

ESTTA Tracking number: **ESTTA475392**

Filing date: **05/30/2012**

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	Athletes' Performance, Inc.
Granted to Date of previous extension	05/30/2012
Address	650 S. Athletes' Place Tempe, AZ 85281 UNITED STATES

Correspondence information	Vanessa Backman Andra Brand Integrity Group 19363 Willamette Drive Suite 228 West Linn, OR 97068 UNITED STATES vanessa@andrabrand.com Phone:503-303-8384
----------------------------	---

Applicant Information

Application No	85401497	Publication date	01/31/2012
Opposition Filing Date	05/30/2012	Opposition Period Ends	05/30/2012
Applicant	Deca Sports Group LLC 46615 Michigan Ave Canton, MI 48188 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2006/01/01 First Use In Commerce: 2006/01/01
All goods and services in the class are opposed, namely: Sports performance training services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2407488	Application Date	08/24/1999
Registration Date	11/21/2000	Foreign Priority Date	NONE
Word Mark	ATHLETES' PERFORMANCE		


Design Mark	ATHLETES' PERFORMANCE
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1999/07/00 First Use In Commerce: 1999/07/00 CONSULTING SERVICES IN THE FIELD OF SPORTS PERFORMANCE, NAMELY, PROVIDING ADVICE IN THE FIELDS OF NUTRITION, PHYSICAL THERAPY, RESISTANCE TRAINING, SOFT TISSUE THERAPY, MOVEMENT TRAINING, FLEXIBILITY TRAINING, ENERGY SYSTEM DEVELOPMENT, COGNITIVE SKILLS, BIOMECHANICS, INJURY REHABILITATION AND RECONDITIONING

U.S. Registration No.	2407489	Application Date	08/24/1999
Registration Date	11/21/2000	Foreign Priority Date	NONE
Word Mark	ATHLETES' PERFORMANCE		
Design Mark	ATHLETES' PERFORMANCE		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1999/07/00 First Use In Commerce: 1999/07/00 Education and training services in the field of sports performance, namely, individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skills, biomechanics, injury rehabilitation and reconditioning		

U.S. Registration No.	3704244	Application Date	08/27/2008
Registration Date	11/03/2009	Foreign Priority Date	NONE
Word Mark	ATHLETES' PERFORMANCE		
Design Mark	ATHLETES' PERFORMANCE		
Description of Mark	NONE		

Goods/Services	<p>Class 041. First use: First Use: 1999/07/01 First Use In Commerce: 1999/07/01 Consulting services in the field of sports performance, namely, providing personal training in the field of resistance training, movement training, flexibility training, cardiovascular training, and training designed to enhance cognitive skills and fitness biomechanics</p> <p>Class 044. First use: First Use: 1999/07/01 First Use In Commerce: 1999/07/01 Consulting services in the field of sports performance, namely, providing advice in the fields of nutrition, physical therapy, soft tissue massage therapy, physical injury rehabilitation and reconditioning</p>
----------------	---

U.S. Registration No.	3704248	Application Date	08/27/2008
Registration Date	11/03/2009	Foreign Priority Date	NONE
Word Mark	ATHLETES' PERFORMANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 1999/07/01 First Use In Commerce: 1999/07/01 Education and training services in the field of sports performance, namely, individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skills, biomechanics, injury rehabilitation and reconditioning</p>		

U.S. Registration No.	3704250	Application Date	08/27/2008
Registration Date	11/03/2009	Foreign Priority Date	NONE
Word Mark	ATHLETES' PERFORMANCE		
Design Mark			
Description of Mark	The mark consists of the word "Athletes" in black with an apostrophe in red at the end. The word "Performance" is in black in capital letters under the word		

	"Athletes".
Goods/Services	Class 041. First use: First Use: 1999/07/01 First Use In Commerce: 1999/07/01 Education and training services in the field of sports performance, namely, individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skills, biomechanics, injury rehabilitation and reconditioning

U.S. Registration No.	2428119	Application Date	08/24/1999
Registration Date	02/13/2001	Foreign Priority Date	NONE

Word Mark ATHLETES' PERFORMANCE



Description of Mark NONE

Goods/Services	Class 042. First use: First Use: 1999/07/00 First Use In Commerce: 1999/07/00 CONSULTING SERVICES IN THE FIELD OF SPORTS PERFORMANCE, NAMELY, PROVIDING ADVICE IN THE FIELDS OF NUTRITION, PHYSICAL THERAPY, RESISTANCE TRAINING, SOFT TISSUE THERAPY, MOVEMENT TRAINING, FLEXIBILITY TRAINING, ENERGY SYSTEM DEVELOPMENT, COGNITIVE SKILLS, BIOMECHANICS, INJURY REHABILITATION AND RECONDITIONING
----------------	--

