

ESTTA Tracking number: **ESTTA262832**

Filing date: **01/26/2009**

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	Fitz-Wright Company Ltd.
Granted to Date of previous extension	01/25/2009
Address	5760 Production WayLangley British Columbia, V3A 4N4 CANADA

Attorney information	Michael J. MacDermott Christie, Parker & Hale, LLP P.O. Box 7068 Pasadena, CA 91109-7068 UNITED STATES pto@cph.com Phone:626-795-9900
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Applicant Information

Application No	77420437	Publication date	07/29/2008
Opposition Filing Date	01/26/2009	Opposition Period Ends	01/25/2009
Applicant	Downwind, Inc. 23950 Madison Street Torrance, CA 90505 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Wetsuits, rashguard shirts, rashguard shorts, beanies, visors, hats, head bands, shirts, shorts and tee shirts
Class 028. All goods and services in the class are opposed, namely: Surfboards and paddleboards

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2156234	Application Date	10/16/1996
Registration Date	05/12/1998	Foreign Priority Date	05/14/1996
Word Mark	BARE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1978/01/00 First Use In Commerce: 1978/01/00 water ski suits, sailing suits, windsurfing suits, surfing suits, kayak suits, canoeing suits, diving suits, triathlon suits, personal watercraft suits, thermal underwear, water sport boots, slippers, socks, gloves and mitts; water sport headwear, namely, caps and hoods; men's, women's and children's clothing, namely, T-shirts, [shorts, bathing suits,] golf shirts, [halter tops and jackets;] chest waders, hip waders, waist waders and gaiters

Attachments	C951 110 2 2 Notice of Opp.PDF (3 pages)(76214 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	/Michael J. MacDermott/
Name	Michael J. MacDermott
Date	01/26/2009

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

In the matter of trademark application **Serial No. 77/420,437**
For the mark BARK
Published in the Trademark *Official Gazette* on July 29, 2008

Fitz-Wright Company Ltd.	Opposition No.
Opposer,	
v.	NOTICE OF OPPOSITION
Downwind, Inc.	
Applicant.	

Fitz-Wright Company Ltd., a corporation of Canada, having its principal place of business at 5760 Production Way, Langley, British Columbia, V3A 4N4, Canada, believes that it will be damaged by registration of the mark BARK shown in Application Serial No. 77/420,437 in International Classes 25 and 28 and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer and its related companies are engaged in the manufacture and sale of, *inter alia*, apparel and accessories, particularly for water sports.
2. Since long prior to Applicant's priority date, Opposer and its related companies have continuously and extensively used in commerce the mark BARE in connection with the sale of apparel and accessories, particularly for water sports.
3. Opposer is the owner of Registration No. 2156234 of the mark BARE issued May 12, 1998 on the Principal Register. Said registration is valid and subsisting and has become incontestable under the provisions of Section 15 of the Trademark Act.
4. Through the widespread use and advertisement of its BARE mark over a long period of time and by virtue of the quality of the goods sold under the mark, Opposer has built up

a valuable goodwill and reputation in connection with said mark, which would be jeopardized by Applicant's use and registration of the mark BARK shown in Serial No. 77/420,437.

5. The goods for which Applicant seeks to register the mark BARK, namely, wetsuits, rashguard shirts, rashguard shorts, beanies, visors, hats, head bands, shirts, shorts and tee shirts surfboards and padleboards, are closely related to Opposer's apparel and accessories, particularly for water sports, previously sold under or in connection with Opposer's BARE trademark.

6. Applicant's mark BARK so resembles Opposer's trademark BARE, previously used in commerce and registered with the United States Patent and Trademark Office, and not abandoned, as to be likely, when applied to the goods of Applicant, to cause confusion, or to cause mistake or to deceive.

7. Opposer is informed and believes that Applicant did not use the mark BARK in connection with any of the goods in Class 25 prior to its filing date.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of Application Serial No. 77/420,437 be refused.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date January 26, 2009

By



Michael J. MacDermott
Attorneys for Opposer
P.O. Box 7068
Pasadena, California 91109-7068
626/795-9900

MM/rm

CERTIFICATE OF SERVICE

I certify that on January 26, 2009, the foregoing **NOTICE OF OPPOSITION** is being served by mailing a copy thereof by first-class mail addressed to applicant's attorney of record:

J.B. FROST
COLEMAN FROST LLP
501 Colorado Suite 208
Santa Monica, CA 90401



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