

ESTTA Tracking number: **ESTTA670674**

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

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	DIADORA SPORT S.R.L.		
Entity	limited liability company	Citizenship	Italy
Address	VIA MONTELLO 80 CAERANO DI SAN MARCO (TREVISO), 31031 ITALY		

Attorney information	Nicholas D. Wells Kirton McConkie 60 E. South Temple, Suite 1800 Salt Lake City, UT 84111 UNITED STATES nwells@kmclaw.com Phone:8013283600
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Applicant Information

Application No	86268523	Publication date	04/14/2015
Opposition Filing Date	05/05/2015	Opposition Period Ends	05/14/2015
Applicant	ANTA (CHINA) CO., LTD. Chidian Town, Jinjiang City Fujian Province, CHINA		

Goods/Services Affected by Opposition

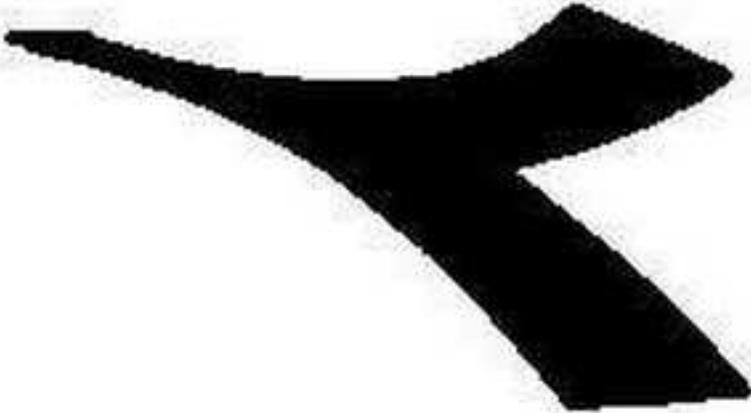
<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Overalls; smocks; linen garments, namely, shirts, pants, shorts, blouses, skirts, coats, and jackets; sweaters; shirts;pants; shorts; sweatshirts; dresses; clothing made of leather, namely, leather pants, leather vests, leather shirts, leather jackets, leather shoes, belts madeof leather; suits; breeches; trousers; knitwear, namely, knitted shirts, knitted tops, knitted sweaters, knitted socks,knitted blouses, knitted pants, knittedskirts; coats; skirts; pe-lisses; pullovers; frocks; overcoats; topcoats; jackets; parkas; clothing of imitation leather, namely, pants made from imitation leather, vests made from imitation leather, shoes made from imitation leather, beltsmade of imitation leather; dust coats; down clothes, namely, down vests, down jackets, down coats, down pants, down shirts; children clothes, namely, headwear,children's and baby cloth eating bibs, baby bodysuits, baby pajamas, children'spajamas; sports jerseys; T-shirts; fishing vests; vests; singlets; pajamas; dress shields; shoulder wraps; collar protectors; shirt fronts; shirt yokes; cuffs;layettes; cyclists' clothing, namely, cycling shorts, cycling shirts, cycling shoes; clothing for gym-nastics, namely, leotards, gymnastics shirts, gymnastics pants, gymnastic shoes, gymnastic shorts;judogi, namely, uniforms worn in the sport of judo; wrestling singlets; raincoats; rain-cloaks; dance clothes, namely, leotards, leg warmers, dance shoes, dance costumes, warm-ups, tights, body suits; footwear; shoes; football shoes; gymnastic shoes; studs for football boots; ski boots; jumping shoes; track shoes; mountain climbing shoes; boots; sports shoes; boots for sports; tips for footwear; inner soles; fittings of metal for shoesand boots; footwear uppers; footwear vamps; gaiters; heel-pieces for boots and shoes; welts for boots and shoes; soles for footwear; insoles. headwear; cap</p>
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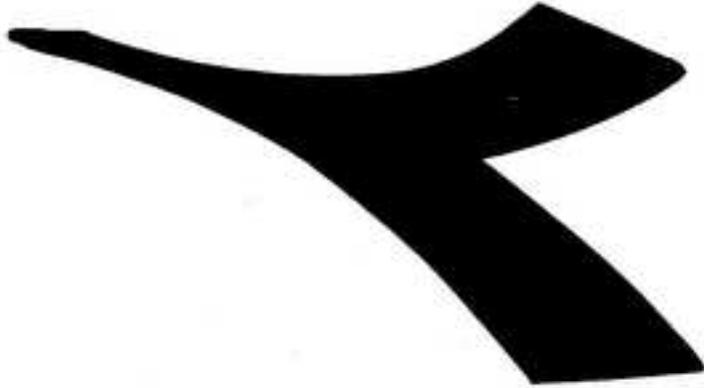
peaks; ear muffs; headbands; paper hats; non-electric foot muffs; socks; sports socks; athletic socks; gloves; muffs; shawls; scarves; belts; money belts; strap belts; waist strings for kimonos; fabric belts; sashes for wear; wedding gowns

