

ESTTA Tracking number: **ESTTA249564**

Filing date: **11/18/2008**

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	Mo-Co, Inc.
Granted to Date of previous extension	11/22/2008
Address	5011 Slide Rd Lubbock, TX 79414 UNITED STATES

Correspondence information	Mo-Co, Inc. 5011 Slide Rd Lubbock, TX 79414 UNITED STATES jkolander@mhb.com Phone:806.796.7311
----------------------------	--

### Applicant Information

Application No	77354576	Publication date	09/23/2008
Opposition Filing Date	11/18/2008	Opposition Period Ends	11/22/2008
Applicant	Omega Psi Phi Fraternity Inc. 3951 Snapfinger Parkway Decatur, GA 30035 UNITED STATES		

### Goods/Services Affected by Opposition


Class 014. Opposed goods and services in the class: Jewelry, namely, jewelry lapel pins, watch chains, charms, cuff links, neck chains, neck tie fasteners, tie pins, tie clips, ornamental lapel pins, ornamental pins, pendants and watches
Class 025. Opposed goods and services in the class: Clothing, namely, shirts, polo shirts, sweat shirts, T-shirts, tank tops, jackets, hats, pants, shoes, socks, jogging suits, shorts, sweat suits, sweat pants, underwear, swim wear, coats, boots, sweat bands, and gym shoes

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------


### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3105593	Application Date	05/28/2004
Registration Date	06/20/2006	Foreign Priority	NONE

		Date	
Word Mark	U DAWG GRAPHICS		
Design Mark			
Description of Mark	The mark consists of a stylized larger sized letter "U" followed by the smaller sized words, "Dawg" and "Graphics" in a horizontal oval.		
Goods/Services	<p>Class 035. First use: First Use: 2002/02/20 First Use In Commerce: 2002/02/20 Advertising services, namely, creating corporate logos and corporate and brand identity for others, and preparation of custom advertisements for others</p> <p>Class 040. First use: First Use: 2002/02/20 First Use In Commerce: 2002/02/20 Custom imprinting of advertising promotional items, namely, but not limited to, acrylic items, air fresheners, alarms and protective devices, albums, antenna accessories, aprons, arm bands, ashtrays, auto accessories, auto dash accessories, auto visor accessories, auto/travel kits, awards, awnings, baby items, badge holders, badges and buttons, bag clips, bags, balloon accessories, balloons, balls, bandages, bandannas, banks, banners and pennants, bar accessories, barbeque accessories, barometers and hydrometers, basketball sets, baskets, bathrobes, bathroom accessories, batteries, beauty aids and health items, bells, belt buckles, beverage holders-insulated, bibs, bicycle accessories, binder accessories, binders, binoculars, blackboards, blankets, boards, book ends, bookmarks, books, bottle holders, bottle stoppers, bottles, bowls, boxer shorts, boxes, breath fresheners, briefcases, brushes, buckets, bulletin boards, bumper stickers, business card holders, business cards, calculators, calendar pads, calendars, cameras, camping equipment and accessories, candle holders and accessories, candles, candy, candy machines, canes, canisters, cans, canteens, cap and hat accessories, caps and hats, caps - bottles and cans, carabineers, carafe sets, carafes, cards, carts, carving sets, cases, cassette players, catalogs and catalog sheets, ceramic - custom made, certificates, chairs, chalk, charts, cheering accessories, chewing gum, chimes, Christmas decorations, cigar and cigar accessories, cleaners, clipboards, clippers, clocks, clothing, clothing-custom made, clover specialties, coasters, coffee pots, coin holders, coin purses, coins, tokens, medallions, coloring books and sets, combs, compact disc players, compact disc specialties, compact discs, compacts, compasses, computer accessories, computer software, condoms, containers, contest/sweepstakes, cookie cutters, cookware, corkscrews, cosmetics, costumes and accessories, cots, coupon keepers, covers, crayons, crystal products, cups, cushions, cutters, cutting boards, data banks, decals, decanter sets, decanters, decorations, dental floss, desk accessories, desk pen stands, dials and slide charts, diaries/journals, diary and phone index sets, dice specialties, dinnerware, dishes, dispensers, doctor and druggist aids, dog tags, drawing instruments, drink stirrers and sticks, drink ware, easels, electric outlet protectors, electronic devices, embedded specialties-custom made, embedment accessories, embeddings, emblems, embroidery, emergency first aid kits, emery boards, envelopes, erasers, exercise and fitness, exhibit/trade show booths, eyeglass accessories, eyeglasses, eyeglasses-3D, fans, figurines, files, flag accessories, flags, flashlights, flasks, flowers, flying saucers and discs, fly swatters, foam novelties, folders, food and beverages, frames, furniture, games, garters, gauges, gavels,</p>		

