

ESTTA Tracking number: **ESTTA551885**

Filing date: **08/02/2013**

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	Tucker-Rocky Corporation, Inc.
Granted to Date of previous extension	08/04/2013
Address	103 Foulk Road, Suite 202 Wilmington, DE 19803 UNITED STATES

Attorney information	Kay Lyn Schwartz Gardere Wynne Sewell, LLP 1601 Elm Street, Suite 3000 Dallas, TX 75201 UNITED STATES ip@gardere.com, kschwartz@gardere.com, jfulmer@gardere.com Phone:2149994702
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Applicant Information

Application No	85717270	Publication date	02/05/2013
Opposition Filing Date	08/02/2013	Opposition Period Ends	08/04/2013
Applicant	5th Gear Sports, Inc. 180 Willow Way Juliette, GA 31046 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. All goods and services in the class are opposed, namely: All purpose sports bags
Class 021. All goods and services in the class are opposed, namely: Water bottles sold empty
Class 025. All goods and services in the class are opposed, namely: Shirts, pajama bottoms, headbands, headbands against sweating

Grounds for Opposition

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

U.S. Registration No.	1742329	Application Date	11/08/1990
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Registration Date	12/22/1992	Foreign Priority Date	NONE
Word Mark	FIRSTGEAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1991/02/00 First Use In Commerce: 1991/02/00 motorcycle wearing apparel; namely, jackets, pants, boots and gloves		

U.S. Registration No.	3625083	Application Date	10/01/2008
Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	1 FIRSTGEAR		
Design Mark			
Description of Mark	The mark consists of the text "FIRSTGEAR". To the left of the word is the number "1" inside a gear, both of which are inside a slanted square.		
Goods/Services	Class 025. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Motorcycle wearing apparel, namely, jackets, pants, boots and gloves		

Attachments	TR-Notice of Opposition (5th Gear).pdf(146985 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	/Kay Lyn Schwartz/
Name	Kay Lyn Schwartz
Date	08/02/2013

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

TUCKER-ROCKY CORPORATION, INC.

Opposer,

v.

5TH GEAR SPORTS, INC.

Applicant.

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Opposition No. _____

U.S. Application Serial No.
85/717,270 for the mark:



NOTICE OF OPPOSITION

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Tucker-Rocky Corporation, Inc., a corporation organized under the laws of the state of Delaware and having a business address of 103 Foulk Road, Suite 202, Wilmington, Delaware 19803 ("**Tucker-Rocky**"), believes it will be damaged by the registration of the mark shown in U.S. Application Serial No. 85/717,270, filed August 30, 2012, and owned by 5TH Gear Sports, Inc., a Georgia corporation having an address of 180 Willow Way, Juliette, Georgia 31046 ("**Applicant**") in connection with goods in Classes 18, 21 and 25, specifically, "*All purpose sports bags,*" "*Water bottles sold empty,*" and "*Shirts, pajama bottoms, headbands, headbands against sweating,*" respectively.

Tucker-Rocky submits this Notice of Opposition opposing the registration of U.S. Application Serial No. 85/717,270, the grounds for which are as follows:


1. Commencing prior to Applicant's filing date, and continuing without interruption to the present time, Tucker-Rocky (itself, or through its related companies and/or licensees) continuously has used, and continues to use, the trademark "FIRST GEAR," "FIRST GEAR" (and design), 1st Gear, and other "FIRST/1st GEAR"-formative marks ("**FIRSTGEAR Marks**") in connection with merchandise/accessories, including wearing apparel, in the powersports industry.

2. Tucker-Rocky's FIRSTGEAR Marks have been so extensively used and advertised by Tucker-Rocky in the United States the marks have come to indicate to the

relevant trade and consumers, goods having their source of origin in, or connected with, Tucker-Rocky.

3. Tucker-Rocky is the owner of, and will rely upon herein, its common law rights and usage of the FIRSTGEAR Marks throughout the United States.

4. In addition, Tucker-Rocky is the owner of, and will rely upon herein, the following federally registered marks:


Trademark	Application No.	Filing Date	Goods	Registration No.	Registration Date
FIRSTGEAR	74/113714	11/08/1990	Motorcycle wearing apparel; namely, jackets, pants, boots and gloves	1742329	12/22/1992
 FIRSTGEAR	76/693239	10/01/2008	Motorcycle wearing apparel; namely, jackets, pants, boots and gloves	3625083	05/26/2009

5. The mark sought to be registered by Applicant in Application Serial No. 85/717,270 is so similar to Tucker-Rocky's FIRSTGEAR Marks, as to be likely, when associated with the goods of Applicant, to cause confusion, to cause mistake or to deceive, thereby to Tucker-Rocky's damage.

WHEREFORE, Tucker-Rocky prays that Applicant be required to answer this Notice of Opposition; that the mark made the subject of U.S. Application Serial No. 85/717,270 be refused registration; and that Opposer be awarded such other and further relief as may be deemed to be just and proper.

Respectfully submitted,

Date: August 2, 2013


Kay Lyn Schwartz
GARDERE WYNNE SEWELL, LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Tel: 214-999-4702
Fax: 214-999-3702
ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing *Notice of Opposition* was served in accordance with 37 C.F.R. 2.101 upon Applicant's attorney at the correspondence address of record as indicated below on August 2, 2013:

Harris W. Henderson
KILPATRICK TOWNSEND & STOCKSTON LLP
1001 W. 4TH Street
Winston Salem, North Carolina 27101-2410

[Via U.S. Mail]

Attorneys for Applicant



Kay Lyn Schwartz