

ESTTA Tracking number: **ESTTA477972**

Filing date: **06/14/2012**

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	Texas Department of Transportation		
Entity	state agency	Citizenship	Texas
Address	125 E. 11th Street Austin, TX 78701-2483 UNITED STATES		

Attorney information	Dwayne K. Goetzel Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. P.O. Box 398 Austin, TX 78767-0398 UNITED STATES dkgpto@intprop.com Phone:512-853-8800		
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Applicant Information

Application No	85502804	Publication date	05/22/2012
Opposition Filing Date	06/14/2012	Opposition Period Ends	06/21/2012
Applicant	Brighton, Kenneth 42 Ptolemy Court Sewell, NJ 08080 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, tops, bottoms, shirts, t-shirts, tank tops, pants, blouses, sweatshirts, hooded sweatshirts, sweatpants, caps, hats, jackets, coats, skirts, dresses, socks, jerseys, underwear, shoes and belts

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.	3930439	Application Date	08/31/2009
Registration Date	03/15/2011	Foreign Priority Date	NONE
Word Mark	DON'T MESS WITH TEXAS		

Design Mark	DON'T MESS WITH TEXAS		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/04/00 First Use In Commerce: 1986/04/00 CLOTHING, NAMELY, T-SHIRTS, POLO SHIRTS, SHIRTS, BUTTON-FRONT SHIRTS, TWILL DRESS SHIRTS AND SWEAT SHIRTS		

U.S. Registration No.	3924369	Application Date	11/07/2000
Registration Date	03/01/2011	Foreign Priority Date	NONE
Word Mark	DON'T MESS WITH TEXAS		
Design Mark	DON'T MESS WITH TEXAS		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/04/00 First Use In Commerce: 1986/04/00 CLOTHING, NAMELY, SHIRTS, HATS AND CAPS		

Attachments	77816121#TMSN.jpeg (1 page)(bytes) 76160856#TMSN.gif (1 page)(bytes) 6-14-12 Ntc of Opposition.pdf (4 pages)(19738 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	/Dwayne K. Goetzel/
Name	Dwayne K. Goetzel
Date	06/14/2012

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

In the Matter of the Trademark Application Serial No. 85502804 for
the mark “DON’T MESS WITH THE US” filed by Kenneth Brighton and Published in the
Official Gazette on May 22, 2012

Texas Department of Transportation)	
Opposer)	
)	
v.)	
)	Opposition No. _____
Kenneth Brighton)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

The Texas Department of Transportation, a Texas state agency having an address of 125 E. 11th Street, Austin, Texas 78701-2483 (“Opposer”), believes that it will be damaged by registration of the mark DON’T MESS WITH THE US that is the subject of application Serial No. 85502804, published in the *Official Gazette* on May 22, 2012, and therefore requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Applicant filed intent-to-use application serial no. 85502804 on or about December 23, 2011, seeking to register DON’T MESS WITH THE US (“Applicant’s Mark”) as a trademark in International Class 25 for the following goods:

Clothing, namely, tops, bottoms, **shirts**, **t-shirts**, tank tops, pants, blouses, **sweatshirts**, hooded sweatshirts, sweatpants, **caps**, **hats**, jackets, coats, skirts, dresses, socks, jerseys, underwear, shoes and belts (emphasis added).

2. Opposer has used the DON'T MESS WITH TEXAS mark ("Opposer's Mark") since at least as early as 1986 in connection with various goods and services in several different classes, including clothing.

3. Opposer is the owner of U.S. Reg. No. 3930439 for use with "clothing, namely, t-shirts, polo shirts, shirts, button-front shirts, twill dress shirts and sweat shirts," the application for which was filed on August 31, 2009, and matured to registration on March 15, 2011.

4. Opposer is also the owner of U.S. Reg. No. 3924369 for use with "clothing, namely, shirts, hats and caps," the application for which was filed on November 7, 2000 and matured to registration on March 1, 2011.

5. The filing date of Applicant's intent-to-use application is well after the first use of Opposer's Mark, in addition to being after the filing date and registration date for Opposer's Mark as shown in U.S. Reg. Nos. 3930439 and 3924369.

6. Opposer has dedicated time, money and effort in advertising, promoting and popularizing Opposer's Mark and in preserving the goodwill associated therewith.

7. Applicant's DON'T MESS WITH THE US mark is confusingly similar to Opposer's DON'T MESS WITH TEXAS mark with respect to, *inter alia*, the sight, sound and meaning of the marks, and with respect to the goods and/or services offered (or that could be offered) thereunder.

8. As a result of such confusing similarity between the respective marks and the goods and/or services offered (or that could be offered) thereunder, damage and harm will result to Opposer and its prior trademark rights, and confusion may result in the marketplace. For example, registration of Applicant's DON'T MESS WITH THE US mark may result in the loss

of revenue and sales of products and/or services marketed under Opposer's DON'T MESS WITH TEXAS mark, as well as harm Opposer's reputation.

9. If the Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of Applicant's DON'T MESS WITH THE US mark in connection with the specified goods, which are or could be confusingly similar to the goods and/or services previously offered by Opposer. Such registration would be a source of damage and injury to the Opposer, for the reasons set forth above.

10. In light of such likely harm and confusion, the Patent and Trademark Office should refuse to register Applicant's Mark in light of Opposer's prior use, and earlier filing and registration date.

WHEREFORE, Opposer prays that application Serial No. 85502804 be rejected, and that the mark therein sought for the goods therein specified in International Class 25 be denied and refused.

Respectfully submitted,

/Dwayne K. Goetzel/

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**ATTORNEYS FOR OPPOSER
TEXAS DEPARTMENT OF
TRANSPORTATION**

CERTIFICATE OF SERVICE

I hereby certify I caused a true and correct copy of the foregoing *Notice of Opposition* to be served upon Applicant's attorney of record, as set forth below, by first class, U.S. Mail, on this 14th day of June 2012.

Maryam Nemazie
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/Dwayne K. Goetzel/

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