

ESTTA Tracking number: **ESTTA531246**

Filing date: **04/09/2013**

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

Proceeding	91210014
Party	Defendant Jax Ltd., Inc.
Correspondence Address	Z. PETER SAWICKI WESTMAN, CHAMPLIN & KELLY, P.A. 900 2ND AVE S STE 1400 MINNEAPOLIS, MN 55402-3244 psawicki@wck.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Z. Peter Sawicki
Filer's e-mail	aprose@wck.com
Signature	/Z. Peter Sawicki/
Date	04/09/2013
Attachments	Motion_Dismiss_040913.pdf (12 pages)(362041 bytes)

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

**In the matter of Trademark Application No. 85/717,177 for the GRONK Mark
Application Filing Date August 30, 2012**

Gronk Nation, LLC,)	
)	
Petitioner,)	Opposition No. 91210014
)	
v.)	
)	
Jax Ltd., Inc.)	
Applicant.)	

MOTION TO DISMISS

Applicant Jax Ltd., Inc. (“Jax”) respectfully moves the Board to dismiss the Notice of Opposition filed by Gronk Nation, LLC (“Opposer”) for lack of service pursuant to 37 C.F.R. § 2.119(a) and Fed. R. Civ. P 12(b)(5). Facts supporting this Motion are set forth in the attached April 9, 2013 Declaration of Z. Peter Sawicki, the attorney of record in the application, as Exhibit A.

The record in the application reveals that the mark was published for opposition purposed on February 5, 2013 and that the opposition period as extended by Petitioner, expired on April 6, 2013. Thus, the time for filing an opposition or further request for extension of time appears to have expired on April 6, 2013. Section 13 of the Lanham Act; Trademark Rule 2.102(c).

Under the Trademark Trial and Appeal Board (TTAB) opposition and cancellation rules effective as of November 1, 2011, “the notice [of opposition] must include proof of service on

the applicant, or its attorney or domestic representative of record, at the correspondence of record in the Office.” 37 CFR § § 2.101(b) and 2.119.

The correspondence of record in the Office is that of the attorney of record, Z. Peter Sawicki of WESTMAN, CHAMPLIN & KELLY, P.A. The Notice of Opposition filed on March 30, 2013 and attached with the Board’s March 30, 2013 order does not contain proof of service. A copy of Opposer’s transmittal letter is attached as Exhibit B. Opposer has failed to comply with the service of process requirement. Since the opposition period expired on April 6, 2013 (as extended), Opposer cannot remedy its oversight. Accordingly, this opposition should be dismissed as a nullity.

Attached as exhibit A is a declaration of Z. Peter Sawicki, the attorney of record identified in the application’s record, which shows that Mr. Sawicki did not receive a copy of the Notice of Opposition and Opposer has made no attempt to effect service. (Sawicki Dec. ¶ 2, 3).

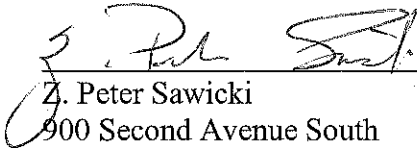
In an opposition where opposer filed a notice of opposition, but did not serve a copy on an application, the opposer may not remedy its oversight by amending the notice of opposition to indicate that opposer served a copy of the notice on the applicant after the last day of the opposition period (as extended). See *Springfield, Inc. v XD*, 86 USPQ 2d 1063 (TTAB 2008). Attached as Exhibit C is the Board’s March order approving the request to extend time to oppose, the extension period of which has now expired.

WHEREFORE, Applicant Jax Ltd., Inc. respectfully requests this Opposition be dismissed and application Serial No. 85/717,177 be forwarded for allowance.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

Dated: April 9, 2013



Z. Peter Sawicki
900 Second Avenue South
Suite 1400
Minneapolis, Minnesota 55402-3319
Telephone: 612-334-3222
Facsimile: 612-334-3312

**ATTORNEYS FOR APPLICANT
JAX LTD., INC.**

EXHIBIT A

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

In the matter of Trademark Application No. 85/717,177 for the GRONK Mark
Application Filing Date August 30, 2012

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Petitioner,)	Opposition No. 91210014
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v.)	
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Jax Ltd., Inc.)	
Applicant.)	
_____)	

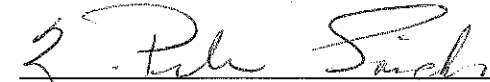
DECLARATION OF Z. PETER SAWICKI

I, Z. Peter Sawicki, state and declare as follows, that:

1. I am an attorney with Westman, Champlin & Kelly, P.A. and one of the attorneys of record for applicant Jax Ltd., Inc. in the matter of Trademark Application Serial No. 85/717,177. I submit this Declaration in support of applicant Jax Ltd., Inc.'s MOTION TO DISMISS this opposition for Opposer Gronk Nation, LLC's ("Opposers") failure to comply with the service of Notice of Opposition requirement.
2. I received the Board's March 30, 2013 order instituting Opposition No. 91210014. However, I did not receive a copy of the Notice of Opposition, which Opposer was required to service on me directly under Trademark Rule 2.101(b), in any of the ways listed in Trademark Rule 2.119(b).
3. I am personally aware of no attempts by Opposer to effect service of process on me or our firm, Westman, Champlin & Kelly, P.A.

