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Filing date: **08/28/2015**

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

Proceeding	91223439
Party	Defendant JS Products, Inc.
Correspondence Address	DAVID A STALL LAW OFFICES OF DAVID A STALL 2152 DUPONT DR, STE 140 IRVINE, CA 92612 UNITED STATES dstall@stall-law.com
Submission	Motion to Dismiss - Rule 12(b)
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Signature	/Tanja Proehl/
Date	08/28/2015
Attachments	Motion to Dismiss 91223439.pdf(469637 bytes ) Memo in Support of Motion to Dismiss 91223439.pdf(511235 bytes ) Exhibit 1- Board's Order.pdf(1383737 bytes ) Exhibit 2- Amended Notices of Opposition.pdf(3858915 bytes )

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

Stanley Logistics, LLC,	)	
	)	
Opposer,	)	Opposition No. 91223439
	)	
v.	)	Serial No. 86/429,073
	)	
JS Products Inc.,	)	
	)	
Applicant.	)	
	)	

**APPLICANT’S MOTION TO DISMISS NOTICE OF  
OPPOSITION FOR FAILURE TO STATE A CLAIM UNDER  
RULE 12(b)(6) WITH RESPECT TO OPPOSER’S COUNT II**

Applicant JS Products Inc., (“Applicant”) moves this Honorable Board to dismiss the Notice of Opposition filed by Opposer Stanley Logistics, LLC (“Opposer”) for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) Fed.R.Civ.P. with respect to Count II. Applicant submits herewith a Memorandum in support of its Motion, and more specifically avers as follows:

1. Opposer filed a Notice of Opposition on August 20, 2015 with the Trademark Trial and Appeal Board on the grounds of Likelihood of Confusion (Count I), Deceptiveness / False Suggestion of a Connection (Count II) and Dilution (Count III).
2. On August 20, 2015 Opposer and Applicant agreed to consolidation of this Opposition No. 91223439 with already filed and consolidated Opposition No. 91221141 with Opposition No. 91221566.<sup>1</sup>

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<sup>1</sup> Applicant is also filing a Motion to Dismiss the Amended Notice of Opposition filed by Opposer for failure to state a claim under Rule 12(b)(6) with respect to Opposer’s Count II in Opposition No. 91221566 and in Opposition No. 9122114.

3. In the already consolidated Opposition Nos. 91221141 and 91221566 the Board determined *sua sponte* that Count II (“deception/false suggestion of a connection”) in each notice of opposition was legally insufficient and struck the same but allowed Opposer to file an Amended Notice of Opposition in each proceeding by August 7, 2015 properly alleging a ground of false suggestion of a connection and/or deceptiveness, should Opposer have a basis for such claim(s). The Board’s Order dated July 16, 2015 is enclosed as **Exhibit 1**.

4. On August 5, 2015 Opposer filed an Amended Notice of Opposition including a revised Count II in Opposition Nos. 91221141 and 91221566 enclosed as **Exhibit 2**.

5. The revised Count II of the Amended Notice of Opposition and Count II of the subject Notice of Opposition are identical.

6. Opposer has not sufficiently alleged a ground of false suggestion of a connection and/or deceptiveness under Section 2(a) of the Trademark Act in Count II.

7. Since Opposer has not sufficiently alleged and cannot allege a Section 2(a) ground for opposition, its Notice of Opposition with regards to Count II must be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

WHEREFORE, Applicant prays that its motion be granted and the Notice of Opposition be dismissed with respect to Count II.

Respectfully submitted,

By:           /s/ Tanja Proehl            
Paul G. Juettner  
Tanja Proehl  
Attorneys for APPLICANT

GREER, BURNS & CRAIN, LTD.  
300 South Wacker Drive  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing APPLICANT'S MOTION TO DISMISS THE NOTICE OF OPPOSITION FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6) WITH RESPECT TO OPPOSER'S COUNT II has been served upon the following counsel for Opposer:

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by email and first class mail, on this 28 day of August, 2015.

By:           /s/ Tanja Proehl            
Tanja Proehl  
Attorney for APPLICANT

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

Stanley Logistics, LLC,	)	
	)	
Opposer,	)	Opposition No. 91223439
	)	
v.	)	Serial No. 86/429,073
	)	
JS Products Inc.,	)	
	)	
Applicant.	)	
	)	

**APPLICANT’S MEMORANDUM IN SUPPORT OF  
ITS MOTION TO DISMISS NOTICE OF  
OPPOSITION FOR FAILURE TO STATE A CLAIM  
UNDER RULE 12(b)(6) WITH RESPECT TO COUNT II**

Applicant, JS Products Inc. (“Applicant”) submits this memorandum in support of its Motion to Dismiss Notice of Opposition filed by Opposer Stanley Logistics, LLC (“Opposer”) for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) Fed.R.Civ.P. with respect to Count II.

**FACTS**

Opposer filed a Notice of Opposition on August 20, 2015 with the Trademark Trial and Appeal Board on the grounds of Likelihood of Confusion (Count I), Deceptiveness / False Suggestion of a Connection (Count II) and Dilution (Count III). On August 20, 2015 Opposer and Applicant agreed to consolidation of this Opposition No. 91223439 with already filed and consolidated Opposition No. 91221141 with Opposition No. 91221566. In the two already consolidated Opposition Nos. 91221141 and 91221566

the Board determined *sua sponte* that Count II (“deception/false suggestion of a connection”) in each notice of opposition was legally insufficient and struck the same, but allowed Opposer to file an Amended Notice of Opposition in each proceeding by August 7, 2015 properly alleging a ground of false suggestion of a connection and/or deceptiveness, should Opposer have a basis for such claim(s). On August 5, 2015 Opposer filed Amended Notices of Opposition including a revised Count II in Opposition Nos. 91221141 and 91221566. The revised Count II of the Amended Notices of Opposition and Count II of the subject Notice of Opposition are identical.

In Count II of the Notice of Opposition Opposer has not sufficiently alleged and cannot allege a ground of false suggestion of a connection and/or deceptiveness.

