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

Proceeding	91178693
Party	Defendant Impact Sports Technologies, Inc.
Correspondence Address	IMPACT SPORTS TECHNOLOGIES, INC. 2101 PLAZA DEL DIOS LAS VEGAS, NV 89102-3985 dbrady13@cox.net
Submission	Answer
Filer's Name	Michael Catania
Filer's e-mail	mcatania@clauseeight.com
Signature	/Michael Catania/
Date	09/05/2007
Attachments	91178693answer.pdf (12 pages)(911537 bytes) Exhibit A.pdf (1 page)(368527 bytes) Exhibit B.pdf (4 pages)(1128209 bytes)

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

Impact Sports, Inc.)	
)	
Opposer)	
v.)	Opposition No. 91178693
)	
Impact Sports Technologies, Inc.)	Serial No. 78977254
)	
)	Publication Date: 04-03-2007
Applicant)	

ANSWER

NOW COMES Impact Sports Technologies Incorporated (hereinafter “Impact Sports”) before this honorable board and hereby answers the Opposition to Impact Sports’ United States Trademark Application for IMPACT SPORTS for clothing, namely wristbands, armbands, anklebands, shirts and gloves, in International Class 25, which has been opposed by Impact Sports Incorporated of Deforest, Wisconsin (hereinafter “Opposer”), as follows:

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

2. Since long prior to March 17, 2005, the 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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations. Impact Sports does admit that, based on a historic search of the Opposer's website, as late as the Spring of 2005 Opposer was selling a line of clothing as the "Impact Line" of clothing as demonstrated by Exhibit A, a copy of the historic webpage of the Opposer.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations. Impact Sports does admit that based on Opposer's website, www.teamimpactsports.com, Opposer does sell Nike® brand apparel.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports admits that it seeks to register 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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations. Impact Sports does make reference to the response to paragraph 2. Impact Sports admits that application number 78977254 is an intent-to-use based application.

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.

RESPONSE

Impact Sports has used the trademark IMPACT SPORTS on heart rate monitors and owns United States Trademark Application Number 78589002 for IMPACT SPORTS for heart rate monitors in International Class 10. Further, the Opposer was well aware of said registration since Opposer filed for an extension of time to oppose application number 78589002. Impact Sports admits that it has not yet used the trademark IMPACT SPORTS on clothing, namely wristbands, armbands, anklebands shirts and gloves in International Class 25.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

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.

RESPONSE

Impact Sports lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and on that basis denies the allegations.

AFFIRMATIVE DEFENSES

1. Impact Sports asserts that the Opposer is barred by unclean hands from asserting an opposition against Impact Sports' United States Trademark Application Number 78977254 for IMPACT SPORTS since the Opposer filed on July 22, 2005 for a 1B, INTENT TO USE application for IMPACT SPORTS for clothing and clothing accessories in international class 25, application number 76643420, making a statement under 18 U.S.C. Section 1001, that the application was based on a bone-fide intention to use the mark IMPACT SPORTS, not based on use, as shown in Exhibit B.

2. Impact Sports asserts that the Opposer is barred by fraud from asserting an opposition against Impact Sports' United States Trademark Application Number 78977254 for IMPACT SPORTS since the Opposer filed on July 22, 2005 for a 1B, INTENT TO USE application for IMPACT SPORTS for clothing and clothing accessories in international class 25, application number 76643420, making a statement under 18 U.S.C. Section 1001, that the application was based on a bone-fide intention to use the mark IMPACT SPORTS, not based on use, as shown in Exhibit B.

3. Impact Sports reserves the right to assert further affirmative defenses to the allegations of Opposer as may be warranted by discovery in this matter.

WHEREFORE, Impact Sports having fully answered the Notice of Opposition, respectfully requests that the Opposition of the Opposer be dismissed with prejudice and that Impact Sports' United States Trademark Application for IMPACT SPORTS for clothing, namely wristbands, armbands, anklebands shirts and gloves, in International Class 25 be registered.

