

ESTTA Tracking number: **ESTTA307213**

Filing date: **09/21/2009**

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	Varsity Spirit Corporation
Granted to Date of previous extension	09/20/2009
Address	6745 Lenox Center Court, Suite 300 Memphis, TN 38115 UNITED STATES

Attorney information	Arlana S. Cohen Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES asc@cll.com, trademark@cll.com
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Applicant Information

Application No	76681906	Publication date	03/24/2009
Opposition Filing Date	09/21/2009	Opposition Period Ends	09/20/2009
Applicant	Renberry, LLC 2107 Hill Road Wayzata, MN 55391 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: RETAIL SPORTING GOODS STORES

Grounds for Opposition


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

U.S. Registration No.	1575830	Application Date	05/15/1989
Registration Date	01/02/1990	Foreign Priority Date	NONE
Word Mark	JUNIOR VARSITY SPIRIT FASHIONS		
Design Mark			
Description of Mark	NONE		


Goods/Services	Class 042. First use: First Use: 1989/04/01 First Use In Commerce: 1989/04/01 MAIL ORDER CATALOG SERVICES IN THE FIELD OF CHEERLEADER UNIFORMS FOR YOUNGER AGE GROUPS		
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U.S. Registration No.	1680452	Application Date	04/02/1990
Registration Date	03/24/1992	Foreign Priority Date	NONE
Word Mark	VARSITY SPIRIT FASHIONS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1978/04/10 First Use In Commerce: 1978/04/10 men's and women's cheerleader and dance team clothing; namely, skirts, sweats, sweaters, tops, pants, shoes		

U.S. Registration No.	1752630	Application Date	09/16/1991
Registration Date	02/16/1993	Foreign Priority Date	NONE
Word Mark	V VARSITY DANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1991/09/06 First Use In Commerce: 1991/09/06 pompon squad, dance team, and drill team uniforms		

U.S. Registration No.	1796645	Application Date	12/13/1991
Registration Date	10/05/1993	Foreign Priority Date	NONE
Word Mark	VARSITY SPIRIT CORPORATION		
Design Mark	<p style="text-align: center;">VARSITY SPIRIT CORPORATION</p>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1993/03/09 First Use In Commerce: 1993/03/09		

	<p>clothing; namely, cheerleader and dance team uniforms with pom-pons, gloves, vests, tops, shirts, skirts, jumpers, warm-up suits, pants, sweaters, shoes, socks, sweatshirts, T-shirts, shorts, sweat pants, tights, leotards, unitards, dresses and jackets</p> <p>Class 041. First use: First Use: 1992/03/00 First Use In Commerce: 1992/03/00 conducting cheerleading, dance team and gymnastics training camps, clinics, seminars, workshops, competitions, championships and tournaments; performing cheerleading at bowl games; private gymnastics, cheerleader and dance team coaching</p>
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U.S. Registration No.	2293083	Application Date	12/20/1996
Registration Date	11/16/1999	Foreign Priority Date	NONE
Word Mark	VARSITY SPORT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/10/30 First Use In Commerce: 1997/10/30 athletic wear, namely, sports shirts, sports shorts, gloves, vests, tops, skirts, jumpers, warm-up suits, pants, sweaters, athletic shoes, sweatshirts, T-shirts, athletic shorts, sweatpants, tights, leotards, unitards, dresses and jackets		

U.S. Registration No.	2357303	Application Date	05/13/1999
Registration Date	06/13/2000	Foreign Priority Date	NONE
Word Mark	V VARSITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1988/11/01 First Use In Commerce: 1988/11/01 cheerleader uniforms, drill team uniforms and pom pon squad uniforms		


U.S. Registration No.	2526564	Application Date	09/14/1999
Registration Date	01/08/2002	Foreign Priority Date	NONE
Word Mark	VARSITY		
Design Mark	VARSITY		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1978/12/00 First Use In Commerce: 1978/12/00 Athletic shirts, athletic shorts, athletic tops, body suits, dresses, hats, jackets, jerseys, jumpers, leotards, pants, skirts, sweaters, sweat pants, sweat shirts, T-shirts, unitards, and warm-up suits sold to colleges, high schools and school-affiliated teams, clubs, groups and individuals by direct sales through sales representatives or employees of applicant, through mail order catalog services or through campus book stores or other retail outlets located at colleges and high schools; uniforms for cheerleaders, drill teams, pom pon squads, pep squads, mascots, bands and booster clubs		

