

ESTTA Tracking number: **ESTTA531821**

Filing date: **04/11/2013**

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	EricJFaull
Granted to Date of previous extension	04/24/2013
Address	101 Locust St. Boise, ID 83629 UNITED STATES

Attorney information	Stuart J. Ford ZEMAN-MULLEN & FORD, LLP 233 White Spar Road Prescott, AZ 86303 UNITED STATES sford@zmfiplaw.com, kbrown@zmfiplaw.com Phone:208-440-8564
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Applicant Information

Application No	85666695	Publication date	12/25/2012
Opposition Filing Date	04/11/2013	Opposition Period Ends	04/24/2013
Applicant	Experience Based Learning, Inc. 3634 Laura Lane Rockford, IL 61107 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2009/06/22 First Use In Commerce: 2009/06/22 All goods and services in the class are opposed, namely: Arranging and conducting professional canopy tour and ropes course adventures for entertainment purposes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85628682	Application Date	05/17/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ZIP IDAHO		

Design Mark	<h1>Zip Idaho</h1>
Description of Mark	NONE
Goods/Services	Class 041. First use: Arranging and conducting canopy tours and zip line events for entertainment purposes

Related Proceedings	Opposition No. 91/208,645 regarding the mark ZIP IDAHO; Opposition No. 91/210,185 regarding the mark ZIP DESIGNS
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Attachments	85628682#TMSN.jpeg (1 page)(bytes) 592520003NOTICE OF OPPOSITION041113.pdf (7 pages)(477305 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	/Stuart J. Ford/
Name	Stuart J. Ford
Date	04/11/2013

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

In re Application No. 85/666,695

Filed July 2, 2012

For the Mark: **ZIP TAMARACK** (Standard Character Mark)

ZIP IDAHO, LLC,)	
an Idaho Limited Liability Company,)	
Opposer,)	
v.)	Opposition No. _____
EXPERIENCE BASED LEARNING, INC.)	
an Illinois corporation,)	
Applicant.)	
)	

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

NOTICE OF OPPOSITION

Opposer, Zip Idaho, LLC, an Idaho Limited Liability Company, having a place of business at 101 Locust Street, Horseshoe Bend, Idaho (“Zip Idaho” or “Opposer”), believes it will be damaged by registration of the mark “Zip Tamarack” shown in Application Serial No. 85/666,695, published for opposition on December 25, 2012 (the “Application”), and hereby opposes the Application pursuant to the provisions of 15 U.S.C. Section 1063. In support of this Opposition, Zip Idaho hereby states as follows:

Introduction and Background

I. The Application for the standard character mark “Zip Tamarack” (the “Opposed Mark”), is owned by Experience Based Learning, Inc., an Illinois corporation, having a principal place of business at 3634 Laura Lane. Rockford, Illinois 61114 (“EBL” or the “Applicant”).

2. Opposer has owned a canopy zip line tour business under the mark “Zip Idaho” in Horseshoe Bend, Idaho, since at least December of 2006. Opposer coined the mark “Zip Idaho” under which to operate its business, and placed the mark in use in commerce at least as early as December 27, 2006. The Zip Idaho canopy zip line tour business has been open to the public in Horseshoe Bend since Spring 2008. Opposer has operated its Zip Idaho canopy zip line tour business continuously in interstate commerce since at least as early as June 13, 2008. Opposer applied to register its “Zip Idaho” mark in connection with its canopy zip line tour business on May 17, 2012, application no. 85/628,682. EBL opposed such registration on December 28, 2012, Opposition No. 91/208,645. The pending “Zip Idaho” Opposition and the instant “Zip Tamarack” Opposition are related.

3. Well after Opposer opened its Zip Idaho canopy zip line tour business in Horseshoe Bend, Idaho, EBL installed and now operates a competing canopy zip line tour business in Tamarack, Idaho, less than 100 miles from Zip Idaho’s business. EBL operates its competing Tamarack business under the brand name “Tamarack Canopy Zip Line Tour.” However, EBL’s website advertising for its Tamarack Canopy Zip Line Tour business uses the mark “Zip Tamarack”, the Opposed Mark.

Likelihood of Confusion under 15 U.S.C. Section 1052(d).

4. As stated above, Opposer owns a canopy zip line tour business which Opposer operates under the “Zip Idaho” mark. As also stated above, Opposer has used the Zip Idaho

mark continuously in connection with its canopy zip line tour business since at least as early as December 2006. Such continuous use has been in interstate commerce since at least as early as June 2008. Opposer has acquired and owned Common Law rights and substantial national brand recognition and goodwill in and to its Zip Idaho mark since that time in connection with its canopy zip line tour business.