U.S. Registration No.	2411558	Application Date	08/24/1999
Registration Date	12/05/2000	Foreign Priority Date	NONE

Word Mark ATHLETES' PERFORMANCE



Description of Mark NONE

Goods/Services	Class 041. First use: First Use: 1999/07/00 First Use In Commerce: 1999/07/00
----------------	---

	Education and training services in the field of sports performance, namely, individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skills, biomechanics, injury rehabilitation and reconditioning
--	---

Attachments	75783425#TMSN.gif (1 page)(bytes) 75783426#TMSN.gif (1 page)(bytes) 77557078#TMSN.jpeg (1 page)(bytes) 77557153#TMSN.jpeg (1 page)(bytes) 77557205#TMSN.jpeg (1 page)(bytes) 75783059#TMSN.gif (1 page)(bytes) 75783060#TMSN.gif (1 page)(bytes) API - Opposition of DYNAMIC ATHLETE PERFORMANCE - 5.30.12.pdf (8 pages)(129506 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Vanessa Backman/
Name	Vanessa Backman
Date	05/30/2012

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

Athletes' Performance Inc., a Delaware corporation,
Opposer,

v.

Deca Sports Group LLC, a Michigan corporation,
Applicant.

Opposition No.: _____
Application Serial No: 85/401,497

Date of Publication: January 31, 2012
Mark: DYNAMIC ATHLETE
PERFORMANCE & Design

NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. § 1063(a) and TBMP § 303.01, Opposer, Athletes' Performance, Inc. ("Opposer"), a Delaware corporation, believes that it is or will be damaged by Application Serial No. 85/401,497 (the "Application"), and hereby opposes the registration of same.

As grounds for opposition, it is alleged that:

1. According to the Trademark Electronic Search System ("TESS") of the United States Patent and Trademark Office ("PTO"), Applicant, Deca Sports Group, a corporation organized and existing under the laws of the State of Michigan, with a principal address of 46615 Michigan Avenue, Canton, Michigan 48188, is the record owner of the Application.


2. The Application was filed on August 18, 2011 for the mark **DYNAMIC ATHLETE PERFORMANCE & Design** (the "Applicant's Mark"). Applicant seeks registration of the Mark on the Principal Register in respect of "sports performance training services" in International Class 41, and claims a date of first use in commerce as of January 1, 2006.



3. For many years Athletes’ Performance, Inc. has continuously used and is currently using the ATHLETES’ PERFORMANCE service marks (collectively, the “ATHLETES’ PERFORMANCE Marks”) in interstate commerce in connection with a wide variety of services, including, without limitation, performance training services.

4. As a result of the Opposer’s extensive, exclusive, and continuous use of the ATHLETES’ PERFORMANCE Marks and the substantial promotion of services offered under these marks, and by virtue of the high quality of the services offered under the ATHLETES’ PERFORMANCE Marks, the ATHLETES’ PERFORMANCE Marks have become associated exclusively with Opposer and its services. Consumers have come to rely on the ATHLETES’ PERFORMANCE Marks to identify Opposer’s services and to distinguish them from the services of others. As such, the ATHLETES’ PERFORMANCE Marks have developed extensive goodwill and consumer recognition in the United States and throughout the world.

5. The ATHLETES’ PERFORMANCE Marks are the subject of the following U.S. federal trademark registrations owned by Opposer:

Mark	Registration No.	Registration Date	Goods/Services
ATHLETES’ PERFORMANCE	2,407,488	11/21/2000	Consulting services in the field of sports performance, namely providing advice in the fields of nutrition, physical therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skills, biomechanics, injury rehabilitation and reconditioning in class 42

