

ESTTA Tracking number: **ESTTA622639**

Filing date: **08/20/2014**

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	Robert Kirkman, LLC
Granted to Date of previous extension	08/20/2014
Address	8931 Ellis Avenue, North Tower, Floor 3 Los Angeles, CA 90034 UNITED STATES
Attorney information	James D. Weinberger Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza 6th Floor New York, NY 10017 UNITED STATES jweinberger@frosszelnick.com, jinsley-pruitt@frosszelnick.com Phone:(212) 813-5900

Applicant Information

Application No	86166802	Publication date	04/22/2014
Opposition Filing Date	08/20/2014	Opposition Period Ends	08/20/2014
Applicants	Theodorou Phillip 446 Ewingville rd Ewing, NJ 08638 UNITED STATES Theodorou Anna 446 Ewingville rd Ewing, NJ 08638 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Restaurant services and themed restaurant services, namely, providing of food and beverages for consumption on and off the premises
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration	4443715	Application Date	04/22/2013
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No.			
Registration Date	12/03/2013	Foreign Priority Date	NONE
Word Mark	THE WALKING DEAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2003/10/31 First Use In Commerce: 2003/10/31 Comic books; Graphic novels		

U.S. Registration No.	4007681	Application Date	05/05/2010
Registration Date	08/02/2011	Foreign Priority Date	NONE
Word Mark	THE WALKING DEAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2011/03/08 First Use In Commerce: 2011/03/08 DVDs featuring an on-going fictional dramatic television program Class 041. First use: First Use: 2010/10/31 First Use In Commerce: 2010/10/31 Entertainment services in the nature of an on-going fictional dramatic television series; providing information about a television series via an on-line global computer network; providing online computer games		

U.S. Registration No.	4429084	Application Date	05/05/2010
Registration Date	11/05/2013	Foreign Priority Date	NONE
Word Mark	THE WALKING DEAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2010/09/10 First Use In Commerce: 2010/09/10 Fan club services		

U.S. Registration No.	4314918	Application Date	05/05/2010
Registration Date	04/02/2013	Foreign Priority Date	NONE
Word Mark	THE WALKING DEAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2012/08/00 First Use In Commerce: 2012/08/00 Video recordings featuring fictional dramatic television programming and music; sound recordings featuring fictional dramatic television programming and music; downloadable computer games; interactive video game programs; computer game cartridges and discs; downloadable computer game software for use with mobile telephones and personal computers; downloadable multimedia file		

	containing artwork, text, audio, video, games, and internet web links relating to music and television; electronic game programs; electronic game software for cellular telephones; electronic game software for handheld electronic devices; electronic game software for wireless devices; slot machines; video game cartridges and discs; video game software
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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	/s/ James D. Weinberger
Name	James D. Weinberger
Date	08/20/2014

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

ROBERT KIRKMAN, LLC,	
	Opposer,
-against-	
PHILLIP THEODOROU and ANNA THEODOROU,	Applicants.

NOTICE OF OPPOSITION

Robert Kirkman, LLC (“Opposer”), a Kentucky limited liability company located at 8931 Ellis Avenue, North Tower, Floor 3 Los Angeles, CA, 90034, believes that it will be damaged by the issuance of a registration for the mark THE WALKING DEAD to Phillip and Anna Theodorou (“Applicants”), in International Class 43, applied for in Application Serial No. 86/166,802 and therefore opposes the same pursuant to Section 13(a) of the Lanham Trademark Act of 1946, 15 U.S.C. § 1063(a).

As grounds therefore, Opposer alleges as follows:

1. Opposer is the owner of all rights in and to THE WALKING DEAD trademark (“Opposer’s Mark”) as used in connection with its series of comic books and graphic novels, and by Opposer’s licensee AMC Network Entertainment LLC (“AMC”), in connection with *The Walking Dead* television series (the “Series”). The Series, now in its fourth season of production, is the most watched drama in cable television history.

2. In addition, Opposer, through AMC, its corporate affiliates and sublicensees, have marketed an array of Series-related goods and services under Opposer’s Mark

3. As a result of Opposer’s reputation, use, sales success and significant investment in advertising, Opposer’s Marks have developed secondary meaning and significance in the minds

of the public and have become strong trademarks identifying Opposer's products exclusively. As such, Opposer's Marks represent an enormous goodwill and are extremely valuable assets to Opposer.

4. As a result of Opposer's reputation, use, substantial sales success, inestimable popularity, and significant investment in advertising, Opposer's Marks have become famous trademarks and became famous prior to any date upon which Applicants can rely.