Specifically, Opposer has made the following allegations:

6. By reason of its extensive marketing, advertising, and promotion, Stanley's PROTO marks have become uniquely associated with Stanley and serve as part of Stanley's identity with consumers.

7. Stanley's PROTO marks have become well-known and famous as distinctive indicators of the origin of Stanley's goods and services, and the PROTO marks are valuable symbols of Stanley's goodwill and identity.

20. Applicant's mark PROTOCOL misdescribes the character, quality, function, composition or use of the applied-for goods; prospective purchasers are likely to believe that the misdescription actually describes the applied-for goods; and the misdescription is likely to affect a significant portion of the relevant consumers' decision to purchase.

21. Applicant's mark PROTOCOL falsely suggests a connection with Stanley because Applicant's mark is the same as, or a close approximation of, Stanley's PROTO name and/or identity; Applicant's mark would be recognized as such, in that it points uniquely and unmistakably to Stanley; Stanley is not connected with goods sold under Applicant's mark; and Stanley's fame and reputation is such that, when Applicant's mark is used with Applicant's goods and services, a connection with Stanley would be presumed.

## ARGUMENT

### **A. Opposer Has Not and Cannot Allege A Section 2(a) Deception Claim.**

The Board may dismiss a claim if it appears that the Opposer can prove no set of facts in support of pled allegations which would entitle him to relief. Fed.R.Civ.P. 12(b)(6); TBMP §503.02. In the present case, Opposer cannot plausibly allege a Section 2(a) deception claim. 15 USC §1052(a).

As stated in the Board's Order dated July 16, 2015 and enclosed as Exhibit 1, in order to properly assert a ground that the mark is deceptive, Opposer must plead that (1) Applicant's mark misdescribes the character, quality, function, composition or use of the goods, (2) prospective purchasers are likely to believe that the misdescription actually describes the goods, and (3) the misdescription is likely to affect a significant portion of the relevant consumers' decision to purchase. See In re Spirits Int'l, N.V., 563 F.3d 1347, 90 USPQ2d 1589 (Fed. Cir. 2009); and In re Budge Mfg. Co., 857 F.2d 773, 775, 8 USPQ2d 1259, 1260 (Fed. Cir. 1988), aff'g 8 USPQ2d 1790 (TTAB 1987). See also In re White Jasmine LLC, 106 USPQ2d 1385 (TTAB 2013).

In paragraph 20 of the Notice of Opposition, Opposer alleges that "Applicant's mark PROTOCOL misdescribes the character, quality, function, composition or use of the applied-for goods; prospective purchasers are likely to believe that the misdescription actually describes the applied-for goods; and the misdescription is likely to affect a significant portion of the relevant consumers' decision to purchase."

Opposer simply has made a conclusory allegation of the elements of a Section 2(a) deception claim as provided in the Board's July 16 Order. Opposer has not made any factual allegations in support of its claim. In particular, the first prong of the

deception test cannot be met because Applicant's Mark "PROTOCOL" does not describe any of the goods covered in the Application, such as "tables and stands specially adapted to hold powered machinery, powered tools, powered saws and powered machinery equipment." Therefore, the mark PROTOCOL is incapable of misdescribing the character, quality, function, composition or use of the recited goods. For this reason alone, a deceptiveness claim is inapplicable on its face.

The true gravamen of Opposer's deceptiveness claim is that the public will likely be deceived (allegedly) as to the source of the goods because Applicant's PROTOCOL mark is allegedly similar to Opposer's PROTO mark. However, this is an ordinary Section 2(d) claim, not a Section 2(a) deceptiveness claim as explained by the Board in its earlier Order. Accordingly, the portion of Opposer's Count II purporting to assert a deceptiveness claim must be dismissed.

**B. Opposer Cannot Allege False Suggestion Of A Connection.**

In the present case, Opposer has not and cannot plausibly allege a false suggestion of a connection claim under Section 2(a) because "PROTO" is a trademark owned by Opposer, not its name or identity.

As stated in the Board's July 16 Order, in order to properly assert a ground of false suggestion of a connection, Opposer must plead that (1) Applicant's mark is the same or a close approximation of Opposer's previously used name or identity; (2) that the mark would be recognized as such, in that it points uniquely and unmistakably to Opposer; (3) that Opposer is not connected with the goods sold by Applicant under the mark; and (4) that Opposer's name or identity is of sufficient fame or reputation that when Applicant's

mark is used on its goods, a connection with Opposer would be presumed. See Boston Red Sox Baseball Club LP v. Sherman, 88 USPQ2d 1581 (TTAB 2008); and Buffett v. Chi-Chi's, Inc., 226 USPQ 428 (TTAB 1985).

Again, Opposer's Notice of Opposition does not allege facts that Opposer's PROTO marks are Opposer's name or identity, apart from being a trademark. Specifically, paragraph 21 alleges that "Applicant's mark PROTOCOL falsely suggests a connection with Stanley because Applicant's mark is the same as, or a close approximation of, Stanley's PROTO name and/or identity" (emphasis added). However, Opposer's name is Stanley Logistics, not PROTO. Opposer does not allege any facts that the term PROTO is or ever was Opposer's previously used name. Further, Opposer does not allege facts that Applicant's mark is the same as or a close approximation of Opposer's "identity."

The Federal Circuit and this Board have explained that a claim for falsely suggesting a connection with persons under Section 2(a) is distinctly different than a trademark claim under Section 2(d). University of Notre Dame du Lac v. J.C. Food Imports Co., Inc., 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); Buffett v. Chi-Chi's, Inc., 226 USPQ 428,429 (TTAB 1985). The interest to be protected is a person's identity or persona and is more akin to invasion of privacy than trademark infringement. Id. The cases have recognized identity or persona rights in names, likenesses and nicknames, but not in a trademark alone. See, Carson v. Here's Johnny Portable Toilets, Inc., 698 F.2d 831, 218 USPQ 1, 4 (6th Cir. 1983)(collecting right of publicity "identity" cases). The courts have not gone so far as to find that a trademark alone can qualify as a person's "identity" under Section 2(a) of the Trademark Act. In Boston Red Sox Baseball Club LP

v. Sherman, 88 USPQ2d 1581 (TTAB 2008) the Board found that “there is no question that the name “Red Sox” is the identity of the baseball club, apart from being a trademark for the entertainment services the club provides.” Id. at 1589 (emphasis added).

