

ESTTA Tracking number: **ESTTA417077**

Filing date: **06/29/2011**

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	Acushnet Company
Granted to Date of previous extension	06/29/2011
Address	333 Bridge Street Fairhaven, MA 02719-0965 UNITED STATES

Attorney information	David J. Ervin Kelley Drye & Warren, LLP 3050 K Street NW Suite 400 Washington, DC 20007 UNITED STATES dervin@kelleydrye.com, ytavakoli@kelleydrye.com Phone:2023428400
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**Applicant Information**

Application No	77846283	Publication date	03/01/2011
Opposition Filing Date	06/29/2011	Opposition Period Ends	06/29/2011
Applicant	Fatlace, LLC 1630 Post Street San Francisco, CA 94115 UNITED STATES		


**Goods/Services Affected by Opposition**

Class 024. First Use: 2006/01/01 First Use In Commerce: 2006/01/01 All goods and services in the class are opposed, namely: Fabrics that may or may not have printed patterns and designs thereon for use in textile applications, namely, the manufacture of apparel, upholstery, signage, flags, banners and wallpaper; Textile fabrics for use in the manufacture of garments, bags, jackets, gloves, and apparel
Class 025. First Use: 2006/01/01 First Use In Commerce: 2006/01/01 All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1155766	Application Date	09/10/1979
Registration Date	05/26/1981	Foreign Priority Date	NONE
Word Mark	TITLEIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1933/12/20 First Use In Commerce: 1933/12/00 Golf Equipment-Namely, Golf Balls, Golf Clubs and Golf Bags		


U.S. Registration No.	316118	Application Date	05/04/1934
Registration Date	08/14/1934	Foreign Priority Date	NONE
Word Mark	TITLEIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U022 (International Class 028). First use: First Use: 1933/12/20 First Use In Commerce: 1933/12/20 GOLF BALLS		

U.S. Registration No.	934406	Application Date	11/23/1970
Registration Date	05/23/1972	Foreign Priority Date	NONE
Word Mark	TITLEIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U022 (International Class 028). First use: First Use: 1933/12/00 First Use In Commerce: 1933/12/00 GOLF EQUIPMENT COMPRISING GOLF BALLS, GOLF CLUBS, GOLF BAGS, GOLF GLOVES AND GOLF HEADCOVERS		


U.S. Registration No.	933271	Application Date	02/08/1971
Registration Date	05/02/1972	Foreign Priority	NONE


		Date	
Word Mark	TITLEIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U039 (International Class 025). First use: First Use: 1970/01/00 First Use In Commerce: 1970/01/00 CLOTHING, MORE SPECIFICALLY, SWEATERS, SHIRTS, AND JACKETS		

U.S. Registration No.	3176825	Application Date	12/28/2005
Registration Date	11/28/2006	Foreign Priority Date	NONE
Word Mark	TITLEIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1970/01/00 First Use In Commerce: 1970/01/00 headwear		

U.S. Registration No.	1273662	Application Date	01/31/1983
Registration Date	04/10/1984	Foreign Priority Date	NONE
Word Mark	TITLEIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1970/01/00 First Use In Commerce: 1970/01/00 Clothing-Namely, Shirts		

U.S. Registration No.	1601034	Application Date	10/11/1988
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Registration Date	06/12/1990	Foreign Priority Date	NONE
Word Mark	TITLEIST #1 BALL IN GOLF.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 GOLF BALLS		

U.S. Registration No.	3111131	Application Date	10/16/2003
Registration Date	07/04/2006	Foreign Priority Date	NONE
Word Mark	TITLEIST PERFORMANCE INSTITUTE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2003/09/00 First Use In Commerce: 2003/09/00 COLLECTION AND RESEARCH OF GOLF DATA TO BE USED FOR EDUCATIONAL SERVICES		

Attachments	73230709#TMSN.gif ( 1 page )( bytes ) 71350879#TMSN.gif ( 1 page )( bytes ) 78781730#TMSN.jpeg ( 1 page )( bytes ) 73411655#TMSN.gif ( 1 page )( bytes ) 73756857#TMSN.gif ( 1 page )( bytes ) 78314310#TMSN.jpeg ( 1 page )( bytes ) Opposition to ILLEST (Stylized) Ser_No_77846283.PDF ( 8 pages )(334760 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	/DJE/
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Name	David J. Ervin
Date	06/29/2011

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

In the Matter of Application Serial No. 77/846,283  
Published in the Official Gazette on March 1, 2011

ACUSHNET COMPANY,

Opposer,

v.

FATLACE, LLC,

Applicant.

Opposition No.