5. Opposer owns numerous U.S. trademark registrations for Opposer's Marks in connection with goods and services including those relating to entertainment services and consumer products, including, but not limited to, the following:

- U.S. Reg. No. 4,443,715 for "Comic books; Graphic novels" in International Class 16 based on first use in 2003;
- U.S. Reg. Nos. 4,007,681 for "DVDs featuring an on-going fictional dramatic television program" in International Class 9 based on first use in 2011 and "Entertainment services in the nature of an on-going fictional dramatic television series; providing information about a television series via an on-line global computer network; providing online computer games" based on first use in 2010;
- U.S. Reg. No. 4,429,084 for "Fan club services" in International Class 41 based on first use in 2010; and
- U.S. Reg. No. 4,314,918 for "Video recordings featuring fictional dramatic television programming and music; sound recordings featuring fictional dramatic television programming and music; downloadable computer games; interactive video game programs; computer game cartridges and discs; downloadable computer game software for use with mobile telephones and personal computers; downloadable multimedia file containing artwork, text, audio, video, games, and

internet web links relating to music and television; electronic game programs; electronic game software for cellular telephones; electronic game software for handheld electronic devices; electronic game software for wireless devices; slot machines; video game cartridges and discs; video game software” based on first use in 2012.

All of the registrations for Opposer’s Marks relied upon herein are valid, subsisting and in full effect and serve as prima facie evidence of the validity of the mark and of Opposer’s exclusive right to use the mark in connection with the goods and services identified therein, pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(a).

6. Upon information and belief, Applicants are individuals residing at 446 Ewingville Road, Ewing, NJ 08638.

7. On January 16, 2014, Applicant filed Application Serial No. 86/166,802 to register the mark THE WALKING DEAD for “Restaurant services and themed restaurant services, namely, providing of food and beverages for consumption on and off the premises” in International Class 43 based on a bona fide intent to use the mark, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) (“Applicants’ Mark”).

8. Opposer’s Marks have been used continuously and/or registered by Opposer since a date prior to any date on which Applicants can rely.

9. Upon information and belief, prior to any date on which Applicants can rely, Applicants were on actual notice of Opposer’s prior rights in and to Opposer’s Marks.

10. The earliest date upon which Applicants can rely is long after the use, registration and acquisition of rights in Opposer’s Marks by Opposer. As such, Opposer’s rights in Opposer’s Marks are prior and superior to any rights Applicants may claim in Applicants’ Mark. The

registration of Applicants' Mark is inconsistent with Opposer's prior rights and statutory grant of exclusivity of use.

11. Applicants' Mark is identical to Opposer's Marks in sight, sound and commercial impression.

12. Applicants' services to be offered under Applicants' Mark are closely related to goods sold and services offered under Opposer's Marks and, upon information and belief, will be sold to the same customers or types of customers to whom goods and services bearing Opposer's Marks are to be sold.

13. Based on the similarity of the marks and goods and services, consumers are likely to be deceived into falsely believing that the services offered by Applicants under Applicants' Mark originate from or are otherwise associated with or endorsed by Opposer, or that there is some relationship between Applicants and Opposer or the goods and services of Applicants and Opposer, all to Opposer's injury and harm.

14. Thus, registration of Applicants' Mark in connection with the services set forth in Application Serial No. 86/166,802 in International Class 41 is likely to cause confusion, cause mistake, or to deceive the public into the false belief that the services offered by Applicants under Applicants' Mark come from or are otherwise sponsored by or connected with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Moreover, Opposer's Marks are famous marks and had become famous long before the earliest priority date upon which Applicants can rely. Because Opposer's Marks have become famous, Applicants' use and registration of Applicants' Mark will damage Opposer by trading on the enormous goodwill associated with the Opposer's Marks and diluting their distinctiveness. Thus, Applicants' use and registration of Applicants' Mark in connection with the services identified in its application are likely to cause dilution by blurring and tarnishment of the famous

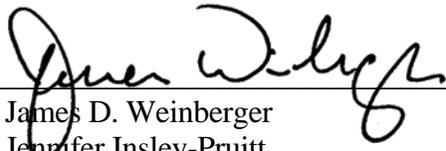
Opposer's Marks, in violation of Sections 13(a) and 43(c) of the Lanham Act, 15 U.S.C. §§ 1063(a), 1125(c).

16. By reason of the foregoing, Opposer is likely to be harmed by the registration of Application Serial No. 86/166,802 for Applicants' Mark.

THEREFORE, it is respectfully requested that this Opposition be sustained and that registration of the mark shown in Application Serial No. 86/166,802 be refused in its entirety.

Dated: New York, New York
August 20, 2014

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

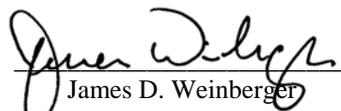
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was sent by first class mail postage pre-paid to Applicants' Correspondent of Record, this 20th day of August, 2014, to the following:

PHILLIP THEODOROU
446 EWINGVILLE RD
EWING, NEW JERSEY 08638-1539


James D. Weinberger