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Lack of bona fide intent to use and false declaration

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3063249	Application Date	03/02/2005
Registration Date	02/28/2006	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 018. First use: First Use: 1974/00/00 First Use In Commerce: 1980/12/01 Sports bags, Backpacks, drawstring sacks, Shoe bags[, Briefcases, Duffle bags,]Bags for balls,[Racquet bags]</p> <p>Class 025. First use: First Use: 1974/00/00 First Use In Commerce: 1980/12/01 Soccer footwear, Tennis footwear, Running footwear, Athletic footwear, Sandals,slippers; Soccer team apparel, namely, jerseys, shorts, T-shirts, practice vests; Goalkeeper apparel, namely, jerseys, pants, shorts; warm-up jackets, warm-up pants, warm-up suits, bench coats, namely coat intended to be worn over athleticwear; Competitive training apparel, namely, jackets, pants, fleeces, sweatshirts, T-shirts; women's and men's tennis apparel, namely, T-shirts, skirts, dresses, tank tops, vests, shorts, polo shirts,warm-up suits; T-shirts, Sleeve tie-backs, Armbands, Wristbands, Headbands, Gloves, Socks, Caps, Hats, Visors</p> <p>Class 028. First use: First Use: 1974/00/00 First Use In Commerce: 1980/12/01 shin guards and ankle guards for athletic use, Goalkeeper gloves, Soccer Balls</p>		
U.S. Registration No.	1324537	Application Date	01/06/1983

Registration Date	03/12/1985	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 018. First use: First Use: 1974/08/00 First Use In Commerce: 1977/00/00 All Purpose Sports Bags, [Travel Bags,Handbags, Briefcases, Attache Cases, Suitcases, Umbrellas, Walking Sticks]</p> <p>Class 025. First use: First Use: 1974/08/00 First Use In Commerce: 1974/11/00 Shoes, Boots, Athletic Shoes, Clogs, Socks, Stockings, Jogging Suits, T-Shirts,Jackets, [Suits,] Pants, Singlets, [Robes,] Hats, Caps and Cuffs, Wrist Bands, [Golf Gloves,] Sweat Bands, [Bath-Robes,] Shorts</p> <p>Class 028. First use: First Use: 1974/08/00 First Use In Commerce: 1977/00/00 Balls of Any Size for Games, [Tennis Nets and Rackets, Sporting Articles and Their Structural Parts-Namely, Ice Skates,] [Roller Skates,] [Batting Gloves,Baseball Bats and Helmets, Golf Clubs, Table Tennis Tables and Rackets, BowlingBalls, Skis]</p>		

Attachments	78578209#TMSN.png(bytes) 73408354#TMSN.png(bytes) Anta Angle Design--TTAB Opposition.pdf(28668 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	/Nicholas Wells/
Name	Nicholas D. Wells
Date	05/05/2015

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

Mark: Angle design
Serial No.: 86268523
Published: April 14, 2015

DIADORA SPORT S.R.L.		
Opposer,		Opposition No. _____
v.		
ANTA (CHINA) CO., LTD.		
Applicant		

