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Filing date: **12/04/2012**

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

Proceeding	91207695
Party	Defendant National Trust for the Wounded Warriors, Inc.Inc.
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Signature	/Corey Field/
Date	12/04/2012
Attachments	Answer and Counterclaim.pdf (8 pages)(109353 bytes)

Registrations Subject to the filing

Registration No	4204531	Registration date	09/11/2012
Registrant	Wounded Warrior Project, Inc. Suite 300 4899 Belfort Road Jacksonville, FL 32256 UNITED STATES		

Goods/Services Subject to the filing

Class 036. First Use: 2003/07/00 First Use In Commerce: 2003/07/00 All goods and services in the class are requested, namely: Charitable fundraising services
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Registration No	4145324	Registration date	05/22/2012
Registrant	Wounded Warrior Project, Inc. Suite 300 4899 Belfort Road Jacksonville, FL 32256 UNITED STATES		

Goods/Services Subject to the filing

Class 041. First Use: 2006/02/08 First Use In Commerce: 2006/02/08 All goods and services in the class are requested, namely: Charitable services, namely, providing disabled veterans with adaptive sports activities equipment and providing instruction in the use of adaptive sports equipment and providing instruction in sports activities
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Registration No	3841207	Registration date	08/31/2010
Registrant	WWP, Inc. Suite 100 7020 A.C. Skinner Parkway Jacksonville, FL 32256 UNITED STATES		

Goods/Services Subject to the filing

Class 036. First Use: 2008/05/28 First Use In Commerce: 2008/05/28
All goods and services in the class are requested, namely: Charitable fund raising services, namely, to aid Veterans returning from combat and their families

Registration No	3878955	Registration date	11/23/2010
Registrant	WWP, Inc. Suite 100 7020 A.C. Skinner Parkway Jacksonville, FL 32256 UNITED STATES		

Goods/Services Subject to the filing

Class 036. First Use: 2008/05/28 First Use In Commerce: 2008/05/28
All goods and services in the class are requested, namely: Charitable fund raising services, namely, to aid Veterans returning from combat and their families

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

IN THE MATTER OF APPLICATION SERIAL NO. 85/431,674 PUBLISHED IN THE
OFFICIAL GAZETTE ON JUNE 26, 2012

WOUNDED WARRIOR PROJECT, INC.,

Opposer and Counterclaim Defendant,

v.

NATIONAL TRUST FOR THE WOUNDED
WARRIORS, INC.

Applicant and Counterclaimant.

Opposition No.: 91207695
Mark: NATIONAL TRUST FOR THE
WOUNDED WARRIORS

**ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM FOR
CANCELLATION OF OPPOSER'S MARKS**

Applicant National Trust for the Wounded Warriors, Inc., a non-stock not-for-profit corporation organized and existing under the laws of the State of Maryland with offices located at 16 Beman Woods Ct., Potomac, Maryland 20854 ("Applicant" and "Counterclaimant"), by its undersigned counsel, hereby answers the Notice of Opposition of Wounded Warrior Project, Inc. ("Opposer" and "Counterclaim Defendant") filed October 25, 2012 as follows:

1. Applicant admits only that U.S. Patent and Trademark Office ("USPTO") online records show Opposer is owner of Registration No. 4204531, issued September 11, 2012 for the word mark WOUNDED WARRIOR PROJECT. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 1 of the Opposition, and on that basis, denies same.

2. Applicant admits only that USPTO online records show Opposer is owner of Registration No. 3001447, issued September 25, 2005 for the mark WOUNDED WARRIOR PROJECT (and design), with a disclaimer of exclusive rights in "WOUNDED WARRIOR

PROJECT" apart from the mark as shown. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 2 of the Opposition, and on that basis, denies same.

3. Applicant admits only that USPTO online records show Opposer is owner of Registration No. 3841207, issued August 31, 2010 for the mark WOUNDED WARRIOR PROJECT SOLDIER RIDE (and design), with a disclaimer of exclusive rights in "WOUNDED WARRIOR PROJECT SOLDIER RIDE" apart from the mark as shown. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 3 of the Opposition, and on that basis, denies same.

