

ESTTA Tracking number: **ESTTA492085**

Filing date: **08/31/2012**

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 | American Soccer Company, Inc. |
| Granted to Date of previous extension | 09/05/2012 |
| Address | 726 E. Anaheim Street Wilmington, CA 90744 UNITED STATES |

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| Attorney information | Franklin E. Gibbs Gibbs & White P.C. 2618 San Miguel Dr. #124 Newport Beach, CA 92660 UNITED STATES fegibbs@gibbswhitelaw.com Phone:7146321490 |
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Applicant Information

| | | | |
|------------------------|---------------------------------------------------------------------------------------------------|------------------------|------------|
| Application No | 85486223 | Publication date | 05/08/2012 |
| Opposition Filing Date | 08/31/2012 | Opposition Period Ends | 09/05/2012 |
| Applicant | Shock Doctor, Inc. 3300 Fernbrook Lane North, Suite 250 Plymouth, MN 55447 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 025. All goods and services in the class are opposed, namely: High performance athletic apparel, namely, underwear, undergarments, underclothes |
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Grounds for Opposition

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| False suggestion of a connection | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Other | 1(b) lack of a bona fide intent to make use of the proposed mark in commerce |


Marks Cited by Opposer as Basis for Opposition


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| U.S. Registration No. | 1422027 | Application Date | 05/27/1986 |
| Registration Date | 12/23/1986 | Foreign Priority Date | NONE |

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|---------------------|------------------------------------------------------------------------------------------------------------|
| Word Mark | SCORE |
| Design Mark |  |
| Description of Mark | NONE |
| Goods/Services | Class 025. First use: First Use: 1986/02/01 First Use In Commerce: 1986/02/01 SHIRTS, PANTS, SHORTS, SOCKS |

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|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------|
| U.S. Registration No. | 1916007 | Application Date | 10/29/1991 |
| Registration Date | 09/05/1995 | Foreign Priority Date | NONE |
| Word Mark | SCORE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | <p>Class 009. First use: First Use: 1986/03/00 First Use In Commerce: 1986/03/00 whistles and whistle lanyards</p> <p>Class 016. First use: First Use: 1986/03/00 First Use In Commerce: 1986/03/00 clipboards, data pads for soccer scores</p> <p>Class 018. First use: First Use: 1986/01/00 First Use In Commerce: 1986/01/00 tote bags</p> <p>Class 024. First use: First Use: 1989/12/00 First Use In Commerce: 1989/12/00 corner flags and cones</p> <p>Class 025. First use: First Use: 1986/01/00 First Use In Commerce: 1986/01/00 footwear, gloves, polo shirts, socks, T-shirts and warm-up suits</p> <p>Class 028. First use: First Use: 1986/03/00 First Use In Commerce: 1986/03/00 [sporting equipment; namely, corner flags and playing field cones for soccer, shinguards for athletic use and soccer balls; soccer referee equipment; namely, holders for carrying signal cards]</p> <p>Class 042. First use: First Use: 1986/01/00 First Use In Commerce: 1986/01/00 distributorship featuring clothing; namely, long and short-sleeve shirts, shorts, warm-up suits, T-shirts, polo shirts, socks, vests, gloves and soccer equipment; namely, balls, tote bags, flags, wallet and card sets, soccer score data pads, whistles and lanyards, shinguards, pumps, nets, corner cones, pressure gauges and line strippers</p> | | |

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| U.S. Registration No. | 3618127 | Application Date | 09/24/2007 |
| Registration Date | 05/12/2009 | Foreign Priority Date | NONE |
| Word Mark | SCORE BASKETBALL | | |

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| Design Mark |  |
| Description of Mark | NONE |
| Goods/Services | Class 025. First use: First Use: 2007/01/00 First Use In Commerce: 2007/01/00 Basketball uniforms, basketball shorts, basketball jerseys, basketball socks |

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| U.S. Registration No. | 3930807 | Application Date | 06/10/2010 |
| Registration Date | 03/15/2011 | Foreign Priority Date | NONE |
| Word Mark | SCORE SPORTS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 035. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Distributorship and computerized online retail store services, both featuring clothing, namely, shirts, shorts, socks, referee uniforms, outerwear, namely, pants, jackets, warm-ups, sweaters, hooded shirts, balls, namely, soccer balls and basketballs, luggage, namely, tote bags, backpacks, mesh net bags, team bags, player bags, shoe and glove bags, ball bags, briefcases, carrying cases for goals, sports accessories and equipment, namely, ice packs, watches, caps, protective sleeves, gloves, whistles, lanyards, first aid kits, shin guards, clipboards, data pads for game scores, corner flags and cones, flags, game coins, wallets and game report pads, planners, clipboards, arm bands, ankle braces, pinnies, DVDs and books related to sports and sports training, training cards, field equipment and training equipment of others, goals, tent awnings, tie straps, goal anchor spikes, screws, rebounders, agility ladders, coaching stix, wickets, speed rings, course markers, pumps, inflation needles, nets, disc cones, pressure gauges and manual and push cart line stripers, pressurized stripe and field paint | | |

