

ESTTA Tracking number: **ESTTA397539**

Filing date: **03/11/2011**

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	Rocky Brands, Inc.
Granted to Date of previous extension	03/26/2011
Address	39 E. Canal St. Nelsonville, OH 45764 UNITED STATES
Attorney information	Karen K. Hammond Porter, Wright, Morris & Arthur LLP 41 S. High St. Columbus, OH 43215 UNITED STATES ipdocket@porterwright.com, khammond@porterwright.com Phone:614-227-2000

Applicant Information

Application No	85108313	Publication date	01/25/2011
Opposition Filing Date	03/11/2011	Opposition Period Ends	03/26/2011
Applicant	Hamricks, Inc. 742 Peachoid Rd. Gaffney, SC 29341 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2010/04/05 First Use In Commerce: 2010/04/05 All goods and services in the class are opposed, namely: Clothing, namely, shirts, T-shirts, tops, blouses, sweaters, sweatshirts, sweatpants, pants, jeans, shorts, pajamas, sleepwear, jackets, coats, vests, footwear, shoes, skirts, dresses
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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.	1313519	Application Date	06/05/1981
Registration Date	01/08/1985	Foreign Priority Date	NONE
Word Mark	ROCKY BOOTS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1979/08/14 First Use In Commerce: 1979/08/14 Boots and Shoes

U.S. Registration No.	1577871	Application Date	05/01/1989
Registration Date	01/16/1990	Foreign Priority Date	NONE
Word Mark	ROCKY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1976/01/18 First Use In Commerce: 1976/01/18 BOOTS AND SHOES		

U.S. Registration No.	2898894	Application Date	05/19/2003
Registration Date	11/02/2004	Foreign Priority Date	NONE
Word Mark	ROCKY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 [LUGGAGE, DUFFELS,] BACKPACKS AND PACKS, NAMELY, WAIST PACKS Class 025. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 FOOTWEAR, namely, SHOES AND BOOTS and CLOTHING, namely, PARKAS, COVERALLS, [WADERS,] VESTS, PANTS, SOCKS, GLOVES,		

	HEAD COVER MASKS, CAPS, HATS, COATS, BIB OVERALLS, T-SHIRTS, RAINWEAR, JACKETS, SHIRTS and PULLOVERS Class 028. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 [HUNTING SAFETY HARNESS SYSTEM CONSISTING OF VEST, PARKA AND PANT]
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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	/Karen Hammond/
Name	Karen K. Hammond
Date	03/11/2011

NOTICE OF OPPOSITION

Rocky Brands, Inc., 39 East Canal Street, Nelsonville, Ohio 45764, a corporation of the State of Ohio, believes it will be damaged by registration of the mark shown in trademark application Serial No. 85/108313, filed August 16, 2010 and published for opposition on January 25, 2011, in connection with a variety of clothing items, footwear and shoes, in International Class 025 and hereby opposes the application.

As grounds for opposition, it is alleged that:

1. Applicant seeks to register the mark "ROCKY RIVER" to identify clothing items, footwear and shoes in International Class 25, as evidenced by the publication of said mark in the January 25, 2011 issue of the Official Gazette.

2. Priority is not an issue. Opposer has been manufacturing and selling footwear and clothing in interstate commerce under its trademark "ROCKY®" and family of "ROCKY®" marks since at least as early as 1976. The opposed application was filed on August 16, 2010 and claims first use in or about April 2010, almost 35 years after Opposer first used its ROCKY mark.

3. In connection with its ROCKY® mark and ROCKY® family of marks, Opposer is the owner of the following registrations: Incontestable Trademark Registration Nos. 1313519 (issued January 8, 1985), 1577871 (issued January 16, 1990), and 2898894 (issued November 2, 2004). Opposer's ROCKY® registered marks cover footwear and/or clothing.

4. Opposer has used its ROCKY® mark and ROCKY® family of marks extensively in publicizing, promoting and selling its goods. By reason of these activities of Opposer over a long period of time, Opposer's ROCKY® marks have become well known to the relevant public as identifying and distinguishing Opposer, Opposer's business and Opposer's clothing and footwear from those of others. Opposer, through great expense and quality control, has built up and is the owner of substantial goodwill in Opposer's ROCKY® mark and ROCKY® family of marks for clothing and footwear.

5. Opposer's ROCKY® mark and ROCKY® family of marks and the applied-for mark contain the identical dominant component "ROCKY" and are confusingly similar in terms of sight, connotation and commercial impression. Consumers who view the parties' marks are likely to focus on, and remember, the "ROCKY" portion of the marks. Therefore, consumers are likely to associate Opposer's ROCKY® mark and the applied-for mark as being associated with a single source.

6. Opposer's goods sold under its ROCKY® mark and ROCKY® family of marks and the goods covered in the application for ROCKY RIVER are identical insofar as clothing and footwear are concerned. Additionally, the targeted audiences for, and the marketing and trade channels of, both parties' products may be overlapping, if not identical. These similarities only increase the likelihood that prospective purchasers will mistakenly associate the respective marks and believe that the parties' goods emanate from, are

sponsored by, or are otherwise connected with a single source. Consumers are likely to erroneously believe that Opposer has licensed, or consented to, Applicant's use of any mark containing "ROCKY", including the applied-for mark, directly in connection with applicant's clothing and footwear items.

7. Applicant's goods are identical in nature to Opposer's goods. Opposer's ROCKY® marks and the applied-for mark are designated in the same class, namely International Class 25.

8. Registration by Applicant of "ROCKY RIVER" for Applicant's clothing and footwear items will cause confusion, or cause mistake or deceive consumers into the erroneous belief that Applicant's goods are those offered by Opposer, or are authorized, licensed or sponsored by, or otherwise connected with Opposer's business. Any fault or defect found in Applicant's goods will reflect upon and injure the reputation of Opposer. The use and registration of ROCKY RIVER by Applicant would allow Applicant to reap the financial reputation-related rewards associated with Opposer's goods and misappropriate Opposer's goodwill to Applicant. Opposer would be injured in the provision of its clothing and footwear, and in the conduct of its business because, among other reasons, Opposer has no control over the quality of Applicant's goods.

9. Accordingly, in view of the similarity of Opposer's ROCKY® mark and ROCKY® family of marks with the applied-for mark, the identical nature of the parties' goods, the overlap in marketing and trade channels for the goods offered under the marks, and overlapping classes of customers, Opposer's long term use of and strong consumer recognition for its ROCKY® mark and family of ROCKY® marks, and other relevant considerations, Opposer will be damaged by the registration of the mark shown in Serial No. 85/108313 for clothing items, footwear and shoes, because:

- a. The applied-for mark is likely to cause confusion, or to cause mistake or to deceive when used in connection with the goods and business of Applicant;
- b. The applied-for mark is confusingly similar to Opposer's ROCKY® mark and family of ROCKY® marks. As a result, registration of the applied-for mark may disparage and falsely suggest a connection with Opposer and injure Opposer's reputation; and
- c. Registration of the applied-for mark by Applicant would tend to restrict and interfere with Opposer in the conduct of Opposer's business.

WHEREFORE, Opposer prays that this Opposition be sustained, that said application Serial No. 85/108313 hereby opposed be refused, and for such other and further relief as may be deemed appropriate.