

ESTTA Tracking number: **ESTTA300404**

Filing date: **08/12/2009**

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	Marko Schuhfabrik GmbH
Granted to Date of previous extension	08/12/2009
Address	Hauptstrasse 35 Kopfung, A-4794 AUSTRIA

Domestic Representative	Ellen A. Rubel Moore & Van Allen PLLC 430 Davis Drive, Suite 500 Morrisville, NC 27560 UNITED STATES ellenrubel@mvalaw.com Phone:919-286-8041
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Applicant Information

Application No	77612151	Publication date	04/14/2009
Opposition Filing Date	08/12/2009	Opposition Period Ends	08/12/2009
Applicant	Berger & Simson Enterprises, LLC Suite C 1233 Front Street Raleigh, NC 27609 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2008/11/04 First Use In Commerce: 2008/11/04 All goods and services in the class are opposed, namely: Producer and distributor of promotional items for advertising and marketing purposes, namely, preparing promotional and merchandising material for others
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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.	3508870	Application Date	04/18/2007
Registration Date	09/30/2008	Foreign Priority Date	NONE
Word Mark	THINK		

Design Mark	Think
Description of Mark	NONE
Goods/Services	Class 035. First use: Retail store services in the field of men's, women's and children's shoes, bags, clothing and leather goods; assistance in business management and product commercialization within the framework of a franchise contract

Attachments	79042753#TMSN.jpeg (1 page)(bytes) Notice of Opposition - THINK PROMOTIONAL GROUP & Design.pdf (5 pages)(146847 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	/Ellen A. Rubel/
Name	Ellen A. Rubel
Date	08/12/2009

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

In the matter of Application Serial Number: 77/612,151

Published in the Official Gazette: April 14, 2009

Marko Schuhfabrik GmbH,)	
Opposer)	
)	
v.)	Opposition Number _____
)	
Berger & Simson Enterprises, LLC)	
DBA Think Promotional Group,)	
Applicant)	
)	

NOTICE OF OPPOSITION

Marko Schuhfabrik GmbH (hereinafter "Opposer"), a corporation organized and existing under the laws of Austria and having a principal place of business at A-4794 Kopfing Haupstrasse 35 Austria believes that it will be damaged by registration of the mark shown in application Serial Number 77/612,151 in International Class 35 and hereby opposes the same.

This Notice of Opposition is based on 15 U.S.C. § 1063(a) and the grounds for the opposition are as follows:

1. An extension of time, to and including August 12, 2009, was requested by and duly granted to Opposer by the Trademark Trial and Appeal Board pursuant to 37 C.F.R. §2.102.

2. On information and belief, on November 11, 2008, Berger & Simson Enterprises, LLC DBA Think Promotional Group, filed an application in the United States Patent and Trademark Office to register the mark **THINK PROMOTIONAL GROUP and Design** (hereinafter “Applicant’s Mark”) as a service mark for use in association with the following services, as amended, “Producer and distributor of promotional items for advertising and marketing purposes, namely preparing promotional and merchandising material for others.” (hereinafter “Applicant’s Services”) in International Class 35 (hereinafter “Applicant’s Application”).

3. Applicant’s Application was assigned Application Serial No. 77/612,151 and the mark was published for opposition in the *Official Gazette* of April 14, 2009.

4. Applicant filed Applicant’s Application under the actual use provisions of 15 U.S.C. § 1051(a), alleging a date of first use of November 4, 2008 and a date of first use in commerce of November 4, 2008.

5. Applicant acquired no rights in Applicant’s Mark in the United States prior to November 4, 2008, when Applicant first began to use its mark in commerce.

6. There is no issue of priority. Prior to the alleged first use date and the filing date for Applicant’s Application to register Applicant’s Mark, and/or prior to any date of use upon which Applicant can rely, Opposer, on April 18, 2007, filed its Request for Extension of Protection of its International Registration No. 0934984 for its THINK mark (hereinafter “Opposer’s Mark”) for use in International Class 35, Application Serial No. 79/042,753, with “Retail store services in the field of men’s, women’s and children’s shoes, bags, clothing and leather goods; assistance in business management and product commercialization within the framework of a franchise contract” (hereinafter “Opposer’s Services”).

7. Opposer’s prior pending application was assigned Application Serial No. 79/042,753, and on September 30, 2008, that pending application matured to registration, Registration No. 3,508,870.

8. The word mark portion of Applicant's Mark not only incorporates the whole of Opposer's Mark but, in addition, the first term and dominant portion of Applicant's Mark is identical to Opposer's Mark.

9. Applicant's Mark and Opposer's Mark are used or intended to be used in association with the same, similar or related services.

10. On information and belief, it is expected that Applicant's Services, in connection with which Applicant uses Applicant's Mark, are or will be marketed to the same potential purchasers in the same relevant markets as are the services in connection with which Opposer uses or will use Opposer's Mark.

11. On information and belief, Applicant uses or will use the same or similar media to advertise and/or promote Applicant's Services under Applicant's Mark as is used or is to be used by Opposer to advertise and/or promote Opposer's Services under Opposer's Mark.

12. Upon information and belief, the services marketed under Applicant's Mark are or will be distributed through the same channels of distribution and are or will be purchased and used by many of the same individuals and entities as those of the Opposer's Services.

13. Because of the similarity of marks, services, relevant markets, advertising, channels of distribution, purchasers, and/or users, Opposer believes that there is a very strong likelihood of confusion if Applicant is permitted to register Applicant's Mark for use in conjunction with Applicant's Services.

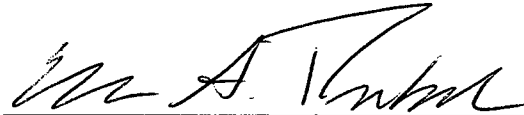
14. If Applicant is granted the registration herein opposed, Applicant would be placed in a position to deceive or mislead the public, as the registration would give Applicant *prima facie* exclusive rights to Applicant's Mark and all confusingly similar marks, thereby causing damage and injury to Opposer.

15. Because of the similarity of marks, relevant markets, advertising, channels of commerce, purchasers, and/or consumers, registration of Applicant's Mark would cause damage and injury to Opposer.

16. Because Applicant's Mark consists of a mark which is identical and/or closely resembles a non-abandoned mark prior used in the United States by Opposer, and Applicant's Mark is likely, when used in connection with Applicant's Services, to cause confusion, to cause mistake, or to deceive, registration of Applicant's Mark is therefore barred under 15 U.S.C. §1052(d).

17. Accordingly, Opposer prays that said Application Serial Number 77/612,151 be rejected and the registration of the mark therein shown for the services therein specified be refused and denied.

Respectfully submitted this 12th day of August, 2009.



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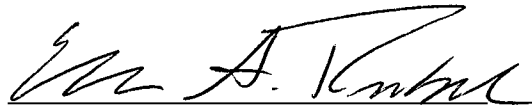
CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **Notice of Opposition** has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a postage prepaid envelope and properly addressed as follows:

Richard W. Farrell
The Farrell Law Group, PC
4900 Falls of the Neuse Road
Suite 212
Raleigh, NC 27609

This the 12th day of August, 2009.

Moore & Van Allen PLLC



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