

ESTTA Tracking number: **ESTTA735963**

Filing date: **03/25/2016**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	Vista Outdoor Operations LLC
Granted to Date of previous extension	03/30/2016
Address	938 University Park Blvd.Suite 200 Clearfield, UT 84015 UNITED STATES

Name	Bushnell Holdings, Inc.
Granted to Date of previous extension	03/30/2016
Address	9200 Cody Overland Park, KS 66214 UNITED STATES

Attorney information	Stephen R. Baird Winthrop & Weinstine, PA 225 South Sixth StreetSuite 3500 Minneapolis, MN 55402 UNITED STATES trademark@winthrop.com, sbaird@winthrop.com, tsitzmann@winthrop.com Phone:6120604.6400
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**Applicant Information**

Application No	86251178	Publication date	12/01/2015
Opposition Filing Date	03/25/2016	Opposition Period Ends	03/30/2016
Applicant	Leapers, Inc. 32700 Capitol Street Livonia, MI 48150 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. First Use: 2002/12/00 First Use In Commerce: 2003/02/20 All goods and services in the class are opposed, namely: Archery equipment, namely, telescopic bow sights; Gun scopes; Rifle scopes; Telescopic gun sights
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**Grounds for Opposition**

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
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Failure to function as a mark	Trademark Act section 1,2 and 45
The mark is not inherently distinctive and has not acquired distinctiveness	Trademark Act section 1,2 and 45; and section 2(f)

Attachments	11698913_1.pdf(205779 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	/Timothy D. Sitzmann/
Name	Timothy D. Sitzmann
Date	03/25/2016

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

In the matter of Application Serial No.: 86/251,178  
Filed: April 14, 2014  
Published in the *Trademark Official Gazette* on December 1, 2015

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Vista Outdoor Operations LLC and  
Bushnell Holdings, Inc.  
Opposers,

v.

Opposition No. \_\_\_\_\_

Leapers, Inc.

Applicant.

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**NOTICE OF OPPOSITION**

Vista Outdoor Operations LLC (“Vista Outdoor”) and Bushnell Holdings, Inc. (“Bushnell”) (Vista Outdoor and Bushnell are collectively referred to herein as “Opposers”) believe that they will be damaged by registration of the claimed product configuration mark shown in Application Serial No. 86/251,178 (the “Application”) and hereby oppose the same.

The grounds for opposition are as follows:

1. Leapers, Inc. (“Applicant”) filed the Application on April 14, 2014 seeking to register the claimed product configuration mark in connection with “Archery equipment, namely, telescopic bow sights; Gun scopes; Rifle scopes; Telescopic gun sights” (“Applicant’s Goods”) in International Class 9.

2. The Application was published for opposition in the *Trademark Official Gazette* on December 1, 2015.

3. On December 16, 2015, Vista Outdoor filed a Request for Extension of Time to Oppose the Application. The Board granted this request on December 16, 2015, extending the filing period to March 30, 2016.

4. On December 21, 2015 Bushnell filed a Request for Extension of Time to Oppose the Application. The Board granted this request on December 21, 2015, extending the opposition filing period to March 30, 2016.

5. This Notice of Opposition is timely filed.

6. Opposers Bushnell and Vista Outdoor are related companies.

7. Opposers develop, market, and sell optical products for hunting and shooting, including bow sights, gun scopes, rifle scopes, telescopic gun sights, and numerous other hunting and shooting products and accessories.

8. Applicant describes its claimed mark in the Application as “a three-dimensional design configuration that is applied to all relevant cylindrical adjustment surfaces (i.e. the knobs and bells) of an archery or rifle scope or sight. The design is marked by scalloped knurling that is: (1) uniform and proportional in the width of the elevations and depressions on the cylindrical adjustments; and (2) straight, unbroken and running parallel to the cylindrical adjustment surfaces” (“Applicant’s Claimed Mark”).

9. The product configuration, features, and designs set forth in Applicant’s Claimed Mark identify which parts and portions of Applicant’s Goods may be adjusted by fingers.

10. The product configuration, features, and designs set forth in Applicant’s Claimed Mark make it easier to grip and adjust the knobs and bells on Applicant’s Goods.

11. Applicant has touted the function of the product configuration, features, and designs set forth in Applicant’s Claimed Mark as “easy to grip tactical finger adjustable knobs.”

12. Applicant's Goods work better because of the product configuration, features, and designs set forth in Applicant's Claimed Mark.

13. The product configuration, features, and designs set forth in Applicant's Claimed Mark provide utilitarian advantages for the use of Applicant's Goods.

14. The product configuration, features, and designs set forth in Applicant's Claimed Mark are essential to the use of Applicant's Goods.

15. The product configuration, features, and designs set forth in Applicant's Claimed Mark are essential to the purpose of Applicant's Goods.

16. The product configuration, features, and designs set forth in Applicant's Claimed Mark affect the cost of Applicant's Goods.

17. The product configuration, features, and designs set forth in Applicant's Claimed Mark affect the quality of Applicant's Goods.

18. The product configuration, features, and designs set forth in Applicant's Claimed Mark are useful product features of Applicant's Goods that are not subject to trademark protection.

19. Granting to Applicant federal registration of Applicant's Claimed Mark for Applicant's Goods would put Opposers and competitors of Applicant at a significant non-reputation related disadvantage.

20. Applicant's Claimed Mark comprises matter that, as a whole, is functional within the meaning of 15 U.S.C. § 1052(e)(5).

21. Applicant's Claimed Mark is merely informational, not an indication of source.

22. Applicant's Claimed Mark fails to function as an indication of source.

23. Applicant's Claimed Mark is not perceived as an indication of source.

24. Applicant's Claimed Mark lacks and is incapable of acquired distinctiveness.

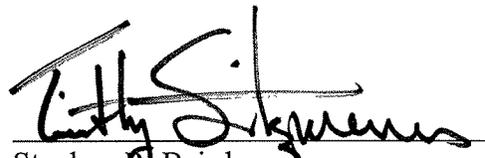
25. Because Applicant's Claimed Mark is functional, informational, and non-distinctive, and it because it fails to function as a mark, and it lacks and is incapable of acquired distinctiveness, registration of the claimed mark would harm Opposers and competitors of Applicant, making registration of Applicant's Claimed Mark in the Application improper, warranting registration refusal under 15 U.S.C. §§ 1052(e)(5) and 1063.

**WHEREFORE**, Opposers request that the Trademark Trial and Appeal Board:

- 1) Sustain this Opposition;
- 2) Refuse registration of the product configuration mark identified in Application Serial No. 86/251,178 for the goods identified in International Class 9; and
- 3) Grant Opposers any further relief the Board deems equitable.

Dated: March 25, 2016

WINTHROP & WEINSTINE, P.A.

  
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LLC and Bushnell Holdings, Inc.