I declare under penalty of perjury under the laws of the United States of America that the
forgoing is true and correct.

Dated: April 9, 2013


Z. Peter Sawicki

WESTMAN, CHAMPLIN & KELLY, P.A.
900 Second Avenue South
Suite 1400
Minneapolis, Minnesota 55402-3319
Telephone: 612-334-3222
Facsimile: 612-334-3312

ESTTA Tracking number: **ESTTA529676**

Filing date: **03/30/2013**

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	Gronk Nation, LLC
Granted to Date of previous extension	04/06/2013
Address	10095 Valiant CourtAPT 201 Miromar Lakes, FL 33913 UNITED STATES

Correspondence information	Gronk Nation, LLC 1415 New Road Amherst, NY 14228 UNITED STATES gronknation1@gmail.com Phone:716-465-2794
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Applicant Information

Application No	85717177	Publication date	02/05/2013
Opposition Filing Date	03/30/2013	Opposition Period Ends	04/06/2013
Applicant	Jax Ltd., Inc. 141 Cheshire Lane, #100 Minneapolis, MN 55441 UNITED STATES		

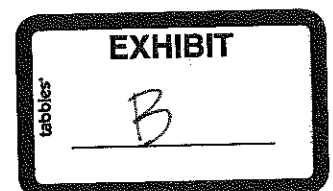
Goods/Services Affected by Opposition


Class 028. All goods and services in the class are opposed, namely: TOY FIGURES AND ACCESSORIES THEREFOR; TOY SKATEBOARDS AND RAMPS AND TRACKS FOR USE THEREWITH; COLLECTIBLE TOY FIGURES AND ACCESSORIES THEREFOR


Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Consists of or comprises a name, portrait, or signature of a living individual without written consent, or the name, portrait, or signature of a deceased president without the written consent of the surviving spouse	Trademark Act section 2(c)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition



U.S. Registration No.	4256584	Application Date	02/08/2012
Registration Date	12/11/2012	Foreign Priority Date	NONE
Word Mark	GRONK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2011/02/18 First Use In Commerce: 2011/02/18 Endorsement services, namely, promoting the goods and services of others		

U.S. Application No.	85844038	Application Date	02/07/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GRONK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2011/02/18 First Use In Commerce: 2011/02/18 Baseball caps and hats; Hats; Shirts for infants, babies, toddlers and children; Snap crotch shirts for infants and toddlers; Sweaters; T-shirts for Men, Women, Children, Babies; Wristbands		

Attachments	85537728#TMSN.jpeg (1 page)(bytes) 85844038#TMSN.jpeg (1 page)(bytes) trademark opposition pdf.pdf (1 page)(23401 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	/Chris Gronkowski/
Name	Gronk Nation, LLC
Date	03/30/2013

The Trademark "Gronk" serial number 85717177 adds confusion to our brand and is using a False suggestion of a connection to our brand as well as it consists of or comprises the names of Chris, Dan, and Rob "Gronk" Gronkowski without their written permission. It is in conflict with our "Gronk" trademark registration number 4256584. Collectable "Gronk" toy figures would be easily confused and connected with our brand and comprises our brand and the names of Chris, Dan and Rob "Gronk" Gronkowski.

/Chris Gronkowski/

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Chris Gronkowski
Gronk Nation, LLC
1415 New Road
Amherst, NY 14228

Mailed: February 14, 2013

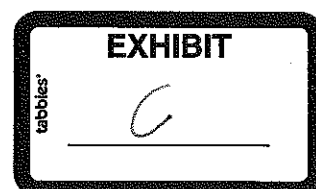
Serial No.: 85717177
ESTTA TRACKING NO: ESTTA521622

The request to extend time to oppose is granted until
4/6/2013 on behalf of potential opposer **Gronk Nation, LLC**

Please do not hesitate to contact the Trademark Trial and
Appeal Board at (571)272-8500 if you have any questions
relating to this extension.

Note from the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to
oppose, notices of opposition, petition for cancellation, notice
of ex parte appeal, and inter partes filings are now available
at <http://estta.uspto.gov>. Images of TTAB proceeding files can
be viewed using TTABVue at <http://ttabvue.uspto.gov>.



CERTIFICATE OF SERVICE

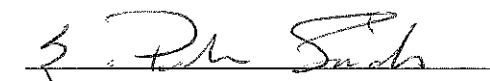
I hereby certify that I represent Applicant Jax Ltd., Inc. and that on April 9, 2013, a copy of the following document:

I. MOTION TO DISMISS

Was sent via First Class Mail, postage prepaid to:

Gronk Nation, LLC
1415 New Road
Amherst, NY 14228
UNITED STATES

I certify under penalty of perjury that the forgoing is true and correct. Executed on April 9, 2013.


Peter Sawicki