

ESTTA Tracking number: **ESTTA144579**

Filing date: **06/06/2007**

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	Dr.'s Own, Inc.
Granted to Date of previous extension	06/06/2007
Address	2270 Cosmos Court, Suite 100 Carlsbad, CA 92011 UNITED STATES

Attorney information	Barry F. Soalt Procopio Cory Hargreaves & Savitch LLP 530 B Street, Suite 2100 San Diego, CA 92101 UNITED STATES docketing@procopio.com, glj@procopio.com Phone:619 525 3865
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**Applicant Information**

Application No	78923943	Publication date	02/06/2007
Opposition Filing Date	06/06/2007	Opposition Period Ends	06/06/2007
Applicant	Brown Shoe Company, Inc. 8300 Maryland Avenue St. Louis, MO 63105 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. All goods and services in the class are opposed, namely: Distributorships in the field of footwear
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2121116	Application Date	07/22/1996
Registration Date	12/16/1997	Foreign Priority Date	NONE
Word Mark	THE GOOD FEET STORE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 042. First use: First Use: 1995/09/15 First Use In Commerce: 1995/09/15 retail store services for shoe supports		
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U.S. Registration No.	2751902	Application Date	09/13/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	GOOD FEET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1995/09/15 First Use In Commerce: 1995/09/15 retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics		

U.S. Registration No.	2751886	Application Date	08/20/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	GOOD FEET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1999/04/04 First Use In Commerce: 1999/04/04 retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics		

U.S. Registration No.	2545069	Application Date	08/20/2001
Registration Date	03/05/2002	Foreign Priority Date	NONE
Word Mark	G		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1999/04/04 First Use In Commerce: 1999/04/04 retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics		

U.S. Registration No.	2751905	Application Date	09/13/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	THE GOOD FEET STORE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1995/09/15 First Use In Commerce: 1995/09/15 retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics

U.S. Registration No.	2751904	Application Date	09/13/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	THE GOOD FEET STORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1995/09/15 First Use In Commerce: 1999/04/04 retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics		

U.S. Registration No.	3088276	Application Date	04/03/2003
Registration Date	05/02/2006	Foreign Priority Date	NONE
Word Mark	GOOD FEET WORLDWIDE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2005/04/11 First Use In Commerce: 2005/04/11 FRANCHISING, NAMELY, OFFERING TECHNICAL ASSISTANCE IN THE ESTABLISHMENT AND/OR OPERATION OF RETAIL STORES FEATURING SHOE SUPPORTS, SHOE CUSHIONS, INSOLES, AND FOOT ORTHOTICS		

U.S. Registration No.	2852411	Application Date	08/30/2001
Registration Date	06/15/2004	Foreign Priority Date	NONE
Word Mark	GOOD FEET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2001/02/26 First Use In Commerce: 2001/02/26 foot orthotics, orthotic foot cushions, arch supports for boots or shoes Class 025. First use: First Use: 2001/02/26 First Use In Commerce: 2001/02/26 Heel cushion inserts and heel cups		

U.S. Application No.	78639375	Application Date	05/27/2005
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	GOOD FEET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: T-shirts, shirts, sweatshirts, sweat pants, belts, socks, hosiery, footwear, slippers, hats, caps, visors, insoles, heel cushions, heel liners, and heel rests		

U.S. Application No.	78639416	Application Date	05/27/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GOOD FEET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: Foot and body stretching and exercise equipment, namely, toe flexors, resistance bands for strength training and flexibility, balance boards, stretch cords, flex boards, foot massagers, foot wheels, compression wraps, bands and pads for comfort, balance and support		

U.S. Registration No.	3183328	Application Date	11/17/2005
Registration Date	12/12/2006	Foreign Priority Date	NONE
Word Mark	GOOD FEET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1999/04/04 First Use In Commerce: 1999/04/04 Pre-recorded digital video discs, CDs, MP3s, video tapes and audio tapes featuring infomercials and promotional presentations promoting goods and services in the fields of foot orthotics, orthotic foot cushions, arch supports, cushion inserts and insoles for shoes or boots, and footwear		

Related Proceedings	Notice of Opposition concurrently being filed 6/6/07 regarding Serial No. 78/923939.
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Signature	/bfs/
Name	Barry F. Soalt
Date	06/06/2007



manufacture, distribution and sales of foot orthotics, orthotic foot cushions, arch supports for boots or shoes, heel cushion inserts and heel cups; retail store services in the field of shoe supports, cushions and foot orthotics; on-line retail store services, mail order services, and distributorships, all in the field of shoe supports, shoe cushions and foot orthotics; franchising services in the field of retail stores featuring shoe supports, shoe cushions, insoles, and foot orthotics, throughout the United States and worldwide, under the trademarks and service marks GOOD FEET, GOOD FEET and Design, GOOD FEET WORLDWIDE and others. Opposer owns registrations and/or pending applications for the GOOD FEET, and GOOD FEET and Design marks in the U.S., and elsewhere in international classes 10, 25, and 35. Opposer is also engaged in the distribution and sales of footwear and other related goods.

