

ESTTA Tracking number: **ESTTA519143**

Filing date: **01/31/2013**

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	Gibson Guitar Corp.
Granted to Date of previous extension	03/13/2013
Address	309 Plus Park Blvd. Nashville, TN 37217 UNITED STATES

Attorney information	Andrea E. Bates Bates & Bates, LLC 1890 Marietta Blvd Atlanta, GA 30318 UNITED STATES abates@bates-bates.com
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Applicant Information

Application No	85636889	Publication date	11/13/2012
Opposition Filing Date	01/31/2013	Opposition Period Ends	03/13/2013
Applicant	Castellano, Jeffrey 829 38th Avenue North St. Petersburg, FL 33704 UNITED STATES		

Goods/Services Affected by Opposition


Class 015. All goods and services in the class are opposed, namely: Musical instrument stands
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2215791	Application Date	04/10/1997
Registration Date	01/05/1999	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark comprises a fanciful design of a guitar body.
Goods/Services	Class 015. First use: First Use: 1961/12/31 First Use In Commerce: 1961/12/31 stringed instruments, namely, guitars

U.S. Registration No.	1020485	Application Date	04/25/1974
Registration Date	09/16/1975	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	THE MARK REPRESENTS A DESIGN FOR A PEG HEAD PROFILE.		
Goods/Services	Class 015. First use: First Use: 1922/00/00 First Use In Commerce: 1922/00/00 STRING INSTRUMENTS		

Attachments	75272182#TMSN.gif (1 page)(bytes) 73019795#TMSN.gif (1 page)(bytes) Axe Opposition.pdf (5 pages)(70165 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	/Andrea E Bates/
Name	Andrea E. Bates
Date	01/31/2013

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

GIBSON GUITAR CORP.)
)
 Opposer,)
)
 v.)
) Opposition No. _____
)
)
 JEFFREY CASTELLANO,)
 Individually,)
)
)
 Applicant.)

OPPOSITION

In accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, GIBSON GUITAR CORP., a Delaware corporation having its principal place of business at 309 Plus Park Blvd., Nashville, Tennessee 37217 (“Opposer”), believes that it would be damaged by the registration of the mark THE AXE RACK and Design (“Applicant’s Alleged Mark”) for musical instruments stands in International Class 15 (“Applicant’s Goods”), which mark is the subject of application Serial Number 85/636,889, filed on May 29, 2012, by Jeffrey Castellano (“Applicant”) and published for opposition in the Official Gazette on November 13, 2012. Accordingly, Opposer hereby opposes the application.

The grounds for the Opposition are as follows:

1. By the Application, Applicant seeks to register Applicant’s Alleged Mark as a mark for Applicant’s Goods. The Application is an intent to use application and therefore claims no date of first use.
2. Opposer has used in interstate commerce and is and has been at all times pertinent hereto (including since prior to the filing date of the Application), the owner of all right, title

and interest in and to the SG BODY SHAPE design mark for use with stringed instruments, namely, guitars, registration number 2,215,791 and DOVE WING design mark for use with string instruments, registration number 1,020,485 (collectively “Opposer’s Goods” and “GIBSON MARKS”). Opposer and its related companies have used Opposer’s GIBSON MARKS for and in connection with Opposer’s Goods in interstate commerce in and throughout the United States continuously and extensively since at least as early as 1922 for the DOVE WING design mark and 1961 for the SG BODY SHAPE design mark.

3. As a result of the widespread and extensive use, advertising and promotion by Opposer and its related companies of Opposer’s GIBSON MARKS on Opposer’s Goods, Opposer’s GIBSON MARKS individually and collectively serve to identify and distinguish Opposer’s guitars and related products from the goods, services and businesses of others, symbolize the goodwill of Opposer’s business, are well-known and are of great value to Opposer in connection with the offering of Opposer’s Goods.

4. As Opposer has used the GIBSON MARKS exclusively since 1922 (DOVE WING) AND 1961 (SG) and Applicant has not begun to use of Applicant’s Alleged Mark, and upon information and belief, Opposer has priority of use or priority of rights in the United States over Applicant’s Alleged Mark, and Applicant is unable to establish, with respect to Opposer’s use of Opposer’s GIBSON MARKS, priority of use or priority of rights in the United States in connection with Applicant’s Alleged Mark.

5. Upon information and belief, Applicant’s Goods and Opposer’s Goods are similar in types, are offered or may be offered through the same, substantially the same, and/or related

channels of trade, to the same, substantially the same, and/or related classes of purchasers, and are or may be advertised, marketed and promoted through the same media channels.

6. Upon information and belief, Applicant's Alleged Mark, when used in connection with Applicant's Goods, so resembles Opposer's GIBSON MARKS as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

7. Opposer would be damaged by the registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection with Applicant's Goods, which would be inconsistent with and detrimental to Opposer's prior and superior rights in and to Opposer's GIBSON MARKS.

8. Applicant's Alleged Mark falsely suggests a connection or affiliation with Opposer and Applicant is therefore not entitled to registration of Applicant's Alleged Mark.

WHEREFORE, Opposer Gibson Guitar Corp. respectfully prays that the application of Jeffrey Castellano, Serial Number 85/636,889, filed on May 29, 2012, for the registration of the mark THE AXE RACK and Design in International Class 15 be *refused*, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted, this 31st day of January 2013.

1890 Marietta Blvd
Atlanta GA 30318

Bates & Bates, LLC

/s/ Andrea E Bates
Andrea E Bates

Attorneys for Opposer
GIBSON GUITAR CORP.

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the forgoing Opposition of the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the attorney of record for the Applicant as follows:

Jeffrey Castellano
829 38th Ave N
St. Petersburg, FL 33704-1133
U.S.A.

This end day of January 31, 2013

/s/ Andrea E Bates

Andrea E Bates