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November 6, 2014

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

Re: Creem International v. Kramer
Opposition No. 91211886

Dear Sir/Madam:

In reviewing the above matter, we discovered that when the Notice of Opposition was initially filed, there was apparently a glitch in the system and the entire Notice does not appear in the database. Therefore, we are enclosing the Notice of Opposition in its entirety (minus the exhibits).

Very truly yours,

Debra A. Nichols
Litigation Paralegal

/dan
Enclosure

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11-10-2014

U.S. Patent & TMO/TM Mail Rcpt Dt. #

ESTTA Tracking number: **ESTTA552286**

Filing date: **08/05/2013**

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	Creem International, Inc.
Granted to Date of previous extension	08/04/2013
Address	1966 US-1 South St. Augustine, FL 32086 UNITED STATES

Attorney information	Mark D. Schneider Gifford, Krass, Sprinkle, Anderson & Citkowski, P.C. P.O. Box 7021 Troy, MI 48007-7021 UNITED STATES doCKET@patlaw.com
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Applicant Information

Application No	85713843	Publication date	02/05/2013
Opposition Filing Date	08/05/2013	Opposition Period Ends	08/04/2013
Applicant	Kramer, Jacob 4166 James River Road New Albany, OH 43054 UNITED STATES		

Goods/Services Affected by Opposition

Class 015. All goods and services in the class are opposed, namely: Capos; Cases for musical instruments; Drumsticks; Guitar accessories, namely, guitar slides; Guitar picks; Guitar straps

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. Application No.	85641284	Application Date	06/01/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CREEM		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 025. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Clothing, namely, shirts and caps Class 041. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Magazine publishing; Providing non-downloadable on-line magazines in the field of music and entertainment

U.S. Application No.	85641284	Application Date	06/01/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CREEM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Clothing, namely, shirts and caps Class 041. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Magazine publishing; Providing non-downloadable on-line magazines in the field of music and entertainment		

U.S. Application No.	85641318	Application Date	06/01/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BOY HOWDY!		
Design Mark			
Description of Mark	The mark consists of the wording "BOY HOWDY!" appearing in a speech balloon adjacent to a bottle with human features including arms, hands, legs, feet and a face.		
Goods/Services	Class 025. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Clothing, namely, shirts and caps Class 041. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Magazine publishing; providing non-downloadable on-line magazines in the field of music and entertainment		

Attachments	Notice of Opposition.pdf(7784 bytes) Exhibits A-H reduced.pdf(3298786 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	/Mark D. Schneider/
Name	Mark D. Schneider
Date	08/05/2013

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

In re Serial No. 85713843
Filed: August 27, 2012

CREEM INTERNATIONAL, INC.,

Opposer,

Opposition No.

vs.

JACOB KRAMER,

Applicant.

NOTICE OF OPPOSITION

Creem International, Inc., a Florida corporation, having a principal place of business in St. Augustine, Florida, alleges that it will be damaged by registration of the mark shown in Serial No. 85713843 ("the '843 Application"), in International Class 15, and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Applicant of the '843 Application, Mr. Jacob Kramer, seeks to register the mark BOY HOWDY! CREEM, together with the following drawing



("Applicant's Mark") for goods that include Capos; Cases for musical instruments; Drumsticks; Guitar accessories, namely, guitar slides; Guitar picks; Guitar straps in

International Class 15, as evidenced by the attached pages from the Trademark Electronic Search System (TESS) (**Exhibit A**). The '843 Application was filed on August 27, 2012, based on Section 1B of the Act (intent to use).

2. On information and belief, Creem ("the Magazine") was a magazine focusing on rock 'n' roll music that was first published in 1969. The Magazine was founded by Mr. Barry Kramer. See **Exhibit B** – Covers from the Magazine. On information and belief, Applicant is the son of the founder.

3. On information and belief, Applicant's Mark incorporates BOY HOWDY! (see *infra*)



("BOY HOWDY!") a character that was first used in, and became associated with, the Magazine. See **Exhibit C**

4. On information and belief, in about 1981 assets related to the Magazine – including the rights to the name "CREEM and BOY HOWDY! – were purchased out of bankruptcy by a Mr. Arnold Levitt ("Levitt").

5. On information and belief, Levitt assigned his interest in the assets of Magazine over to a Nevada Corporation, Creem Media, Inc. ("Creem Media").

6. On information and belief, as a result of a dispute concerning the ownership and control of Creem Media, in September 2007 the Supreme Court of the

State of New York, County of New York (“the New York action”), ruled that Applicant and Mr. Christopher Carter must consent to any action being taken by Creem Media.