U.S. Registration No.	3418764	Application Date	09/01/1999
Registration Date	04/29/2008	Foreign Priority Date	NONE
Word Mark	VARSITY.COM		
Design Mark	VARSITY.COM		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Online retail store services featuring pre-recorded videotapes and compact discs, school supplies, jewelry and home furnishings; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network Class 039. First use: First Use: 2005/12/31 First Use In Commerce: 2005/12/31 Travel agency services, namely, making reservations Class 045. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Providing an online database in the field of topics of interest to teenage boys and girls, namely, fashion		

U.S. Registration No.	2082554	Application Date	06/08/1993
Registration Date	07/22/1997	Foreign Priority	NONE

		Date	
Word Mark	VARSITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1963/10/00 First Use In Commerce: 1963/10/00 mens underwear; T-shirts; briefs; athletic shirts; undergarments; pajamas; robes; nightshirts; loungewear and boxer shorts sold through retail outlets		

U.S. Registration No.	1812198	Application Date	06/15/1990
Registration Date	12/21/1993	Foreign Priority Date	NONE
Word Mark	VARSITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1939/00/00 First Use In Commerce: 1939/00/00 men's and women's sleepwear, underwear, night shirts, loungewear and boxer shorts		

U.S. Application No.	75791750	Application Date	09/01/1999
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VARSITY.COM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2008/03/00 First Use In Commerce: 2008/03/00 Camps, namely, children's recreational camps, cheerleading camps, and soccer camps		

U.S. Application No.	75791751	Application Date	09/01/1999
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VARSITY		

Design Mark	VARSIITY
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2009/01/00 First Use In Commerce: 2009/01/00 Pre-recorded videotapes and compact discs containing music and/or movies Class 041. First use: First Use: 2008/03/00 First Use In Commerce: 2008/03/00 Camps, namely, children's recreational camps, cheerleading camps, and soccer camps

U.S. Registration No.	3436493	Application Date	09/01/1999
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	VARSIITY		
Design Mark	VARSIITY		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Online retail store services featuring pre-recorded videotapes and compact discs, school supplies, jewelry and home furnishings; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network Class 039. First use: First Use: 2005/12/31 First Use In Commerce: 2005/12/31 Travel agency services, namely, making reservations Class 045. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Providing an online database in the field of topics of interest to teenage boys and girls, namely, fashion		

Attachments	74203623#TMSN.gif (1 page)(bytes) 74231166#TMSN.gif (1 page)(bytes) 75216343#TMSN.gif (1 page)(bytes) 75704039#TMSN.gif (1 page)(bytes) 75798082#TMSN.gif (1 page)(bytes) 75984008#TMSN.gif (1 page)(bytes) 75791750#TMSN.gif (1 page)(bytes) 75791751#TMSN.gif (1 page)(bytes) 75983628#TMSN.gif (1 page)(bytes) Authentic Varsity - Letter to Commissioner.pdf (1 page)(29113 bytes) Authentic Varsity - Notice of Opposition.pdf (7 pages)(257836 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	/Arlana S. Cohen/
Name	Arlana S. Cohen
Date	09/21/2009

Cowan, Liebowitz & Latman, P.C.

Law Offices

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Arlana S. Cohen
Direct (212) 790-9237
asc@cl.com

September 21, 2009

By Electronic Filing

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

Re: Varsity Spirit Corporation
Notice of Opposition Against
Renberry, LLC
Application to Register Authentic Varsity Sports & Design
Attorney Ref. No. 25894.092

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 76/681,906 published in the Official Gazette on March 24, 2009. 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 Arlana S. Cohen, Esq. of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Arlana S. Cohen /

Arlana S. Cohen

Enclosures

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

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 VARSITY SPIRIT CORPORATION,)
)
)
 Opposer,)
)
 v.)
)
 RENBERRY, LLC)
)
 Applicant.)
 -----X

Opposition No. _____

NOTICE OF OPPOSITION

In the matter of trademark application Serial No. 76/681,906, filed September 17, 2007 and published for opposition in the Official Gazette of March 24, 2009:

Varsity Spirit Corporation, Inc., a Tennessee corporation, having a business address at 6745 Lenox Center Court, Memphis, TN 38115 (“Opposer”), believes it will be damaged and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicant Renberry, LLC (“Applicant”) seeks to register “AUTHENTIC VARSITY SPORTS & Design” as a trademark for use with respect to “retail sporting goods stores” in Class 35 (hereinafter referred to as “Applicant’s Mark”). This application is based on Applicant’s alleged intent-to-use of Applicant’s Mark.