	<p>gift baskets, gift cards, gift collections, gift wrap, glass specialties, globes, gloves, glow products, goggles, golf accessories, greeting cards, grocery aids, hair care, Halloween decorations, hammocks, handkerchiefs, handles, hangers, hardware tools, headbands, headphones, head rests, heat transfers, highlighter sets, holders, holograms, horseshoe specialties, hotel amenities, humidors, ice buckets, ice packs, ice picks and crushers, ice scrapers, ID holders, imprinting, index guides, inflatables, inflators, insect repellent, invitations, jackets, jars, jewelry, jewelry boxes, jewelry rolls, kaleidoscopes, kazoos, key cases key holders, key reels, key tags, keys, kitchen accessories, kites, kits, knives, labels, laminating machines and supplies, lamps, lanterns, lanyards, lapel pins, lawn and garden accessories, leather and simulated leather specialties-custom made, leather specialties, leis, lenticular, letter openers, letters, numerals and symbols, license plates and frames, licensees, lighters, lights, lint removers, lip balm, lipsticks and lipstick holders, liquid motion products, locks, luggage, luggage tabs, lunch boxes/kits, magnets, magnifiers, maps and atlases, markers, masks, massagers, match folder specialties, matches, mats, measuring devices, medals, medical information products, megaphones, membership cards, memo books, memo holders, memo pad and paper holders, memo pads and cubes, menus and menu covers, metal specialties, microphones and microphone cubes, miniatures and replicas, mirrors, mitts, mobiles, money, money clips, money converters, mouse pads, mug trees and holders, mugs and stems, musical specialties, name plates, napkin rings and holders, napkins, noisemakers, office supplies, openers, organizers, ornaments, packaging, paddles, pads, paint stirrers, pajamas, pamphlets, paper specialties, paper weights, party favors, pedometers, pen and pencil accessories, pen and pencil holders, pen and pencil sets, pen sets, pencil cases and boxes, pencils, pens, pepper mills and pepper mill sets, pet accessories, phone accessories, phone calling cards, phone indexes, phones, photo cards, photo cubes, physical and therapeutic aids, picnic baskets and kits, picnic coolers, pictures and paintings, pillows, pifiatas, pins, pitcher sets, pitchers, place mats, planners, planters,plants, plaque accessories, plaques, plastic molds, plates, playing cards, pointers, poker chips, polishers and dusters, portfolios, post cards, pot holders, potpourri, pouches, pourers, puppets, purses, puzzles and tricks, racks, radios, rain wear, razors, recorders, recycled products, reflectors, registers, religious goods, ribbons, rubber stamps, rulers, safety products, salad sets, sandals, scales, scarves, scissors and shears, scoops, scrapers, scratch-off cards, screen printing, seals, seats-folding, seeds, select gift programs, servers, sewing accessories, shakers, shaving accessories, shirts, shoehorns, shoelaces, shoes, shovels, sign and display accessories, signs and displays, slippers, snow domes, soap, socks, special packaging, sponges and sponge holders, spoons, sports equipment and accessories, sports memorabilia, sports schedules, squeegees, stamp pads, stamps, stands, staple removers, staplers, stationery/business forms, steak knives, stone specialties-custom made, stones, stools, stopwatches, straps, straws, stress relievers and cards, stuffed animals, sum catchers, sun visors, sunglasses, suntan lotions, sweaters, swim wear, switch plates, T-shirts, table clothes and tablecloth sets, tabs, tags, tape, tape measures, tassels, tattoos, teapots, telescopes, televisions, tents, thermometers, tiaras and crowns, tie clips, ties, tiles, timers, tins, tissues, tool kits, toothbrushes, toothpicks, tops and spinners, towelettes, towels, toys and novelties, travel accessories, trays, treasure chest promotions, trees, trophies and loving cups, tweezers, umbrellas, uniforms, USB/flash drives, utensils, utility clips, valuable paper holders, vases, vests, video equipment, vinyl plastic specialties, voice recorders, wallets, wands and scepters, warmers, watch fobs, watches, water, weather instruments, whistles, wind socks, wine accessories, with decorative advertising designs; electronic digitizing of embroidery, screen printing, and vinyl graphics</p>		
--	--	--	--

U.S. Registration No.	3047673	Application Date	06/01/2004
-----------------------	---------	------------------	------------

Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	U-DAWG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/02/20 First Use In Commerce: 2002/02/20 Clothing, namely, shirts, jackets; footwear; headwear		

Attachments	76594760#TMSN.gif ( 1 page )( bytes ) 76594964#TMSN.gif ( 1 page )( bytes ) Opposition Argument.pdf ( 2 pages )(29473 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	/Jerry M. Kolander, Jr./
Name	Mo-Co, Inc.
Date	11/18/2008

Mo-Co, Inc., a Texas corporation, located and doing business at 5011 Slide Road, Lubbock, Texas 79414 (“Opposer”), believes it will be damaged by registration of the mark Q-DAWG shown in Application Serial No. 77354576 and hereby opposes the same under both International Code 014 and International Code 025.