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| Attachments | 73600824#TMSN.gif (1 page)(bytes) |
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| | 77287640#TMSN.jpeg (1 page)(bytes) 85059958#TMSN.jpeg (1 page)(bytes) Opposition to CORE App No 85-486223.pdf (8 pages)(43594 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 | /feg/ |
| Name | Franklin E. Gibbs |
| Date | 08/31/2012 |

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

In the Matter of:
Appl. No.: 85/486,223
Filed: December 2, 2011
Mark: CORE°
Published: May 8, 2012
Applicant: Shock Doctor, Inc.

| | | |
|------------------------------------------------------------|---|----------------|
| AMERICAN SOCCER COMPANY, INC., a California corporation |) | Opposition No. |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | |
| |) | |
| SHOCK DOCTOR, INC., a Delaware corporation |) | |
| |) | |
| Applicant. |) | |
| _____ |) | |

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450


To Commissioner of Trademarks:


American Soccer Company, Inc., a corporation organized and existing under the laws of the State of California, having a business address at 726 East Anaheim Street, Wilmington, California 90744 (“OPPOSER”), believes it will be damaged by the registration of the mark shown in Application Serial No. 85/486,223 regarding goods in

Class 025, which was filed by Shock Doctor, Inc. (“APPLICANT”), and hereby opposes same.

As grounds for this Notice, it is alleged upon information and belief that:

1. OPPOSER has the trademark SCORE® to distribute and sell various sports related products in commerce, since at least as early as 1986. OPPOSER owns a number of U.S. Registrations consisting of or including SCORE, such as the marks listed below:

| Mark | Reg. No. | Goods |
|-----------------------------------------------------------------------------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | 1,422,027 (incontestable) | IC 025. US 039. G & S: SHIRTS, PANTS, SHORTS, SOCKS. FIRST USE: 19860201. FIRST USE IN COMMERCE: 19860201 |
| SCORE | 1,916,007 (incontestable) | <p>IC 009. US 023 026. G & S: whistles and whistle lanyards. FIRST USE: 19860300. FIRST USE IN COMMERCE: 19860300</p> <p>IC 016. US 037 038. G & S: clipboards, data pads for soccer scores. FIRST USE: 19860300. FIRST USE IN COMMERCE: 19860300</p> <p>IC 018. US 003. G & S: tote bags. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100</p> <p>IC 024. US 042 050. G & S: corner flags and cones. FIRST USE: 19891200. FIRST USE IN COMMERCE: 19891200</p> <p>IC 025. US 039. G & S: footwear, gloves, polo shirts, socks, T-shirts and warm-up suits. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100</p> |

| | | |
|-----------------------------------------------------------------------------------|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | 3,618,127 | IC 025. US 022 039. G & S: Basketball uniforms, basketball shorts, basketball jerseys, basketball socks. |
| SCORE SPORTS | 3,930,807 | IC 035. US 100 101 102. G & S: Distributorship and computerized online retail store services, both featuring clothing, namely, shirts, shorts, socks, referee uniforms, outerwear, namely, pants, jackets, warm-ups, sweaters, hooded shirts, balls, namely, soccer balls and basketballs, luggage, namely, tote bags, backpacks, mesh net bags, team bags, player bags, shoe and glove bags, ball bags, briefcases, carrying cases for goals, sports accessories and equipment, namely, ice packs, watches, caps, protective sleeves, gloves, whistles, lanyards, first aid kits, shin guards, clipboards, data pads for game scores, corner flags and cones, flags, game coins, wallets and game report pads, planners, clipboards, arm bands, ankle braces, pinnies, DVDs and books related to sports and sports training, training cards, field equipment and training equipment of others, goals, tent awnings, tie straps, goal anchor spikes, screws, rebounders, agility ladders, coaching stix, wickets, speed rings, course markers, pumps, inflation needles, nets, disc cones, pressure gauges and manual and push cart line stripers, pressurized stripe and field paint. |

2. OPPOSER is the owner of all goodwill associated with the SCORE® marks identified in the United States trademark registrations in Paragraph 1 above. OPPOSER also claims common law trademark rights in the SCORE™ trademarks with respect to OPPOSER’S goods and services identified in paragraph 1 above. The OPPOSER’S’ registered and common law trademarks identified herein are collectively referred to as the “SCORE® Marks.”

3. The SCORE® Marks have neither been canceled nor abandoned, have been used continuously since adoption, and are valid and currently in full force and effect. Registration Nos. 1,422,027 and 1,916,007 are incontestable under § 15 the Lanham Act, 15 U.S.C. § 1065.

