

ESTTA Tracking number: **ESTTA671824**

Filing date: **05/12/2015**

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

Proceeding	91221336
Party	Defendant TITIN ATHLETICS, LLC
Correspondence Address	SOFIA JEONG, ESQ. TROUTMAN SANDERS LLP 600 PEACHTREE ST NE STE 5200 ATLANTA, GA 30308-2216  trademarks@troutmansanders.com
Submission	Answer and Counterclaim
Filer's Name	Peter J. Vranum
Filer's e-mail	pvrnum@gordonherlands.com
Signature	/peter j. vranum/
Date	05/12/2015
Attachments	throwdown.answer.pdf(474298 bytes )

**Registrations Subject to the filing**

Registration No	3462987	Registration date	07/08/2008
Registrant	THROWDOWN INDUSTRIES, INC. 18 Goodyear Irvine, CA 92618 UNITED STATES		
Grounds for filing	The registered mark has been abandoned. The registration was obtained fraudulently.		

**Goods/Services Subject to the filing**

<p>Class 018. First Use: 2003/03/01 First Use In Commerce: 2003/03/01 All goods and services in the class are requested, namely: All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; Athletic bags; Backpacks; Bags and holdalls for sports clothing; Duffel bags; Duffle bags; Gym bags; Sports bags</p>
<p>Class 025. First Use: 2003/03/01 First Use In Commerce: 2003/03/01 All goods and services in the class are requested, namely: Athletic footwear; Athletic shoes; Athletic uniforms; Beanies; Belts; Belts made of leather; Board shorts; Bottoms; Boxer briefs; Boxer shorts; Boxing shoes; Briefs; Briefs; Caps; Children's headwear; Clothing for wear in judo practices; Clothing for wear in wrestling games; Coats; Fabric belts; Footwear; Gloves; Gym shorts; Gym suits; Hats; Head sweatbands; Head wear; Headbands; Headwear; Hoods; Jeans; Jerseys; Judo suits; Karate suits; Kendo outfits; Knitted caps; Martial arts uniforms; Pants; Pullovers; Sandals; Shirts; Shoes; Short-sleeved or long-sleeved t-shirts; Shorts; Skull caps; Slippers; Sneakers; Socks; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweatbands; Socks; T-shirts; Tank tops; Thongs; Tops; Undergarments; Underwear; Uniforms; Visors; Walking shorts</p>

Registration No	3505817	Registration date	09/23/2008
Registrant	THROWDOWN INDUSTRIES, INC. 18 Goodyear Irvine, CA 92618 UNITED STATES		

Grounds for filing	The registered mark has been abandoned.
	The registration was obtained fraudulently.

### Goods/Services Subject to the filing

<p>Class 018. First Use: 2007/09/01 First Use In Commerce: 2007/09/01  All goods and services in the class are requested, namely: All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; Athletic bags; Backpacks; Bags and holdalls for sports clothing; Duffel bags; Duffle bags; Gym bags; Sports bags; Sports packs</p>
<p>Class 025. First Use: 2003/03/01 First Use In Commerce: 2003/03/01  All goods and services in the class are requested, namely: Athletic footwear; Athletic shoes; Athletic uniforms; Beanies; Belts; Board shorts; Bottoms; Boxer briefs; Boxer shorts; Boxing shoes; Briefs; Caps; Clothing for wear in judo practices; Clothing for wear in wrestling games; Coats; Denims; Fabric belts; Footwear; Gloves; Gym shorts; Gym suits; Hats; Head wear; Headwear; Hoods; Jackets; Jeans; Jerseys; Jogging suits; Judo suits; Karate suits; [ Kendo outfits; Motorcycle gloves; Motorcyclist boots; ] Pants; Pullovers; Sandals; Shirts; Shoes; Shorts; Skull caps; Sportshirts; Sports jerseys and breeches for sports; Sports overuniforms; Sweat bands; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweatbands; Sweatsocks;T-shirts; Tank tops; Tops; Training shoes; Training suits; Under garments; Underclothes; Undergarments; Underpants; Underwear; Uniforms; Visors; Walking shorts</p>

Registration No	3928195	Registration date	03/08/2011
Registrant	Throwdown Industries, Inc. 18 Goodyear Irvine, CA 92618 UNITED STATES		