3. Opposer owns federal registrations and/or pending applications for the following specific GOOD FEET Marks:

Mark: **THE GOOD FEET STORE and Design**  
Reg. No.: 2,121,116  
Issued: 12/16/97  
Class: 42  
Goods/Services: Retail store services for shoe supports

Mark: **GOOD FEET**  
Reg. No.: 2,751,902  
Issued: 8/19/03  
Class: 35  
Goods/Services: Retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics

Mark: **GOOD FEET and Design**  
Reg. No.: 2,751,886

Issued: 8/19/03  
Class: 35  
Goods/Services: Retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics

Mark: **G and Design**  
Reg. No.: 2,545,069  
Issued: 3/5/02  
Class: 35  
Goods/Services: Retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics

Mark: **THE GOOD FEET STORE**  
Reg. No.: 2,751,905  
Issued: 8/19/03  
Class: 35  
Goods/Services: Retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics

Mark: **THE GOOD FEET STORE and Design**  
Reg. No.: 2,751,904  
Issued: 8/19/03  
Class: 35  
Goods/Services: Retail store services in the field of shoe supports, shoe cushions and foot orthotics; on-line retail store and mail order services in the field of shoe supports, shoe cushions and foot orthotics; and distributorships in the field of shoe supports, shoe cushions and foot orthotics

Mark: **GOOD FEET WORLDWIDE**  
Reg. No.: 3,088,276  
Issued: 5/2/06  
Class: 35

Goods/Services: Franchising, namely, offering technical assistance in the establishment and/or operation of retail stores featuring shoe supports, shoe cushions, insoles, and foot orthotics

Mark: **GOOD FEET**

Reg. No.: 2,852,411

Issued: 6/15/04

Classes and Goods/Services: 10 Foot orthotics, orthotic foot cushions, arch supports for boots or shoes

25 Heel cushion inserts and heel cups

Mark: **GOOD FEET & Design**

Serial. No.: 78/639,375

Filing Date: 5/27/05

Class: 25

Goods/Services: T-shirts, shirts, sweatshirts, sweat pants, belts, socks, hosiery, footwear, slippers, hats, caps, visors, insoles, heel cushions, heel liners, and heel rests

Mark: **GOOD FEET & Design**

Serial No.: 78/639,416

Filing Date: 5/27/05

Class: 28

Goods/Services: Foot and body stretching and exercise equipment, namely, toe flexors, resistance bands for strength training and flexibility, balance boards, stretch cords, flex boards, foot massagers, foot wheels, compression wraps, bands and pads for comfort, balance and support, water bottles and water bottle carriers, walking sticks, walking canes, and pedometers.

Mark: **GOOD FEET and Design**

Reg. No.: 3,183,328

Issued: 12/12/06

Class: 9

Goods/Services: Pre-recorded digital video discs, CDs, MP3s, video tapes and audio tapes featuring infomercials and promotional presentations promoting goods and services in the fields of foot orthotics, orthotic foot cushions, arch supports, cushion inserts and insoles for shoes or boots, and footwear

Each of the foregoing registrations is valid, subsisting, unrevoked and uncanceled. Said marks and registrations thereof are hereinafter collectively the GOOD FEET Marks.

4. By virtue of the sales and advertising of Opposer's aforesaid goods and services, including without limitation, its foot orthotics, cushions, arch supports, footwear and related goods and accessories marketed and sold under the GOOD FEET Marks and company brands, through retail company owned and franchised stores, through marketing via Opposer's websites, infomercials, and other print and electronic advertising campaigns, said GOOD FEET Marks are recognized as identifying goods and services finding their origin or otherwise associated with Opposer.

5. The mark subject to this Opposition is FEELING GOOD ... FEET FIRST, Application Serial No. 78/923,943, filed July 6, 2006 on the basis of intent-to-use in class 35 for distributorships in the field of footwear. The Applicant's mark was filed subsequent to the Opposer's filing and first use dates in the aforesaid registrations. Opposer's filing and first use dates are clearly prior to those of the Applicant.

6. Applicant, Brown Shoe Company, Inc. is a New York corporation with its principal place of business at 8300 Maryland Avenue, St. Louis, Missouri 63105.

7. The Applicant's FEELING GOOD ... FEET FIRST mark is confusingly similar to Opposer's GOOD FEET Marks and registrations. The respective marks are similar in sound, appearance, and overall commercial impression. The Applicant's mark and application contains the Opposer's mark in its entirety in the same juxtaposition and word order. The goods and services of the parties offered under the respective marks are related. The respective goods and services are presumed to travel in the same or overlapping channels of trade and to be marketed to and purchased by the same or overlapping class of consumers. Opposer's goods and services under the GOOD FEET Marks and registrations, and Applicant's goods and services under the FEELING GOOD ... FEET FIRST marks and applications are likely to be marketed through overlapping channels of trade, advertised in overlapping trade publications and used by an

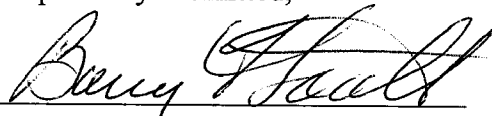
overlapping class of consumers. Accordingly, it is likely that consumers will mistakenly believe that Applicant's FEELING GOOD ... FEET FIRST mark for footwear and distributorships in the field of footwear is associated in some manner with Opposer and the goods and services, sold or offered under Opposer's GOOD FEET Marks and registrations.

8. Registration of Applicant's FEELING GOOD ... FEET FIRST marks for its goods and services would be inconsistent with Opposer's rights in its GOOD FEET Marks and registrations, and will cause damage to Opposer.

WHEREFORE, it is respectfully prayed that registration of the FEELING GOOD ... FEET FIRST marks, Application Serial No. 78/923,943, not be permitted. Certified title and status copies of Opposer's registrations will be submitted during the course of the proceeding. I authorize you to deduct the filing fee in the sum of \$300.00 for this Notice of Opposition from the Procopio Cory Hargreaves & Savitch LLP Deposit Account number 502075.

Respectfully submitted,

Dated: June 6, 2007

By: 

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