

ESTTA Tracking number: **ESTTA137208**

Filing date: **04/24/2007**

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 party opposes registration of the indicated application.

Opposer Information

Name	BC Sports, Inc.
Granted to Date of previous extension	04/28/2007
Address	3414 SE Oak Street Portland, OR 97214 UNITED STATES
Attorney information	Karen Wetherell Davis Elliott, Ostrander & Preston, P.C. 707 SW Washington Street Suite 1500 Portland, OR 97205 UNITED STATES karen@eoplaw.com, niel@eoplaw.com Phone:(503) 224-7112

Applicant Information

Application No	79015449	Publication date	02/27/2007
Opposition Filing Date	04/24/2007	Opposition Period Ends	04/28/2007
International Registration No.	0862494	International Registration Date	02/25/2005
Applicant	Global Bio-Marketing Group Pty Ltd Level 1 43 Agnes Street; JOLIMONT, VIC 3002 AUSTRALIA		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical drinks and pharmaceutical preparation drink mixes in powder, granulated or concentrated form, none of which contains aloe vera, used to aid in physical recovery after sports, exercise, and/or physical exertion
Class 032. All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, sports drinks and energy drinks, none of which contains aloe vera, used to aid in fluid replacement after sports, exercise, and/or physical exertion; powders, granules, concentrates, or concentrates in capsule form for use in making sports drinks and energy drinks, none of which contains aloe vera

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	No Bona Fide Intention to Use the Mark Incorrect Owner Listed in Application

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2928815	Application Date	11/24/2003
Registration Date	03/01/2005	Foreign Priority Date	NONE
Word Mark	SPARQ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2004/04/07 First Use In Commerce: 2004/04/07 Athletic equipment, namely, football, baseball, softball, basketball, soccer, running and volleyball training products for speed, agility and quickness		

Attachments	78332147#TMSN.jpeg (1 page)(bytes) Notice of Opposition 79015449.pdf (7 pages)(164943 bytes)
-------------	--

Signature	/Karen Wetherell Davis/
Name	Karen Wetherell Davis
Date	04/24/2007

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

B.C.SPORTS, INC.,

Opposer,

v.

GLOBAL BIO-MARKETING GROUP PTY LTD,

Applicant.

Opposition No.: _____

In re Application Serial No. 79/015,449

Filed: February 25, 2005

Mark: SPARQ

Published: February 27, 2007

NOTICE OF OPPOSITION

STANDING

BC Sports, Inc, an Oregon corporation with a principal place of business at 3414 SE Oak Street, Portland, Oregon 97214, U.S.A. (“Opposer”), believes that it will be damaged by registration of the mark in the above identified application (the “Application”) filed by Global Bio-Marketing Group Pty Ltd., residing at Level 1, 43 Agnes Street, Jolimont, Victoria 3002, Australia (“Applicant”), and hereby opposes same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

GROUND

As grounds for opposition, it is alleged that:

1. Opposer is a company engaged in the business of creating and marketing goods and services in the sports and athletics industry; namely: athletic training equipment; software,

entertainment properties; apparel; magazines; education classes and workshops; and related goods and services. Opposer's goods and services are sold, marketed and promoted to athletes through Internet websites, retail stores, sports events, camps, and licensee sales.

2. Opposer is the owner of all right, title and interest in and to the trademark "SPARQ", which Opposer has used in connection with the sale of goods in interstate commerce since at least as early as April 7, 2004.

3. Opposer is the owner of U.S. Patent and Trademark Office ("USPTO") Registration No. 2,928,815 for "athletic equipment, namely, football, baseball, softball, basketball, soccer, running and volleyball training products for speed, agility and quickness", filed on November 24, 2003, and registered on March 1, 2005 (hereinafter, the "Registration"). The Registration is valid and continuing.

4. Opposer owns applications pending with the USPTO for "SPARQ" and "SPARQ (and Design)": (a) "SPARQ", Serial No. 78/787,501, filed January 9, 2006, and "SPARQ (and Design)", Serial No. 78/758,608, filed November 21, 2005 (both based on intent-to-use the mark) in connection with numerous types of bags in International Class 18, and numerous items of apparel and footwear, in International Class 25; ; (b) "SPARQ", Serial No. 78/585,015, filed March 10, 2005 (based on intent-to-use) and "SPARQ (and Design)", Serial No. 78/787,495, filed January 9, 2006 (based on prior use and intent-to-use) for use in connection audio and audio-visual recordings in the fields of competitive sports and athletics and sports and athletic training, in International Class 9; various items of printed matter, in International Class 16; various types of athletic equipment, in International Class 28; and educational and entertainment services, in International Class 41 (the "Opposer's Applications").

5. Opposer's Applications Serial Nos. 78787501, 78758608 and 78787495 have been issued Notices of Suspension by the USPTO pending the outcome of Applicant's Application. The Examiner has cited a likelihood of confusion between Applicant's mark and Opposer's mark.

6. Opposer and its related companies and licensees have made continuous and substantial use and promotion of the "SPARQ" mark. Through substantial sales and promotion of goods and services under the mark "SPARQ", Opposer is the recognized source of "SPARQ" goods and services, and "SPARQ" is a valuable and recognized symbol of Opposer's goodwill.