In the Notice of Opposition there is no factual allegation that the term PROTO is anything more than a trademark owned by Opposer. Opposer’s allegations that “Stanley’s PROTO marks have become uniquely associated with Stanley and serve as part of Stanley’s identity with consumers” (Opposition ¶ 6) and that “Stanley’s PROTO marks have become well-known and famous as distinctive indicators of the origin of Stanley’s goods and services, and the PROTO marks are valuable symbols of Stanley’s goodwill and identity” (Opposition ¶ 7) do not save the claim. The same allegations that a plaintiff’s or opposer’s trademark is part of its identity with consumers and is a valuable symbol of its goodwill and identity could be made in any Section 2(d) trademark case. As with its deceptiveness allegations, Opposer is attempting to improperly multiply its Section 2(d) claim, and for this reasons the claim must be dismissed.

### **CONCLUSION**

Since Opposer has not and cannot allege deception and false suggestion of a connection claim, Count II of its Notice of Opposition must be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

Applicant respectfully requests that the deadline for Applicant to file an answer to the Notice of Opposition be reset for 30 days after the Board rules on Applicant’s Motion to Dismiss, and that the opposition schedule be reset accordingly.

Respectfully submitted,

By: /s/ Tanja Proehl  
Paul G. Juettner  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE NOTICE OF OPPOSITION FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6) WITH RESPECT TO OPPOSER'S COUNT II has been served upon the following counsel for Opposer:

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by email and first class mail, on this 28 day of August 2015.

By: /s/ Tanja Proehl  
Tanja Proehl  
Attorney for APPLICANT

# EXHIBIT 1

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: July 16, 2015

Opposition Nos. 91221141 (parent)  
91221566

Stanley Logistics, LLC

v.

JS Products, Inc.

**Robert H. Coggins,  
Interlocutory Attorney:**

Now before the Board is Opposer's motion (filed May 26, 2015, in Opposition No. 91221566) to consolidate Opposition Nos. 91221141 and 91221566.<sup>1</sup> The motion is fully briefed.

Motion to Consolidate

Federal R. Civ. P. 42(a), made applicable to these proceedings by Trademark Rule 2.116(a), provides with respect to consolidation of proceedings that, when actions involve a common question of law or fact, the Board may join for hearing or trial any or all of the matters at issue in the actions, may consolidate the actions, and may issue any other orders to avoid unnecessary costs or delay. *See* TBMP § 511 (2015).

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<sup>1</sup> Applicant's appearance of counsel (filed April 27 and May 29, 2015, in the respective oppositions) is noted.

The Board has reviewed the records in Opposition Nos. 91221141 and 91221566, and concludes that these cases involve identical parties, identical marks, and common questions of law and fact. All but four of the thirty-three paragraphs in the respective notices of opposition are identical; indeed, Opposer pleads ownership of the same thirteen registrations in both pleadings and alleges the same grounds for opposition. Three of the four differing paragraphs (1, 5, and 9) contemplate the difference between the goods in Applicant's respective applications, with paragraphs 1 and 5 of Opposition No. 91221566 merely including Opposer's additional allegation of common law rights in its marks with regard to "lighting products." It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a). Indeed, Applicant concedes that these proceedings likely will have overlapping proofs. Applicant's arguments that the goods in its respective applications differ and that its evidence and arguments for its Classes 8 and 11 goods may differ do not reveal any prejudice or inconvenience that would outweigh the savings in time, effort, and expense which may be gained from consolidation. Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file. In view thereof, the motion to consolidate is **granted**. The above-noted proceedings are hereby consolidated and may be presented on the same record and briefs. *See Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010).

The Board file will be maintained in Opposition No. 91221141 as the “parent” case. Except for amended notices of opposition, if filed, and answers thereto (see discussion, *infra*), only a single copy of all motions and papers should be filed in the parent case only, and should caption all consolidated proceeding numbers listing the parent case first.<sup>2</sup>

Count II Stricken *Sua Sponte*

Upon review of the notices of opposition, which was necessary for consideration of the motion to consolidate, the Board has determined that Count II (“deception/false suggestion of a connection”) in each notice of opposition is insufficient.

In the header for Count II, Opposer cites to “§ 43(a).” Section 43(a) of the Trademark Act provides recourse to a party by way of a civil action but is not applicable to an opposition proceeding. The Board may not entertain any claim based on Trademark Act § 43(a). *Andersen Corp. v. Therm-O-Shield Int’l, Inc.*, 226 USPQ 431, 432 n.5 (TTAB 1985). This is not, however, the only flaw in pleading Count II. Although Opposer also cites to Section 2(a) of the Trademark Act (*see* paragraph 20), neither the ground of deception nor false suggestion of a connection is sufficiently pleaded under Section 2(a); instead, they appear to be another iteration of Count I (likelihood of confusion).

In order to properly assert a ground of false suggestion of a connection, Opposer must plead that (1) Applicant’s mark is the same or a close approximation of

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<sup>2</sup> The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

Opposer's previously used name or identity; (2) that the mark would be recognized as such, in that it points uniquely and unmistakably to Opposer; (3) that Opposer is not connected with the goods sold by Applicant under the mark; and (4) that Opposer's name or identity is of sufficient fame or reputation that when Applicant's mark is used on its goods, a connection with Opposer would be presumed. *See Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581 (TTAB 2008); and *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985). While Opposer provides some conclusory allegations as to part of a claim of false suggestion of a connection, neither notice of opposition contains an allegation that Opposer's PROTO marks serve as Opposer's *name* or *identity* instead of merely a *mark* owned by Opposer. Specifically, paragraph 21 alleges that the subject mark closely resembles Opposer's marks -- not Opposer's previously used name or identity.

