

ESTTA Tracking number: **ESTTA438452**

Filing date: **10/28/2011**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	Major League Baseball Properties, Inc.
Granted to Date of previous extension	10/30/2011
Address	245 Park Avenue New York, NY 10167 UNITED STATES

Name	Baseball Assistance Team, Inc.
Granted to Date of previous extension	10/30/2011
Address	245 Park Avenue New York, NY 10167 UNITED STATES

Attorney information	Robert Riether Cowan Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES rar@cll.com, trademark@cll.com, jmn@cll.com, eck@cll.com Phone:212-790-9200
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**Applicant Information**

Application No	85074839	Publication date	05/03/2011
Opposition Filing Date	10/28/2011	Opposition Period Ends	10/30/2011
Applicant	Brevard Softball Magazine, Inc. 400 Magnolia Avenue Merritt Island, FL 32952 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 1997/08/01 First Use In Commerce: 1997/08/01 All goods and services in the class are opposed, namely: Organizing, promoting and conducting exhibitions, tradeshow, and events for business purposes, namely, for baseball and softball equipment vendors
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**Applicant Information**

Application No	85258317	Publication date	07/26/2011
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Opposition Filing Date	10/28/2011	Opposition Period Ends	
Applicant	Brevard Softball Magazine, Inc. 400 Magnolia Avenue Merritt Island, FL 32952 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, hats, visors, caps, t-shirts, sweat shirts
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### Applicant Information

Application No	85258273	Publication date	08/02/2011
Opposition Filing Date	10/28/2011	Opposition Period Ends	
Applicant	Brevard Softball Magazine, Inc. 400 Magnolia Avenue Merritt Island, FL 32952 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Organizing sporting events, namely, baseball and softball tournaments
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### Grounds for Opposition

Other	Please see attached pleading.
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Attachments	1274350_1.pdf ( 1 page )(69101 bytes ) 1271294_2.pdf ( 5 pages )(29778 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	/Robert Riether/
Name	Robert Riether
Date	10/28/2011





baseball and softball tournaments” as shown in Application Serial No. 85/258,273 (the “Class 41 Application”) (collectively, the “Applications”), and having been granted extensions of time to oppose up to and including October 28, 2011, November 23, 2011 and November 30, 2011, respectively, hereby oppose the same.

As grounds for the consolidated opposition, it is alleged that:

1. Since long prior to August 1, 1997, Applicant’s earliest claimed first use date, Opposers, their predecessors, and their affiliated and related entities and sponsors have used the name and mark BASEBALL ASSISTANCE TEAM and/or its abbreviation “BAT,” alone or



with other word, letter and/or design elements, including (the “BAT Logo”) (collectively, the “Opposers’ BAT Marks”), in connection with a variety of goods and services, including, but not limited to, charitable fundraising services relating to baseball, including but not limited to organizing a charitable golf tournament and headwear and clothing.

2. Opposer Baseball Assistance owns a U.S. federal registration for Opposer’s BAT Mark in International Class 36, namely, Registration No. 1,626,286. Registration No. 1,626,286 is incontestable.

3. Since long prior to August 1, 1997, Applicant’s earliest claimed first use date, Opposers, their predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposers’ BAT Marks, including, but not limited to, charitable fundraising services relating to baseball including but not limited to organizing a charitable golf tournament

and headwear and clothing and have offered such goods and rendered such services in commerce.

4. As a result of the sales and promotion of its goods and services bearing or offered in connection with Opposers' BAT Marks, Opposers have built up highly valuable goodwill in Opposers' BAT Marks, and said goodwill has become closely and uniquely identified and associated with Opposers.

5. On June 30, 2010, Applicant filed the Class 35 Application for the Applicant's Mark for "Organizing, promoting and conducting exhibitions, tradeshow, and events for business purposes, namely, for baseball and softball equipment vendors," claiming both a first use and first use in commerce date of August 1, 1997. On March 4, 2011, Applicant filed the Class 25 Application for Applicant's Mark for "Clothing, namely, hats, visors, caps, t-shirts, sweat shirts" based on an intent to use. On March 4, 2011, Applicant filed the Class 41 Application for Applicant's Mark for "Organizing sporting events, namely, baseball and softball tournaments" based on an intent to use.

6. Upon information and belief, Applicant did not use Applicant's Mark for the goods and/or services covered in the Applications in United States commerce prior to its earliest claimed first use date of August 1, 1997.

7. The goods and services covered by the Applications are closely related to the goods offered and services rendered in connection with Opposers' BAT Marks.

8. Applicant's Mark so resembles Opposers' BAT Marks as to be likely, when used in connection with Applicant's goods and services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods and services have

their origin with Opposers and/or that such goods and services are approved, endorsed or sponsored by Opposers or associated in some way with Opposers. Opposers would thereby be injured by the granting to Applicant of certificates of registration for Applicant's Mark.

WHEREFORE, Opposers believe that they will be damaged by registration of Applicant's Mark and request that the consolidated opposition be sustained and said registrations be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel, Robert A. Riether and Elise C. Kasell (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York  
October 28, 2011

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.  
Attorneys for Opposer

By: /Robert A. Riether/

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Richard S. Mandel  
Elise C. Kasell  
Robert A. Riether  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 28, 2011, I caused a true and correct copy of the foregoing Consolidated Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's counsel and correspondent of record, Brian S. Steinberger, Law Offices of Brian S. Steinberger, P.A, 101 Brevard Avenue, Cocoa, Florida 32922.

/Robert A. Riether/  
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Robert A. Riether