2. Opposer, together with its parent company, Varsity Brands, Inc. and its sister company Varsity Spirit Fashions & Supplies, Inc. all of whom are in direct privity with one another (Varsity Spirit Corporation, Varsity Brands, Inc. and Varsity Spirit Fashion &

Supplies, Inc. will hereinafter be referred to collectively as the “Varsity Companies”), are, and have for many years been engaged in the business of inter alia offering goods and services directed to students at all levels and all ages.

3. Opposer, through the Varsity Companies, has used, since at least as early as 1939, and continues to use in commerce, the mark “VARSITY” for, *inter alia*, services, products and accessories primarily directed at high school and college students. Opposer has long sold its various VARSITY products by direct sales, online at “www.varsity.com” and through catalogs (“Opposer’s Common Law Rights”), and has used, in particular the mark VARSITY SPORT.

4. Opposer, through the Varsity Companies, is the owner of the following trademark registrations in the United States without limitation:

I. MARK	REG. NO.	II. DATE	A. GOODS/SERVICES
JUNIOR VARSITY SPIRIT FASHIONS	1,575,830	01/02/90	Mail order catalog services in the field of cheerleader uniforms for younger age groups
Varsity Spirit Fashions	1,680,452	03/24/92	Men’s and women’s cheerleader and dance team clothing; namely, skirts, sweaters, tops, pants, shoes
V Varsity Dance	1,752,630	02/16/93	Pompon squad, dance team, and drill team uniforms
Varsity Spirit Corporation	1,796,645	10/05/93	Conducting cheerleading, dance teams and gymnastics training camps, clinics, seminars, workshops, competitions, championships and tournaments; performing cheerleading at bowl games; private gymnastics, cheerleader and dance team coaching; clothing; namely, cheerleader and dance team uniforms with pom-poms, gloves, vests, tops, shirts, skirts, jumpers, warm-up suits, pants, sweaters, shoes, socks, sweatshirts, T-shirts, shorts, sweat pants, tights, leotards,

			unitards, dresses and jackets
VARSIY SPORT	2,293,083	11/16/99	Athletic wear, namely, sports shirts, sports shorts, gloves, vests, tops, skirts, jumpers, warm-up suits, pants, sweaters, athletic shoes, sweatshirts, T-shirts, athletic shorts, sweat-pants, tights, leotards, unitards, dresses, and jackets
V VARSITY	2,357,303	06/13/00	Cheerleader uniforms, drill team uniforms and pompon squad uniforms
VARSIY	2,526,564	01/08/02	Athletic shirts, athletic shorts, athletic tops, body suits, dresses, hats, jackets, jerseys, jumpers, leotards, pants, skirts, sweaters, sweat pants, sweat shirts, T-shirts, unitards, and warm-up suits sold to colleges, high schools and school-affiliated teams, clubs, groups and individuals by direct sales through sales representatives or employees of applicant, through mail order catalog services or through campus book stores or other retail outlets located at colleges and high schools; uniforms for cheerleaders, drill teams, pompon squads, pep squads, mascots, bands and booster clubs
VARSIY.COM	3,418,764	04/29/08	Online retail store services featuring pre-recorded videotapes and compact discs, school supplies, jewelry and home furnishings; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network; travel agency services, namely, making reservations; and providing an online database in the field of topics of interest to teenage boys and girls, namely, fashion.
VARSIY	2082554	07/22/97	Mens underwear, T-shirts, briefs; athletic shirts; undergarments; pajamas; robes; nightshirts; loungewear and boxer shorts sold through retail outlets.
VARSIY	1812198	12/21/93	Men's and women's sleepwear, underwear, night shirts, loungewear and boxer shorts.

