

ESTTA Tracking number: **ESTTA237928**

Filing date: **09/19/2008**

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	Florida Marlins L.P.
Granted to Date of previous extension	09/21/2008
Address	Dolphin Stadium 2267 Dan Marino Blvd. Miami, FL 33056 UNITED STATES
Attorney information	Elise Wolinsky Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES ecw@cll.com, jkt@cll.com, trademark@cll.com Phone:212-790-9200

Applicant Information

Application No	77323320	Publication date	03/25/2008
Opposition Filing Date	09/19/2008	Opposition Period Ends	09/21/2008
Applicant	The Marlin Company 100 Kenna Drive North Haven, CT 06473 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. All goods and services in the class are opposed, namely: publications, namely, posters and newsletters for companies and organizations to promote employee productivity, performance, recognition and morale
Class 042. All goods and services in the class are opposed, namely: providing a website featuring technology that enables companies and organizations to administer and manage employee incentive award programs and to promote employee productivity, performance, recognition and morale

Grounds for Opposition

Other	See attached pleading.
-------	------------------------

Attachments	Letter to Commissioner MARLIN NOO.pdf (2 pages)(97811 bytes) MARLIN NOO.pdf (5 pages)(33485 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	/Elise Wolinsky/
Name	Elise Wolinsky
Date	09/19/2008

Cowan, Liebowitz & Latman, P.C.

Law Offices

1133 Avenue of the Americas • New York, NY 10036-6799

(212) 790-9200 • www.cl.com • Fax (212) 575-0671

Elise C. Wolinsky
Direct (212) 790-9282
ecw@cl.com

September 19, 2008

By Electronic Filing

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

Attention: Trademark Trial and Appeal Board

Re: Florida Marlins L.P.
Notice of Opposition Against
The Marlin Company's
Application to Register MARLIN
Attorney Ref. No. 21307.014

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/323,320, published in the Official Gazette of March 25, 2008. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$600 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Cowan, Liebowitz & Latman, P.C.

September 19, 2008

Page 2

Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Elise C. Wolinsky/

Elise Wolinsky

Enclosures

cc: Ms. Diane Kovach (w/encs. – by fax)
Mary L. Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)
Nancy Pisacano (w/encs.)

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

In re Application Serial No. 77/323,320
Filed: November 7, 2007
For Mark: MARLIN
Published in the Official Gazette: March 25, 2008

-----X
:
FLORIDA MARLINS L.P., :
:
Opposer, :
v. :
:
THE MARLIN COMPANY, :
:
Applicant. :
:
-----X

NOTICE OF OPPOSITION

Opposition No.

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, Florida Marlins L.P. (“Opposer”), a Delaware limited partnership, located at Dolphin Stadium, 2267 Dan Marino Boulevard, Miami, Florida 33056, believes that it will be damaged by registration of the word mark MARLIN in International Class 16 for “Publications, namely, posters and newsletters for companies and organizations to promote employee productivity, performance, recognition and morale” and International Class 42 for “Providing a website featuring technology that enables companies and organizations to administer and manage employee incentive award programs and to promote employee productivity, performance, recognition and morale” shown in Application Serial No. 77/323,320 (the

“Application”), and having been granted extensions of time to oppose the Application up to and including September 21, 2008, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned FLORIDA MARLINS Major League Baseball club.

2. Since long prior to November 7, 2007, Applicant’s constructive first use date, Opposer, its predecessors, their affiliated and related entities, licensees and/or sponsors, have used the mark MARLINS or MARLIN, alone or with other words, letters and/or designs in connection with baseball game, exhibition and mascot services and a wide variety of goods and services, including, without limitation, posters and other printed and paper matter, online information services, apparel, novelties, toys, and sporting goods, and the word MARLIN has been used by the press, media, fans and the public to refer to the Club’s individual baseball players, coaches and managers (“Opposer’s MARLINS Marks”).

3. Opposer owns United States federal applications and registrations for Opposer’s MARLINS Marks in International Classes 6, 9, 14, 16, 18, 21, 25, 28 and 41; namely, Registration Nos. 1,791,268; 1,807,380; 1,861,412; 1,862,991; 1,881,634; 1,909,332; 1,912,055; 1,973,074; 2,084,194 and 3,006,315 and Application Serial Nos. 78/628,798; 78/642,369; 78/667,182; 78/716,751; 78/798,300 and 78/980,118. Registration Nos. 1,791,268; 1,807,380; 1,861,412; 1,862,991; 1,881,634; 1,909,332; 1,912,055; 1,973,074 and 2,084,194 are incontestable.

4. Since long prior to November 7, 2007, Applicant’s constructive first use date, Opposer, its predecessors, their affiliated and related entities, licensees and/or sponsors, have promoted and advertised the sale and distribution of goods and services bearing or offered in

connection with Opposer's MARLINS Marks, including, but not limited to, baseball game, exhibition and mascot services and a wide variety of goods and services, including, without limitation, posters and other printed and paper matter, online information services, apparel, novelties, toys, and sporting goods, and have sold or distributed such goods and rendered such services in commerce.

5. As a result of the extensive sales and promotion of its goods and services bearing or offered in connection with Opposer's MARLINS Marks, Opposer has built up highly valuable goodwill in Opposer's MARLINS Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

6. On November 7, 2007, Applicant filed the Application to register the word mark MARLIN for "Publications, namely, posters and newsletters for companies and organizations to promote employee productivity, performance, recognition and morale" in International Class 16 and "Providing a website featuring technology that enables companies and organizations to administer and manage employee incentive award programs and to promote employee productivity, performance, recognition and morale" in International Class 42 on an intent-to-use basis.

7. Upon information and belief, Applicant did not use the word mark MARLIN in United States commerce in connection with the goods and services in the Application prior to its constructive first use date of November 7, 2007.

8. The goods and services covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's MARLINS Marks.

9. Applicant's MARLIN mark so resembles Opposer's MARLINS Marks as to be likely, when applied to Applicant's goods and services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods and services have their origin with Opposer and/or that such goods and services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's MARLIN mark.

10. Opposer would be further injured by the granting of a certificate of registration to Applicant because Applicant's MARLIN mark would falsely suggest a connection between Applicant and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's MARLIN mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Jill K. Tomlinson (members of the bar of the State of New York), and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
September 19, 2008

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Elise Wolinsky/
Mary L. Kevlin
Richard S. Mandel
Elise Wolinsky
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing NOTICE OF OPPOSITION to be sent via First Class Mail, postage paid, to Applicant's Attorney of Record and Correspondent of Record, Donald S. Holland, Esq., Holland & Bonzagni, P.C., 171 Dwight Road, Longmeadow, Massachusetts 01106-1700, on September 19, 2008.

/Elise Wolinsky/
Elise Wolinsky