

ESTTA Tracking number: **ESTTA696288**

Filing date: **09/16/2015**

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	Kimber IP, LLC
Granted to Date of previous extension	09/16/2015
Address	1 Lawton Street Yonkers, NY 10705 UNITED STATES

Attorney information	Eric S. Marzluf Caesar Rivise, PC 1635 Market Street 7 Penn Center - 12th Floor Philadelphia, PA 19103-2212 UNITED STATES mlozada@crbcp.com Phone:215-567-2010
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Applicant Information

Application No	86057823	Publication date	05/19/2015
Opposition Filing Date	09/16/2015	Opposition Period Ends	09/16/2015
Applicant	Aegis Academy, LLC 7040 Avenida Encinas Ste 104 Carlsbad, CA 92011 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2012/04/25 First Use In Commerce: 2012/04/25
All goods and services in the class are opposed, namely: firearms training services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3363677	Application Date	05/24/2006
Registration Date	01/01/2008	Foreign Priority Date	NONE
Word Mark	AEGIS		

Design Mark	<h1>AEGIS</h1>
Description of Mark	NONE
Goods/Services	Class 013. First use: First Use: 2006/04/12 First Use In Commerce: 2006/04/12 Firearms, namely, pistols

Attachments	78891287#TMSN.png(bytes) '823 opposition.pdf(1058927 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	/E.S.Marzluf/
Name	Eric S. Marzluf
Date	09/16/2015

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

KIMBER IP, LLC,	:	
	:	
Opposer,	:	
	:	
vs.	:	OPPOSITION NO.
	:	
	:	A.S.N. 86057823
AEGIS ACADEMY, LLC,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Kimber IP, LLC believes it will be damaged by the issuance of a registration on the Principal Register for the mark AEGIS ACADEMY and design as applied for in Application Serial No. 86057823 filed September 6, 2013 under Section 1(a) of the Lanham Act for “firearms training services” in International Class 41, and therefore opposes the same. As grounds for its opposition, Opposer, by its attorneys, alleges as follows:

1. Opposer Kimber IP, LLC (“Kimber”) is a Delaware, Limited Liability Company having a mailing address of 1 Lawton Street, Yonkers, New York 10705.
2. Since at least as early as 2006, long prior to the acts complained of herein, Kimber has used the mark AEGIS in connection with firearms, namely, pistols in interstate commerce.
3. Since 2006, Kimber has been engaged in substantially exclusive use of the name and mark AEGIS.
4. Opposer’s mark AEGIS is displayed prominently on Opposer’s firearms, namely, pistols, by engraving the mark thereon.

5. Kimber has invested a substantial amount of time, effort and money in promoting the AEGIS mark and in ensuring the high quality of goods provided under the AEGIS mark, and has developed valuable goodwill in the AEGIS mark.

6. Kimber's goods sold under the mark AEGIS are recognized to be of the highest quality, are offered for sale and sold in interstate commerce.

7. On May 24, 2006, Opposer filed an application to register the mark AEGIS for firearms, namely, pistols, claiming a date of first use of April 12, 2006.

8. On January 1, 2008, the United States Patent and Trademark Office issued United States Certificate of Registration No., 3363,677 for the mark AEGIS in connection with firearms, namely, pistols.

9. Said Registration is valid, subsisting and in full force and effect and serves as prima facie evidence of the validity the mark AEGIS and Kimber's ownership thereof, and is constructive notice of ownership of the mark AEGIS by Kimber, as provided by Sections 7(b) and 22 of the Lanham Act, 15 U.S.C. §§ 1057(b) and 1072.

10. Said Registration No. 3,363,677 has achieved incontestable status under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and said Registration is conclusive evidence of Kimber's exclusive right to use the mark AEGIS in commerce. A true and correct copy of the current printout from the United States Patent and Trademark Office's Trademark Status and Document Retrieval (TSDR) electronic database showing the current status and title of Registration No. 3,363,677 is annexed hereto as Exhibit A, and are made a part hereof.

