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

In the matter of trademark application Serial No.: **78/520,869**
For the mark: **“W”**
Published in the Official Gazette: **October 11, 2005**

(Brenda Sayles)
v.
(Baseball Expos, L.P.)

NOTICE OF OPPOSITION

Brenda Sayles
Licensed Merchandise Vendor, Class “B”
438-21st Street, N.E.
Washington, D.C. 20002

The above-identified opposer believes that she will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for the opposition are as follows:

1. The opposer has been a licensed merchandise vendor in Washington, District of Columbia, for 20 years; selling apparel in the 1900-2200 blocks of East Capitol Street, S.E. adjacent to RFK Stadium and the D.C. Armory, the original site for professional baseball, football and soccer events held in the District of Columbia, and for circuses, concerts, expositions and other public events. There are approximately 20 other merchandise and food vendors who work at this location; other vendors working inside RFK Stadium and the D.C. Armory are not licensed to vend on authorized public vending space in the District of Columbia.

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2. Primary items of merchandise sold by the opposer throughout her career as a vendor include baseball caps, knit caps, visors, t-shirts, sweatshirts, pennants, lanyards, key chains, cups and other items emblazoned with the letters "W" (for Washington) and "DC", with letters interlocked, abbreviations that refer to the District of Columbia, not to any particular professional sports team.
3. The opposer also sells official sports apparel fully "licensed" by professional sports franchises throughout the year, as well as regional items with the "W" and "DC" that have no affiliation with particular professional sports teams, such as the Washington (football) Redskins, the Washington (basketball) Wizards and Mystics, D.C. (soccer) United, and this year's newest entry, the Washington Nationals -- until 2005, the Montreal Expos (the applicant).
4. Merchandise with the "W" and "DC", (with letters interlocked), is on sale throughout the District of Columbia year-round, because of the tourist trade in Washington, D.C., the nation's capital.
5. Letters of protest supporting the opposer's claims will be submitted, under separate cover, by elected members of the Council of the District of Columbia, who, likewise, object to trademark control of letters and abbreviations commonly used to refer to the nation's capital, as being designed to cause confusion of the geographical location with a particular professional sports team.
6. The calligraphic outline form of the letter "W" claimed by the applicant is SIGNIFICANTLY SIMILAR to one of the popular Caslon fontstyles introduced by the preeminent British typographer, William Caslon, in London during the late eighteenth century. Caslon fonts are so ubiquitous as to be found in virtually every computer operating systems that offer English language wordprocessing features. The typeface used in this sentence, for example, is a common Caslon typeface.

The "W" claimed by the applicant is also SIGNIFICANTLY SIMILAR to many other handwriting, calligraphy, script and italic fonts commonly used in the printing industry.

7. The "W" applied for by the applicant is SIGNIFICANTLY SIMILAR to the non-trademarked "W" used by the Washington Senators Baseball Team from 1963-1971. Athletic merchandise bearing the non-trademarked "W" utilized by Washington Senators has continued to be

available for public consumption since it was originally introduced in 1963.

8. Typographic fontstyles of the letters "W" & "DC" are commonly used by other athletic teams, educational institutions, entertainment entities and independent companies. Specifically, the "W" used by companies such as Walgreen's, Walt Disney and products such as Wisp are significantly similar to the "W" of the applicant. The letter "W", currently, is also commonly associated with the incumbent President of the United States another Washington, D.C. fixture.
9. The principal manufacturer that affixes the letters "W" and "DC" to sporting apparel is American Needle Inc.

<u>Name</u>	<u>Location</u>	<u>Items Manufactured</u>
American Needle Inc.	415 N Main St., Floor Ann Arbor, MI 48104	baseball caps, sweatshirts (see item #2, above)

American Needle Company, (Ann Arbor, MI), is a major athletic manufacturer of sporting apparel and merchandise since 1913. Their most widely-distributed athletic line is the "Cooperstown Collection" (which introduced the italic "W" utilized by the former Washington Senators baseball team).

10. Some of the wholesalers that distribute/distributed these items in the District of Columbia include:

<u>Name</u>	<u>Location</u>	<u>Product Line</u>
Continental	5 th Street, NE/WDC	baseball caps, Sweatshirts & etc.
Seven-Seven Wholesale, Inc.	1307-4 th Street, NE/WDC	as above
Jumbo Trading	401 Morse Street, NE/WDC	as above
CAPSCO	14 th Street, NW	as above
Joe Tash	7 th Street, NW	as above
New York Jewelry Co.	7 th Street, NW	as above
LINK Co.	900 Block of "F" Street, NW	as above

11. This year, in 2005, the Major League Baseball franchise team formerly known as the Montreal Expos, was relocated to Washington, D.C. Subsequently, individuals representing themselves as agents for Major League Baseball, have made unauthorized seizures of merchandise from licensed vendors that does not replicate items licensed by Major League Baseball, or the Montreal Expos. Other individuals claiming to represent Major League Baseball have distributed unauthorized "Notices" and "Warnings" threatening licensed vendors at this location with prosecution for trademark counterfeiting under Title 22 of the District Code § 902. These individuals maintain that apparel with the letters "W" and "DC" are under trademark control of Major League Baseball – which is the subject of this opposition.
12. The opposer asserts that she has sold 'Initial/Alphabet' items for decades and will be injured if Major League Baseball is permitted to control the trademarks "W" and "DC" which have been affixed on items, listed above, for years. It will exponentially increase the cost of items that have simply been associated with the nation's capital, as opposed to any particular athletic team, by assigning control of these letters to Major League Baseball. Moreover, it will expose vendors, such as the opposer, to criminal fines and imprisonment, should they attempt to use the letters "W" or "DC", in the interlocking form, for items that do not refer to the Washington Nationals baseball team but to Washington, D.C. the capital of the United States of America.
13. While some of the manufacturers that have been producing such items for decades might reasonably argue a claim for trademark control, based upon their usage of these symbols over the years, and because of established channels of distribution, such usage has been in the public domain too long, by too many for any single applicant to be able to make a compelling case for trademark control.
14. Moreover, the applicant necessarily presumes to benefit from the confusion occasioned by control of such a trademark, in order to re-establish the identity of a team formerly located in the capital city of Canada, now that it has relocated to the capital of the United States of America.

15. In short, the use of the letters "W" and "DC" (in the interlocking and other forms) has been so ubiquitous in tourist and sports apparel in the nation's capital that it would be difficult for any manufacturer, corporation, advertiser or entity other than the municipal jurisdiction and government of the District of Columbia to establish sole rights of use to the letters "W", "DC" or "Washington, DC". Certainly a baseball team that did not begin playing in Washington, D.C. until 2005 and was formerly based in the capital of another country cannot establish such a right of use. Finally, the Baseball Expos, formerly of Montreal, Canada, are borrowing – not originating – the use of the "W" and the "DC" to effect their transformation into the Baseball Nationals of Washington, D.C.

By 
Brenda Sayles

Date December 9, 2005