

ESTTA Tracking number: **ESTTA154377**

Filing date: **08/01/2007**

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	Impact Sports, Inc.
Granted to Date of previous extension	08/01/2007
Address	4151 Anderson Road DeForest, WI 53532 UNITED STATES

Correspondence information	Joseph W. Byrne Attorney for Opposer Boardman, Suhr, Curry & Field LLP One South Pinckney Street, Fourth Floor Madison, WI 53703 UNITED STATES jbyrne@boardmanlawfirm.com Phone:(608) 257-9521
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Applicant Information

Application No	78977254	Publication date	04/03/2007
Opposition Filing Date	08/01/2007	Opposition Period Ends	08/01/2007
Applicant	Impact Sports Technologies, Inc. 2101 Plaza Del Dios Las Vegas, NV 89102 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely wristbands, armbands, anklebands, shirts and gloves

Grounds for Opposition

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

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	IMPACT SPORTS		
Goods/Services	Clothing and clothing accessories; wholesale and retail distributorship and sales services featuring clothing, clothing accessories, sporting		

	goods and other sports related equipment manufactured by others; and embroidering and screen printing services, namely the custom embroidering and screen printing of clothing and clothing accessories for others.
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Attachments	NotOpp. Notice of Opposition - As Filed 8-1-2007 (NOTOPP1).pdf (8 pages) (177735 bytes)
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Signature	/Joseph W. Byrne/
Name	Joseph W. Byrne
Date	08/01/2007

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

In the Matter of Application Serial No.: 78/977,254
Filed on: March 17, 2005
For the Mark: IMPACT SPORTS
Published in the Official Gazette on: April 3, 2007

IMPACT SPORTS, INC.)	
)	
Opposer,)	
)	
v.)	
)	Opposition No. _____
IMPACT SPORTS)	
TECHNOLOGIES, INC.)	
)	
Applicant.)	

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Impact Sports, Inc., a Wisconsin corporation having a mailing address of 4151 Anderson Road, DeForest, Wisconsin 53532 (hereinafter "Opposer") believes that it will be damaged by registration of the designation IMPACT SPORTS for "clothing, namely wristbands, armbands, anklebands, shirts and gloves" in International Class 25 as shown in Application Serial No. 78/977,254 which was filed on March 17, 2005 by Impact Sports

Technologies, Inc., a Delaware corporation having a mailing address of 2101 Plaza Del Dios, Las Vegas, Nevada 89102 (hereinafter “Applicant”) and hereby opposes same.

As grounds of opposition, it is alleged that:

1. Opposer is now and for many years past has manufactured and sold a line of clothing and clothing accessory items bearing the mark IMPACT SPORTS. Opposer sells and has sold its clothing and clothing accessory goods to individuals, businesses and other organizations.

2. Since long prior to March 17, 2005, the filing date of the application herein opposed, Opposer adopted, has used and is using in interstate commerce the mark IMPACT SPORTS on and in connection with the aforementioned clothing and clothing accessory goods. Opposer has prior use in interstate commerce of the mark IMPACT SPORTS for the aforementioned clothing and clothing accessory goods and since the adoption and first use of the mark IMPACT SPORTS as aforesaid, Opposer has continuously used such mark in interstate commerce in the United States by affixing such mark to the aforementioned goods and by applying such mark to brochures, advertisements and promotional literature used in connection with the sale and advertisement of the aforementioned goods.

3. Opposer’s clothing and clothing accessories are now and for many years past have been widely promoted and provided under the IMPACT SPORTS mark in interstate commerce in the United States. The IMPACT SPORTS mark has come to be favorably known, and of great value to Opposer, and in the mind of the trade and public, identifies

Opposer's line of clothing and clothing accessories and distinguishes Opposer's clothing and clothing accessory goods from the goods and services of others.

4. Opposer is now and for many years past has also been a wholesale and retail distributor and seller of clothing, clothing accessories, sporting goods, and other sports related equipment manufactured by others. Opposer's distributorship and sales services are and have been offered and provided to individuals, businesses and other organizations.

5. Since long prior to March 17, 2005, the filing date of the application herein opposed, Opposer adopted, has used and is using in interstate commerce the mark IMPACT SPORTS in connection with the aforementioned distributorship and sales services. Opposer has prior use in interstate commerce of the mark IMPACT SPORTS for the aforementioned distributorship and sales services and since the adoption and first use of the mark IMPACT SPORTS as aforesaid, Opposer has continuously used or displayed such mark in connection with the sale and advertisement of the aforementioned distributorship and sales services in interstate commerce in the United States.

6. Opposer's wholesale and retail distributorship and sales services are now and for many years past have been widely promoted and provided under the IMPACT SPORTS mark in interstate commerce in the United States. The IMPACT SPORTS mark has come to be favorably known, and of great value to Opposer, and in the mind of the trade and public, identifies Opposer's distributorship and sales services and distinguishes Opposer's distributorship and sales services from the goods and services of others.

7. Opposer is now and for many years past has also been engaged in offering and providing embroidering and screen printing services, namely the custom embroidering and screen printing of clothing and clothing accessories for others. Opposer's embroidering and screen printing services are and have been offered and provided to individuals, businesses and other organizations.