7. Attached as **Exhibit D** is a true copy of the 2007 order from the New York action (see e.g., Page 28).

8. In 2009, an agreement (“the Agreement”) was signed by a Mr. Jason Turner, on behalf of Creem Media, and Mr. Todd A. Riggs, on behalf of T.A. Riggs Licensing LLC (“Riggs Licensing”) involving the licensing by Creem Media to Riggs Licensing of certain marks and other assets owned by Creem Media.

9. Attached as **Exhibit E** is a true copy of the Agreement.

10. On information and belief, at the time Mr. Jason Turner signed the Agreement (Exhibit E) on behalf of Creem Media, Creem Media owned all right, title and interest in and to the BOY HOWDY!, the CREEM logo, MR. DREAMWHIP (another character of the Magazine), and any other character associated with or developed to be associated with the Magazine.

11. On information and belief, Applicant reviewed the Agreement (Exhibit E) prior to its signing by Mr. Jason Turner.

12. On information and belief, Mr. Christopher Carter had actual knowledge of the Agreement (Exhibit E) prior to its signing by Mr. Jason Turner.

13. On information and belief, Applicant was general counsel of Creem Media at the time Mr. Jason Turner signed the Agreement (Exhibit E) on behalf of Creem Media.

14. On information and belief, Applicant did not object to the signing of the Agreement (Exhibit E) by Mr. Jason Turner on behalf of Creem Media.

15. On information and belief, at no time prior to the date the Agreement (Exhibit E) was signed by either Mr. Jason Turner or by Mr. Todd Riggs did Applicant notify Riggs Licensing that Applicant objected to the Agreement.

16. On information and belief, at no time prior to the date the Agreement (Exhibit E) was signed by either Mr. Jason Turner or by Mr. Todd Riggs did Mr. Christopher Carter notify Riggs Licensing that Mr. Carter objected to the Agreement.

17. On information and belief, Applicant is the also applicant on U.S. Trademark Application Serial Nos.:

- a) 85067085 for the mark BOY HOWDY! CREEM (and Design) in International Class 25;
 - b) 85431412 for BOY HOWDY (and Design) in International Class 41;
 - c) 85645528 for BOY HOWDY! CREEM (and Design) in International Class;
- and
- d) 77874768 for BOY HOWDY! (and Design) in International Class 25.

18. On information and belief, Applicant personally signed each of the Applications identified in paragraph 17. See **Exhibit F**.

19. On information and belief, in filing the '843 Application Applicant affirmed in relevant part that "...; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...". Applicant also made identical affirmations in connection with the filing of each of the applications identified in paragraph 17.

20. On information and belief, Applicant had actual knowledge of the Agreement (Exhibit E) at the time Applicant filed the '843 Application.

21. On information and belief, Applicant had actual knowledge of the Agreement (Exhibit E) at the time Applicant filed each of the applications identified in paragraph 17.

22. On information and belief, Creem Media was sued by Riggs Licensing in the courts of the State of Michigan for breach of the Agreement (Exhibit E) ("the Michigan action").

23. On information and belief, on March 21, 2012, the court in the Michigan action ordered, in relevant part, that all right, title and interest of Creem Media in BOY HOWDY!, the CREEM logo, MR. DREAMWHIP were "...hereby assigned, conveyed and otherwise ordered transferred ..." to Riggs Licensing.

24. A true copy of the order of March 21, 2012 from the Michigan action is attached as **Exhibit G** (see e.g., pages 6 – 8).

25. On information and belief, Applicant had actual knowledge of the Michigan action prior to March 21, 2012, but Applicant did not intervene in that action.

26. On information and belief, at no time prior to the date of the March 21, 2012 order (Exhibit G) in the Michigan action did Applicant provide notice to the court in the Michigan action that Applicant objected to the signing of the Agreement (Exhibit E) by Mr. Jason Turner on behalf of Creem Media.

27. On information and belief, at no time prior to the date of the March 21, 2012 order in the Michigan action (Exhibit E) did Mr. Christopher Carter provide notice

to the Michigan Court that Mr. Charter objected to the signing of the Agreement (Exhibit E) by Mr. Jason Turner on behalf of Creem Media.

28. Opposer is the owner by assignment of the assets of Riggs Licensing in certain former assets of Creem Media identified in the Agreement, including the former right, title and interest of Creem Media in BOY HOWDY!, the CREEM logo, MR. DREAMWHIP, and any other character associated with or developed to be associated with the Magazine.