Attorney Docket No.  
766202.2939

**NOTICE OF OPPOSITION**

Acushnet Company (“Opposer”), a Delaware corporation, located at 333 Bridge Street, Fairhaven, Massachusetts 02719, believes that it is and will be damaged by the registration of the mark ILLEST (Stylized) shown in Application Ser. No. 77/846,283, for “athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms” in Cl. 25, and for “fabrics that may or may not have printed patterns and designs thereon for use in textile applications, namely, the manufacture of apparel, upholstery, signage, flags, banners and wallpaper; textile fabrics for use in the manufacture of garments, bags, jackets, gloves, and apparel” in Cl. 24, owned by Fatlace, LLC (“Applicant”), a limited liability company, located at 1630 Post Street, San Francisco, California 94115, and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer, by itself and/or its predecessor has now and has been for many years, engaged in the business of manufacturing, marketing, and selling a wide variety of golf equipment, golf apparel, and golf accessories.





2. Since at least as early as 1933, almost three quarters of a century prior to January 1, 2006, the date of first use in interstate commerce claimed by Applicant, a predecessor of Opposer adopted and began to use TITLEIST as a trademark for golf balls of superior quality and performance. The TITLEIST product range has since expanded to cover a wide range of goods sold worldwide under the TITLEIST trademark, including golf clubs, golf bags, golf headcovers, shirts, hats, visors, gloves, umbrellas, towels, backpacks, travel and duffel bags, and more.

3. Opposer's TITLEST mark has been used on and in connection with such goods continuously since its date of first use, and Opposer's products marked as TITLEST have been promoted, advertised, shipped, distributed, and sold in interstate commerce throughout the United States continuously for said period of time.

4. The unique script in which Opposer uses its TITLEIST mark originated when the first TITLEIST-branded golf balls were produced in the 1930s. Company executives wanted to develop a unique stylization for the TITLEIST mark and remembered the handwriting of office secretary Helen Robinson, an individual considered to have excellent penmanship. She was given a sheet of paper and asked to write "TITLEIST" on it. The stylization in which she wrote it on that paper over seventy years ago is virtually identical to how the popular script *Titleist* mark, which has been registered in many countries, continues to appear to this day on every TITLEIST product in the United States and throughout the world.

5. For over seven decades, and well before January 1, 2006, the date of first use in interstate commerce claimed by Applicant, Opposer has drawn upon the extensive goodwill and public recognition of its TITLEST mark by adopting and using the TITLEIST and TITLEIST formative marks (hereinafter "TITLEIST Marks") for a wide variety of golf equipment, golf apparel, and golf accessories.

6. Opposer has registered its TITLEIST Marks with the United States Patent and Trademark Office (“PTO”) as set forth below.

Mark	Reg. No.	Reg. Date	First Use	Goods/Services
	1,155,766	5/26/1981	12/20/1933	28 - golf equipment- namely, golf balls, golf clubs and golf bags
TITLEIST	316,118	8/14/1934	12/20/1933	28 - golf balls
TITLEIST	934,406	5/23/1972	12/31/1933	28 - golf equipment comprising golf balls, golf clubs, golf bags, golf gloves and golf headcovers
TITLEIST	933,271	5/02/1972	1/31/1970	25 - clothing, more specifically, sweaters, shirts, and jackets
TITLEIST	3,176,825	11/28/2006	1/31/1970	25 - headwear
	1,273,662	4/10/1984	1/31/1970	25 - clothing namely, shirts
	1,601,034	6/12/1990	12/31/1978	28 - golf balls
	3,111,131	7/04/2006	9/30/2003	41 - collection and research of golf data to be used for educational services



These registrations are valid and subsisting, and Opposer is the owner of said registrations and marks shown above together with the business and goodwill connected with these marks.

7. Products marked with the TITLEIST Marks have been widely promoted, advertised, shipped, distributed and sold in interstate commerce, and the TITLEIST Marks are recognized and relied upon as identifying Opposer's goods and services and as distinguishing them from the goods and services of others. Collectively, the TITLEIST Marks have come to represent an extremely valuable goodwill and business belonging exclusively to Opposer.

8. By virtue of widespread sales, advertising, and promotion of Opposer's goods and services under the TITLEIST Marks, since long prior to January 1, 2006, the date of first use in interstate commerce claimed by Applicant, Opposer's TITLEIST Marks have become famous for golf equipment, golf apparel, and golf accessories. Opposer's TITLEIST Marks are presently and have been consistently relied upon by the trade and public as identifying Opposer's products and business, serving to distinguish them from the products and businesses of others. The famous TITLEIST Marks, individually and collectively, including the following stylization

The image shows the word "Titleist" written in a cursive, handwritten-style font. The letters are connected and have a slightly slanted, elegant appearance. The word is centered within a thin black rectangular border.

have come to represent and symbolize an extremely valuable goodwill and business belonging exclusively to Opposer.