### Goods/Services Subject to the filing

<p>Class 025. First Use: 2007/10/25 First Use In Commerce: 2007/10/25  All goods and services in the class are requested, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic footwear; Athletic shoes; Athletic uniforms; Beanies; Belts; Board shorts; Bottoms; Boxer briefs; Boxer shorts; Boxing shoes; Boxing shorts; Briefs; Caps; Caps with visors; Clothing for wear in judo practices; Clothing for wear in wrestling games; Coats; Coats of denim; Denim jackets; Denims; Fabric belts; Footwear; Footwear for men and women; Gloves; Gym shorts; Gym suits;Hats; Head sweatbands; Head wear; Headwear; Hooded pullovers; Hooded sweat shirts; Hoods; Hoods; Jackets; Jeans; Jerseys; Jogging suits; Judo suits; Karate suits; Kendo outfits; Motorcycle gloves; Motorcyclist boots; Pants; Pullovers; Sandals; Shirts; Shoes; Shorts; Skull caps; Skullies; Sleeveless jerseys; Sport shirts; Sports jerseys; Sports jerseys and breeches for sports; Sports overuniforms;Sports pants; Surf wear; Sweat bands; Sweat pants; Sweat shorts; Sweat suits; Sweatbands; Swim wear for gentlemen and ladies; T-shirts; Tank tops; Tank-tops; Tops; Training shoes; Training suits; Under garments; Underclothes; Undergarments; Underpants; Uniforms; Visors; Walking shorts</p>
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3. Applicant denies the allegations in paragraph 3 of the Notice of Opposition.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Notice of Opposition, and, on that basis, denies those allegations.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Notice of Opposition, and, on that basis, denies those allegations.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Notice of Opposition, and, on that basis, denies those allegations.

7. Applicant denies the allegations in paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations in paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations in paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations in paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations in paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations in paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations in paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations in paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations in paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations in paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations in paragraph 20 of the Notice of Opposition.
21. Applicant denies the allegations in paragraph 21 of the Notice of Opposition.
22. Applicant denies the allegations in paragraph 22 of the Notice of Opposition except admits that it owns Registration No. 40923 dated January 24, 2012 for the exact same logo as Applicant's Logo in application Serial No. 86408942.
23. Applicant denies the allegations in paragraph 23 of the Notice of Opposition.
24. Applicant denies the allegations in paragraph 24 of the Notice of Opposition.

#### AFFIRMATIVE DEFENSES

As affirmative defenses to the Notice of Opposition, Applicant alleges as follows:

25. The Notice of Opposition fails to state a claim upon which relief can be granted.
26. Opposer's claims in the Notice of Opposition are barred under the doctrine of estoppel.
27. Opposer's claims in the Notice of Opposition are barred by waiver.
28. There is no likelihood of confusion between Applicant's mark and Opposer's marks.
29. Opposer's claims in the Notice of Opposition are barred under the doctrine of unclean hands. Upon information and belief, Opposer is not using its mark on all the goods covered by its cited, relied upon registrations. In order to obtain and maintain its registrations, Opposer has filed false declarations. As such Opposer has fraudulently obtained and maintained its registrations and may not rely on them in this proceeding.
30. Opposer's claims in the Notice of Opposition are barred by laches. Opposer did not object to Applicant's prior registration of its identical T Design mark, U.S. Registration No.

4092311, covering substantially the same goods. Opposer's delay was unreasonable and has prejudiced Applicant which has continued to use and invest in its mark, building up a valuable business and goodwill.

31. Opposer's opposition is barred, insupportable or otherwise fatally flawed under the *Morehouse* doctrine, based upon Applicant's prior registration of its identical T Design mark which is the subject of the instant application. Applicant's prior registration, U.S. Registration No. 4092311 dated January 24, 2012, covered the same goods or substantially the same goods as those covered by the instant application. Because of Applicant's prior registration for the identical mark, Opposer will suffer no added damage from the instant application. Applicant's prior registration is subsisting and not under challenge.

32. Opposer's claims in the Notice of Opposition are barred by acquiescence. Opposer did not object to Applicant's prior registration of its identical T Design mark, U.S. Registration No. 4092311, or its use of the mark in connection with substantially the same goods. Opposer's acquiescence has prejudiced Applicant which in reliance thereon has continued to use and invest in its mark, building up a valuable business and goodwill.

#### COUNTERCLAIMS FOR CANCELLATION

33. Petitioner Titan Athletics, LLC is a limited liability company duly organized under the laws of the State of New York. Petitioner or its predecessor in interest is now and has been engaged in the design, sale and distribution of clothing and apparel products.

34. Petitioner is the owner of a trademark registration for a T Design Mark, U.S. Registration No. 4092311 dated January 24, 2012 covering goods in International Class 25.

35. Petitioner is the owner of a trademark application for a T Design mark, Serial No.

86408942 dated September 29, 2014, covering goods in International Class 25.

