

ESTTA Tracking number: **ESTTA432348**

Filing date: **09/26/2011**

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	LorindaElizando
Granted to Date of previous extension	09/25/2011
Address	28391 East 94th Street South Broken Arrow, OK 74014 UNITED STATES

Attorney information	Zachary W. Hilton Carstens & Cahoon, LLP P.O. Box 802334 Dallas, TX 75380 UNITED STATES tmdocketing@cclaw.com, hilton@cclaw.com Phone:972-367-2001
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Applicant Information

Application No	85168823	Publication date	03/29/2011
Opposition Filing Date	09/26/2011	Opposition Period Ends	09/25/2011
Applicant	Libby's Legacy Breast Cancer Foundation, Inc. 1718 S. Orange Ave. Orlando, FL 32806 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. First Use: 2007/02/28 First Use In Commerce: 2007/02/28 All goods and services in the class are opposed, namely: Clothing, namely, t-shirts, hats and sweatshirts
Class 036. First Use: 2007/02/28 First Use In Commerce: 2007/02/28 All goods and services in the class are opposed, namely: Charitable fundraising services, namely, fundraising for breast cancer awareness, research, education and services

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. Application No.	85334225	Application Date	05/31/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	HOOTERS ON SCOOTERS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 2006/07/00 First Use In Commerce: 2006/07/00 Charitable fundraising services for promoting research, education and other activities relating to breast cancer, and/or the prevention or reduction of breast cancer

Attachments	85334225#TMSN.jpeg (1 page)(bytes) Notice of Opposition (FINAL).pdf (3 pages)(81981 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	/Zachary W. Hilton/
Name	Zachary W. Hilton
Date	09/26/2011

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

In the matter of Application No. 85/168,823
Filing Date: 2010-11-04
Mark: SCOOTERS 4 HOOTERS (words)

Lorinda Elizando	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No.: _____
	§	
Libby's Legacy Breast Cancer Foundation, Inc.	§	
	§	
Applicant.	§	

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF TRADEMARKS:

LORINDA ELIZANDO (“Elizando” or “Opposer”), an individual and United States citizen, residing at 28391 East 94th Street South Broken Arrow, Oklahoma 74014, believes that she will be damaged by registration of the applied-for mark (“SCOOTERS 4 HOOTERS”) that is the subject of U.S. Trademark Application Serial No. 85/168,823 in International Classes 25 and 36, filed on November 4, 2010 by Libby’s Legacy Breast Cancer Foundation, Inc. (“Libby’s” or “Applicant”) and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Applicant seeks to register SCOOTERS 4 HOOTERS as a trademark for:
1.) charitable fundraising services, namely, fundraising for breast cancer awareness, research, education and services in International Classes 36; and 2.) clothing, namely, t-shirts, hats and sweatshirts (“Applicant’s Mark”). Applicant claims a date of first use of

February 28, 2007 with respect to the applied-for mark in both of the foregoing classes of goods and services.

2. Opposer is the owner of U.S. Application No. 85/334,225 for the mark HOOTERS ON SCOOTERS for “charitable fundraising services for promoting research, education and other activities relating to breast cancer, and/or the prevention or reduction of breast cancer” in International Class 36 (“Opposer’s Mark”).

3. There is no issue as to priority. Opposer and/or her licensees have been continuously using Opposer’s Mark since at least as early as July 2006. For over five years, Opposer has offered charitable fundraising services under Opposer’s Mark. Opposer’s Mark has been extensively advertised and promoted and Opposer has expended considerable effort and expense in offering quality services under Opposer’s Mark. As a result, Opposer’s Mark has become strongly identified by the consuming public with Opposer, and Opposer enjoys valuable goodwill attached to the Mark.

4. In view of the foregoing, Applicant’s Mark is likely to cause confusion amongst relevant consumers when used by Applicant in the manner set forth in the application that is the subject of this Notice.

5. Applicant is not associated with or affiliated with Opposer.

6. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Opposer has standing to oppose issuance of registration on the grounds that were such a registration issued to Applicant, it would be a source of damage and injury to Opposer.

Wherefore, Opposer prays that this Opposition be sustained and that the applied-for mark that is the subject of Application Serial No. 85/168,823 be refused registration.

Respectfully submitted,

Date: September 26, 2011

By: /Zachary W. Hilton/_____

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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Opposition** was served upon the following parties on September 26, 2011, via First Class Mail.

Ms. Amber N. Davis, *Esq.*
BEUSSE WOLTER SANKS MORA & MAIRE, P.A.,
390 N. Orange Ave. Suite 2500
Orlando, Florida 32801

Attorneys for Libby's Legacy Breast Cancer Foundation, Inc.

/Zachary W. Hilton/_____
Zachary W. Hilton