In order to properly assert a ground that the mark is deceptive, Opposer must plead that (1) Applicant's mark misdescribes the character, quality, function, composition or use of the goods, (2) prospective purchasers are likely to believe that the misdescription actually describes the goods, and (3) the misdescription is likely to affect a significant portion of the relevant consumers' decision to purchase. *See In re Spirits Int'l, N.V.*, 563 F.3d 1347, 90 USPQ2d 1589 (Fed. Cir. 2009); and *In re Budge Mfg. Co.*, 857 F.2d 773, 775, 8 USPQ2d 1259, 1260 (Fed. Cir. 1988), *aff'g* 8 USPQ2d 1790 (TTAB 1987). *See also In re White Jasmine LLC*, 106 USPQ2d 1385 (TTAB 2013). There does not appear to be anything other than bare bones, conclusory allegations in the notices of opposition as to any of the individual factors.

Moreover, paragraph 20 alleges that the mark misdescribes the “origin” of the goods, and paragraph 23 alleges that the mark “is deceptive in that it falsely suggests a connection with” Opposer. These allegations are, in essence, more appropriate to a claim of likelihood of confusion under Section 2(d) rather than deceptiveness under Section 2(a). Opposer fails to allege how the use of the mark by Applicant would be deceptive in relation to the goods, and there is nothing that would allege plausibility or materiality of a Section 2(a) deceptiveness claim. Moreover, Opposer appears to improperly conflate the separate grounds. *See para. 23 (“Applicant’s mark PROTOCOL is deceptive in that it falsely suggests a connection with” Opposer) (emphasis added).*

In view thereof, Count II (the false suggestion of a connection and deceptiveness grounds pleaded in paragraphs 19-25) is **stricken** from each notice of opposition. However, Opposer is allowed until **August 7, 2015**, to file an amended notice of opposition in each proceeding that properly alleges a ground of false suggestion of a connection and/or deceptiveness, should Opposer have a reasonable basis for such claim(s); failing which, the consolidated oppositions will go forward on the two remaining grounds of likelihood of confusion (Count I) and dilution (Count III) in the original notices of opposition, as **stricken**. Applicant is allowed until **August 28, 2015**, in which to file an answer to each prospective first amended notice of opposition, if amended notices of opposition are filed.<sup>3</sup>

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<sup>3</sup> As mentioned above, the complaint and answer are exceptions to the general rule that a paper should be filed only in the “parent” case. The parties should file the individual complaint and answer in the respective file.

Schedule

Dates are reset on the schedule below.<sup>4</sup>

<u>Amended Notice(s) of Opposition Due, if Filed</u>	<u>8/7/2015</u>
<u>Answer(s) to Amended Notice(s) Due</u>	<u>8/28/2015</u>
<u>Initial Disclosures Due</u>	<u>9/11/2015</u>
<u>Expert Disclosures Due</u>	<u>1/9/2016</u>
<u>Discovery Closes</u>	<u>2/8/2016</u>
<u>Plaintiff's Pretrial Disclosures</u>	<u>3/24/2016</u>
<u>Plaintiff's 30-day Trial Period Ends</u>	<u>5/8/2016</u>
<u>Defendant's Pretrial Disclosures</u>	<u>5/23/2016</u>
<u>Defendant's 30-day Trial Period Ends</u>	<u>7/7/2016</u>
<u>Plaintiff's Rebuttal Disclosures</u>	<u>7/22/2016</u>
<u>Plaintiff's 15-day Rebuttal Period Ends</u>	<u>8/21/2016</u>

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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<sup>4</sup> Discovery is open. Inasmuch as the deadline for the parties' discovery conference in each proceeding has run, the new, consolidated schedule does reset this date.

# EXHIBIT 2

ESTTA Tracking number: **ESTTA687742**

Filing date: **08/05/2015**

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

Proceeding	91221566
Party	Plaintiff Stanley Logistics, LLC
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Signature	/Jim Davis/
Date	08/05/2015
Attachments	Amended Notice of Opposition No 91221566.pdf(438252 bytes )

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

In re Application Serial No. 86429094 for the mark PROTOCOL filed on October 20, 2014, and published on March 24, 2015.

Stanley Logistics, LLC

Opposer,

Opposition No. 91221566

v

JS Products Inc.

Applicant.

**AMENDED NOTICE OF OPPOSITION**

This Amended Notice of Opposition is being filed pursuant to the Board's July 16, 2015, order.

Stanley Logistics, LLC, a limited liability company organized under the laws of Delaware, believes that it will be damaged by the registration of the mark PROTOCOL (the "Disputed Mark"), the subject of application Serial No. 86429094 (the "Application") filed by JS Products Inc. ("JSP" or "Applicant"), a Nevada corporation with an address of 6445 Montessouri Street, Las Vegas, Nevada 89113. Stanley Logistics, LLC hereby opposes the Disputed Mark under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Stanley Logistics, LLC alleges as follows:

1. Stanley Logistics, LLC is a wholly-owned subsidiary of Stanley Black & Decker, Inc. (collectively "Stanley"). Stanley is renowned in the U.S. and around the world as a leading manufacturer and marketer of tools, tool kits, security products, lighting products, and a wide variety of other products.

