

ESTTA Tracking number: **ESTTA204182**

Filing date: **04/10/2008**

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	Athleta, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1450 Technology Lane, #150 Petaluma, CA 94954 UNITED STATES		

Attorney information	Joel A. Kauth KAUTH, POMEROY, PECK & BAILEY LLP P.O. Box 19152 Irvine, CA 92623 UNITED STATES pto@kppb.com Phone:949.852.0000		
----------------------	--	--	--

### Applicant Information

Application No	77163056	Publication date	03/11/2008
Opposition Filing Date	04/10/2008	Opposition Period Ends	04/10/2008
Applicant	Patagonia, Inc. Attn: Legal Department 259 W. Santa Clara St. Ventura, CA 93001 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, shirts, pants, underwear, hats, gloves, socks, and outerwear, namely, coats and jackets
--

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Priority of use for application number 77/444833 for the mark WICK-IT.

### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.		Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			

Description of Mark	NONE
Goods/Services	

Attachments	DOC000.PDF ( 5 pages )(43651 bytes )
-------------	--------------------------------------

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joel A. Kauth/
Name	Joel A. Kauth
Date	04/10/2008

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

ATHLETA, INC.,

Opposer,

vs.

PATAGONIA, INC.,

Applicant.

Opposition No.

**NOTICE OF OPPOSITION**

*Mark: WICKIT*

*Serial No. 77-163,056*

*Filed: April 23, 2007*

*Published: March 11, 2008*

Opposer, Athleta, Inc. believes that it will be damaged by registration of the mark shown in Serial No. 77-163,056, and hereby opposes the same. As grounds for opposition, Opposer alleges that:

1. Opposer, Athleta, Inc., is a Delaware corporation, located and doing business at 1450 Technology Lane, Petaluma, California, 94954.

2. On information and belief, Applicant Patagonia, Inc. is a California Corporation with a business address of 259 W. Santa Clara St., Ventura, California, 93001.

3. Applicant Patagonia, Inc. seeks to register the mark WICKIT for "clothing, namely, shirts, pants, underwear, hats, gloves, socks, and outerwear, namely, coats and jackets" in International Class 025, as evidenced by publication in the Official Gazette of March 11, 2008.

4. Applicant filed its application on April 23, 2007, claiming a bona fide intention to use the mark.

5. Since at least as early as January 12, 2006, Opposer Athleta, Inc. has been, and continues to use the mark WICK-IT in connection with Opposer's goods. Specifically, Opposer has used the mark in connection with clothing, including pants, shirts, shorts, skorts, and hooded sweatshirts.

6. Opposer's use of WICK-IT been valid and continuous since said date of first use and has not been abandoned. Opposer's WICK-IT mark has been built up by Opposer through substantial amounts of time and effort in advertising and promotion.

7. As a result of the high quality of Opposer's goods, and the advertising, promotion, sales and public acceptance of such goods, Opposer's goods have acquired an outstanding reputation, and the public now used Opposer's WICK-IT trademark to distinguish Opposer's goods from the goods of others.

8. By virtue of Opposer's continuous, exclusive and wide-spread use of its WICK-IT trademark, Opposer's WICK-IT trademark is entitled to a broad scope of protection.

9. Applicant's WICKIT designation is nearly identical to Opposer's WICK-IT trademark, especially with respect to visual appearance, pronunciation, commercial impression, and connotation.

10. The goods identified in Applicant's application are closely related to the Opposer's goods. Both are in International Class 025, and include many of the same types of clothing. Applicant intended use of WICKIT is on goods that will compete directly with Opposer's goods.

11. On information and belief, the marketing and channels of trade associated with the goods identified in Applicant's application are closely related to the marketing and channels of trade through which Opposer sells and markets Opposer's goods in association with its WICK-IT trademark.

12. Opposer's rights in the WICK-IT trademark precede any rights Applicant may have in its WICKIT designation. Opposer began use of its WICK-IT trademark at least as early as January 2006, while Applicant did not file its intent-to-use application until April, 2007.

13. Opposer is the owner of trademark application Serial No. 77-444,833, for WICK-IT for "clothing, namely pants, shirts, shorts, tops, skorts, and outerwear, namely sweat shirts and jackets" in International Class 025 filed April 10, 2008.

14. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark WICKIT so

resembles Opposer's mark WICK-IT previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

15. Registration of the subject mark of Applicant's application for the goods depicted therein will likely cause confusion among the relevant consuming public and will cause the relevant consuming public to mistakenly conclude that Applicant's goods, including those depicted in Applicant's application, are associated with Opposer, which they are not.

16. Registration of the subject mark of Applicant's application is also likely to cause injury to Opposer's business reputation and to injure or impair Opposer's rights in Opposer's WICK-IT trademark by causing confusion, mistake and/or deception as to the respective rights of the parties and as to the source or sponsorship of the goods.

17. Prior to the time that Applicant filed its trademark application for WICKIT for the goods listed in its application, purchasers would have been confused as to the source or sponsorship of the listed goods associated with that designation and would have believed Opposer Athleta, Inc. to be the source of such goods.

18. Thus registration of Applicant's WICKIT designation is inconsistent with the trademark rights of Opposer.

//////

//////

//////

//////

WHEREFORE, Opposer prays that said application Serial No. 77-163,056 be rejected, that no registration be issued thereon to applicant, and that this opposition be sustained in favor of Opposer.

DATED: April 10, 2008

Respectfully submitted,

KAUTH, POMEROY, PECK & BAILEY LLP

By



Joel A. Kauth

Counsel for Opposer ATHLETA, INC.