

ESTTA Tracking number: **ESTTA29719**

Filing date: **04/04/2005**

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

<b>Name</b>	Russell Asset Management, Inc.
<b>Granted to Date of previous extension</b>	04/03/2005
<b>Address</b>	Suite 1410, Nemours Building, 1007 Orange Street Wilmington, DE 19801 UNITED STATES

<b>Name</b>	Russell Corporation
<b>Granted to Date of previous extension</b>	04/03/2005
<b>Address</b>	3330 Cumberland Blvd SE Suite 800 Atlanta, GA 30339 UNITED STATES

<b>Attorney information</b>	Nathan W Johnson Bradley Arant Rose & White LLP 1819 Fifth Avenue North Birmingham, AL 35203-2104 UNITED STATES njohnson@bradleyarant.com Phone:2055218369
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**Applicant Information**

<b>Application No</b>	76435188	<b>Publication date</b>	10/05/2004
<b>Opposition Filing Date</b>	04/04/2005	<b>Opposition Period Ends</b>	04/03/2005
<b>Applicant</b>	Rawlings Sporting Goods Company, Inc. 1859 Intertech Drive Fenton, MO 63026 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 028. First Use: 20020200First Use In Commerce: 20020500 All goods and services in the class are opposed, namely: SPORTING GOODS, NAMELY, SOFTBALLS AND BASEBALLS, GLOVES, BATS, SOFTBALL AND BATTER'S GLOVES AND PROTECTIVE EQUIPMENT, NAMELY, LEG GUARDS, CATCHER'S MASKS AND CHEST PROTECTORS
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<b>Attachments</b>	Opposition to Serial No 76435188.pdf ( 7 pages )
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<b>Signature</b>	/Nathan W Johnson/
<b>Name</b>	Nathan W Johnson
<b>Date</b>	04/04/2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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**Russell Asset Management, Inc.,** )  
 )  
**together with its affiliate,** )  
 )  
**Russell Corporation** )  
 )  
 )  
**Opposers,** )  
 )  
**v.** )  
 )  
**Rawlings Sporting Goods Company, Inc.** )  
 )  
 )  
**Applicant.** )

**Re: Serial No. 76/435188  
SB and Design**



**OPPOSITION NO. \_\_\_\_\_**

**NOTICE OF OPPOSITION**

In the matter of Application Serial No. **76/435188** by Rawlings Sporting Goods Company, Inc. (“Applicant”) for registration of the mark SB and Design in Class 28 for sporting goods related to softball and baseball, RUSSELL ASSET MANAGEMENT, INC., a Delaware corporation whose address of record with the USPTO under certain registrations cited herein is Brandywine Plaza, Suite 101, 103 Foulk Road, Wilmington, Delaware 19803 and which recently adopted a new address at Suite 1410, Nemours Building, 1007 Orange Street, Wilmington, Delaware 19801, and its affiliate, RUSSELL CORPORATION, an Alabama corporation having an address at 3330 Cumberland Boulevard SE, Suite 800, Atlanta, Georgia 30339 (collectively, “Opposers”), believe they each, together and separately, would be damaged by the registration of the mark covered by the referenced application and hereby oppose the registration of said mark.

Collective statements may be made by Opposers in this Notice of Opposition where the use and other activity of Russell Asset Management, Inc. is by and through its related company and affiliate Russell Corporation or, conversely, where the use and other activity of Russell Corporation is by and through its related company and affiliate Russell Asset Management, Inc.

The grounds for opposition are as follows:

1. Opposers believe that they each would be damaged by the registration on the Principal Register of the mark SB and Design that is the subject of Application Serial No. **76/435188** (the “Application”).

2. Applicant’s Application, for the mark SB and Design, declares actual use on “sporting goods, namely, softballs and baseballs, gloves, bats, softball and batter’s gloves and protective equipment, namely, leg guards, catcher’s masks and chest protectors.” Opposers and their predecessors or affiliates have engaged in the manufacture, marketing, and sale of softballs (and in the past, Opposers’ predecessors engaged in the sale of softball-related equipment) under a form or variation of the mark SB, including, without limitation, the following uses: SB-12ST and SB-12L (hereinafter “Opposers’ Marks”). Such trademark use on softballs by Opposers (or their predecessors or affiliates) of Opposers’ Marks, predates, and has been continuous to the present since before, the filing date of the Application. Additionally, such trademark use on softballs by Opposers (or their predecessors or affiliates) predates and has been continuous to the present since before the date of any first use claimed by Applicant in the Application. Such trademark use on softballs by Opposers (or their predecessors or affiliates) has been continuous to the present and, upon information and belief, predates any prior use with continuity to the present by Applicant or its predecessors of the SB and Design mark.