On behalf of Impact Sports Technologies Incorporated

/Michael Catania/

Michael Catania
Attorney for Impact Sports Technologies Incorporated
Clause Eight Intellectual Property Services LLP
P.O. Box 131270
Carlsbad, California 92013
Telephone: 760-579-3702
Fax: 760-431-9960
e-mail: mcatania@clauseeight.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer is being deposited with the United States Postal Service as Express Mail in an envelope addressed to the following:

Joseph W. Byrne
BOARDMAN, SUHR, CURRY & FIELD LLP
One South Pinckney Street
Fourth Floor
Madison, Wisconsin 53703

On this 5th day of September, 2007

/Michael Catania/

Michael Catania
Attorney for Impact Sports Technologies Incorporated
Clause Eight Intellectual Property Services LLP
P.O. Box 131270
Carlsbad, California 92013



- NIKE CATALOG
- FOOTWEAR
- FUNDAMENTALS
- UNIFORMS
- EQUIPMENT
- IMPACT CLOTHING
- T-SHIRTS
- SHORTS
- SWEATPANTS
- SWEATSHIRTS
- DOWNLOADS
- NIKE CATALOG
- ART DESIGNS
- CONTACT US
- CUSTOMER SERVICE

VIEW OUR NEW LINE OF HATS



VIEW NOW

TOP OF THE WORLD

CLICK HERE TO VIEW OUR NEW LINE OF TOP OF THE WORLD HATS

SHOES TO CHECK OUT



CLICK HERE TO VIEW

SPRING IS HERE FOR 2005!!!!



WHAT'S NEW FOR 2005



CUSTOM T-SHIRT DESIGN



CUSTOM ORDER FORMS



FRONT

BACK

CUSTOM ORDER FORMS

Do you want to be able to customize any t-shirt? Like Nike? well contact us by click on the contact us link to talk to one of our customer service reps.

FIND OUT MORE INFORMATION ON HOW YOUR SCHOOL OR TEAM USE OUR CUSTOM FORMS TO RAISE MONEY OR JUST TO MAKE THI EASIER FOR YOUR TEAM THIS YEAR. CLICK HERE TO CONTACT L AND TALK TO OUR CUSTOMER SERVICE REPS TO FIND OUT MOR INFORMATION.

EXHIBIT B

*Trademark Registration Application
Attorney Docket No. 28779-2*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: IMPACT SPORTS
Serial No.:
Filing Date:
International Class: 25
Applicant: Impact Sports, Inc.
Law Office:
Trademark Attorney:

Via Express Mail (Label No. EL 871772795 US)

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

TRANSMITTAL LETTER

Sir:

Enclosed is the intent-to-use Application for Trademark Registration of Applicant Impact Sports, Inc., for registration of the mark

IMPACT SPORTS

as shown on the drawing page attached to the Application for use in connection with the following goods:

Clothing and clothing accessories, namely, shirts, polo shirts, t-shirts, long sleeve t-shirts, sweat shirts, crew-neck sweat shirts, hooded sweat shirts, sweat pants, warm-up suits, shorts, athletic practice jerseys, hats, and caps (Class 25).

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: IMPACT SPORTS
International Class: 25
Applicant: Impact Sports, Inc.
a Wisconsin close corporation
Address: 4525 Pflaum Road
Madison, Wisconsin 53718

Via Express Mail (Label No. EL 871772795 US)

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICATION FOR TRADEMARK REGISTRATION

Sir:

Applicant Impact Sports, Inc., a Wisconsin close corporation having a place of business located at 4525 Pflaum Road, Madison, Wisconsin 53718, hereby requests registration of the above-identified mark shown on the accompanying drawing page in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051, et seq., as amended) for the following goods:

Clothing and clothing accessories, namely, shirts, polo shirts, t-shirts, long sleeve t-shirts, sweat shirts, crew-neck sweat shirts, hooded sweat shirts, sweat pants, warm-up suits, shorts, athletic practice jerseys, hats, and caps (Class 25).

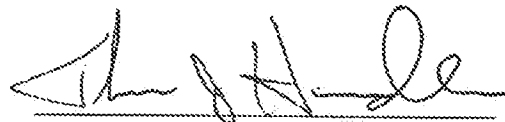
Applicant has a bona fide intention to use, or use through Applicant's related company or licensee, the mark in commerce on or in connection with all of the above-identified goods (15 U.S.C. § 1051(b), as amended).

The mark consists of standard characters, without claim to any particular font style, size or color.

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the Applicant; he/she believes the Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under 15 U.S.C. § 1051(b), he/she believes Applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

IMPACT SPORTS, INC.



Thomas J. Handlen, President

7-8-05
Date

@PFDesktop\ODMA\WORLDOX\F\DOCS\WD\28779\2\TMAPP.WPD