1. Applicant Omega Psi Phi Fraternity, Inc. (“Applicant”) filed trademark application, Serial No. 77354576 (the “Opposed Application”) on December 18, 2007 to register the mark Q-DAWG (the “Proposed Mark”) for use in connection with “Jewelry, namely, jewelry lapel pins, watch chains, charms, cuff links, neck chains, neck tie fasteners, tie pins, tie clips, ornamental lapel pins, ornamental pins, pendants and watches” in International Class 014, and in connection with “Clothing, namely, shirts, polo shirts, sweat shirts, t-shirts, tank tops, jackets, hats, pants, shoes, socks, jogging suits, shorts, sweat suits, sweat pants, underwear, swim wear, coats, boots, sweat bands, and gym shoes” in International Class 025.

2. The Opposed Application was published for opposition in the Official Gazette on September 23, 2008.

3. The Opposed Application was filed on December 18, 2007 on an intent to use basis.

4. On information and belief, Applicant made no use of the Proposed Mark at least prior to the date the Opposed Application was filed.

5. Opposer has used the trademarks U-DAWG and U-DAWG GRAPHICS (“Opposer’s Marks”) in connection with “Clothing, namely, shirts, jackets, footwear, headwear” and “...caps and hats, ...clothing, ...jackets, ...jewelry, ...lapel pins, ...ornaments, ...shirts, ...shoes, ...socks, ...swim wear, ...t-shirts, ...tie clips., ...watches, ...” (“Opposer’s Goods”) since at least as early as February 20, 2002, and has used Opposer’s Marks in connection with Opposer’s Goods in commerce since at least as early as February 20, 2002. This date is well prior to the date the Opposed Application was filed and any potential date of first use that Applicant may claim.

6. Opposer has used its U-DAWG and U-DAWG GRAPHICS marks in connection with Opposer’s Goods in commerce continuously since February 20, 2002.

7. On May 28, 2004, Opposer filed an application to register the mark U-DAWG GRAPHICS with design for “custom imprinting of advertising promotional items, namely, acrylic items, ...caps and hats, ...clothing, ...jackets, ...jewelry, ...lapel pins, ...ornaments, ...shirts, ...shoes, ...socks, ...swim wear, ...t-shirts, ...tie clips., ...watches, ...” claiming first use at least as early as February 20, 2002, and first use in commerce at least as early as February 20, 2002. On June 1, 2004, Opposer filed an application to register the mark U-DAWG for “Clothing, namely, shirts, jackets, footwear, headwear” claiming first use at least as early as February 20, 2002, and first use in commerce at least as early as February 20, 2002 (“Opposer’s Applications”).

8. Opposer has superior rights in and to its U-DAWG and U-DAWG GRAPHICS marks because its use of its marks in commerce, which has been continuous since February 20,

2002, precedes Applicant's application filing date for Applicant's mark and any potential date of first use that Applicant may claim.

9. Opposer has developed an exceedingly valuable goodwill in respect to Opposer's Marks.

10. By virtue of its efforts and the expenditure of resources for advertising and promotional activities and by virtue of the excellence of Opposer's Goods, Opposer has gained a most valuable reputation for Opposer's Marks and has experienced increasing growth trends and increases in the volume of sales and customers for Opposer's Goods.

11. Upon information and belief, Opposer alleges that Opposer's Goods and Applicant's Goods are similar and are offered in similar channels of commerce and offered to similar consumers.

12. When applied to Applicant's Services, the Proposed Mark is likely to be confused and mistaken with Opposer's Marks. The Proposed Mark is deceptively similar to Opposer's Marks so as to cause confusion and lead to deception as to the origin of Applicant's Services bearing the Proposed Mark.

13. Opposer alleges that Applicant has not developed any secondary meaning in the Proposed Mark.

14. Registration of the Proposed Mark would create a likelihood of confusion, mistake or deception in the minds of prospective consumers and the public as to the origin, source or sponsorship of Applicant's Goods.

15. Consumers familiar with Opposer's Marks are likely to believe that Applicant's Goods are sponsored, authorized, or otherwise approved by Opposer.

16. Upon information and belief, Applicant adopted the Proposed Mark and filed the Opposed Application with knowledge of Opposer's prior rights and with the intention of unfairly trading upon the goodwill associated with Opposer's Marks.

17. If the Proposed Mark registers, the Proposed Mark is likely to dilute the strength and value of Opposer's Marks by affecting the ability of Opposer's Marks to serve as a unique identifier of Opposer's Goods, therefore causing serious injury to the reputation and goodwill that Opposer has established in its marks.

WHEREFORE, Opposer respectfully requests that registration of the mark shown in Application Serial No. 77354576 be refused and that this Opposition be sustained in favor of Opposer.