

ESTTA Tracking number: **ESTTA501089**

Filing date: **10/19/2012**

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	The State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University
Granted to Date of previous extension	10/21/2012
Address	University Marketing 102 Adams Hall Oregon State University Corvallis, OR 97331 UNITED STATES
Party who filed Extension of time to oppose	The State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University The State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University
Relationship to party who filed Extension of time to oppose	The name is identical to the name originally submitted with the previous extensions of time to oppose. The TTAB form indicates the following error: "Entered value: 'The State of Oregon acting by and through the State Board of Higher Education on Behalf of the Oregon State University' into field named 'Name' is longer than 80 characters" which necessitated splitting the opposer's name into two different fields on the form.
Attorney information	KEVIN M HAYES KLARQUIST SPARKMAN LLP 121 SW SALMON STREET, ONE WORLD TRADE CENTER SUITE 1600 PORTLAND, OR 97204 UNITED STATES ptotmdocket@klarquist.com, kevin.hayes@klarquist.com Phone:503-595-5300

Applicant Information

Application No	85323217	Publication date	04/24/2012
Opposition Filing Date	10/19/2012	Opposition Period Ends	10/21/2012
Applicant	McDiarmid, Mark 83436 Lonesome Dove Road Indio, CA 922032828 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2009/07/06 First Use In Commerce: 2009/08/17 All goods and services in the class are opposed, namely: (Based on Use in Commerce) Clothing, namely, tops, bottoms, t-shirts, board shorts, martial arts uniforms and suits
Class 028. All goods and services in the class are opposed, namely: (Based on Intent to Use) martial arts training equipment; training apparatus for boxing, martial arts, and similar sports; martial arts

shoulder pads, chest pads, shin pads, elbow pads; martial arts protective pads for the head, chest, elbows, hands and shins; Sports equipment for boxing, martial arts, and the like, namely, an apparatus to support a moving heavy bag; Bags specially adapted for sports equipment

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OSU		
Goods/Services	goods and services including clothing and other merchandise such as, inter alia, mugs, water bottles, and bags, as well as educational services and arranging and conducting of athletic competitions		

Attachments	OSU Notice of Opposition.pdf (6 pages)(1446791 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 First Class Mail on this date.

Signature	/Kevin M. Hayes/
Name	KEVIN M HAYES
Date	10/19/2012

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

State of Oregon acting by and through the State)	
Board of Higher Education on behalf of the)	
Oregon State University,)	NOTICE OF OPPOSITION
)	
Opposer,)	Opposition No.: _____
)	App. No. 85323217
v.)	
)	
)	
Mark McDiarmid,)	
Applicant.)	

In re trademark application of: Mark McDiarmid

Serial No.: 85323217

Filed: May 17, 2011

Mark: OSU! RESPECT PERSEVERE APPRECIATE

International Class(es): 025, 028

Published in *Official Gazette*: April 24, 2012

NOTICE OF OPPOSITION

COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313

The State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University, located and doing business at University Marketing, 102 Adams Hall, Oregon State University, Corvallis, Oregon 97331 (“Oregon State University” or “OSU”), whose marks include OSU, believes that it will be damaged by registration of the mark OSU! RESPECT PERSEVERE APPRECIATE shown in Applicant’s application Serial No. 85323217 for the goods recited therein (i.e., clothing, namely, tops, bottoms, t-shirts, board shorts, martial

arts uniforms and suits and martial arts training equipment; training apparatus for boxing, martial arts, and similar sports; martial arts shoulder pads, chest pads, shin pads, elbow pads; martial arts protective pads for the head, chest, elbows, hands and shins; sports equipment for boxing, martial arts, and the like, namely, an apparatus to support a moving heavy bag; bags specially adapted for sports equipment) (the “Subject Application”) and hereby opposes the same.