5. Opposer, through the Varsity Companies, is also the owners of the following allowed trademark applications in the United States without limitation:

III. MARK	Ser. No.	IV. FILED	V. GOODS/SERVICES
Varsity.COM	75/791,750	09/01/99	Cosmetics, namely, lipstick, lip liner, face powder, blush, mascara, eyeliner, eyebrow pencil, and eye shadow; Pre-recorded videotapes and compact discs containing music and/or movies and video game cassettes; home furnishings, namely, sofas, chairs, bedroom furniture; camps, namely, children's recreational camps, cheerleading camps, and soccer camps
Varsity	75/791,751	09/01/99	Cosmetics, namely, lipstick, lip liner, face powder, blush, mascara, eyeliner, eyebrow pencil, and eye shadow; pre-recorded videotapes and compact discs containing music and/or movies and video game cassettes; home furnishings, namely, sofas, chairs, bedroom furniture; camps, namely, children's recreational camps, cheerleading camps, and soccer camps.
Varsity	75/983,628	09/01/99	Online retail store services featuring, pre-recorded videotapes and compact discs, school supplies, jewelry, home furnishing; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network; travel agency services, namely, making reservations; providing an online database in the field of topics of interest to teenage boys and girls, namely fashion.

Opposer's Common Law Rights, trademark applications and trademark registrations are referred to hereinafter as the "Varsity Family of Marks."

6. By virtue of extensive use in commerce of the mark Varsity in the United States, the relevant trade and public have come to associate goods and services bearing its Varsity Family of Marks with Opposer.

7. Since long prior to Applicant's filing date of the application herein opposed, Opposer has used its VARSITY Family of Marks with regard to apparel products and the sale of apparel products.

8. The proposed services of Applicant and the goods and services of Opposer are identical and/or substantially similar and related.

9. Applicant's Mark, as applied to the services set forth in the application herein opposed, so resembles Opposer's VARSITY Family of Marks as applied to its goods and services that it is likely to cause confusion, mistake and/or deception.

10. If Applicant is permitted to register the Applicant's Mark for the services set forth in the application, confusion of the trade and public is likely to result, such confusion resulting in damage and injury to Opposer.

11. Purchasers and potential purchasers, on seeing the Applicant's Mark used in connection with its services are likely to believe, in error, that such services are offered in association or affiliation with or under license from Opposer.

12. If Applicant is permitted to register its mark for the services set forth in the application herein opposed, confusion of the relevant trade and public resulting in damage and injury to Opposer would be likely to result. Any persons familiar with the goods and services of Opposer would be likely to assume that Applicant's services are sponsored by or produced under license from or otherwise affiliated with Opposer. Furthermore, any objection to or fault found with Applicant's services provided under its mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods sold and services offered under its VARSITY Family of Marks.

13. If Applicant were granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that registration of the mark of application No. 76/681,906 be refused and that this opposition be sustained.

The filing fee of \$300.00 is enclosed herewith and any additional fees or deficiencies deemed to be due and owing in connection with this opposition may be charged to Deposit Account No. 03-3415 and any overpayment may be credited thereto.

Dated: September 21, 2009

New York, New York

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By /Arlana S. Cohen/

Arlana S. Cohen

1133 Avenue of the Americas

New York, New York 10036-6799

Tel: (212) 790-9237

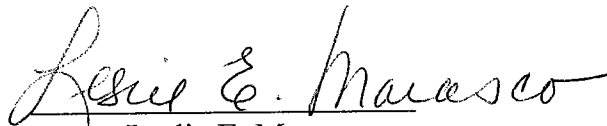
Fax: (212) 575-0671

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that, on September 21, 2009, I caused a true copy of the foregoing NOTICE OF OPPOSITION to be sent via First Class Mail, postage paid, to Applicant's Attorney at:

David R. Fairbairn, Esq.
Kinney & Lange, P.A.
The Kinney & Lange Building
312 South Third Street
Minneapolis, MN 55415-1002

A handwritten signature in cursive script that reads "Leslie E. Marasco". The signature is written in black ink and is positioned above the printed name.

Leslie E. Marasco