9. By the application herein opposed, Applicant seeks to register the following designation

The image shows the word "illest" written in a cursive, handwritten-style font. The letters are connected and have a slightly slanted, elegant appearance. The word is centered.

as a trademark for "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms" in Cl. 25, and for "fabrics that may or may not have printed patterns and

designs thereon for use in textile applications, namely, the manufacture of apparel, upholstery, signage, flags, banners and wallpaper; textile fabrics for use in the manufacture of garments, bags, jackets, gloves, and apparel” in Cl. 24, under application Ser. No. 77/846,283.

10. The goods for which Applicant seeks to register the designation ILLEST (Stylized) are nearly identical with respect to Opposer’s goods in Cl. 25 and are otherwise very closely related to Opposer’s goods and services. Upon information and belief, Applicant’s goods are likely to be marketed, promoted and sold to the same kinds of customers as Opposer’s golf accessories, golf equipment, and golf apparel are marketed, promoted, and sold under its TITLEIST Marks.

11. Applicant’s designation ILLEST (Stylized) is likely to cause confusion with Opposer’s long-standing TITLEIST Marks because they are similar in sight, sound, and commercial impression. The script stylization in Applicant’s designation

*illest*

copies the distinct handwritten stylization of the mark

*Titleist*

Applicant’s designation uses the same letters and imitates the sound of the last two syllables of Opposer’s TITLEIST Marks. Since Applicant’s designation ILLEST (Stylized) is for nearly identical and such closely related goods, it is almost certain, when applied to the goods of Applicant, to cause confusion, mistake or deception as to the source, origin or sponsorship of Applicant’s goods, with consequent injury to Opposer, the trade and the public, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

12. Applicant's use of the ILLEST (Stylized) designation is also likely to dilute the distinctive quality of Opposer's TITLEIST Marks in violation of Sections 13(a) and 43(c) of the Trademark Act, 15 U.S.C. §§ 1063(a) and 1125(c).

13. On October 12, 2009, Applicant submitted a sworn statement and declaration before the PTO stating that Applicant's designation ILLEST (Stylized) was used in commerce at least as early as January 1, 2006, and "is now in use in commerce" for "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms" in Cl. 25, and for "fabrics that may or may not have printed patterns and designs thereon for use in textile applications, namely, the manufacture of apparel, upholstery, signage, flags, banners and wallpaper; textile fabrics for use in the manufacture of garments, bags, jackets, gloves, and apparel" in Cl. 24.

14. On May 25, 2010, and again on January 14, 2011, Applicant continued to declare that Applicant's designation ILLEST (Stylized) was used in commerce at least as early as January 1, 2006, and that Applicant "is using" it for the specified goods.

15. Upon information and belief, Applicant does not use and has never used in commerce its ILLEST (Stylized) designation for some of the goods identified in its application.

16. Upon information and belief, Applicant knowingly misrepresented the nature of its use in commerce of the ILLEST (Stylized) designation at the time it filed its application and in subsequent declarations.

17. Upon information and belief, Applicant made the declarations of use which it knew or should have known were false.

18. Upon information and belief, the false declarations were made to induce authorized agents of the PTO to grant Applicant a registration.

19. Opposer will be damaged by the registration sought by Applicant because it will support and assist Applicant in the confusing and misleading use of the designation sought to be

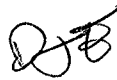
registered, and will give color of exclusive statutory rights in Applicant in violation and derogation of the prior and superior rights of Opposer and will dilute Opposer's distinctive trademark.

WHEREFORE Opposer believes that it will be damaged by the registration of the Applicant's mark and prays that Application Ser. No. 77/846,283 be denied pursuant to Section 2 (d), 13(a) and 43(c) of the Trademark Act, 15 U.S.C. §§ 1052(d), 1063(a), and 1125(c).

Respectfully submitted,

June 29, 2011

By:



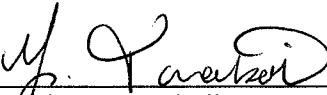
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Attorneys for Opposer  
ACUSHNET COMPANY

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Opposer's NOTICE OF OPPOSITION to the registration of the mark designated in Application Serial No. 77/846,283 has been served upon Fatlace, LLC, the owner of said application at 1630 Post Street, San Francisco, California 94115, the address designated by said owner for that purpose, by first class mail on June 29, 2011.

  
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