11. By virtue of its registration for and use of AEGIS as a mark, Opposer has standing to bring this Opposition.

12. Upon information and belief, Applicant, Aegis Academy, LLC is a California Limited Liability Company having a mailing address of 7040 Avenida Encinas, Suite 104, Carlsbad, California 92011.

13. Notwithstanding Opposer's well-known and prior exclusive rights in the mark AEGIS, Applicant, on September 6, 2013, filed trademark application Serial No. 86057823 for the mark AEGIS ACADEMY and design on an alleged date of first use of April 25, 2012 for "firearms training services," in International Class 41.

14. There is no issue as to priority of use. Applicant's filing date and its alleged use date are long after Kimber began using the mark AEGIS as a mark; long after Opposer's mark AEGIS was registered; and after Opposer's mark AEGIS achieved incontestability.

15. Upon information and belief, Applicant was on actual notice of Opposer's prior rights in the AEGIS mark before adopting and seeking to register the mark AEGIS ACADEMY and design for "firearms training services". As a matter of law, based on Opposer's federal trademark registration for the mark AEGIS, Applicant was deemed to be on constructive notice of Opposer's rights in the mark AEGIS.

16. There never has been any relationship between Applicant and Opposer, and Opposer has never authorized or consented to Applicant's use or application to register the mark AEGIS.

17. Applicant's mark AEGIS ACADEMY and design is nearly identical to Opposer's registered and prior used mark AEGIS.

18. Applicant's application and the presumption of exclusivity that would come from a registration to Applicant of the mark AEGIS ACADEMY and design is inconsistent with the

prior rights of Opposer in its mark AEGIS and Opposers' rights flowing from its trademark registration.

COUNT I – 15 U.S.C. § 1052(d) – LIKELIHOOD OF CONFUSION

19. Opposer incorporates ¶¶ (1) through (18) of this Notice as a part of this count.

20. Applicant's mark AEGIS ACADEMY and design so resembles Opposer's mark AEGIS in terms of appearance, sound and commercial impression as to be likely, when applied to Applicant's services, to cause confusion and mistake and to deceive.

21. The services identified in Applicant's Application Serial No. 86057823 are highly related to Opposer's goods set forth in U.S. Certificate of Registration No. 3,363,677 and are not restricted as to types of customers or channels of trade.

22. Opposer alleges upon information and belief that the services of Applicant and the goods of Opposer are, or are likely to be, provided and sold in coincident geographical areas to the same purchasers.

23. It is not unusual for goods such as firearms, namely, pistols and services for firearms training to emanate from a common source and to be offered under the same mark. Accordingly, consumers would likely assume that – if sold/offered under the same or similar marks – Opposer's goods and Applicant's services likewise share a common source.

24. The mark proposed for registration by Applicant, AEGIS ACADEMY and design, is likely to cause confusion, mistake or to deceive as to the source of origin of Applicant's services, contrary to 15 U.S.C. § 1052(d), by causing the consuming public to believe, contrary to fact, that Applicant's services bearing the mark AEGIS ACADEMY and design are sponsored, licensed and/or otherwise approved by, or are in some way connected or affiliated with Opposer.

25. Applicant's use and registration of the mark AEGIS ACADEMY and design is likely to cause confusion in the minds of consumers or to cause mistake or to deceive, or otherwise injure, diminish or detract from the prior rights firmly established by Opposer in and to its mark AEGIS.

26. Applicant's use of the Applicant's AEGIS ACADEMY and design mark will interfere with Opposer's valuable property rights and will amount to a conversion of such rights from which Applicant unfairly would reap financial profit.

27. If Applicant is permitted to use and register the mark AEGIS ACADEMY and design for the services specified in the application herein opposed, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between the Applicant's mark AEGIS ACADEMY and design and Opposers' mark AEGIS.

28. By reason of the foregoing, Opposer will be damaged by the registration of the mark AEGIS ACADEMY and design to Applicant.

WHEREFORE, Opposer Kimber IP, LLC prays that this Notice of Opposition be sustained in favor of Opposer; that Application Serial No. 86057823, herein opposed, be refused registration; and for such other and further relief as may be deemed to be just and proper.

