

ESTTA Tracking number: **ESTTA673106**

Filing date: **05/19/2015**

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	Robert Kirkman, LLC		
Entity	limited liability company	Citizenship	Kentucky
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		
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Applicant Information

Application No	86418856	Publication date	04/21/2015
Opposition Filing Date	05/19/2015	Opposition Period Ends	05/21/2015
Applicants	Theodorou Steve 446 Ewingville rd Ewing, NJ 08638 UNITED STATES Theodorou Phillip 446 Ewingville rd Ewing, NJ 08638 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: cigarillos, cigars, ashtrays, match boxes, matches, lighters for smokers

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 No.	4443715	Application Date	04/22/2013
Registration Date	12/03/2013	Foreign Priority	NONE

		Date	
Word Mark	THE WALKING DEAD		
Design Mark	<p style="text-align: center;">THE WALKING DEAD</p>		
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	<p style="text-align: center;">THE WALKING DEAD</p>		
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	THE WALKING DEAD
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	THE WALKING DEAD		
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 computergame 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		

U.S. Application No.	86145914	Application Date	12/17/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THE WALKING DEAD		

Design Mark	<h1>THE WALKING DEAD</h1>
Description of Mark	NONE
Goods/Services	<p>Class 016. First use: First Use: 2011/00/00 First Use In Commerce: 2011/00/00 Books relating to a dramatic televisionseries, poster books, bookends, posters, art prints, photographs, trading cards, calendars, stickers, bumper stickers, pens, greeting cards, paper party favors, paperweights</p> <p>Class 020. First use: First Use: 2011/00/00 First Use In Commerce: 2011/00/00 Busts made of resins, plastics, polyresin, gypsum, polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; statues made of resins, plastics, polyresin, gypsum, polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; sculptures of resins, plastics, polyresin, gypsum, polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; figurines made of resins, plastics, polyresin, gypsum, polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; picture frames; plastic key chains; non-metal and non-leather key chains</p> <p>Class 025. First use: First Use: 2011/00/00 First Use In Commerce: 2011/00/00 Clothing, shirts, t-shirts, sweatshirts, jackets, sleepwear, loungewear, bathrobes, beachwear, underwear, socks, infantwear, headwear, footwear, belts, head wraps, Halloween costumes, masquerade costumes, costume accessories, namely, novelty wigs</p> <p>Class 028. First use: First Use: 2012/00/00 First Use In Commerce: 2012/00/00 Parlour games, party games, tabletop games, board games, card games, action skill games, target games, dart games, puzzles, action figures, toy figures, bobblehead dolls, amusement game machines, pinball and pinball-type games, costume masks, lottery tickets, toy vehicles, toy weapons, toy model and replica weapons, costume accessories, namely, weapon props, fake scars</p>

Related Proceedings	Consolidated Opposition Nos. 91217941(Parent), 91217992, 91218267, 91218669.
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Attachments	85911364#TMSN.png(bytes) 85975352#TMSN.png(bytes) 85030452#TMSN.png(bytes) 85977997#TMSN.png(bytes) 86145914#TMSN.png(bytes) Notice of Opposition (THE WALKING DEAD Class 34) (F1694652x96B9E).pdf(39782 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	/s/ James D. Weinberger
Name	James D. Weinberger
Date	05/19/2015

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

ROBERT KIRKMAN, LLC,	
	Opposer,
-against-	
PHILLIP THEODOROU and STEVE 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 Theodorou and Steve Theodorou in International Class 34, applied for in Application Serial No. 86/418,856 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, including, but not limited to, t-shirts.

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 Sections 7(b) and Section 33(a) of the Lanham Act, 15 U.S.C. §§ 1057(a), 1115(a).

6. Opposer is also the owner of pending U.S. trademark Application Serial No. 86/145,914 for Opposer’s Mark for the following goods:

- “bookends, posters, art prints, photographs, trading cards, calendars, stickers, bumper stickers, pens, greeting cards, paper party favors, paperweights” in International Class 16, based on first use in commerce in 2011;
- “busts made of resins, plastics, polyresin, gypsum, polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; statues made of resins, plastics, polyresin, gypsum, polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; sculptures of resins, plastics, polyresin, gypsum, polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; figurines made of resins, plastics, polyresin, gypsum,

polyurethane, wax, wood, fabric and mixed media consisting of the foregoing materials; picture frames; plastic key chains; non-metal and non-leather key chains” in International Class 20, based on first use in commerce in 2011;

- “clothing, shirts, t-shirts, sweatshirts, jackets, sleepwear, loungewear, bathrobes, beachwear, underwear, socks, infantwear, headwear, footwear, belts, head wraps, Halloween costumes, masquerade costumes, costume accessories, namely, novelty wigs” in International Class 25, based on first use in commerce in 2011; and
- “parlour games, party games, tabletop games, board games, card games, action skill games, target games, dart games, puzzles, action figures, toy figures, bobblehead dolls, amusement game machines, pinball and pinball-type games, costume masks, lottery tickets, toy vehicles, toy weapons, toy model and replica weapons, costume accessories, namely, weapon props, fake scars” in International Class 28, based on first use in commerce in 2012.

7. Upon information and belief, Phillip Theodorou is an individual residing at 446 Ewingville Road, Ewing, NJ 0863.

8. Upon information and belief, Steve Theodorou is an individual residing at 446 Ewingville Road, Ewing, NJ 0863. (Phillip Theodorou and Steve Theodorou are collectively referred to hereinafter as “Applicants.”)

9. On October 9, 2014, Applicants filed Application Serial No. 86/418,856 to register the mark THE WALKING DEAD for “cigarillos, cigars, ashtrays, match boxes, matches, lighters for smokers” in International Class 34, based on an alleged bona fide intent to use the mark, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) (“Applicants’ Mark”).

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

11. 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.

12. 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.

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

14. Applicants' goods 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.

15. Based on the similarity of the marks and goods and services, consumers are likely to be deceived into falsely believing that the goods 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.

16. Thus, registration of Applicants' Mark in connection with the goods set forth in Application Serial No. 86/418,856 in International Class 34 is likely to cause confusion, cause mistake, or to deceive the public into the false belief that the goods 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).

17. 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 goods identified in their application is 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).

18. By reason of the foregoing, Opposer is likely to be harmed by the registration of Application Serial No. 86/418,856 for Applicants' Mark.

THEREFORE, it is respectfully requested that this Opposition be sustained and that registration of the mark shown in Application Serial No. 86/418,856 be refused in its entirety.

Dated: New York, New York
May 21, 2015

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

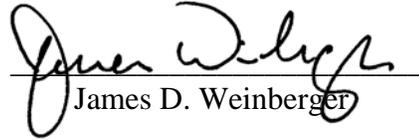
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Attorneys for Opposer

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 21st day of May, 2015, to the following:

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


James D. Weinberger