2. For more than 65 years Stanley and its predecessors-in-interest have used the trademark PROTO, and marks that incorporate PROTO, in connection with hand and power tools, tool storage products, and a wide variety of related goods and services. Stanley owns several federal trademark registrations for its PROTO marks, including the following:

<b>Reg. No.</b>	<b>Reg. Date</b>	<b>Mark</b>	<b>Goods</b>
0501030	July 13, 1948	PROTO	Pliers, end wrenches and sockets, in Class 8
0530257	Sept. 5, 1950	PROTO	Tools-namely, adapters, awls, utility bars, battery terminal pullers, bearing pullers, bending bars, box wrenches, brake spring plier, brake tools, cape chisels, chisels, cold chisels, connecting rod sockets, crowfoot wrenches, diamond point chisels, drag link tools, L handles, flare nut wrenches, flex handles, gear pullers, hacksaws, hinge handles, offset box wrenches, open end wrenches, pin handles, pinion puller bars, pipe extractors, pipe wrenches, pitman arm pullers, pneumatic wrench sockets, prick punches, pry bars, pullers, punches, ratchets, rim wrenches, ripping chisels, rivet cutters, rolling head bars, scrapers, screw extractors, screwdriver sockets, screwdrivers, socket handles, socket racks, socket wrenches, combination wrenches, star drills, stud pullers, torque wrenches, tubing expanders, universal joints, universal sockets, wheel pullers, wood chisels, wrench pliers, wrenches, in Class 6
0555093	Feb. 19, 1952	PROTO	Tools-namely-brake gauges, feeler gauges, ignition gauges, and thickness gauges, in Class 9
0889361	Apr. 14, 1970	PROTO	Compression testers, in Class 9
0954749	Mar. 13, 1973	PROTO	Containers for tools-namely, portable tool boxes, chests and cabinets, in Class 6
1739488	Dec. 15, 1992	PROTO	manually operated hand tools; namely, sockets, ratchets, universal joints, wrenches, torque wrenches, c-clamps, punches, pry bars, chisels, pliers, cutters, wire strippers, snips, utility knives, screwdrivers, nut drivers, hex bits and hex keys, hammers, pullers, saws, inspection mirrors, files and parts thereof, in Class 8; and feeler and thickness gauges and measuring instruments; namely, tape rules, in Class 9
4384740	Aug. 13, 2013		Power impact wrenches and power torque drivers, in Class 7

4403918	Sept.17, 2013	<b>PROTO</b>	Pneumatic wrench sockets, in Class 7; Hand tools, namely, awls, utility bars, battery terminal pullers, bearing pullers, bending bars, box wrenches, brake spring pliers, universal brake adjusting tools, cape chisels, chisels, cold chisels, connecting rod sockets, crowfoot wrenches, diamond point chisels, L handles, flare nut wrenches, flex handles, gear pullers, hacksaws, hinge handles, offset box wrenches, open end wrenches, pin handles, pinion puller bars, pipe extractors, pipe wrenches, pitman arm pullers, prick punches, pry bars, pullers, punches, ratchets, rim wrenches, ripping chisels, rivet cutters, rolling head bars, scrapers, screw extractors, screwdrivers, screwdriver sockets, socket handles, socket racks, socket adapter heads, drag link socket head adapters, wrenches, combination wrenches, star drills, stud pullers, torque wrenches, tubing expanders, universal joints, universal sockets, wheel pullers, wood chisels, wrench pliers, wrenches, pliers, end wrenches and sockets, in Class 8
4502145	Mar.25, 2014	<b>PROTO</b>	Metal containers for tools sold empty, namely, portable tool boxes and chests, in Class 6; Containers for tools, namely, portable tool boxes and chests sold filled with hand tools, in Class 8; Non-metal containers for tools sold empty, namely, portable tool boxes and chests; containers for tools, namely, cabinets, in Class 20
4384784	Aug.13, 2013	PROTO	Power impact wrenches and power torque drivers, in Class 7
4426057	Oct.29, 2013	<b>PROTO</b> (id)	Metal containers for tools sold empty, namely, portable tool boxes and chests, in Class 6
4396897	Sept. 3, 2013	<b>PROTO</b> (id)	Power impact wrenches and power torque drivers, in Class 7
4426058	Oct. 29, 2013	<b>PROTO</b> (id)	Pneumatic wrench sockets, in Class 7; Hand tools, namely, adapters to affix radio frequency identification chips to tools, awls, utility bars, battery terminal pullers, bearing pullers, bending bars, box wrenches, brake spring pliers, cape chisels, chisels, cold chisels, connecting rod sockets, crowfoot wrenches, diamond point chisels, L handles, flare nut wrenches, flex handles, gear pullers, hacksaws, hinge handles, offset box wrenches, open end wrenches, pin handles, pinion puller bars, pipe extractors, pipe wrenches, pitman arm pullers, prick punches, pry bars, pullers, punches, ratchets, rim wrenches, ripping chisels, rivet cutters, rolling head bars, scrapers, screw extractors, screwdriver sockets, screwdrivers, socket handles, socket racks, socket wrenches, combination wrenches,

star drills, stud pullers, torque wrenches, tubing expanders, universal joints, universal sockets, wheel pullers, wood chisels, wrench pliers, wrenches, pliers, end wrenches and sockets, in Class 8

3. Many of these registrations are incontestable and provide *conclusive* evidence of Stanley's registration of the PROTO marks, Stanley's ownership of the marks, and of Stanley's exclusive right to use the marks in commerce on or in connection with the goods specified in the registrations.

4. Stanley's rights in the PROTO marks are senior to any trademark rights Applicant may claim in the mark PROTOCOL.

5. For decades Stanley has expended substantial resources and money marketing, advertising, and promoting the PROTO marks throughout the United States in connection with a wide range of hand and power tools, tool storage products, lighting products, and related goods and services.

6. By reason of its extensive marketing, advertising, and promotion, Stanley's PROTO marks have become uniquely associated with Stanley and serve as part of Stanley's identity with consumers.

7. Stanley's PROTO marks have become well-known and famous as distinctive indicators of the origin of Stanley's goods and services, and the PROTO marks are valuable symbols of Stanley's goodwill and identity.

8. The PROTO marks are fanciful, arbitrary, inherently distinctive, and therefore strong and entitled to a broad scope of protection.

9. Applicant has done business with Stanley and was aware of Stanley's PROTO marks when Applicant adopted its PROTOCOL mark but, notwithstanding Stanley's prior rights, Applicant is seeking to register the mark PROTOCOL for the following products:

Flashlights and Portable Utility Lights, in Class 11

10. The mark PROTOCOL is substantially and confusingly similar to Stanley's PROTO marks.

11. The goods identified in the PROTOCOL Application are highly related or identical to the goods Stanley provides under its PROTO marks, and the goods protected under Stanley's federal trademark registrations for the PROTO marks.