5. As stated above, Opposer applied to register its Zip Idaho mark with the U.S. Trademark Office on May 17, 2012, application no. 85/628,682. EBL opposed such registration on December 28, 2012, Opposition No. 91/208,645 (the “Zip Idaho Opposition”). In the Zip Idaho Opposition, EBL alleges, *inter alia*, that there will be a likelihood of confusion if the Zip Idaho mark is allowed to register in view of EBL’s pending application for Zip Tamarack, the Opposed Mark herein.

6. Zip Idaho is the senior mark over Zip Tamarack, the Opposed Mark herein. Zip Idaho has been in use in interstate commerce since at least June, 2008, as set forth more fully in ¶ 5 above. In contrast, EBL alleges a first use date in its Zip Tamarack Application of at least as early as June 22, 2009. Opposer does not concede herein that such first use date is actually as early as June 2009, but nonetheless avers that it is no earlier.

7. Opposer denies that there will be any likelihood of confusion between Zip Idaho and Zip Tamarack, as Opposer sets forth more fully in the Zip Idaho Opposition. However, if EBL meets its burden of proof in the Zip Idaho Opposition that there will be a likelihood of confusion, then the Trademark Office must grant registration to Zip Idaho and refuse registration to Zip Tamarack (the Opposed Mark herein), since Zip Idaho is the senior mark.

8. The services identified by the EBL in the Zip Tamarack Application (opposed herein) are related, if not identical, to the services provided by Opposer in its Zip Idaho canopy zip line tour business.

9. In the event that, in the face of Opposer's denial, EBL is nonetheless able to prove in the Zip Idaho Opposition that there is a likelihood of causing confusion or mistake in the eyes of the consuming public between the source of Opposer's services and EBL's services under the Opposed Mark, then Opposer, as the senior user, would be injured by EBL in EBL's provision, sale and distribution of EBL's services and in the conduct by EBL of its business under the Opposed Mark.

10. Similarly if, in the face of Opposer's denial, EBL is nonetheless able to prove in the Zip Idaho Opposition that there is a likelihood of causing confusion or mistake in the eyes of the consuming public between the source of Opposer's services and EBL's services under the Opposed Mark, then any fault or defect found in EBL's services would reflect upon and injure the reputation that Opposer, as the senior user, has established in its Zip Idaho business.

11. Similarly if, in the face of Opposer's denial, EBL is nonetheless able to prove in the Zip Idaho Opposition that there is a likelihood of causing confusion or mistake in the eyes of the consuming public between the source of Opposer's services and EBL's services under the Opposed Mark, then the use of the Opposed Mark by EBL would allow EBL to reap the financial reputation related rewards associated with Opposer's business and misappropriate goodwill that belongs to Opposer as the senior user.

12. Similarly if, in the face of Opposer's denial, EBL is nonetheless able to prove in the Zip Idaho Opposition that there is a likelihood of causing confusion or mistake in the eyes of the consuming public between the source of Opposer's services and EBL's services under the

Opposed Mark, then granting registration of the Zip Tamarack Application (opposed herein) would be inconsistent with Opposer's aforementioned common law and registration rights as the senior user. Opposer would be damaged.

WHEREFORE, Opposer prays that U.S. registration of "Zip Tamarack", the Opposed Mark, be refused.

Opposer submits electronically herewith, payment in the amount of \$300.00 to cover the notice of opposition fee.

Opposer hereby appoints the following individuals as its attorneys with full power of substitution, association and revocation in this proceeding to prosecute same and to transact all business in the United States Patent and Trademark Office in connection therewith:

Stuart J. Ford, Idaho bar member, and Laura J. Zeman- Mullen, Arizona bar member, both of Zeman-Mullen & Ford, LLP, with its Idaho office at 2267 W. Winter Camp Drive, Boise, ID 83703.

Date: April 11, 2013

Respectfully submitted,

/s/ Stuart J. Ford

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Attorneys for Opposer Zip Idaho, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Opposition was served via pre-paid first-class U.S. Mail upon:

Experienced Based Learning, Inc.
3634 Laura Lane,
Rockford, Illinois 61114

and deposited with the U.S. Mail on April 11, 2013,

and also by confirmatory e-mail on the same date to the following counsel of record:

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