As grounds for opposition, it is alleged:

1. The Subject Application seeks to register a mark beginning with and dominated by OSU’s trademark OSU for some of the same goods for which OSU uses its OSU mark as well as other highly related goods. The Subject Application should be refused since Applicant’s use of a mark beginning with and dominated by OSU in OSU’s territory is likely to cause confusion with OSU’s mark OSU.

2. OSU is Oregon State University’s mark for a number of goods and services including clothing and other merchandise such as, *inter alia*, mugs, water bottles, and bags, as well as educational services and arranging and conducting of athletic competitions.

3. By way of example, shown below are screen captures from the OSU BEAVER STORE, where an OSU marked shirt and spirit bag are offered.

[http://osubeaverstore.com/Merch/Item.asp?CatalogGroupID=24&CatalogItemID=8848](#) OSU Beaver Store Merch...

OSU BEAVER STORE

[Cart](#) | [Order Status](#) | [Help](#)

[APPAREL & GIFTS](#) | [GRAD CENTER](#) | [TEXTBOOKS](#) | [BOOKS](#) | [BEAVER TECH](#) | [FACULTY](#)

Featured Products

Spring 2012 Catalog

Men

- Tee Shirts
- Sweatshirts
- Pants and Shorts
- Outerwear
- Jerseys
- Poles

Women

Kids

Souvenirs

Accessories

3 for \$25 Tees

OSU Sports Program

Diploma Frames

Mom's Weekend

Grad Center and Official Rings





Nike Vault Football Long Sleeve Top

Select an Option/Size ▾

Quantity: 1

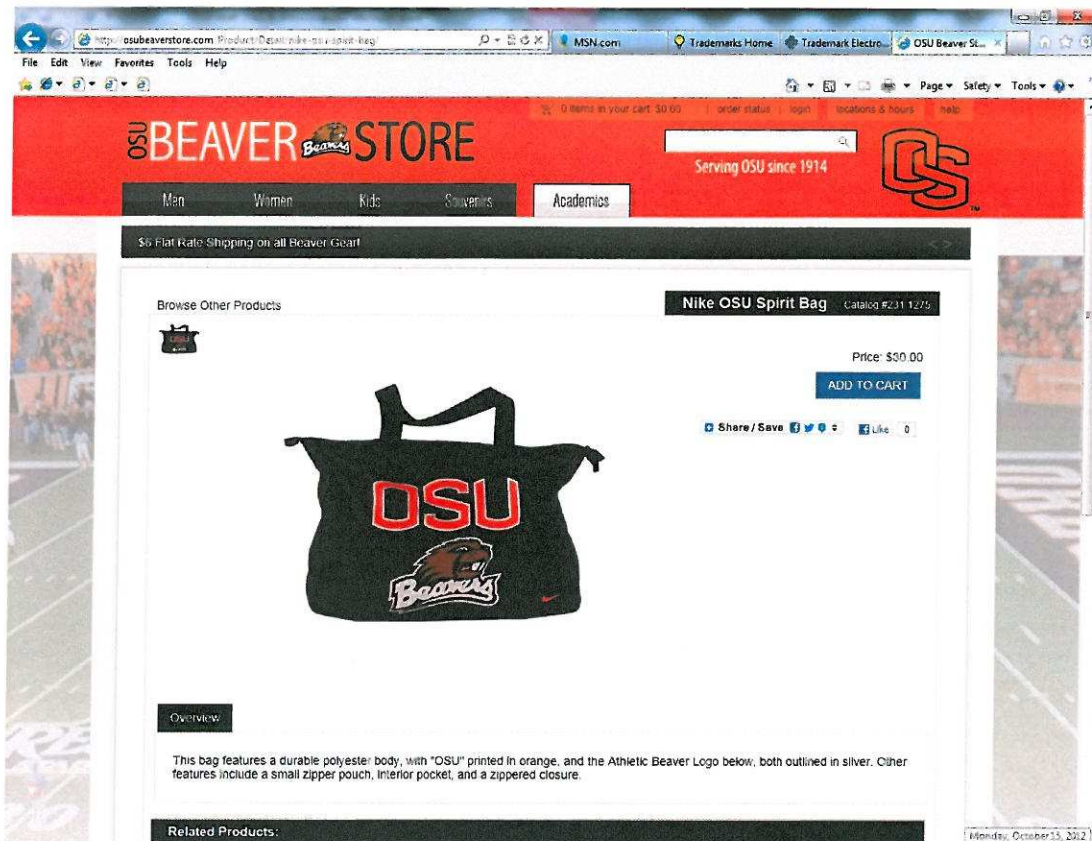
[Add to Cart](#)