12. Stanley is not related to Applicant and has not authorized Applicant to use or register the Disputed Mark.

13. Stanley believes that it will be damaged by the registration of the Disputed Mark.

**COUNT I – LIKELIHOOD OF CONFUSION – § 2(d)**

14. Stanley hereby incorporates by reference the allegations contained in paragraphs 1 through 13 above.

15. The mark PROTOCOL so resembles Stanley's PROTO marks that Applicant's use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's goods and will injure and damage Stanley and the goodwill and reputation symbolized by Stanley's PROTO marks.

16. Applicant's goods are highly-related or identical to the goods and services of Stanley such that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Stanley or that Applicant is in some way connected with, sponsored by, or affiliated with Stanley, all to Stanley's irreparable damage.

17. Likelihood of confusion is enhanced in this case by the fame of Stanley's PROTO marks and by the fact that consumers associate Stanley's PROTO marks with goods and services sold, approved, or endorsed by Stanley.

18. Likelihood of confusion is enhanced in this case by the fact that the parties' goods are marketed and sold through the same trade channels to the same purchasers and classes of purchasers.

#### **COUNT II – DECEPTION/FALSE SUGGESTION OF CONNECTION**

19. Stanley hereby incorporates by reference the allegations contained in paragraphs 1 through 18 above.

20. Applicant's mark PROTOCOL misdescribes the character, quality, function, composition or use of the applied-for goods; prospective purchasers are likely to believe that the misdescription actually describes the applied-for goods; and the misdescription is likely to affect a significant portion of the relevant consumers' decision to purchase.

21. Applicant's mark PROTOCOL falsely suggests a connection with Stanley because Applicant's mark is the same as, or a close approximation of, Stanley's PROTO name and/or identity; Applicant's mark would be recognized as such, in that it points uniquely and unmistakably to Stanley; Stanley is not connected with goods sold under Applicant's mark; and Stanley's fame and reputation is such that, when Applicant's mark is used with Applicant's goods and services, a connection with Stanley would be presumed.

22. Applicant's PROTOCOL mark is a close approximation of Stanley's PROTO name and identity.

23. When Applicant's mark is used on the goods covered under its application, Applicant's mark will cause purchasers to mistakenly assume that Stanley is endorsing,

attempting to promote, or encouraging the sale of Applicant's goods by permitting Applicant's mark to be used in connection with such goods.

24. Applicant's mark PROTOCOL is deceptive in that it falsely suggests a connection with, or approval by, Stanley.

25. Applicant is not connected with Stanley and Stanley is not connected with any activities performed by Applicant under Applicant's mark.

26. Use and registration of the mark PROTOCOL by Applicant will deprive Stanley of the ability to protect its reputation, persona, and goodwill.

27. Likelihood of damage to Stanley's goodwill is enhanced by the fact that many of the same customers and prospective customers will encounter both the PROTO and PROTOCOL marks and those that encounter defects in the quality of Applicant's goods will attribute those defects to Stanley, thereby injuring Stanley's reputation and goodwill.

### **COUNT III – DILUTION – § 43(c)**

28. Stanley hereby incorporates by reference the allegations contained in paragraphs 1 through 27 above.

29. Stanley's PROTO marks have been widely used and extensively publicized in the United States and have become well-known and famous within the meaning of the Lanham Act § 43(c) as a distinctive symbol of Stanley's goodwill.

30. Stanley's PROTO marks were well-known and famous before Applicant filed its application for or made any use of the mark PROTOCOL.

31. Applicant's conduct is likely to cause an association arising from the similarity between the marks PROTO and PROTOCOL that impairs the distinctiveness of Stanley's mark

PROTO.

32. The use or registration of Applicant's mark PROTOCOL will tarnish the goodwill of Stanley's PROTO marks and lessen the capacity of Stanley's PROTO marks to identify and distinguish Stanley's goods and services.

33. Likelihood of confusion, dilution, and deception is further enhanced here by the fact that the parties' goods will be advertised and provided through the same trade channels and to the same classes of prospective purchasers.

34. Likelihood of confusion, dilution and deception is further enhanced here by the fact that the goods covered under Applicant's PROTOCOL application are closely related or identical to those provided by Stanley under its PROTO marks.

35. By reason of the foregoing, Stanley asserts that it will be damaged by the registration of Applicant's mark PROTOCOL and hereby opposes the Application under 15 U.S.C. § 1052.

WHEREFORE, Stanley prays that this opposition be sustained and that registration be denied.

Respectfully submitted,

Y LOGISTICS, LLC

Dated: August 8, 2015 By:

J II  
Fox LLP  
K Street, NW  
D.C. 20006  
02) 857-6000

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing Amended Notice of Opposition regarding Opposition No. 91221566 is being served on Applicant's counsel

Paul G. Juettner  
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Chicago, IL 60606  
[pjuettner@gbclaw.net](mailto:pjuettner@gbclaw.net), [tproehl@gbclaw.net](mailto:tproehl@gbclaw.net)

via email as agreed upon, this

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ESTTA Tracking number: **ESTTA687740**

Filing date: **08/05/2015**

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

Proceeding	91221141
Party	Plaintiff Stanley Logistics, LLC
Correspondence Address	JAMES R DAVIS II ARENT FOX LLP 1717 K ST NW WASHINGTON, DC 20006-5344 UNITED STATES Davis.Jim@arentfox.com, mitchell.justine@arentfox.com, TMdock- et@arentfox.com
Submission	Other Motions/Papers
Filer's Name	James R. Davis, II
Filer's e-mail	Davis.Jim@arentfox.com, mitchell.justine@arentfox.com
Signature	/Jim Davis/
Date	08/05/2015
Attachments	Amended Notice of Opposition No 91221141.pdf(440352 bytes )

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

In re Application Serial No. 86321980 for the mark PROTOCOL filed on June 26, 2014, and published on November 18, 2014.

Stanley Logistics, LLC

Opposer

Opposition No. 91221141

v

JS Products Inc.

Applicant.