NOTICE OF OPPOSITION

In the matter of trademark application Serial No. 86268523 (the “Application”) for the angle design trademark for “ Overalls; smocks; linen garments, namely, shirts, pants, shorts, blouses, skirts, coats, and jackets; sweaters; shirts; pants; shorts; sweatshirts; dresses; clothing made of leather, namely, leather pants, leather vests, leather shirts, leather jackets, leather shoes, belts made of leather; suits; breeches; trousers; knitwear, namely, knitted shirts, knitted tops, knitted sweaters, knitted socks, knitted blouses, knitted pants, knitted skirts; coats; skirts; pelisses; pullovers; frocks; overcoats; topcoats; jackets; parkas; clothing of imitation leather, namely, pants made from imitation leather, vests made from imitation leather, shoes made from imitation leather, belts made of imitation leather; dust coats; down clothes, namely, down vests, down jackets, down coats, down pants, down shirts; children clothes, namely, headwear,

children's and baby cloth eating bibs, baby bodysuits, baby pajamas, children's pajamas; sports jerseys; T-shirts; fishing vests; vests; singlets; pajamas; dress shields; shoulder wraps; collar protectors; shirt fronts; shirt yokes; cuffs; layettes; cyclists' clothing, namely, cycling shorts, cycling shirts, cycling shoes; clothing for gymnastics, namely, leotards, gymnastics shirts, gymnastics pants, gymnastic shoes, gymnastic shorts; judogi, namely, uniforms worn in the sport of judo; wrestling singlets; raincoats; rain-cloaks; dance clothes, namely, leotards, leg warmers, dance shoes, dance costumes, warm-ups, tights, body suits; footwear; shoes; football shoes; gymnastic shoes; studs for football boots; ski boots; jumping shoes; track shoes; mountain climbing shoes; boots; sports shoes; boots for sports; tips for footwear; inner soles; fittings of metal for shoes and boots; footwear uppers; footwear vamps; gaiters; heelpieces for boots and shoes; welts for boots and shoes; soles for footwear; insoles. headwear; cap peaks; ear muffs; headbands; paper hats; non-electric foot muffs; socks; sports socks; athletic socks; gloves; muffs; shawls; scarves; belts; money belts; strap belts; waist strings for kimonos; fabric belts; sashes for wear; wedding gowns” in International Class 025, filed May 1, 2014 and published in the Official Gazette on April 14, 2015, Opposer DIADORA SPORT S.R.L. ("Opposer"), a limited liability company registered in Italy and having an address at VIA MONTELLO 80, CAERANO DI SAN MARCO (TREVISO) 31031, ITALY, believes it will be damaged by registration of the mark shown in the above-identified Application and hereby opposes the same.

The grounds for the opposition are as follows:

1. Opposer is a limited liability company organized under the laws of Italy having a place of business at Via Montello 80, Caerano di San Marco (Treviso) 31031 Italy.
2. Opposer is the owner of U.S. trademark registration number 3063249 filed March 2, 2005 and registered February 28, 2006 for an Angle Design for (as currently amended) “Sports bags, Backpacks, drawstring sacks, Shoe bags, Bags for balls” in International Class 18; “Soccer footwear, Tennis footwear, Running footwear, Athletic footwear, Sandals, slippers; Soccer team apparel, namely, jerseys, shorts, T-shirts, practice vests; Goalkeeper apparel, namely, jerseys, pants, shorts; warm-up jackets, warm-up pants, warm-up suits, bench coats, namely coat intended to be worn over athletic wear; Competitive training apparel, namely, jackets, pants, fleeces, sweatshirts, T-shirts; women's and men's tennis apparel, namely, T-shirts, skirts, dresses, tank tops, vests, shorts, polo shirts, warm-up suits; T-shirts, Sleeve tie-backs, Armbands, Wristbands, Headbands, Gloves, Socks, Caps, Hats, Visors” in International Class 25; and “shin guards and ankle guards for athletic use, Goalkeeper gloves, Soccer Balls” in International Class 28.
3. Opposer is the owner of U.S. trademark registration number 1324537 filed January 6, 1983 and registered March 12, 1985 for an Angle Design for (as currently amended) “All Purpose Sports Bags” in International Class 18; “Shoes, Boots, Athletic Shoes, Clogs, Socks, Stockings, Jogging Suits, T-Shirts, Jackets, Pants, Singlets, Hats, Caps and Cuffs, Wrist Bands, Sweat Bands, Shorts” in International Class 25; and “Balls of Any Size for Games” in International Class