7. On February 25, 2005, Applicant filed its application to register the mark "SPARQ" for use in connection with "pharmaceutical drinks and pharmaceutical preparation drink mixes in powder, granulated or concentrated form, none of which contains aloe vera, used to aid in physical recovery after sports, exercise, and/or physical exertion, in International Class 005", and "non-alcoholic beverages, namely, sports drinks and energy drinks, none of which contains aloe vera, used to aid in fluid replacement after sports, exercise, and/or physical exertion; powders, granules, concentrates, or concentrates in capsule form for use in making sports drinks and energy drinks, none of which contains aloe vera, in International Class 032."

8. The Application was filed on the basis of Applicant's International Registration, under 15 U.S.C. Section 1141(e).

9. On information and belief, Applicant made no use in the United States of Applicant's Mark in connection with any goods prior to February 25, 2005.

10. Applicant knew or had reason to know of Opposer's prior rights in "SPARQ" when Applicant filed the Application.

11. Prior to the filing of the Application, Applicant's agent met with Opposer, at which time Applicant presented its plans for the use and development of the mark across multiple categories within the sports industry. During and subsequent to that meeting, the Applicant and Opposer engaged in discussions about Applicant's desire to license Opposer's mark "SPARQ" for use in connection with beverages (specifically, sports beverages) and the value of Opposer's marketing and business plans for the development of that mark in the sports training, equipment and content market in terms of creating interest in and demand for a sports beverage bearing that same mark.

12. Prior to concluding any agreement with Opposer with respect to the proposed license of Opposer's mark, Applicant filed its Application without the knowledge or consent of Opposer, and did not notify Opposer until well after the filing of the Application.

13. At the time of filing the Application, Applicant filed for the benefit of Opposer with a clear intention to transfer ownership of the mark to Opposer and act as Opposer's licensee with regard to the mark "SPARQ" in connection with beverages. Applicant explicitly stated such intention to Opposer when notifying Opposer of such Application.

14. Subsequent to filing its Application, negotiations between Applicant and Opposer ceased with regard to a license to Applicant to use Opposer's mark "SPARQ" for beverages. Nonetheless, Applicant has not withdrawn or transferred its Application.

15. On information and belief, it is Applicant's intention that beverages under the "SPARQ" mark be sold to athletes and other customers of Opposer, or to the same class of consumers or potential consumers.

16. On information and belief, it is Applicant's intention that its goods be promoted by and through sports and athletic competitions and sports industry events, publications, and venues.

17. Opposer has used, advertised and promoted its "SPARQ" mark in interstate commerce and international commerce involving the United States from a date long prior to the filing date of the Application and long prior to any possible use by Applicant of Applicant's Mark in the United States.

18. Opposer's initial Application was filed long prior to the filing date of the Applicant's Application, and Opposer's Registration issued prior to any use by Applicant of Applicant's Mark.

19. Opposer's "SPARQ" mark is recognized as an indicator of the source of Opposer's goods and services in U.S. commerce and became distinctive of Opposer's goods and services in U.S. commerce long prior to the filing date of the Application and long prior to any use by Applicant of Applicant's Mark.

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

20. Opposer realleges and incorporates by reference paragraphs 1 through 19 as though fully set forth herein.

21. Applicant's mark so resembles Opposer's mark that the use and registration of Applicant's mark is likely to cause confusion as to origin, or to cause mistake or to deceive as to the source of Applicant's goods, and will cause damage to the reputation and goodwill of Opposer and its "SPARQ" mark and goods and services.

22. Applicant's goods would be sold in the same or similar channels of trade as Opposer's goods and services, and would be marketed to the same classes of purchasers. The consuming public is likely to be deceived or confused as to the affiliation, connection, or association of Applicant's goods with Opposer, and Opposer would lose control over its valuable goodwill, reputation and source affiliation with the "SPARQ" mark.

23. If Applicant is granted the registration herein opposed, it would thereby obtain at least *prima facie* exclusive right to the use of Applicant's mark, and such registration would damage Opposer in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

(No Bona Fide Intention to Use the Mark)

24. Opposer realleges and incorporates by reference paragraphs 1 through 23 as though fully set forth herein.

25. Applicant did not have a *bona fide* intention to use the mark SPARQ when it filed its Application, and therefore it did not have a valid basis to file the Application.

26. Applicant's Application is therefore invalid, and should not be granted.

(Incorrect Owner Listed in Application)

27. Opposer realleges and incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

28. The Applicant listed the incorrect owner in the Application, and therefore the Application is void, and invalid, and should not be granted.

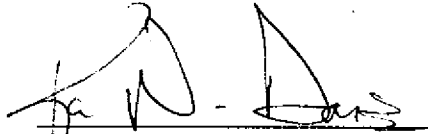
WHEREFORE, Opposer prays that the Application Serial No. 79/015,449 be rejected in its entirety, and that registration of Applicant's mark therein sought for the goods specified be

denied and refused. The required fee of \$600 (for two international classes) is submitted herewith.

Respectfully submitted, this 24th day of April 2007, by

BC SPORTS, INC., Opposer

By:



Karen Wetherell Davis, OSB No. 03209
Elliott, Ostrander & Preston, P.C.
707 S.W. Washington Street, #1500
Portland, OR 97205
(503) 224-7112
karen@eoplaw.com

Attorneys for Opposer