BOX TTAB FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313

**AMENDED NOTICE OF OPPOSITION**

This Amended Notice of Opposition is being filed pursuant to the Board's July 16, 2015, order.

Stanley Logistics, LLC, a limited liability company organized under the laws of Delaware, believes that it will be damaged by the registration of the mark PROTOCOL (the "Disputed Mark"), the subject of application Serial No. 86321980 (the "Application") filed by JS Products Inc. ("JSP" or "Applicant"), a Nevada corporation with an address of 5440 S. Procyon Avenue, Las Vegas Nevada 89118. Stanley Logistics, LLC hereby opposes the Disputed Mark under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Stanley Logistics, LLC alleges as follows:

1. Stanley Logistics, LLC is a wholly-owned subsidiary of Stanley Black & Decker, Inc. (collectively "Stanley"). Stanley is renowned in the U.S. and around the world as a leading

manufacturer and marketer of tools, tool kits, security products, and a wide variety of other products.

2. For more than 65 years Stanley and its predecessors-in-interest have used the trademark PROTO, and marks that incorporate PROTO, in connection with hand and power tools, tool storage products, and a wide variety of related goods and services. Stanley owns several federal trademark registrations for its PROTO marks, including the following:

<b>Reg. No.</b>	<b>Reg. Date</b>	<b>Mark</b>	<b>Goods</b>
0501030	July 13, 1948	PROTO	Pliers, end wrenches and sockets
0530257	Sept. 5, 1950	PROTO	Tools-namely, adapters, awls, utility bars, battery terminal pullers, bearing pullers, bending bars, box wrenches, brake spring plier, brake tools, cape chisels, chisels, cold chisels, connecting rod sockets, crowfoot wrenches, diamond point chisels, drag link tools, L handles, flare nut wrenches, flex handles, gear pullers, hacksaws, hinge handles, offset box wrenches, open end wrenches, pin handles, pinion puller bars, pipe extractors, pipe wrenches, pitman arm pullers, pneumatic wrench sockets, prick punches, pry bars, pullers, punches, ratchets, rim wrenches, ripping chisels, rivet cutters, rolling head bars, scrapers, screw extractors, screwdriver sockets, screwdrivers, socket handles, socket racks, socket wrenches, combination wrenches, star drills, stud pullers, torque wrenches, tubing expanders, universal joints, universal sockets, wheel pullers, wood chisels, wrench pliers, wrenches
0555093	Feb. 19, 1952	PROTO	Tools-namely-brake gauges, feeler gauges, ignition gauges, and thickness gauges
0889361	Apr. 14, 1970	PROTO	Compression testers
0954749	Mar. 13, 1973	PROTO	Containers for tools-namely, portable tool boxes, chests and cabinets
1739488	Dec. 15, 1992	PROTO	manually operated hand tools; namely, sockets, ratchets, universal joints, wrenches, torque wrenches, c-clamps, punches, pry bars, chisels, pliers, cutters, wire strippers, snips, utility knives, screwdrivers, nut drivers, hex bits and hex keys, hammers, pullers, saws, inspection mirrors, files and parts thereof, in Class 8; and feeler and thickness gauges and measuring instruments; namely, tape rules, in Class 9

4384740	Aug.13, 2013	<b>PROTO</b>	Power impact wrenches and power torque drivers, in Class 7
4403918	Sept.17, 2013	<b>PROTO</b>	Pneumatic wrench sockets, in Class 7; Hand tools, namely, awls, utility bars, battery terminal pullers, bearing pullers, bending bars, box wrenches, brake spring pliers, universal brake adjusting tools, cape chisels, chisels, cold chisels, connecting rod sockets, crowfoot wrenches, diamond point chisels, L handles, flare nut wrenches, flex handles, gear pullers, hacksaws, hinge handles, offset box wrenches, open end wrenches, pin handles, pinion puller bars, pipe extractors, pipe wrenches, pitman arm pullers, prick punches, pry bars, pullers, punches, ratchets, rim wrenches, ripping chisels, rivet cutters, rolling head bars, scrapers, screw extractors, screwdrivers, screwdriver sockets, socket handles, socket racks, socket adapter heads, drag link socket head adapters, wrenches, combination wrenches, star drills, stud pullers, torque wrenches, tubing expanders, universal joints, universal sockets, wheel pullers, wood chisels, wrench pliers, wrenches, pliers, end wrenches and sockets, in Class 8
4502145	Mar.25, 2014		Metal containers for tools sold empty, namely, portable tool boxes and chests, in Class 6; Containers for tools, namely, portable tool boxes and chests sold filled with hand tools, in Class 8; Non-metal containers for tools sold empty, namely, portable tool boxes and chests; containers for tools, namely, cabinets, in Class 20
4384784	Aug.13, 2013	PROTO	Power impact wrenches and power torque drivers, in Class 7
4426057	Oct.29, 2013	<b>PROTO</b> (id)	Metal containers for tools sold empty, namely, portable tool boxes and chests, in Class 6
4396897	Sept. 3, 2013	<b>PROTO</b> (id)	Power impact wrenches and power torque drivers, in Class 7
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screwdriver sockets, screwdrivers, socket handles, socket racks, socket wrenches, combination wrenches, star drills, stud pullers, torque wrenches, tubing expanders, universal joints, universal sockets, wheel pullers, wood chisels, wrench pliers, wrenches, pliers, end wrenches and sockets, in Class 8.

3. Many of these registrations are incontestable and provide *conclusive* evidence of Stanley's registration of the PROTO marks, Stanley's ownership of the marks, and of Stanley's exclusive right to use the marks in commerce on or in connection with the goods specified in the registrations.

4. Stanley's rights in the PROTO marks are senior to any trademark rights Applicant may claim in the mark PROTOCOL.

5. For decades Stanley has expended substantial resources and money marketing, advertising, and promoting the PROTO marks throughout the United States in connection with a wide range of hand and power tools, tool storage products, and related goods and services.

6. By reason of its extensive marketing, advertising, and promotion, Stanley's PROTO marks have become uniquely associated with Stanley and serve as part of Stanley's identity with consumers.