3. Among other stylizations and usage, Opposers' Marks are and have been used in stylizations that present the letters "SB" emphasized in relation to any accompanying words or numerals. An example is as follows:



By such use, SB is one of Opposers' Marks and is the dominant portion of Opposers' Marks.

4. Opposer Russell Asset Management, Inc. is the owner of Opposers' Marks.

5. Opposer Russell Corporation is a related company of opposer Russell Asset Management, Inc. Use of Opposers' Marks by Russell Corporation or certain of its subsidiaries inures to the benefit of Russell Asset Management, Inc.

6. Opposers' Marks include marks subject to the following federal registrations of which Russell Asset Management, Inc. is the owner, in addition to Opposers' SB common law mark and its variations and stylizations:

(a) SB-12L, Registration No. 1,504,121 on the Principal Register of the United States Patent and Trademark Office, which issued on September 13, 1988. The registration states that the mark was first used in commerce at least as early as December 12, 1957, and is registered for softballs in International Class 28. The United States Patent and Trademark Office acknowledged an Affidavit of Incontestability with respect to this registration on February 1, 1995.

(b) SB-12ST, Registration No. 2,264,640 on the Principal Register of the United States Patent and Trademark Office, which issued on July 27, 1999. The registration states that the mark was first used in commerce at least as early as January 1, 1992, and is registered for

softballs in International Class 28. The United States Patent and Trademark Office acknowledged an Affidavit of Incontestability with respect to this registration on December 22, 2004.

7. Opposer Russell Asset Management, Inc. acquired each of the foregoing registered trademarks from SGG Trademarks, LLC by assignment. This assignment is reflected at reel/frame 2710/0150, as recorded in the United States Patent and Trademark Office on September 4, 2003.

8. Opposers or their predecessors or affiliates have been using the trademark SB-12L continuously and actively in commerce with softballs since at least as early as December 12, 1957, and have been using the SB-12ST trademark continuously and actively with softballs since at least as early as January 1, 1992. The Application evidences that Applicant's goods and the mark applied for relate to and specifically target the precise market occupied by the Opposers' Marks.

9. In addition to the foregoing registered trademarks, Opposers' Marks include common law trademarks consisting of SB or variations or stylizations thereof.

10. Opposers' Marks have become famous in the relevant market in connection with softballs and are well-known generally by purchasers in the relevant market as a quality brand associated with Opposers.

11. Products bearing the Opposers' marks are sold in sporting goods stores nationwide. Opposers or their predecessors or affiliates have under Opposers' Marks extensively advertised and promoted softballs (and in the past, softball-related goods) bearing Opposers' Marks throughout the United States and in foreign countries.

12. As a result of the extensive and long-term use and promotion of Opposers' Marks by Opposers or their predecessors or affiliates in connection with the manufacture, marketing,

and sale of softballs (and in the past, softball-related goods), Opposers' Marks have become and remain associated with Opposers in the relevant trade. Opposers' Marks have become distinctive as applied to Opposers' goods in commerce and, thus, have acquired secondary meaning. Additionally, Opposers' Marks have become famous and strong as marks that are well recognized by purchasers in the relevant market as a unique linkage between Opposers' Marks and Opposers.

13. The use and registration (and either separately) of the mark SB and Design by Applicant reduce and are likely to reduce the distinctiveness of Opposers' Marks, and reduce and are likely to reduce the capacity of Opposers' Marks to distinguish and identify Opposers and Opposers' goods in commerce. As a result, registration and use of the SB and Design mark by Applicant dilute and are likely to dilute Opposers' Marks.

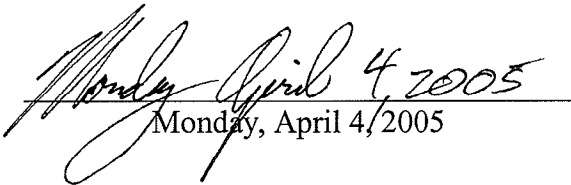
14. In view of the strength of Opposers' Marks, the fact that the Applicant's goods and the mark applied for are related to and specifically target the precise market occupied by Opposers' Marks, and the fact that the mark applied for so resembles Opposers' Marks, Opposers believe that use by the Applicant of the mark for which registration is sought is likely to cause confusion, or to cause mistake, or to deceive purchasers in that they are likely to believe that Applicant's goods are Opposers' goods or are in some way legitimately connected with, sponsored, or approved by Opposers. Therefore, registration of Applicant's mark would cause damage to Opposers, and registration is opposed pursuant to Section 13(a) of the Lanham Act (15 U.S.C. § 1063(a)) and on the basis of Section 2(d) of the Lanham Act (15 U.S.C. § 1052(d)).

