to the Patent and trademark Office's ("PTO") records, Applicant is a limited liability company organized and existing under the laws of the State of Florida, with an address of Suite A 12485 44<sup>th</sup> Street North Clearwater, Florida 33762.
4. Upon information and belief, Applicant is the owner of Applicant's Application.
5. Opposer's WOLF mark is symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in selling scooters under the mark.
6. Opposer's mark has become famous in connection with its use of the mark, and is therefore entitled to a high degree and wide zone of protection.
7. Notwithstanding, Opposer's extensive prior use of Opposer's mark, on August 14, 2013, Applicant filed Application Serial No. 86/037,963 for the mark WOLF.
8. Applicant's mark covers "*Motor scooters; Motorized scooters; Motorized scooters and structural parts therefor*" in International class 012 and was filed on a 1(a) basis claiming use of Applicant's mark in commerce in connection with Applicant's Goods as early as April 1, 2013.
9. The mark proposed for registration by Applicant, WOLF, is confusingly similar and equivalent to Opposer's WOLF mark.
10. Registration of the mark WOLF by the Applicant for "*Motor scooters; Motorized scooters; Motorized scooters and structural parts therefor*" is likely to cause confusion with Opposer's WOLF marks for "scooters."

11. The marks WOLF and WOLF, as applied to the goods of both Opposer and Applicant, are advertised, marketed, and sold through the same source of trade. Thus, the mark WOLF is used in the same channels of trade for the same goods as the Applicant's mark.
12. If Applicant is granted the registration herein opposed, it would therefore obtain at least a *prima facie* exclusive right to use of the alleged mark. Such registration would be a source of further damage and injury to Opposer.
13. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register its alleged mark and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. 1052(d).
14. Moreover, on August 14, 2013 while filing Application Serial No. 86/037,963, Applicant via its authorized representative, knowingly made a fraudulent statement wherein it claimed "the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 04/01/2013, and first used in commerce at least as early as 04/01/2013, and is now in use in such commerce." and "The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause

mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

15. Upon information and belief, Applicant did not use Applicant’s Mark in commerce in connection with the goods covered by the Application Serial No. 86/037,963, during the filing of the Application.
16. Applicant knowingly made false, material misrepresentation of fact in connection with Application Serial No. 86/037,963 during the filing of Applicant’s mark.
17. The USPTO relied on the false and fraudulent declaration when it acknowledged the filing of Application Serial No. 86/037,963 and allowed it to proceed to publication of the official Gazette.
18. As a result, Applicant willfully and knowingly perpetrated a fraud with the Application Serial No. 86/037,963.
19. Applicant is not entitled to Registration of Application Serial No. 86/037,963 as Applicant knowingly committed fraud when it filed the Application Serial No. 86/037,963.

WHEREFORE, Opposer requests that the Opposition be sustained, and that registration of Application Serial No. 86/037,963 to Applicant for the mark WOLF be refused registration.

Opposer submits herewith the required fee for filing the Notice of Opposition in the amount of \$300.00.

Respectfully Submitted,  
Alliance Powersports, Inc.

By: /JungJin Lee/  
JungJin Lee, Esq.  
Attorney for Applicant

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 22nd, 2014, a true and correct copy of the foregoing Motion for

Judgment was served upon:

Ross M. Babbitt Co., LPA  
700 W Saint Clair Ave, Ste. 200  
Cleveland, Ohio 44113-1274

By Priority Mail

I further certify that the foregoing paper is being filed electronically via the Electronic System for Trademark Trials and Appeals (ESTTA).

Date: February 22, 2014

/JungJin. Lee/  
JungJin. Lee