7. Stanley's PROTO marks have become well-known and famous as distinctive indicators of the origin of Stanley's goods and services, and the PROTO marks are valuable symbols of Stanley's goodwill and identity.

8. The PROTO marks are fanciful, arbitrary, inherently distinctive, and therefore strong and entitled to a broad scope of protection.

9. Applicant has done business with Stanley and Applicant was aware of Stanley's PROTO marks when Applicant adopted its PROTOCOL mark but, notwithstanding Stanley's prior rights, Applicant is seeking to register the mark PROTOCOL for the following hand tools:

Hand Tools, namely Axes, Clamps, Knives, Saws, Saw Blades, Cutters, Punches, Chisels, Pliers, Screwdrivers, Nut Drivers, Hammers, and Drill Bits, in Class 8

10. The mark PROTOCOL is substantially and confusingly similar to Stanley's PROTO marks.

11. The goods identified in the PROTOCOL Application are highly related or identical to the goods Stanley provides under its PROTO marks, and the goods protected under Stanley's federal trademark registrations for the PROTO marks.

12. Stanley is not related to Applicant and has not authorized Applicant to use or register the Disputed Mark.

13. Stanley believes that it will be damaged by the registration of the Disputed Mark.

#### **COUNT I – LIKELIHOOD OF CONFUSION – § 2(d)**

14. Stanley hereby incorporates by reference the allegations contained in paragraphs 1 through 13 above.

15. The mark PROTOCOL so resembles Stanley's PROTO marks that Applicant's use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's goods and will injure and damage Stanley and the goodwill and reputation symbolized by Stanley's PROTO marks.

16. Applicant's goods are highly-related or identical to the goods and services of Stanley such that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Stanley or that Applicant is in some way connected with, sponsored by, or affiliated with Stanley, all to Stanley's irreparable damage.

17. Likelihood of confusion is enhanced in this case by the fame of Stanley's PROTO marks and by the fact that consumers associate Stanley's PROTO marks with goods and services sold, approved, or endorsed by Stanley.

18. Likelihood of confusion is enhanced in this case by the fact that the parties' goods are marketed and sold through the same trade channels to the same purchasers and classes of purchasers.

#### **COUNT II – DECEPTION/FALSE SUGGESTION OF CONNECTION**

19. Stanley hereby incorporates by reference the allegations contained in paragraphs 1 through 18 above.

20. Applicant's mark PROTOCOL misdescribes the character, quality, function, composition or use of the applied-for goods; prospective purchasers are likely to believe that the misdescription actually describes the applied-for goods; and the misdescription is likely to affect a significant portion of the relevant consumers' decision to purchase.

21. Applicant's mark PROTOCOL falsely suggests a connection with Stanley because Applicant's mark is the same as, or a close approximation of, Stanley's PROTO name and/or identity; Applicant's mark would be recognized as such, in that it points uniquely and unmistakably to Stanley; Stanley is not connected with goods sold under Applicant's mark; and Stanley's fame and reputation is such that, when Applicant's mark is used with Applicant's goods and services, a connection with Stanley would be presumed.

22. Applicant's PROTOCOL mark is a close approximation of Stanley's PROTO name and identity.

23. When Applicant's mark is used on the goods covered under its application, Applicant's mark will cause purchasers to mistakenly assume that Stanley is endorsing,

attempting to promote, or encouraging the sale of Applicant's goods by permitting Applicant's mark to be used in connection with such goods.

24. Applicant's mark PROTOCOL is deceptive in that it falsely suggests a connection with, or approval by, Stanley.

25. Applicant is not connected with Stanley and Stanley is not connected with any activities performed by Applicant under Applicant's mark.

26. Use and registration of the mark PROTOCOL by Applicant will deprive Stanley of the ability to protect its reputation, persona, and goodwill.

27. Likelihood of damage to Stanley's goodwill is enhanced by the fact that many of the same customers and prospective customers will encounter both the PROTO and PROTOCOL marks and those that encounter defects in the quality of Applicant's goods will attribute those defects to Stanley, thereby injuring Stanley's reputation and goodwill.

### **COUNT III – DILUTION – § 43(c)**

28. Stanley hereby incorporates by reference the allegations contained in paragraphs 1 through 27 above.

29. Stanley's PROTO marks have been widely used and extensively publicized in the United States and have become well-known and famous within the meaning of the Lanham Act § 43(c) as a distinctive symbol of Stanley's goodwill.

30. Stanley's PROTO marks were well-known and famous before Applicant filed its application for or made any use of the mark PROTOCOL.

31. Applicant's conduct is likely to cause an association arising from the similarity between the marks PROTO and PROTOCOL that impairs the distinctiveness of Stanley's mark

PROTO.

32. The use or registration of Applicant's mark PROTOCOL will tarnish the goodwill of Stanley's PROTO marks and lessen the capacity of Stanley's PROTO marks to identify and distinguish Stanley's goods and services.

33. Likelihood of confusion, dilution, and deception is further enhanced here by the fact that the parties' goods and services will be advertised and provided through the same trade channels and to the same classes of prospective purchasers.

34. Likelihood of confusion, dilution and deception is further enhanced here by the fact that the goods covered under Applicant's PROTOCOL application are closely related or identical to those provided by Stanley under its PROTO marks.

35. By reason of the foregoing, Stanley asserts that it will be damaged by the registration of Applicant's mark PROTOCOL and hereby opposes the Application under 15 U.S.C. § 1052.

WHEREFORE, Stanley prays that this opposition be sustained and that registration be denied.

Respectfully submitted,

S            Y LOGISTICS, LLC

Dated: August            2015    By:

  
J            vis, II  
              FOX LLP  
              7 K Street, NW  
              ashington, D.C. 20006  
              (202) 857-6000

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing Amended Notice of Opposition regarding Opposition No. 91221141 is being served on Applicant's counsel

Paul G. Juettner  
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pjuettner@gbclaw.net,

via email as agreed upon, this

day of August, 2015