Go for some old school spirit with the Nike Vault Football Long Sleeve Top. This top features white cracked print with "OSU" at the center, and vault Benny printed in grey beneath. 100% cotton. Imported.

Item #112-3152

[Shop by Category](#) | [New Arrivals](#) | [Gift Cards](#) | [Contact Us](#) | [Beaver Fan Mail](#) | [OSU Beaver Store](#) | [Email Us](#) | [Site Map](#)

Friday, May 11, 2012



4. Oregon State University has been using its mark OSU since long before Applicant filed the Subject Application to register OSU! RESPECT PERSEVERE APPRECIATE, a mark that begins with Oregon State University's mark and which Applicant is attempting to register for some of the same and similar goods as offered by Oregon State University.

5. The mark of the Subject Application entirely incorporates OSU.

6. The mark of the Subject Application begins with OSU.

7. The dominant feature of the mark of the Subject Application is OSU.

8. The mark of the Subject Application adds to OSU an exclamation point and the phrase RESPECT PERSEVERE APPRECIATE.

9. OSU is the most distinguishing feature of the mark of the Subject Application.

10. The Subject Application is for sport-related goods.

11. Oregon State University offers sport-related goods.
12. Oregon State University offers sports services.
13. Oregon State University's sport-related goods and sports services are related to the sporting goods of the Subject Application.

14. The Subject Application conflicts with Oregon State University's trademark rights in its OSU trademark. The Subject Application so resembles Oregon State University's senior mark as to be likely to cause confusion, or mistake, or to deceive consumers within the meaning of 15 U.S.C. § 1052(d) when used on or in connection with the goods identified therein.

WHEREFORE, Opposer will be injured and damaged by registration of the OSU! RESPECT PERSEVERE APPRECIATE mark of application Serial No. 85323217 for the identified goods and Opposer requests that this opposition be sustained, that said application be rejected, and that no registration be issued thereon.

Respectfully submitted,

By


Kevin M. Hayes
Klarquist Sparkman, LLP
One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 226-7391
Attorneys for Opposer

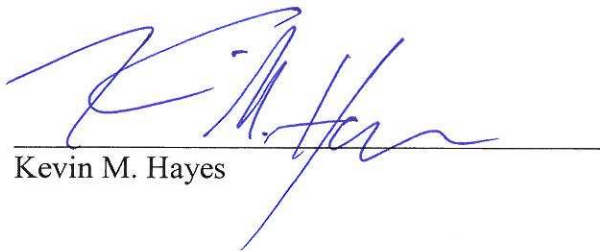
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 19, 2012, pursuant to 37 CFR §2.101(a-b) and TBMP 309.02(c)(1) a true copy of the foregoing **Notice of Opposition** was served on Applicant at the Correspondence Address listed for the application by first class mail, postage prepaid, to:

Raj Abhyanker, P.C.
1580 W El Camino Real Ste. 8
Mountain View, California 94040-2462
United States

A true copy of the foregoing **Notice of Opposition** was also served on Applicant at the address of counsel believed to be representing Applicant, by first class mail, postage prepaid, to:

Kuscha Hatami, Esq.
LegalForce RAPC Worldwide
Professional Law Corporation
1580 W. El Camino Real Suite 13
Mountain View, CA 94040



Kevin M. Hayes