

ESTTA Tracking number: **ESTTA568944**

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

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

Proceeding	91210195
Party	Plaintiff Eric J. Faul
Correspondence Address	STUART J FORD ZEMAN-MULLEN & FORD LLP 2267 W WINTER CAMP DR BOISE, ID 83709 UNITED STATES sford@zmfiplaw.com, kbrown@zmfiplaw.com
Submission	Response to Board Order/Inquiry
Filer's Name	Stuart J. Ford
Filer's e-mail	sford@zmfiplaw.com, kbrown@zmfiplaw.com
Signature	/Stuart J. Ford/
Date	11/04/2013
Attachments	Response to Show Cause Order 110413.pdf(499208 bytes )

---

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

---

Zip Idaho, LLC,

Opposer,

v.

Opposition No. 91210195

Serial No. 85/666,695

Opposed Mark: ZIP TAMARACK

Experience Based Learning, Inc.,

Applicant.

---

**RESPONSE TO SHOW CAUSE ORDER**

Opposer Zip Idaho, LLC (“ZI”) files this response paper (“Response”) to the Board’s request for more information and/or an explanation in this case, styled in the form of a Show Cause Order mailed out October 4, 2013. In support of this Response, ZI respectfully states as follows:

1. As noted, this Response is to the TTAB Order, mailed out October 4, 2013, requesting an explanation as to why the Opposer in this case, Zip Idaho, LLC, is a different entity from the individual (Eric J. Faull) who originally filed a request for an extension of time to oppose registration in this case.

2. Please see the Declaration of Eric J. Faull, attached to this paper as Exhibit 1. In his Declaration, Mr. Faull explains that he made a mistake when he originally filed the request

for an extension of time to oppose registration in this case. He has no formal training in trademark law, and was unrepresented by trademark counsel at the time he filed his request for an extension of time to oppose. He intended to file his request in his capacity as President of Zip Idaho, LLC, the user of the ZIP IDAHO mark on which he intended to base his opposition. Mr. Faull is the President and has been a member (owner) of Zip Idaho, LLC since the LLC's inception. He was unaware of the legal distinction between filing a request of time to oppose in his individual name, versus filing in the name of the Zip Idaho, LLC business.

3. The facts recited in Mr. Faull's declaration are respectfully submitted to meet the legal requirements for mistake under Trademark Rule 2.102(b). The recited facts also demonstrate privity between Mr. Faull and Zip Idaho, LLC, since Mr. Faull is the President and a member (owner) of Zip Idaho, LLC.

Date: November 4, 2013

Respectfully submitted,

/s/ Stuart J. Ford

Stuart J. Ford  
Zeman-Mullen & Ford, LLP  
2267 W. Winter Camp Drive  
Boise, ID 83703  
Tel: (208) 440-8564  
Fax: (208) 345-3588  
sford@zmfiplaw.com

Attorneys for Opposer Zip Idaho, LLC

### **Certificate of Transmission**

I hereby certify that this Response to Show Cause Order was electronically transmitted to the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals ("ESTTA") on November 4, 2013.

/s/ Stuart J. Ford  
Stuart J. Ford

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Response to Show Cause Order was served on November 4, 2013 via e-mail upon the following counsel of record:

Daniel E. Kattman  
REINHART BOERNER VAN DUEREN S.C.  
1000 North Water Street, Suite 2100  
Milwaukee, WI 53202  
[dkattman@reinhardt.com](mailto:dkattman@reinhardt.com)  
Tel: (414) 298-8185  
Fax: (414) 298-8097

/s/ Stuart J. Ford

Stuart J. Ford  
Zeman-Mullen & Ford, LLP  
2267 W. Winter Camp Drive  
Boise, ID 83703  
Tel: (208) 440-8564  
Fax: (208) 345-3588  
[sford@zmfiplaw.com](mailto:sford@zmfiplaw.com)

# EXHIBIT 1

---

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

---

Zip Idaho, LLC,

Opposer,

v.

Opposition No. 91210195  
Serial No. 85/666,695

Opposed Mark: ZIP TAMARACK

Experience Based Learning, Inc.,

Applicant.

---

**DECLARATION OF ERIC J. FAULL**

I, Eric J. Faull, declare under penalty of perjury as follows:

1. My name is Eric J. Faull. I am over the age of eighteen years and I am legally competent in all regards to make this Declaration. The facts stated in this Declaration are within my personal knowledge and are true. I gained this personal knowledge by being personally involved in the facts about which I testify.

2. I formed Zip Idaho, LLC with the State of Idaho in October, 2007. The Articles of Organization from the State of Idaho are attached to this Declaration as Exhibit "A". I am a member and owner of Zip Idaho, LLC, and always have been a member and owner since its inception in October, 2007. I am, and always have been, the President of Zip Idaho, LLC, and as such, have held primary executive authority over the LLC since its inception. Zip Idaho, LLC is, and always has been, a valid LLC in good standing with the State of Idaho.

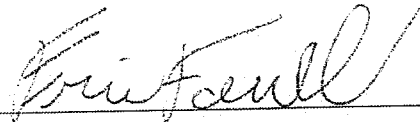
3. Zip Idaho, LLC is a zip-lining business in Horseshoe Bend, Idaho. It uses the ZIP IDAHO mark in connection with that business.

4. I filed a request for an extension of time to oppose registration of the ZIP TAMARACK mark on January 9, 2013. I filed for the extension of time in my own personal name, Eric J. Faull, although I intended to file in my capacity as President of Zip Idaho, LLC. I am not a trademark lawyer and I have had no formal training in trademark law. In January, 2013, I was not represented by trademark counsel. I was not aware of the legal distinction between filing for an extension of time to oppose in my own name versus filing on behalf Zip Idaho, LLC. It was my intention to file a request for extension of time to oppose on behalf of Zip Idaho, LLC, since that is the business that has been using the ZIP IDAHO mark with which I believe registration of the ZIP TAMARACK mark would conflict.

5. I request the TTAB to kindly accept my explanation, and overlook my mistake.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that all statements made of his or her own knowledge are true, and that all statements made on information are believed to be true.

Signed:

  
\_\_\_\_\_

Date:

11-4-13  
\_\_\_\_\_



# EXHIBIT "A"



# ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

(Instructions on back of application)

Click here to clear form.

07 OCT -2 PM 1:08

SECRETARY OF STATE  
STATE OF IDAHO

1. The name of the limited liability company is:

Zip Idaho LLC

2. The street address of the initial registered office is:

872 s. Gray Eagle Wy. Boise. Id. 83712

and the name of the initial registered agent at the above address is:

Eric Faul

3. The mailing address for future correspondence is:

872 Gray Eagle Ww. Boise. Id 83712

4. The limited liability company will be:

Manager-managed  or Member-managed  (please check the appropriate box)

5. If manager-managed, list the name(s) and address(es) of at least one initial manager.  
If member-managed, list the name(s) and address(es) of at least one initial member.

Name

Address

Eric Faul

872 Gray Eagle Ww. Boise. Id 83712

6. Signature of at least one person responsible for forming the limited liability company:

Signature: *Eric Faul*

Typed Name: Eric Faul

Capacity: President

Signature \_\_\_\_\_

Typed Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Secretary of State use only

*W67228*

IDAHO SECRETARY OF STATE  
10/02/2007 05:00  
CK: 1295482 CT: 172899 BH: 1678494  
1 @ 100.00 = 100.00 ORGAN LLC # 2

com\forms\llc\forms\articlesoforganization.pmd  
Revised 05/2007

Web Form