

ESTTA Tracking number: **ESTTA759074**

Filing date: **07/19/2016**

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 party opposes registration of the indicated application.

Opposer Information

Name	BBC Ice Cream LLC		
Entity	Limited liability company	Citizenship	Delaware
Address	3850 Bird Road, Suite 801 Miami, FL 33146 UNITED STATES		

Attorney information	Josh E. Saltz Peretz Chesal & Herrmann, P.L. 2 S. Biscayne Blvd., Suite 3700 Miami, FL 33131 UNITED STATES trademarks@pch-iplaw.com Phone:305.341.3000		
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Applicant Information

Application No	86840178	Publication date	06/28/2016
Opposition Filing Date	07/19/2016	Opposition Period Ends	07/28/2016
Applicant	Spire Enterprises, Inc Suite 218 Doral, FL 33126 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, T-Shirts, hats, pants, and socks

Grounds for Opposition

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

U.S. Registration No.	4246385	Application Date	02/14/2003
Registration Date	11/20/2012	Foreign Priority Date	NONE
Word Mark	ICECREAM		

Design Mark	ICECREAM
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2004/04/14 First Use In Commerce: 2004/04/14 Clothing, namely, jackets, coats, parkas, raincoats, blazers, blouses, shirts, t-shirts, trousers, jeans, shorts, sweaters, cardigans, scarves and belts; footwear; headwear

U.S. Registration No.	3774117	Application Date	02/26/2009
Registration Date	04/13/2010	Foreign Priority Date	NONE

Word Mark	ICE CREAM
Design Mark	ICE CREAM
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 2008/07/01 First Use In Commerce: 2008/07/01 All-purpose sports and athletic bags; beach, book, carry-on, duffel, gym, leather shopping, shoulder, tote and travel bags, backpacks; knapsacks; leather key chains; wallets

U.S. Registration No.	4517935	Application Date	01/23/2009
Registration Date	04/22/2014	Foreign Priority Date	NONE

Word Mark	ICECREAM
Design Mark	ICECREAM
Description of Mark	NONE

Goods/Services	Class 009. First use: First Use: 2014/01/07 First Use In Commerce: 2014/01/07 Sunglasses and sunglass frames		
U.S. Application No.	86084152	Application Date	10/07/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ICECREAM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 0 First Use In Commerce: 0 Jewellery and watches		

Attachments	78215027#TMSN.png(bytes) 77678815#TMSN.png(bytes) 77655364#TMSN.png(bytes) 86084152#TMSN.png(bytes) NoticeofOpposition.PDF(213323 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 Overnight Courier on this date.

Signature	/Josh E. Saltz/
Name	Josh E. Saltz
Date	07/19/2016

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

BBC Ice Cream, LLC,

Opposer,

v.

Spire Enterprises, Inc.,

Applicant/Owner.

In re Application Serial No.: 86/840,178

Mark: ICE CREAM BOYS

NOTICE OF OPPOSITION

1. BBC Ice Cream LLC (“**Opposer**”), a Delaware limited liability company located at 3850 Bird Road, Suite 801, Miami, Florida 33146, believes it will be damaged by registration of the mark claimed in Application Serial No. 86/840,178 (the “**Contested Application**”) and accordingly hereby opposes the Contested Application pursuant to Trademark Act Section 13, 15 U.S.C. § 1063, and alleges:

Introduction

2. This Notice of Opposition is based upon Opposer’s priority of rights in the mark ICECREAM, which is incorporated in its entirety in the mark in the Contested Application. Based upon such priority, the Contested Application should be refused.

Opposer’s Prior Rights

3. On or about April 2004, Opposer began using the mark ICECREAM to identify its clothing, headwear and footwear, and subsequently expanded its product offering to a variety of other products, including bags, sunglasses and related items.

4. Opposer’s line of ICECREAM products were launched by the iconic singer, rapper and record producer, Pharrell Williams and have received a substantial amount of media coverage.

5. As a result of the foregoing use of the ICECREAM mark, Opposer has established significant goodwill in the mark and it has come to be exclusively associated with Opposer.

The Contested Application

6. Upon information and belief, Applicant, Spire Enterprises, Inc. (“**Applicant**”) is a Florida corporation with its principal place of business located at 8323 NW 12 St, Suite 218, Doral, Florida 33126.

7. Through the Contested Application, Applicant is seeking registration of the mark ICE CREAM BOYS for “clothing, namely, T-Shirts, hats, pants, and socks” in Class 25.

8. The Contested Application was filed on December 4, 2015 under Section 1(b) (intent-to-use) and was published for opposition on June 28, 2016.

Opposition Based on Opposer’s Prior Rights

9. Applicant’s rights are inferior to those of Opposer due to Opposer’s actual prior use of the ICECREAM mark for clothing, bags, sunglasses and related goods.

10. Opposer also has priority over Applicant based upon the constructive use filing dates (dating back as far as February 2003) for the following registrations:

U.S. Reg. No. 4,246,385 for the mark ICECREAM covering “Clothing, namely, jackets, coats, parkas, raincoats, blazers, blouses, shirts, t-shirts, trousers, jeans, shorts, sweaters, cardigans, scarves and belts; footwear; headwear” in Class 25. (Filed February 14, 2003)

U.S. Reg. No. 3,774,117 for the mark ICE CREAM covering “All-purpose sports and athletic bags; beach, book, carry-on, duffel, gym, leather shopping, shoulder, tote and travel bags, backpacks; knapsacks; leather key chains; wallets” in Class 18. (Filed February 26, 2009)

U.S. Reg. No. 4,517,935 for the mark ICECREAM covering “Sunglasses and sunglass frames” in Class 9. (Filed January 23, 2009)

11. Since Opposer’s rights are superior to those of Applicant, the Contested Application should not have been approved for publication.

The Harm to Opposer

12. The mark in the Contested Application is nearly identical to Opposer’s mark—merely adding the descriptive term “Boys”—and covers both identical and highly related goods. When used on or in connection with the goods of the Applicant, the mark in the Contested Application is likely to cause confusion, or to cause mistake, or to deceive.

13. If Applicant is granted registration of ICE CREAM BOYS, Applicant would thereby obtain a prima facie exclusive right to use the ICE CREAM BOYS mark, which would be a source of damage to Opposer’s trademark rights as a result of the potential likelihood of confusion between the respective marks.

WHEREFORE, Opposer, BBC Ice Cream LLC, respectfully requests that registration of the mark claimed in the Contested Application Serial No. 86/840,178 be refused and that this Opposition be sustained in favor of Opposer.

Dated: July 19, 2016

Respectfully submitted,

PERETZ CHESAL & HERRMANN, P.L.
Attorneys for Opposer
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Miami, Florida 33131
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By: /Josh E. Saltz/
Michael B. Chesal
Fla. Bar No. 775398
Josh E. Saltz
Fla. Bar No. 70521

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2016 a copy of the foregoing was served via UPS, to the following:

SPIRE ENTERPRISES, INC.
8323 NW 12 ST
SUITE 218
DORAL, FLORIDA 33126

By: /Josh E. Saltz/
Josh E. Saltz