

ESTTA Tracking number: **ESTTA250638**

Filing date: **11/21/2008**

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	AZPB Limited Partnership
Granted to Date of previous extension	11/23/2008
Address	Chase Field 401 East Jefferson Street Phoenix, AZ 85004 UNITED STATES

Attorney information	Maryann Penney Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES mxx@cjl.com, trademark@cjl.com Phone:212-790-9200
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Applicant Information

Application No	76564280	Publication date	05/27/2008
Opposition Filing Date	11/21/2008	Opposition Period Ends	11/23/2008
Applicant	MEDI-DYNE HEALTHCARE PRODUCTS, LTD. 1812 Industrial Boulevard Colleyville, TX 76034 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2001/01/00 First Use In Commerce: 2001/03/00
All goods and services in the class are opposed, namely: CUSHIONED SHOE SOLE INSERTS

Grounds for Opposition

Other	See attached pleading.
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Attachments	DIAMONDBACKS (MediDyne) - Letter to Commissioner.pdf (1 page)(58150 bytes) DIAMONDBACKS - Notice of Opposition.PDF (5 pages)(18277 bytes)
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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	/Maryann Penney/
Name	Maryann Penney
Date	11/21/2008

Cowan, Liebowitz & Latman, P.C.

Law Offices

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

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Maryann Penney
Direct (212) 790-9218
mxp@cl.com

November 21, 2008

By Electronic Filing

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

Re: AZPB Limited Partnership
Notice of Opposition Against
Medi-Dyne Healthcare Products, Ltd.'s
Application to Register DIAMONDBACKS and Design
Attorney Ref. No. 21307.038

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 76/564,280 published in the Official Gazette on May 27, 2008. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

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

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

Respectfully submitted,

/Maryann Penney/

Maryann Penney

Enclosures

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

Ref. No. 21307.038

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

In re Application Serial No. 76/564,280
Filed: November 26, 2003
For Mark: DIAMONDBACKS and Design
Published in the Official Gazette: May 27, 2008

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AZPB LIMITED PARTNERSHIP,

Opposer,

v.

MEDI-DYNE HEALTHCARE
PRODUCTS, LTD.,

Applicant.

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

NOTICE OF OPPOSITION

Opposition No.

Opposer, AZPB Limited Partnership, a Delaware limited partnership with offices at Chase Field, 401 East Jefferson Street, Phoenix, Arizona 85004 (“Opposer”), believes that it will be damaged by registration of the following DIAMONDBACKS and design mark:



(“Applicant’s DIAMONDBACKS and Design Mark”) for

“cushioned shoe sole inserts” in International Class 25, as shown in Application Serial No. 76/564,280 (the “Application”) and, having been granted extensions of time to oppose up to and including November 23, 2008, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned ARIZONA DIAMONDBACKS MAJOR LEAGUE BASEBALL club.

2. Since long prior to January 2001, Applicant's claimed first use date, Opposer, its predecessors, their affiliated and related entities, licensees and/or sponsors have used marks and names comprising or containing the words DIAMONDBACKS or D-BACKS and/or various designs or representations of a diamondback snake, either alone or with other word, letter and/or design elements ("Opposer's DIAMONDBACKS Marks") in connection with baseball game and exhibition services and a wide variety of goods and services, including, without limitation, apparel, including footwear, sporting goods, toys, printed and paper matter and novelty items.

3. Opposer owns U.S. federal registrations and applications for Opposer's DIAMONDBACKS Marks in International Classes 9, 14, 16, 18, 25, 28, 36 and 41; namely, U.S. Registration Nos. 2,506,423, 2,577,984, 2,718,516, 2,825,803, 2,825,804, 2,873,082, 2,875,933, 2,875,934, 2,889,634, 2,947,119, 2,962,569, 3,240,969, 3,303,988 and 3,412,953, and Application Serial Nos. 76/692,228 and 78/749,018. Registration No. 2,506,423 is incontestable.

4. Since long prior to January 2001, Applicant's claimed 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 DIAMONDBACKS Marks, including, without limitation, baseball games and exhibition services and a wide variety of goods and services, including, without limitation, apparel, including footwear, sporting goods, toys, printed and paper matter and novelty items, and have sold or distributed such goods and rendered such services in commerce.

5. As a result of the extensive sales, distribution and promotion of its goods and services bearing or offered in connection with Opposer's DIAMONDBACKS Marks, Opposer

has built up highly valuable goodwill in its Opposer's DIAMONDBACKS Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

6. On November 26, 2003, Applicant filed the Application to register Applicant's DIAMONDBACKS and Design Mark for "cushioned shoe sole inserts" in International Class 25, claiming a first use date of January 2001 and a first use in commerce date of March 2001.

7. Upon information and belief, Applicant did not use Applicant's DIAMONDBACKS and Design Mark in United States commerce for the goods covered in the Application prior to its claimed first use date of January 2001.

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

9. Applicant's DIAMONDBACKS and Design Mark so resembles Opposer's DIAMONDBACKS Marks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods 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 DIAMONDBACKS and Design Mark.

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

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's DIAMONDBACKS and Design 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 Maryann Penney (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
November 21, 2008

Respectfully submitted,

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

By: /Maryann Penney/
Mary L. Kevlin
Richard S. Mandel
Maryann Penney

1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 21, 2008, I caused a true copy of the foregoing NOTICE OF OPPOSITION to be sent via First Class Mail, postage paid, to Applicant's attorneys, Thomas R. Felger, Esq. and Valerie Verret, Esq., Baker Botts, LP, 2001 Ross Avenue, Dallas, Texas 75201-2980.

Dated: New York, New York
November 21, 2008

/Maryann Penney/
Maryann Penney