

ESTTA Tracking number: **ESTTA92844**

Filing date: **08/02/2006**

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

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|---------------------------------------|---|
| Name | RINGLING BROS.-BARNUM & BAILEY COMBINED SHOWS INC. |
| Granted to Date of previous extension | 08/02/2006 |
| Address | 8607 Westwood Center Drive Vienna, VA 22182 UNITED STATES |

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| Attorney information | Laura E. Goldbard Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038-4982 UNITED STATES lgoldbard@stroock.com, afisher@stroock.com Phone:212-806-5400 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 78667242 | Publication date | 04/04/2006 |
| Opposition Filing Date | 08/02/2006 | Opposition Period Ends | 08/02/2006 |
| Applicant | Tommy Bartlett, Inc. 560 Dells Parkway Wisconsin Dells, WI 53965 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 041. First Use: 1999/01/01 First Use In Commerce: 1999/01/01 All goods and services in the class are opposed, namely: Entertainment services, particularly water skiing shows |
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| Attachments | Opposition H2O.pdf (5 pages)(163579 bytes) |
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|-----------|---------------------|
| Signature | /laura e. goldbard/ |
| Name | Laura E. Goldbard |
| Date | 08/02/2006 |

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

In the Matter of Application:

Mark: THE GREATEST SHOW ON H2O
Applicant: Tommy Bartlett, Inc.
Serial No.: 78-667,242
Published: April 4, 2006

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| RINGLING BROS.-BARNUM & BAILEY | : | |
| COMBINED SHOWS, INC., | : | |
| | : | |
| Opposer, | : | |
| | : | |
| vs. | : | Opposition No. _____ |
| | : | |
| TOMMY BARTLETT, INC., | : | |
| | : | |
| Applicant. | : | |
| -----X | : | |

NOTICE OF OPPOSITION

Opposer, Ringling Bros.-Barnum & Bailey Combined Shows, Inc. (“Ringling Bros.”), a Delaware corporation, located and doing business at 8607 Westwood Center Drive, Vienna, Virginia 22182, believes that it will be damaged by the registration of the aforesaid trademark and hereby opposes application for registration. Its grounds for the opposition are as follows:

1. For over 110 years and long prior to the use of the mark sought to be registered, Opposer or its predecessors-in-interest have used the mark THE GREATEST SHOW ON EARTH and THE GREATEST SHOW ON EARTH & Design in connection with entertainment services in the nature of circus productions, as well as a variety of additional goods and services. More

specifically, Opposer is the owner of four registrations for the mark THE GREATEST SHOW ON EARTH, Registration No. 3,015,685, for entertainment services in the form of a circus, based upon use since July 21, 1891; Registration No. 787,963, for entertainment services in the nature of a series of television programs; Registration No. 2,185,161, for providing an interactive online database in the fields of entertainment, education, historical and biographical information regarding a specific circus, performers, animals and other circus related information; and Registration No. 2,380,169, for electronic online retailing in the field of merchandise related to a specific circus and providing an interactive online database in the fields of entertainment, education, historical and biographical information regarding a specific circus, performers, animals and other circus related information. In addition, Opposer owns other registrations for the mark THE GREATEST SHOW ON EARTH & Design, including one for the mark THE GREATEST SHOW ON EARTH & Design, Registration No. 3,020,575, for entertainment services in the form of a circus, based upon use since 1933; Registration No. 1,363,330, for program books, coloring books and play cards; Registration No. 1,363,568, for toy stuffed animals; Registration No. 1,366,779, for t-shirts; and Registration No. 1,415,050, (collectively, the foregoing trademarks are hereinafter referred to as “Ringling Bros. Marks” and the foregoing goods and services are hereinafter collectively referred to as “Goods/Services”).

2. By reason of the extensive use throughout the United States and promotion of Opposer’s marks THE GREATEST SHOW ON EARTH and THE GREATEST SHOW ON EARTH & Design for Goods/Services throughout the United States, the trademark THE GREATEST SHOW ON EARTH has acquired substantial distinctiveness, secondary meaning

and fame. By virtue of the distinctiveness, goodwill and fame that Ringling Bros. has established in THE GREATEST SHOW ON EARTH mark, the public understands and believes that the goods and services bearing THE GREATEST SHOW ON EARTH originated specifically with Ringling Bros.

3. As a result of the extensive sales, revenues generated, advertising and marketing throughout the United States, the THE GREATEST SHOW ON EARTH mark has become famous among American consumers. By virtue of Ringling Bros.' extensive and continuous use of THE GREATEST SHOW ON EARTH mark in interstate commerce, the Ringling Bros. Marks have become and continue to be famous and distinctive.

4. Applicant, Tommy Bartlett, Inc., a Delaware corporation, located and doing business at 560 Dells Parkway, Wisconsin Dells, Wisconsin 53965, seeks to register the mark THE GREATEST SHOW ON H2O for entertainment services, particularly water skiing shows.

5. The mark that Applicant seeks to register is similar in appearance and pronunciation to the Ringling Bros. Marks which have been long used and registered. Applicant has merely changed the word "EARTH" to "H2O" resulting in a mark which is confusingly similar in pronunciation, appearance and commercial impression to Ringling Bros.' registered and/or long, prior use of THE GREATEST SHOW ON EARTH.

6. Applicant's services are also entertainment services, which are closely related to Ringling Bros.' entertainment services. In particular, Applicant's circus-type acts include, *inter alia*, clowns, unicycle stunts, juggling, Wheel of Destiny, as well as acts or similarly themed acts

that previously performed with Ringling Bros. Accordingly, the respective services of Opposer and Applicant are both entertainment services and, because the closely related nature of such services are offered under confusingly similar trademarks, a likelihood of confusion exists. More specifically, the consuming public will likely believe that there is an association between or sponsorship by Opposer with Applicant.

7. In view of the facts set forth above, Applicant's use and registration of the mark THE GREATEST SHOW ON H2O is likely to create confusion, mistake and deceive the trade and public into believing that Applicant's services originate with or are otherwise licensed, sponsored or authorized by Ringling Bros.

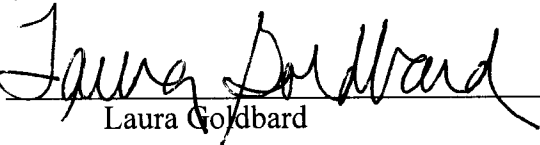
8. The use and registration of the mark THE GREATEST SHOW ON H2O by Applicant is likely to damage and destroy the distinctiveness, goodwill, reputation and secondary meaning created and established by Ringling Bros. in its mark THE GREATEST SHOW ON EARTH as used on the Goods/Services, by virtue of the confusion, mistake and deception likely to occur between the respective marks in derogation of Ringling Bros.' exclusive right to continue to use its marks for the Goods/Services.

9. By reason of all the foregoing, Ringling Bros. will be gravely damaged by Applicant's registration of the mark THE GREATEST SHOW ON H2O for entertainment services.

WHEREFORE, by reason of the confusing similarity of Applicant's and Ringling Bros.' marks, Ringling Bros. respectfully requests that the opposition be sustained and that registration of Applicant's THE GREATEST SHOW ON H2O mark be refused.

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP
Attorneys for Ringling Bros.-Barnum &
Bailey Combined Shows, Inc.
180 Maiden Lane
New York, New York 10038-4982
(212) 806-5400

BY 
Laura Goldbard

Dated: New York, New York
August 2, 2006