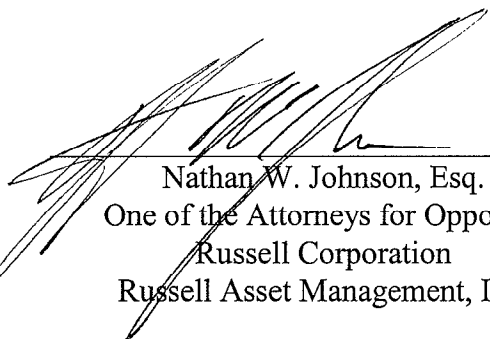
15. In view of the strength and fame of Opposers' Marks and the fact that the parties' goods are related and are likely to be sold through similar channels of trade to the same class of purchasers, Opposers believe that both use and registration (and either of them separately) by the

Applicant of the mark for which registration is sought would damage Opposers and Opposers' Marks, including as a result of dilution under Section 43(c) of the Lanham Act, and would diminish the distinctiveness, uniqueness, effectiveness and prestigious connotations of Opposers' Marks. Therefore, registration of Applicant's mark would cause damage to Opposers, and registration is opposed pursuant to Section 13(a) of the Lanham Act (15 U.S.C. § 1063(a)).

16. This Notice of Opposition is filed in a timely manner pursuant to 15 U.S.C. § 1063. Opposers have previously requested, and have been granted, Requests for Extension of Time for Filing Notice of Opposition, which extended the time in which to file this Notice of Opposition to Sunday, April 3, 2005. Pursuant to 37 C.F.R. § 1.7 and TBMP § 209.02, because the expiration of the extension period fell on a Sunday, this Notice of Opposition is timely filed on the next succeeding day, Monday, April 4, 2005.

WHEREFORE, Opposers request that the registration sought by the Applicant be refused and that this Opposition be sustained.

  
Monday, April 4, 2005

  
Nathan W. Johnson, Esq.  
One of the Attorneys for Opposers  
Russell Corporation  
Russell Asset Management, Inc.

**OF COUNSEL:**  
BRADLEY ARANT ROSE & WHITE LLP  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2104  
(205) 521-8369 (DIRECT DIAL)  
(205) 488-6369 (Direct Facsimile)  
(205) 521-8000 (MAIN NUMBER)  
(205) 521-8800 (Main Facsimile)



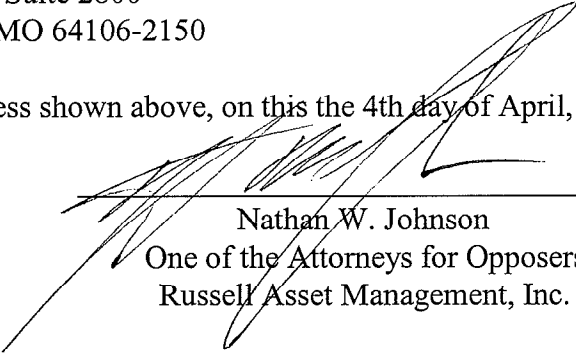
**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served the foregoing Notice of Opposition regarding Application 76/435,188 for the mark SB and Design, on the following:

Penny R. Slicer  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2800  
Kansas City, MO 64106-2150

by deposit in First Class U.S. Mail to the address shown above, on this the 4th day of April, 2005.

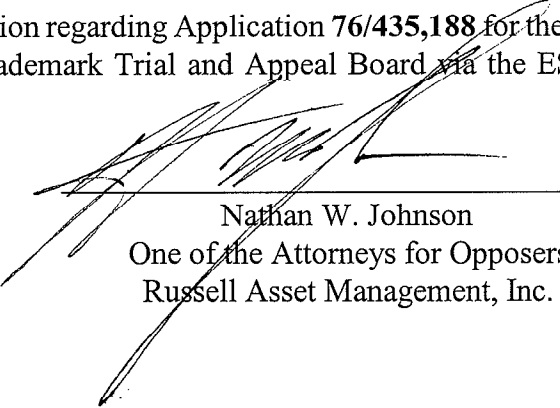
4-4-2005  
Date

  
\_\_\_\_\_  
Nathan W. Johnson  
One of the Attorneys for Opposers  
Russell Asset Management, Inc.

**CERTIFICATE OF SUBMISSION VIA ESTTA**

I hereby certify that foregoing Notice of Opposition regarding Application 76/435,188 for the mark SB and Design, is being transmitted to the Trademark Trial and Appeal Board via the ESTTA system on Monday, April 4, 2005.

4-4-2005  
Date

  
\_\_\_\_\_  
Nathan W. Johnson  
One of the Attorneys for Opposers  
Russell Asset Management, Inc.