ATHLETES' PERFORMANCE	2,407,489	11/21/2000	Education and training services in the field of sports performance, namely individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skill, biomechanics, injury rehabilitation and reconditioning in class 41
ATHLETES' PERFORMANCE	3,704,244	11/3/2009	Consulting services in the field of sports performance, namely providing personal training in the field of resistance training, movement training, flexibility training, cardiovascular training, and training designed to enhance cognitive skills and fitness biomechanics in class 41 Consulting services in the field of sports performance, namely providing advice in the fields of nutrition, physical therapy, soft tissue massage therapy, physical injury rehabilitation and reconditioning in class 44
ATHLETES' PERFORMANCE	3,704,248	11/3/2009	Education and training services in the field of sports performance, namely individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skill, biomechanics, injury rehabilitation and reconditioning in class 41
	3,704,250	11/3/2009	Education and training services in the field of sports performance, namely individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy

			system development, cognitive skill, biomechanics, injury rehabilitation and reconditioning in class 41
	2,428,119	2/13/2001	Consulting services in the field of sports performance, namely providing advice in the fields of nutrition, physical therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skills, biomechanics, injury rehabilitation and reconditioning in class 42
	2,411,558	12/5/2000	Education and training services in the field of sports performance, namely individualized and group sport-specific training courses in the areas of nutrition, therapy, resistance training, soft tissue therapy, movement training, flexibility training, energy system development, cognitive skill, biomechanics, injury rehabilitation and reconditioning in class 41

6. The foregoing registrations of Opposer are valid, subsisting, and in full force and effect. Registration Nos. 3,704,244; 3,704,248; 3,704, 250; and, 2,428,119 constitute evidence of the validity of the registered marks and of the registrations thereof, of Opposer's ownership of the marks, and of Opposer's exclusive right to use the marks in commerce in connection with the identified goods and services pursuant to Section 7(b) of the Lanham Act, 15 U.S.C. § 1057(b). Such registrations place others on constructive notice of Opposer's claim of ownership thereof pursuant to Section 22 of the Lanham Act, 15 U.S.C. § 1072.

7. Opposer also has common law rights in the ATHLETES' PERFORMANCE Marks based on its extensive and continuous use and promotion of such marks in interstate commerce and foreign commerce.

8. The Application was filed on August 18, 2011 with a date of first use of January 1, 2006. Opposer acquired rights in the ATHLETES' PERFORMANCE Marks long before Applicant's priority date for the Mark.

9. Applicant's Mark as used in association with the services recited in the Application is so similar to Opposer's previously-used ATHLETES' PERFORMANCE Marks as to be likely to create confusion, mistake, or deception as to the source, sponsorship or affiliation of Applicant's goods in the minds of consumers and persons in the trade for the following reasons, among others:

10. Applicant's Mark contains a mark that is almost identical to Opposer's ATHLETES' PERFORMANCE Marks and Applicant's Mark thus contains a mark that is virtually identical to the ATHLETES' PERFORMANCE Marks in sight, sound and commercial meaning.

11. The proposed services recited in the Application are identical to some of the services offered by Opposer in connection with the ATHLETES' PERFORMANCE Marks.

12. Upon information and belief Applicant's services offered under Applicant's Mark and Opposer's services offered under the ATHLETES' PERFORMANCE Marks are likely to be sold, marketed, and/or offered to the same or similar classes or people.

13. Upon information and belief, the channels of trade for Applicant's services offered under Applicant's Mark and the channels of trade for Opposer's services offered under the ATHLETES' PERFORMANCE Marks are the same.

14. Registration of the Applicant's Mark would be inconsistent with Opposer's prior exclusive rights in the ATHLETES' PERFORMANCE Marks and would damage Opposer's investment and goodwill in such marks. Opposer therefore would be injured by registration of the Application.

15. If the Applicant is granted registration of the Application herein opposed, it would thereby obtain at least a prime facie exclusive right to use the Applicant's Mark. Such registration would be a source of damage and injury to Opposer

16. If Applicant is granted registration of the Application herein opposed, it would weaken the strength and reputation of the ATHLETES' PERFORMANCE Marks, resulting in damage and injury to Opposer.

PRAYER FOR RELIEF

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in favor of Opposer and that Application Serial No. 85/401,497 be denied registration in respect of “sports performance training services.”

Date: May 30, 2012

Respectfully submitted,

ANDRA BRAND INTEGRITY GROUP

/s/ Vanessa Backman

Vanessa Backman
19363 Willamette Drive, Suite 228
West Linn, Oregon 97068
(503) 303-8384

*Attorney for Opposer
Athletes' Performance, Inc.*

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **NOTICE OF OPPOSITION** was served upon Applicant by delivering true and correct copies of same to Applicant and its counsel via Federal Express on May 30, 2012 as follows:

Deca Sports Group LLC
46615 Michigan Avenue
Canton, Michigan 48188

Paul Fransway
Butzel Long
350 South Main Street, Suite 300
Ann Arbor, Michigan 48104

/s/ Vanessa Backman
Vanessa Backman