29. On information and belief, the BOY HOWDY! displayed in Applicant's mark is identical to the BOY HOWDY! that was the subject of the Agreement (Exhibit E) and that was subsequently assigned to Riggs Licensing in the Michigan action.

30. On information and belief, the "CREEM" displayed in Applicant's mark is identical to the CREEM logo that was the subject of the Agreement (Exhibit E) and that was subsequently assigned to Riggs Licensing in the Michigan action.

31. By virtue of the assignment of the marks BOY HOWDY!, the CREEM logo, MR. DREAMWHIP, etc. from Riggs Licensing to Opposer, Opposer is entitled to claim / tack the prior use of BOY HOWDY! and the CREEM logo back to at least the prior use and ownership of same by Creem Media.

32. Opposer has also extensively used the identical or closely similar trademarks BOY HOWDY! and the CREEM logo as marks for about year in connection with t-shirts and other goods. See **Exhibit H** – Sample of Home Page from CreemUSA.com.

33. As a result of the prior use by predecessors in interest, and Opposer's own substantial investment in developing, promoting and selling products related to the

BOY HOWDY! and the CREEM logo, Opposer has developed exceedingly valuable goodwill and consumer recognition in connection with each of those marks.

34. Applicant's Mark which is the subject of this Opposition is so closely similar to Opposer's BOY HOWDY! and CREEM logo marks in appearance, meaning, and commercial impression, and is used for closely related goods, so as to cause confusion and lead to deception as to the origin of Applicant's goods identified with the Applicant's Mark opposed herein. This similarity and likelihood of confusion are heightened by the identical drawing incorporated into Applicant's mark. In particular, Applicant's goods are likely to be confused with Opposer's goods and mistaken therefore.

35. If the Applicant is permitted to use and register the pending mark for the goods of the Applicant listed in the Application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of use of the nearly identical mark on identical or closely related goods by both Applicant and Opposer. Persons familiar with Opposer's use of the term and mark would be likely to buy Applicant's goods as and for goods offered by the Opposer. Any such confusion in trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its goods merchandised under BOY HOWDY! and CREEM logo marks.

36. If the Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark, in direct conflict with

Opposer's rights deriving from its own common law and statutory rights for the BOY HOWDY! and CREEM logo marks, for closely related goods mens and women's apparel, license plates, drinkware, etc. Such a conflicting registration would be a source of damage and injury to the Opposer.

37. On information and belief, Applicant did not have a bona fide intent to use Applicant's mark for at least the reason that Applicant was aware of the order from the Michigan action, and thus Opposer's right to use the BOY HOWDY! and CREEM logo mark at the time Applicant filed Applicant's mark.

38. On information and belief, Applicant did not have a bona fide intent to use Applicant's mark for at least the reason that Applicant was aware of Creem Media's claim of ownership of the BOY HOWDY! and CREEM logo mark at the time Applicant filed Applicant's mark.

WHEREFORE, the Opposer prays that the application Serial No. 85713843 be rejected, that no notice of allowance or registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer. Opposer hereby gives notice that after hearing and in any appeal on this opposition proceeding, it will rely on its exhibits annexed to this notice of opposition as evidence in support of this notice of opposition.

The filing fee of this opposition in the amount of \$300.00 is enclosed.

Opposer hereby appoints the attorneys of Gifford, Krass, Sprinkle, Anderson & Citkowski, P.C., a law firm having a place of business at 2701 Troy Center Drive, Ste. 330, P.O. Box 7021, Troy, Michigan 48007 to act as attorneys for Opposer herein, with full power to prosecute said opposition, to transact all relative business in the United States Patent and Trademark Office and in the United States courts, and to receive all official communications in connection with this opposition.

Respectfully submitted,

GIFFORD, KRASS, SPRINKLE,
ANDERSON & CITKOWSKI PC

/s/ Mark D. Schneider
GIFFORD, KRASS, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
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P.O. Box 7021
Troy, MI 48007
(248) 647-6000
(248) 647-5210 – Facsimile
docket@patlaw.com

Attorney for Opposer

Dated: August 5, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NOTICE OF OPPOSITION** was sent via First Class Mail to:

Jacob Kramer
4166 James River Road
New Albany, OH 43054

on this 5th day of August, 2013.

/s/ Mark D. Schneider
GIFFORD, KRASS, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
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P.O. Box 7021
Troy, MI 48007
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the foregoing **NOTICE OF OPPOSITION** was electronically filed with the TTAB on this 5th day of August, 2013.

/s/ Mark D. Schneider
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ANDERSON & CITKOWSKI, P.C.
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