4. Applicant only admits that USPTO online records show Opposer is owner of Registration No. 3878955, issued November 23, 2010 for the design mark PROUD SUPPORTER OF WOUNDED WARRIOR PROJECT, with a disclaimer of exclusive rights in "PROUD SUPPORTER OF WOUNDED WARRIOR PROJECT" apart from the mark as shown. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 4 of the Opposition, and on that basis, denies same.

5. Applicant admits only that USPTO online records show Opposer is owner of Registration No. 4145324, issued May 22, 2012 for the word mark WOUNDED WARRIOR DISABLED SPORTS PROJECT . Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 5 of the Opposition, and on that basis, denies same.

6. Applicant is without information sufficient to admit or deny the allegations of Paragraph 6 and therefore denies the same.

7. Applicant is without information sufficient to admit or deny the allegations of Paragraph 7 and therefore denies the same.

8. Applicant is without information sufficient to admit or deny the allegations of Paragraph 8 and therefore denies the same.

9. Applicant is without information sufficient to admit or deny the allegations of Paragraph 9 and therefore denies the same.

10. Applicant is without information sufficient to admit or deny the allegations of Paragraph 10 and therefore denies the same.

11. Admitted that Applicant filed Application Serial No. 85431674 to register the mark NATIONAL TRUST FOR THE WOUNDED WARRIORS (and design) for the services stated in the application, and that Applicant has disclaimed exclusive rights in "NATIONAL TRUST FOR THE WOUNDED WARRIORS" apart from the mark as shown. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 11 of the Opposition, and on that basis, denies same.

12. Admitted that Application Serial No. 85431674 states a date of first use of March, 2011. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 12 of the Opposition, and on that basis, denies same.

13. Applicant is without information sufficient to admit or deny the allegations of Paragraph 13 and therefore denies the same.

14. Admitted that Application Serial No. 85431674 states a date of first use of March, 2011. Except as expressly admitted, Applicant lacks sufficient knowledge or information to

form a belief as to the truth of the averments of Paragraph 14 of the Opposition, and on that basis, denies same.

15. Denied.

16. Denied.

17. Admitted that if Applicant is granted the registration herein opposed, Applicant would have exclusive rights in Applicant's mark. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 17 of the Opposition, and on that basis, denies same.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief may be granted.
2. "Wounded warrior" is a widely used descriptive term in the public domain applying to persons engaged or experienced in warfare who have suffered or are suffering injury or bodily harm, and which term both U.S. military branch organizations and several other charitable organizations, use as a descriptor in the names of their programs.
3. Opposer's pleaded registrations that include the term "wounded warrior" are descriptive marks that, if afforded any protection at all, are too weak to have a scope of protection broad enough to preclude Applicant from obtaining a registration for the applied-for mark.

COUNTERCLAIM FOR CANCELLATION OF OPPOSER'S MARKS

Applicant, pursuant to 15 U.S.C. §1064 (1), believes it will be damaged by the continued registration of Registration Nos. 4,204,531; 4,145,324; 3,841,207; and 3,878,955 and hereby counterclaims for cancellation of the Opposer's federal registrations, in whole or in part, as follows:

1. The mark WOUNDED WARRIOR PROJECT of Registration No. 4,204,531, when used on or in connection with the services of the Opposer, is merely descriptive of Opposer's services, under Section 2(e) of the Trademark Act, 15 U.S.C. §1052(e), because the term describes a charitable fundraising project to help persons engaged or experienced in warfare who have suffered or are suffering injury or bodily harm.

2. The mark WOUNDED WARRIOR DISABLED SPORTS PROJECT of Registration No. 4,145,324, when used on or in connection with the services of the Opposer, is merely descriptive of Opposer's services, under Section 2(e) of the Trademark Act, 15 U.S.C. §1052(e), because the term describes a sports-related charitable fundraising project to help persons engaged or experienced in warfare who are disabled as a result of suffering injury or bodily harm.