4. OPPOSER has developed an exceedingly valuable goodwill with respect to its SCORE® Marks. OPPOSER'S SCORE® Marks have become favorably known throughout the United States as identifying and distinguishing OPPOSER as the source and origin of the goods and services identified in paragraph 1 that bear the SCORE® Marks. These marks are very valuable to OPPOSER and any registration by APPLICANT of the mark claimed in the above captioned trademark application for use in connection with the goods in Class 025 will cause immediate and irreparable harm to OPPOSER, because it is likely to cause consumer confusion, and it falsely suggests an affiliation of APPLICANT with or sponsorship of APPLICANT by OPPOSER.

5. OPPOSER has rightfully and lawfully expanded its use of the SCORE® mark by adopting the marks SCORE®, SCORE BASKETBALL & DESIGN® and SCORE SPOTS® for use in connection with other sports related goods and services.

6. OPPOSER has expended great effort and considerable expense in advertising, promoting, offering for sale and selling its goods and services under the SCORE® Marks in the United States.

7. OPPOSER is informed and believes, and on that ground avers that APPLICANT has a corporate headquarters located at 3300 Fernbrook Ln N, Suite# 250, Minneapolis, MN 55473.

8. APPLICANT seeks to federally register the mark CORE[°] and filed a trademark application (Serial No. 85/486,223) on December 2, 2011 under a Section 1B, intent to use, for use in connection with high performance athletic apparel, namely, underwear, undergarments, underclothes in Class 025.

9. Upon information and belief, the Class 025 goods specified in APPLICANT's CORE[°] trademark application would be distributed through similar, if not identical, channels of trade, such as sports retail stores and online stores, to a same or similar class of purchases as the products marketed by OPPOSER under its SCORE[®] Marks.

10. If the Applicant is permitted to use and register its CORE[°] mark for Class 025 goods identified in the application herein opposed – goods which fall within OPPOSER's natural zone of expansion – industry and consumer confusion is likely to occur. Applicant's CORE[°] mark so resembles OPPOSER's SCORE[®] Marks, long used in the United States prior to the filing date of the instant Application and not abandoned, as to be likely to cause confusion, mistake or deception, thus resulting in damage and injury to OPPOSER. Persons familiar with OPPOSER's SCORE[®] Marks would be likely to buy APPLICANT's Class 025 goods mistakenly assuming them to be goods offered and sold by OPPOSER and/or would incorrectly assume APPLICANT's goods are affiliated with or sponsored by OPPOSER. Any defect, objection or fault found with APPLICANT's Class 025 goods marketed and sold under the CORE[°] mark would necessarily injure OPPOSER's reputation under the SCORE[®] Marks.

11. APPLICANT filed its current application for the CORE[°] mark under a section 1B – intent to use.

12. OPPOSER is informed and believes, and on that ground avers that APPLICANT abandoned its previous federally registered mark for CORE^o (Registration No. 2,961,092) for Class 025 for high performance athletic apparel, namely underwear, undergarments, underclothes.

13. APPLICANT's prior CORE^o Registration No. 2,961,092 was initially filed as a Section 1B followed by a new basis for Section 1A actual use.

14. APPLICANT's CORE^o Registration No. 2,961,092 was cancelled on January 13, 2012, because APPLICANT did not file an acceptable declaration under Section 8.

15. OPPOSER is informed and believes, and on that ground avers that APPLICANT has not sold any high performance athletic apparel, namely underwear, undergarments, underclothes under the CORE^o mark for some time.

16. OPPOSER is informed and believes, and on that ground avers that APPLICANT currently does not have the requisite "bona fide" intent to use the CORE^o mark as identified in APPLICANT's filing.

17. OPPOSER believes it will be damaged by registration of the mark shown in the opposed application.

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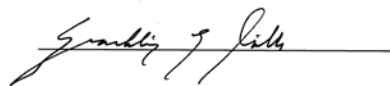
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WHEREFORE, OPPOSER prays that registration of the mark shown in Application Serial No. 85/486,223 published on May 8, 2012 in the Official Gazette, for the International Class 025 goods specified therein, be refused and denied and that this opposition be sustained.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Franklin E. Gibbs", is written over a horizontal line.

Date: August 31, 2012

Franklin E. Gibbs, Esq.
U.S. Patent Reg. No. 44,709
California Bar No. 189,015
ATTORNEY FOR OPPOSER
AMERICAN SOCCER COMPANY, INC .

GIBBS & WHITE P.C.
2618 San Miguel Dr. #124
Newport Beach, CA 92660

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 31st day of August, 2012.

/Franklin E. Gibbs/

Franklin E. Gibbs

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing NOTICE OF OPPOSITION upon Applicant's attorney of record, who is designated on the U.S. Patent and Trademark Office TARR database to receive correspondence on behalf of Applicant, by depositing one copy thereof in the United States Mail with First Class postage affixed thereon on August 31, 2012 addressed as follows;

JODI A. DESCHANE, ESQ.
FAEGRE & BENSON LLP
90 S 7TH ST STE 2200
MINNEAPOLIS, MN 55402-3901

/Franklin E. Gibbs/

Franklin E. Gibbs