Opposer/Respondent herein, Throwdown Industries, Inc., has filed the instant opposition against Petitioner's T Design trademark application, citing U.S. Registration No. 3462987 for a TI design mark; U.S. Registration No. 3505817 for the mark THROWDOWN TI; and U.S. Registration No. 3928195 for the mark ELITE TI.

36. Upon information and belief, Opposer is not using the mark in Registration No. 3462987 for all or for some of the goods identified in the registration.

37. Upon information and belief, Petitioner avers that Opposer has made no trademark or service mark use of the TI Design mark in the United States for all or for some of the goods identified in Registration No. 3462987 for a significant period of time.

38. Upon information and belief, Opposer does not have any bona fide intention to resume use of the mark in Registration No. 3462987 for any or for some of the goods identified in the registration.

39. The mark in Registration No. 3462987 as used for the goods recited in the registration has been abandoned by Opposer and should be cancelled under Section 14 of the Trademark Law.

40. On July 3, 2014, Opposer by its Authorized Counsel, Jaime R. Quezon, executed a declaration under Section 8 declaring the Opposer was using the mark in commerce on or in connection with all of the goods and/or services listed in Registration No. 3462987.

41. Upon information and belief, on July 3, 2014, for a significant time prior to July 3, 2014, and for a significant period of time after July 3, 2014, Opposer has not used the mark in commerce on or in connection with all of the goods listed in Registration No. 3468987, to wit: All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; Athletic bags;

Backpacks; Bags and holdalls for sports clothing; Duffel bags; Duffle bags; Gym bags; Sports bags; and Athletic footwear; Athletic shoes; Athletic uniforms; Beanies; Belts; Belts made of leather; Board shorts; Bottoms; Boxer briefs; Boxer shorts; Boxing shoes; Briefs; Briefs; Caps; Children's headwear; Clothing for wear in judo practices; Clothing for wear in wrestling games; Coats; Fabric belts; Footwear; Gloves; Gym shorts; Gym suits; Hats; Head sweatbands; Head wear; Headbands; Headwear; Hoods; Jeans; Jerseys; Judo suits; Karate suits; Kendo outfits; Knitted caps; Martial arts uniforms; Pants; Pullovers; Sandals; Shirts; Shoes; Short-sleeved or long-sleeved t-shirts; Shorts; Skull caps; Slippers; Sneakers; Socks; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweatbands; Socks; T-shirts; Tank tops; Thongs; Tops; Undergarments; Underwear; Uniforms; Visors; Walking shorts.

42. Upon information and belief, the Section 8 declaration executed July 3, 2014 and filed in the Patent and Trademark Office on July 3, 2014, was false and fraudulent in that it declared under penalty of law that Opposer was using the mark TI design for all items listed in Registration No. 3462987 when, in fact, Opposer was not using the mark for all of these items. The Section 8 declaration was made with the intention to deceive.

43. Registration No. 3462987 was maintained fraudulently in violation of Section 14 of the Trademark Law, and should be cancelled.

44. Upon information and belief, Opposer is not using the mark in Registration No. 3505817 for all or for some of the goods identified in the registration.

45. Upon information and belief, Petitioner avers that Opposer has made no trademark or service mark use of the THROWDOWN TI Design mark in the United States for all or for some of the goods identified in Registration No. 3505817 for a significant period of time.

46. Upon information and belief, Opposer does not have any bona fide intention to resume use of the mark in Registration No. 3505817 for any or for some of the goods identified in the registration.

47. The mark in Registration No. 3505817 as used for the goods recited in the registration has been abandoned by Opposer and should be cancelled under Section 14 of the Trademark Law.

48. On March 23, 2015, Opposer by its Authorized Counsel, Jaime R. Quezon, executed a declaration under Section 8 declaring the Opposer was using the mark in commerce on or in connection with all of the goods and/or services listed in Registration No. 3505817.

49. Upon information and belief, on March 23, 2015, for a significant time prior to March 23, 2015, and for a significant period of time after March 23, 2015, Opposer has not used the mark in commerce on or in connection with all of the goods listed in Registration No. 3505817, to wit: All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; Athletic bags; Backpacks; Bags and holdalls for sports clothing; Duffel bags; Duffle bags; Gym bags; Sports bags; Sports packs; and Athletic footwear; Athletic shoes; Athletic uniforms; Beanies; Belts; Board shorts; Bottoms; Boxer briefs; Boxer shorts; Boxing shoes; Briefs; Caps; Clothing for wear in judo practices; Clothing for wear in wrestling games; Coats; Denims; Fabric belts; Footwear; Gloves; Gym shorts; Gym suits; Hats; Head wear; Headwear; Hoods; Jackets; Jeans; Jerseys; Jogging suits; Judo suits; Karate suits; Pants; Pullovers; Sandals; Shirts; Shoes; Shorts; Skull caps; Sport shirts; Sports jerseys and breeches for sports; Sports overuniforms; Sweat bands; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweatbands; Sweatsocks; T-shirts; Tank tops; Tops; Training shoes; Training suits; Under garments; Underclothes; Undergarments; Underpants; Underwear; Uniforms; Visors; Walking shorts.