8. Since long prior to March 17, 2005, the filing date of the application herein opposed, Opposer adopted, has used and is using in interstate commerce the mark IMPACT SPORTS in connection with the aforementioned embroidering and screen printing services. Opposer has prior use in interstate commerce of the mark IMPACT SPORTS for the aforementioned embroidering and screen printing services and since the adoption and first use of the mark IMPACT SPORTS as aforesaid, Opposer has continuously used or displayed such mark in connection with the sale and advertisement of the aforementioned embroidering and screen printing services in interstate commerce in the United States.

9. Opposer's embroidering and screen printing services are now and for many years past have been widely promoted and provided under the IMPACT SPORTS mark in interstate commerce in the United States. The IMPACT SPORTS mark has come to be favorably known, and of great value to Opposer, and in the mind of the trade and public, identifies Opposer's embroidering and screen printing services and distinguishes Opposer's embroidering and screen printing services from the goods and services of others.

10. Opposer is now and for many years past has also used the trade name IMPACT SPORTS to identify Opposer's business. Opposer's business is and for many years

past has been widely promoted under the IMPACT SPORTS trade name in interstate commerce in the United States. The IMPACT SPORTS trade name has come to be favorably known, and of great value to Opposer, and in the mind of the trade and public, identifies Opposer's business and distinguishes Opposer's business from the businesses of others.

11. By the application herein opposed, Applicant seeks to register the designation IMPACT SPORTS for "clothing, namely wristbands, armbands, anklebands, shirts and gloves" in International Class 25.

12. The opposed application is an intent-to-use based application filed on March 17, 2005 which date is well after Opposer first commenced use of the mark IMPACT SPORTS. Since long prior to March 17, 2005, Opposer adopted and used, and is using, the mark IMPACT SPORTS in interstate commerce in connection with the aforementioned goods and services of Opposer.

13. On information and belief, Applicant has made no actual use of the designation IMPACT SPORTS in interstate commerce or otherwise prior to the March 17, 2005 filing date of the application herein opposed, in connection with Applicant's goods recited in the application, or in connection with any other goods or services.

14. Applicant's designation IMPACT SPORTS in Application Serial No. 78/977,254 is identical in sight, sound, connotation and commercial impression to Opposer's IMPACT SPORTS mark.

15. The goods for which Applicant seeks registration in Application Serial No. 78/977,254 are identical or similar to the goods on and in connection with which Opposer

uses and has used its IMPACT SPORTS mark and are related to the services in connection with which Opposer uses and has used its IMPACT SPORTS mark.

16. On information and belief, the channels of trade for the goods for which Applicant seeks registration in Application Serial No. 78/977,254 are identical or similar to the channels of trade for the goods and services in connection with which Opposer uses and has used its IMPACT SPORTS mark.

17. On information and belief, the conditions under which, and buyers to whom sales are made of, the goods for which Applicant seeks registration in Application Serial No. 78/977,254 are identical or similar to the conditions under which, and buyers to whom sales are made of, the goods and services in connection with which Opposer uses and has used its IMPACT SPORTS mark.

18. In view of, *inter alia*, the similarity in sight, sound, connotation and commercial impression between Applicant's proposed mark and Opposer's IMPACT SPORTS mark, the similarity and relatedness between the respective goods and services of Applicant and Opposer, the similarity of the channels of trade for the respective goods and services of Applicant and Opposer, and the similarity in the conditions under which, and buyers to whom sales are made, for the respective goods and services of Applicant and Opposer, Applicant's proposed mark in Application Serial No. 78/977,254 so resembles Opposer's previously used IMPACT SPORTS mark as to be likely, when used in connection with Applicant's proposed goods, to cause confusion, to cause mistake and to deceive with consequent injury to Opposer and the public.

19. In addition, Applicant's designation IMPACT SPORTS in Application Serial No. 78/977,254 so resembles Opposer's previously used IMPACT SPORTS mark as to be likely, when used in connection with Applicant's goods recited in Application Serial No. 78/977,254, to lead to the belief that Applicant's goods are sponsored by, affiliated with, approved by, or otherwise emanate from Opposer, with consequent injury to Opposer and the public. Any faults or defects which might be found with Applicant's goods would reflect adversely upon and seriously injure the valuable reputation and goodwill of Opposer.

20. Additionally, Applicant's mark as depicted in Application Serial No. 78/977,254 so resembles Opposer's previously used IMPACT SPORTS mark so as to falsely suggest a connection between Applicant and Opposer.

21. Opposer will also be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's mark and would give to Applicant color of exclusive statutory rights to such designation in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer believes that it would be damaged by registration of Applicant's mark, and therefore requests that registration of Applicant's mark be denied and that this opposition be sustained.

Authorization to charge the filing fee for this Notice as required by 37 C.F.R. § 2.6(a)(17) to a credit card is being provided simultaneously with the filing of this Notice of Opposition. In the event that such authorization is defective or deficient in any manner, the

Commissioner is hereby authorized to charge any required fees, or any deficiency in any required fees, to deposit account no. 02-2850.

Please recognize as attorneys for Opposer, Joseph W. Byrne, Esq., a member in good standing of the Bar of the State of Wisconsin, and the firm of Boardman, Suhr, Curry & Field LLP, One South Pinckney Street, Fourth Floor, P.O. Box 927, Madison, WI 53701-0927. Please address all communications to Joseph W. Byrne, Esq. of said firm and address.

Dated this 1st day of August, 2007.

Respectfully submitted,
IMPACT SPORTS, INC.

/Joseph W. Byrne/

Joseph W. Byrne
Attorney for Impact Sports, Inc.

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