3. The WOUNDED WARRIOR PROJECT SOLDIER RIDE portion of the mark of Registration No. 3,841,207, when used on or in connection with the services of the Opposer, is merely descriptive of Opposer's services, under Section 2(e) of the Trademark Act, 15 U.S.C. §1052(e), because the term describes a charitable fundraising project relating to bicycle-riding or motorcycle-riding to help persons engaged or experienced in warfare who have suffered or are suffering injury or bodily harm.

4. The PROUD SUPPORTER OF WOUNDED WARRIOR PROJECT portion of the mark of Registration No. 3,878,955, when used on or in connection with the services of the Opposer, is merely descriptive of Opposer's services, under Section 2(e) of the Trademark Act, 15 U.S.C. §1052(e), because the term describes supporters of a charitable fundraising project.

relating to persons engaged or experienced in warfare who have suffered or are suffering injury or bodily harm.

5. The WOUNDED WARRIOR portion of Opposer's marks of Registration Nos. 4,204,531; 4,145,324; 3,841,207; and 3,878,955, when used on or in connection with the services of the Opposer, is merely descriptive of Opposer's services, under Section 2(e) of the Trademark Act, 15 U.S.C. §1052(e) because the term describes a person engaged or experienced in warfare who has suffered or is suffering injury or bodily harm.

6. The terms WOUNDED WARRIOR PROJECT; WOUNDED WARRIOR DISABLED SPORTS PROJECT; WOUNDED WARRIOR PROJECT SOLDIER RIDE; PROUD SUPPORTER OF WOUNDED WARRIOR PROJECT; and WOUNDED WARRIOR have not become distinctive of Opposer's services pursuant to 15 U.S.C. § 1052(f).

7. The terms WOUNDED WARRIOR PROJECT; WOUNDED WARRIOR DISABLED SPORTS PROJECT; WOUNDED WARRIOR PROJECT SOLDIER RIDE; PROUD SUPPORTER OF WOUNDED WARRIOR PROJECT; and WOUNDED WARRIOR are so highly descriptive that purchasers seeing the terms in relation to Opposer's services would be less likely to believe that they indicate source in any one party.

8. The term WOUNDED WARRIOR is in widespread usage by government agencies, charitable organizations, the press, and the public to describe soldiers who have been injured.

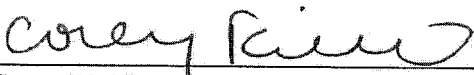
PRAYER FOR RELIEF

WHEREFORE, Applicant respectfully requests that Registrations Nos. 4,204,531 and 4,145,324 be cancelled pursuant to 15 U.S.C. § 1064(1) on the ground that the marks are merely descriptive of Opposer's services, and have not become distinctive of Opposer's services; and

WHEREFORE, Applicant respectfully requests that Registrations Nos. 3,841,207 and 3,878,955 be partially cancelled in the nature of the entry and maintaining of a disclaimer of the words "WOUNDED WARRIOR PROJECT SOLDIER RIDE" and "PROUD SUPPORTER OF WOUNDED WARRIOR PROJECT" pursuant to 15 U.S.C. § 1086; and that Applicant's mark NATIONAL TRUST FOR THE WOUNDED WARRIORS proceed to registration.

Dated: December 4, 2012

Respectfully submitted,



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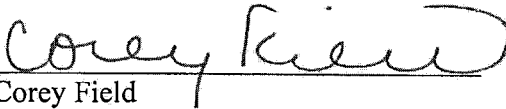
CERTIFICATE OF SERVICE

I, Corey Field, hereby certify that on today's date, I caused a copy of the foregoing Applicant's Answer to Notice of Opposition and Counterclaim for Cancellation of Opposer's Marks to be served by email and by First Class Mail on the Opposer as set forth below:

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*Attorneys for Opposer
Wounded Warrior Project, Inc.*

Dated: December 4, 2012


Corey Field