50. Upon information and belief, the Section 8 declaration executed March 23, 2015 and filed in the Patent and Trademark Office on March 23, 2015, was false and fraudulent in that it declared under penalty of law that Opposer was using the mark THROWDOWN TI design for all items listed in Registration No. 3505817 when, in fact, Opposer was not using the mark for all of these items. The Section 8 declaration was made with the intention to deceive.

51. Registration No. 34505817 was maintained fraudulently in violation of Section 14 of the Trademark Law, and should be cancelled.

52. Upon information and belief, Opposer is not using the mark in Registration No. 3928195 for all or for some of the goods identified in the registration .

53. Upon information and belief, Petitioner avers that Opposer has made no trademark or service mark use of the ELITE TI Design mark in the United States for all or for some of the goods identified in Registration No. 3928195 for a significant period of time.

54. Upon information and belief, Opposer does not have any bona fide intention to resume use of the mark in Registration No. 3928195 for any or for some of the goods identified in the registration.

55. The mark in Registration No. 3928195 as used for the goods recited in the registration has been abandoned by Opposer and should be cancelled under Section 14 of the Trademark Law.

56. On June 14, 2010, Opposer by its Authorized Counsel, Jaime R. Quezon, executed a declaration declaring the Opposer was using the mark in commerce on or in connection with all of the goods and/or services listed in Registration No. 3928195.

57. Upon information and belief, on June 14, 2010, for a significant time prior to June 10, 2010, and for a significant period of time after June 14, 2010, Opposer has not used the mark

in commerce on or in connection with all of the goods listed in Registration No. 3928195, to wit:

Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms;

Athletic footwear; Athletic shoes; Athletic uniforms; Beanies; Belts; Board shorts; Bottoms;

Boxer briefs; Boxer shorts; Boxing shoes; Boxing shorts; Briefs; Caps; Caps with visors;

Clothing for wear in judo practices; Clothing for wear in wrestling games; Coats; Coats of denim; Denim jackets; Denims; Fabric belts; Footwear; Footwear for men and women; Gloves;

Gym shorts; Gym suits; Hats; Head sweatbands; Head wear; Headwear; Hooded pullovers;

Hooded sweat shirts; Hoods; Hoods; Jackets; Jeans; Jerseys; Jogging suits; Judo suits; Karate suits; Kendo outfits; Motorcycle gloves; Motorcyclist boots; Pants; Pullovers; Sandals; Shirts;

Shoes; Shorts; Skull caps; Skullies; Sleeveless jerseys; Sport shirts; Sports jerseys; Sports jerseys and breeches for sports; Sports overuniforms; Sports pants; Surf wear; Sweat bands; Sweat pants; Sweat shorts; Sweat suits; Sweatbands; Swim wear for gentlemen and ladies; T-shirts; Tank tops;

Tank-tops; Tops; Training shoes; Training suits; Under garments; Underclothes; Undergarments; Underpants; Uniforms; Visors; Walking shorts.

58. Upon information and belief, the declaration executed June 14, 2010 and filed in the Patent and Trademark Office on June 14, 2010, was false and fraudulent in that it declared under penalty of law that Opposer was using the mark ELITE TI design for all items listed in Registration No. 3928195 when, in fact, Opposer was not using the mark for all of these items. The Section 8 declaration was made with the intention to deceive.

59. Registration No. 3928195 was maintained fraudulently in violation of Section 14 of the Trademark Law, and should be cancelled.

WHEREFORE, Petitioner prays that this petition be granted and that Registration Nos.3462987, 3505817 and 3928195 be cancelled.

Dated: New York, New York  
May 12, 2015

Respectfully submitted,

GORDON, HERLANDS, RANDOLPH  
& COX LLP

By 

Peter J. Vranum, Esq.  
355 Lexington Avenue  
New York, New York 10017  
(212) 986-1200

Attorneys for Applicant  
TITIN ATHLETICS, LLC

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the foregoing Applicant's Answer to Notice of Opposition to be served by First Class mail, postage prepaid, on May 12, 2015, on:

Jaime R. Quezon, Esq.  
Jaime R. Quezon, P.A.  
805 W. Azeele Street  
Tampa, FL 33606



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Peter J. Vranum