28. (U.S. Reg. Nos. 3063249 and 1324537 being collectively “Opposer’s Registrations” and the marks therein being “Opposer’s Angle Design Mark”.)
4. Opposer is a leading manufacturer of sporting apparel, footwear, and accessories and provides products for use in football, tennis, running, cycling, rugby, and soccer, among other uses.
 5. Opposer was founded in Italy in 1948 and has been selling athletic footwear in the United States for more than 40 years--since at least as early as 1968.
 6. Opposer is a leading provider of footwear and athletic apparel for soccer players in the United States.
 7. The filing dates of Opposer’s registration 1324537 precedes the filing date of the opposed Application by more than three decades.
 8. Opposer’s Registrations are valid, subsisting, and enforceable.
 9. Opposer has expended significant resources in developing, advertising, and promoting its athletic footwear, apparel, and related products in the United States and throughout the world. Through such advertising and promotion, Opposer has developed valuable goodwill in Opposer’s Angle Design Mark. As such, Opposer’s Angle Design Mark is closely associated with Opposer in the minds of consumers and Opposer’s Angle Design Mark serves as a strong source identifier for the goods provided by Opposer.
 10. On information and belief, Applicant ANTA (CHINA) CO., LTD. is a limited company registered in China and having an address at Chidian Town, Jinjiang City Dongshan Industrial Zone, Fujian Province, China.

11. Upon information and belief, Applicant knew of Opposer's rights in Opposer's Angle Design Mark before filing the opposed Application.

LIKELIHOOD OF CONFUSION

Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d)

12. Opposer re-alleges the allegations in Paragraphs 1 through 11 of this Notice of Opposition.

13. The angle design that Applicant seeks to register so resembles Opposer's Angle Design Mark in appearance and commercial impression that the use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's Goods in violation of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d), and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Angle Design Mark.

14. The use of Opposer's Angle Design Mark by Opposer predates the filing date of the Application and any alleged first date of use in commerce of Applicant's angle design mark; consequently there is no question of priority of rights, as such priority clearly belongs to Opposer.

15. The opposed angle design mark and Opposer's Angle Design Mark both consist of a triangular design have a point and two arms which extend back at acute angles, with an open space between the two arms.

16. Applicant's Goods are identical to or so closely related to the goods offered by Opposer in connection with Opposer's Angle Design Mark that the public is likely to be confused, deceived, and to assume erroneously that Applicant's Goods are those of Opposer or that Applicant is in some way connected with,

- licensed or sponsored by, or affiliated with Opposer, all to the irreparable damage of Opposer.
17. Likelihood of confusion is enhanced by the fact that Opposer's Angle Design Mark is strong, famous, well-known, and entitled to a broad scope of protection.
 18. Applicant is not affiliated or connected with Opposer and has not been endorsed or sponsored by Opposer nor has Opposer approved any of Applicant's Goods to be sold by Applicant under its alleged trademark.
 19. Applicant has never obtained permission from Opposer to use Applicant's alleged mark nor has Opposer approved any of Applicant's Goods to be offered under Applicant's alleged mark.

FRAUD

808 F.2d 46, 1 USPO2d 1483 (Fed Cir. 1986)

20. Opposer re-alleges the allegations contained in Paragraphs 1 through 19 of this Notice of Opposition.
21. In the Application, Applicant has committed prosecution fraud on the USPTO.
22. Upon information and belief, Applicant knowingly made false and material misrepresentations in the filing of the Application.
23. An affiliated entity of Opposer and an affiliated entity of Applicant have been adverse to one another in a trademark dispute in at least one other jurisdiction.
24. In the filing of Applicant's Application, Applicant declared that "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.”

25. Upon information and belief, at the time such declaration was made by Applicant, Applicant was aware of Opposer’s use of and rights in Opposer’s Angle Design Mark and Applicant’s application to register its alleged design mark was merely an attempt to build on the goodwill and reputation of Opposer’s Angle Design Mark.
26. Upon information and belief, said false declaration was made with the intent to induce authorized agents of the USPTO to approve the Application for registration and, reasonably relying upon the truth of said false declaration, the USPTO did, in fact, approve the Application for registration.
27. Accordingly, Applicant’s Application is invalid on the ground of fraud and should be refused registration.

