

ESTTA Tracking number: **ESTTA124092**

Filing date: **02/08/2007**

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	Head Sport AG		
Entity	Corporation	Citizenship	Austria
Address	Wuhrkopfgweg 1 Kennelbach, A-6921 AUSTRIA		

Name	Head Technology GmbH		
Granted to Date of previous extension	04/11/2007		
Address	Wuhrkopfgweg 1 Kennelbach, A-6921 AUSTRIA		

Attorney information	Linda K. McLeod Finnegan Henderson Farabow Garrett & Dunner, L.L.P. 901 New York Avenue, NW Washington, DC 20001-4413 UNITED STATES docketing@finnegan.com, linda.mcleod@finnegan.com, judy.valusek@finnegan.com Phone:202-408-4000		
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Applicant Information

Application No	78702386	Publication date	12/12/2006
Opposition Filing Date	02/08/2007	Opposition Period Ends	04/11/2007
Applicant	Oakley, Inc. One Icon Foothill Ranch, CA 92610 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Sunglasses and spectacles featuring an audio-visual display containing audio speakers and video screen

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Signature	/Linda K. McLeod/
Name	Linda K. McLeod

Date	02/08/2007
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2. Opposer Head Technology GmbH, is a corporation of Austria with its principal place of business at Wuhrkopfweg 1, A-6921 Kennelbach, Austria. Head Technology GmbH is a wholly-owned subsidiary of Head Sport AG.

3. Opposers, through their predecessors-in-interest, related companies, and licensees, have been engaged in the manufacture, advertising, and sale of a wide variety of sports equipment, bags, clothing, hats, footwear, eyewear, and related products since long prior to the filing date of the subject application, and any date of first use that may be alleged by Applicant.

4. Opposers, through their predecessors-in-interest and related companies, have used HEAD in the United States as part of their trade name since at least the 1950's.

5. Opposer Head Sport AG is the owner of, among others, the following United States trademark registrations for the mark HEAD:

Mark	Reg. No. Reg. Date	Goods
HEAD	2621914 9/17/02	Sunglasses, sunglass frames
HEAD	2945418 5/03/05	Glasses, spectacle cases, skiing goggles, diving goggles, helmets
HEAD GAMES	2696540 3/11/03	Footwear

6. Opposer Head Technology GmbH is the owner of, among others, the following United States trademark registrations for the mark HEAD:

Mark	Reg. No. Reg. Date	Goods
HEAD	675190 3/10/59	Snow skis
HEAD & Design	871815 6/24/69	Ski parkas
HEAD	1762980 4/06/93	Golf clubs, and golf bags
HEAD	1020388 9/16/75	Team tote bags; men's and women's ski wear including pants, parkas, shirts, sweaters, suits, hats, and women's tennis wear including shorts, pants, shirts, sweaters, suits, jackets, blazers, skirts, dresses, socks, sweatbands, headbands, tennis shoes; and women's general sportswear, namely, shorts, pants, jackets, blazers, suits, shirts, sweaters, skirts, dresses and scarves; slalom skis, and tennis rackets and tennis racket covers, gut and nylon string for tennis rackets, and ski bags, tennis racket bags
HEAD	1677425 3/3/92	Water bottles and towels
HEAD	1695827 6/23/92	Carry-on bags, back packs, and waist bags, men's tennis wear, wristbands, t-shirts, gaitors and athletic shoes; squash rackets, racketball rackets, grip tape for rackets, gut and nylon string for rackets, racket gloves, head guard tape for rackets, ski gloves, ski boots
HEAD	2045422 3/18/97	Sport bags, namely athletic bags; bags, namely school bags, book bags, and beach bags; game bags, namely animal game bags and hunters' game bags; leather and imitation leather sold in bulk; suitcases; trunks for traveling; attache cases; briefcases; mesh, textile, and leather shopping bags; mesh, textile, and leather shopping nets in the nature of netted bags; handbags; wallets; vanity cases sold empty; toiletry bags sold empty for traveling; traveling bags; rucksacks; duffel bags for traveling; key wallets in the nature of cases; and bags with rollers, namely traveling bags and luggage; Camping bags, namely sleeping bags and bags for carrying sleeping bags; Fitted vanity cases; Trunks for storage

7. The foregoing registrations in Paragraphs 5 and 6 above are valid and subsisting and constitute *prima facie* evidence of the validity of the marks and registrations, of Opposers' ownership of and exclusive right to use the marks in commerce, and provide constructive notice of ownership thereof by Opposers.

8. As a result of Opposers' promotional efforts and commercial success, Opposers' HEAD trade name and marks have achieved such widespread public recognition that they have become famous.

Applicant and its HEAD THEATER Application

9. On information and belief, Oakley, Inc. ("Applicant"), is a corporation of Washington having an address of One Icon, Foothill Ranch, California 92610.

10. On information and belief, Applicant is the current owner of intent-to-use Application Serial No. 78702386, filed August 29, 2005, for the mark HEAD THEATER for "sunglasses and spectacles featuring an audio-visual display containing audio speakers and video screen" in International Class 9.

Likelihood of Confusion, 15 U.S.C. §1052(d)

11. Opposers repeat and reallege each and every allegation set forth in Paragraphs 1 through 10.

12. Since well prior to the filing date of Application Serial No. 78702386, and any date of first use that may be alleged by Applicant, Opposers and their predecessors-in-interest and licensees have advertised, promoted, and sold in the United States, *inter alia*, sports clothing, headwear, footwear, bags, sunglasses, sunglass frames, glasses, spectacle cases, goggles, golf clubs and golf bags, ski

equipment, racket equipment, and other goods under the HEAD name and marks and marks containing HEAD.

13. The "HEAD" portion of Applicant's mark HEAD THEATER is identical in sound, pronunciation, and appearance to Opposers' HEAD name and mark. The sunglasses and spectacles identified in the subject application are identical or closely related to the products offered and sold by Opposers in connection with their HEAD name and marks, and to the products covered by Opposers' HEAD trademark registrations.

14. In view of the similarity of the parties' marks and the identical and/or closely related nature of the parties' goods, Applicant's mark HEAD THEATER so resembles Opposers' previously used HEAD trade name and mark, and previously registered HEAD marks, as to be likely to cause confusion, or to cause mistake, or to deceive in violation of Section 2(d), 15 U.S.C. § 1052(d).

Dilution, 15 U.S.C. §1125(c)(1)

15. Opposers repeat and reallege each and every allegation set forth in Paragraphs 1 through 14.

16. Opposers' HEAD trade name and marks became famous well prior to the filing date of Application No. 78702386, and any date of first use that may be alleged by Applicant.

17. Applicant's mark HEAD THEATER mark so closely resembles Opposers' previously registered HEAD marks, and previously used HEAD trade name and marks, as to dilute or be likely to cause dilution of the distinctive quality of Opposers' famous marks and trade name in violation of Section 43(c), 15 U.S.C. § 1125(c).

18. For the foregoing reasons, Opposers are being and will be damaged by the registration of the mark HEAD THEATER shown in Application Serial No. 78702386 for "sunglasses and spectacles featuring an audio-visual display containing audio speakers and video screen" in International Class 9.

WHEREFORE, Opposers respectfully request that Application Serial No. 78702386 be refused registration, and that this opposition be sustained.

Respectfully submitted,

HEAD TECHNOLOGY GMBH and
HEAD SPORT AG

Dated: February 8, 2007

By: 

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