* * * *

Respectfully submitted,

CAESAR RIVISE, PC.

Dated: September 16, 2015

By /E.S.Marzluf/

Gary A. Greene
Eric S. Marzluf
1635 Market Street
Seven Penn Center – 12th Floor
Philadelphia, PA 19103

Attorneys for Opposer
Kimber IP, LLC

CERTIFICATE OF ELECTRONIC MAILING

The undersigned hereby certifies that the within NOTICE OF OPPOSITION regarding Application Serial No. 86057823 is being filed electronically with the Trademark Trial and Appeal Board, via the Electronic System for Trademark Trials and Appeals (ESTTA) on September 16, 2015.

/E.S.Marzluf/
Eric S. Marzluf

CERTIFICATE OF SERVICE

The undersigned certifies that, pursuant to 37 C.F.R. §§ 2.101 and 2.119, a copy of the within NOTICE OF OPPOSITION regarding Application Serial No. 86057823 is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail on September 15, 2015 in an envelope addressed to the Applicant's counsel of record, Katherine L. McDaniel at the following correspondence address of record:

Katherine L. McDaniel
Fulwider Patton LLP
6060 Center Drive, Floor 10
Los Angeles, CA 90045-1598

/E.S.Marzluf/
Eric S. Marzluf

EXHIBIT A

STATUS DOCUMENTS

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Mark: AEGIS

AEGIS

US Serial Number: 78891287

Application Filing Date: May 24, 2006

US Registration Number: 3363677

Registration Date: Jan. 01, 2008

Register: Principal

Mark Type: Trademark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Feb. 04, 2013

Publication Date: Jan. 02, 2007

Notice of Allowance Date: Mar. 27, 2007

Mark Information

Mark Literal Elements: AEGIS

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services.

- Brackets [] indicate deleted goods/services,
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability, and
- Astenks * * identify additional (new) wording in the goods/services.

For: Firearms, namely, pistols

International Class(es): 013 - Primary Class

U.S Class(es): 002, 009

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 12, 2006

Use in Commerce: Apr. 12, 2006

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Kimber IP, LLC

Owner Address: 1 Lawton Street
Yonkers, NEW YORK 10705
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Gary A. Greene

Docket Number: N1077/30032

Attorney Primary Email trademarks@crbcp.com
Address:

Attorney Email Authorized: Yes

Correspondent

Correspondent Gary A. Greene

Name/Address: Caesar, Rivise, Bernstein, Cohen & Pokotilow, Ltd.
1635 MARKET ST
PHILADELPHIA, PENNSYLVANIA 19103-2217
UNITED STATES

Phone: 215-567-2010

Fax: 215-751-1142

Correspondent e-mail: trademarks@crbcp.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 04, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Feb. 04, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76293
Feb. 04, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76293
Jan. 21, 2013	TEAS SECTION 8 & 15 RECEIVED	
Jan. 01, 2008	REGISTERED-PRINCIPAL REGISTER	
Nov. 28, 2007	LAW OFFICE REGISTRATION REVIEW COMPLETED	76537
Nov. 28, 2007	ASSIGNED TO LIE	76537
Oct. 25, 2007	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 16, 2007	STATEMENT OF USE PROCESSING COMPLETE	66154
Sep. 27, 2007	USE AMENDMENT FILED	66154
Oct. 16, 2007	EXTENSION 1 GRANTED	66154
Sep. 27, 2007	EXTENSION 1 FILED	66154
Sep. 27, 2007	TEAS EXTENSION RECEIVED	
Sep. 27, 2007	TEAS STATEMENT OF USE RECEIVED	
Mar. 27, 2007	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jan. 02, 2007	PUBLISHED FOR OPPOSITION	
Dec. 13, 2006	NOTICE OF PUBLICATION	
Nov. 08, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	78413
Nov. 03, 2006	ASSIGNED TO LIE	78413
Oct. 28, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	

Oct. 25, 2006

ASSIGNED TO EXAMINER

74307

May 31, 2006

NEW APPLICATION ENTERED IN TRAM

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 104

Date in Location: Feb. 04, 2013

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