FALSE SUGGESTION OF A CONNECTION

Section 2(a) of the Lanham Act, 15 U.S.C. Section 1052(a)

28. Opposer re-alleges the allegations contained in Paragraphs 1 through 27 of this Notice of Opposition.

29. Applicant's Angle Design mark is identical to or a close approximation of Opposer's Angle Design Mark.
30. Opposer used Opposer's Angle Design Mark in commerce within the United States for decades prior to the May 01, 2014 filing date of the Application.
31. Due to Opposer's extensive advertising, marketing and sales in the United States, consumers are likely to recognize that Opposer's Angle Design Mark points uniquely and unmistakably to Opposer, given the fame and renown of Opposer.
32. Opposer is not connected with or affiliated with Applicant, Applicant's activities, or Applicant's angle design mark.
33. Opposer's Angle Design Mark, and Opposer's name and identity are so famous and renowned that consumers would presume a connection between Applicant and Opposer when they encounter Applicant's angle design mark as used on the goods set forth in the opposed Application.
34. Thus, Applicant's angle design mark falsely suggest a connection with Opposer and Opposer's Angle Design Mark, in violation of Lanham Act § 2(a), and is not entitled to registration.

LACK OF BONA FIDE INTENT TO USE AND FALSE DECLARATION

Section 2(a) of the Lanham Act, 15 U.S.C. Section 1052(a)

35. Opposer re-alleges the allegations contained in Paragraphs 1 through 34 of this Notice of Opposition.
36. Applicant refers to itself in public descriptions of itself as a "professional sportswear company" and as the "5th biggest sporting goods company" in the world.

37. On information and belief, Applicant did not, at the time of filing, have a bona fide intent to use its angle design mark on the following goods in Class 25, as recited in the Application:
- dresses; clothing made of leather, namely, leather pants, leather vests, leather shirts, leather jackets, suits; pelisses; frocks; overcoats; topcoats; clothing of imitation leather, namely, pants made from imitation leather, vests made from imitation leather, dust coats; children's and baby cloth eating bibs, baby bodysuits, baby pajamas, children's pajamas; pajamas; shoulder wraps; collar protectors; shirt fronts; shirt yokes; cuffs; layettes; dance clothes, namely, leotards, leg warmers, dance shoes, dance costumes, warm-ups, tights, body suits; ski boots; paper hats; money belts; wedding gowns
38. On information and belief, Applicant has never sold anywhere in the world any of the following goods: pelisses, baby cloth eating bibs, baby pajamas, children's pajamas, shoulder wraps; collar protectors; leotards; dance costumes; ski boots; paper hats; money belts; wedding gowns
39. Based on the above, Applicant filed a false declaration on May 01, 2014, and Applicant's angle design mark should be refused on the grounds of lack of bona fide intent to use and false declaration.

DILUTION

Section 43(c) of the Lanham Act

40. Opposer re-alleges the allegations contained in Paragraphs 1 through 39 of this Notice of Opposition.

41. As a result of the use and promotion of Opposer's Angle Design Mark for a period of multiple decades for Opposer's goods identified above, Opposer's Angle Design Mark has acquired significant goodwill and has become famous prior to Applicant's first use of its mark and the filing date of its application. Opposer's Angle Design Mark is a famous mark within the meaning of Section 43(c) of the Lanham Act.
42. Registration of the confusingly similar angle design mark by Applicant will lessen the capacity of Opposer's Angle Design Mark to identify and distinguish the goods and services of Opposer, and is thereby likely to cause dilution of Opposer's Angle Design Mark.

If Applicant obtains such rights as conferred under the Principal Register of the Lanham Act, it will obtain at least a *prima facie* exclusive right to use its alleged trademark, and Opposer will be subjected to great and irreparable damage, and Applicant will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act.

WHEREFORE, DIADORA SPORT S.R.L. believes and avers that it will be damaged by the registration of the Application, and respectfully requests that the Application be rejected, that no registration be issued thereon to Applicant, and that the Opposition be sustained in favor of DIADORA SPORT S.R.L.

Dated: Salt Lake City, Utah
May 5, 2015

KIRTON MCCONKIE

By: /Nicholas D. Wells/

Nicholas D. Wells
1800 World Trade Center
60 E. South Temple
Salt Lake City, Utah 84111

(801) 328-3600

Attorney for Opposer
DIADORA SPORT S.R.L.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2015, I served a copy of this NOTICE OF OPPOSITION on Applicant's Attorney of record, as designated below, by placing said copies in the United States Mail, first class, postage prepaid, addressed as follows:

EDWARD F. PERLMAN
WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVE FL 23
BOSTON, MA 02210-2206

By: /Nicholas D. Wells/

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