

ESTTA Tracking number: **ESTTA572657**

Filing date: **11/22/2013**

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	IMG College, LLC
Granted to Date of previous extension	12/01/2013
Address	1075 Peachtree Street Suite 3300 Atlanta, GA 30309 UNITED STATES

Attorney information	Michael Drucker IMG College, LLC 1075 Peachtree Street Suite 3300 Atlanta, GA 30309 UNITED STATES mdrucker@clc.com
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Applicant Information

Application No	85796845	Publication date	06/04/2013
Opposition Filing Date	11/22/2013	Opposition Period Ends	12/01/2013
Applicant	C.O. Branded Corporation 1101 Blackman Circle Auburn, AL 36830 ALBANIA		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing and personal items, namely, shirts, pants, and hats

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	IN GUS WE TRUST		
Goods/Services	Clothing and personal items, namely, shirts, pants, and hats		

Related Proceedings	Opposition filed by IMG COLlege, LLC against C.O. Branded Corporation's application to register GUS BUS (Serial No. 85820524)
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Attachments	Notice of Opposition (Serial No. 85796845-In Gus We Trust).pdf(202916 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/Michael Drucker/
Name	Michael Drucker
Date	11/22/2013

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

IMG College, LLC)	
(Opposer))	
)	Opposition No.: _____
-v-)	Appl. Serial No.: 85/796845
)	Published in the Official Gazette on June
)	4, 2013
C.O. Branded Corporation)	
(Applicant))	

NOTICE OF OPPOSITION

IMG College, LLC, a limited liability company organized and existing under the laws of the State of Delaware, (hereinafter "Opposer") believes that it will be damaged by the registration of the mark shown in Serial No. 85/796845 in Class 25 for clothing and personal items, namely, shirts, pants, and hats and hereby oppose the same.

As grounds for opposition, it is alleged that:

1. The Applicant seeks to register IN GUS WE TRUST as a trademark for apparel, namely, shirts, pants, jackets, footwear, hats and caps, and athletic uniforms in International Class 25, claiming as a basis for its filing a bona fide intent to use said mark in commerce, said Application having been published in the Official Gazette on TM Page 791 on June 4, 2013.

2. IMG College, LLC, exclusively owns certain personal, appearance, and endorsement rights of Gus Malzahn, a well-known college football coach. All signatures and other indicia of origin associated with Gus Malzahn ("Coach Malzahn") are owned by IMG College, LLC under contract with Coach Malzahn, to identify it as the source of origin of any product or service to which said signature or other indicia of origin is applied, and any revenues derived from

the use thereof, or from Coach Malzahn's signature, personal appearances and endorsement, accrues to the Opposers.

3. Since as early as 2005, Coach Malzahn has been well known throughout the nation as a college football coach who has excelled in his profession. As a consequence, Coach Malzahn enjoys an excellent reputation as a college football coach, whereby his endorsement of various products is of great commercial value. Such reputation has been supported by the words "In Gus We Trust" used in association with Coach Malzahn.

4. Applicant failed to acquire Coach Malzahn's written consent, as required by TMEP 1206.04, to the application to register IN GUS WE TRUST, a mark that includes Coach Malzahn's first name Gus. Accordingly, Applicant has fraudulently claimed in its application to register IN GUS WE TRUST that it had the right and authority to file such application (37 C.F.R. §11.18).

5. IMG College, LLC, has entered into various contractual arrangements with others consenting to their use of, among other indicia of Coach Malzahn, the term "In Gus We Trust" in connection with various goods and services. These contractual arrangements also often make provision for the personal endorsement of goods by Coach Malzahn. Under these contractual arrangements, Opposer is to realize considerable revenues from the use of marks and indicia of Coach Malzahn, including "In Gus We trust." As such, Opposer has extremely valuable property right in the mark, signature, and pseudonym IN GUS WE TRUST.

6. The phrase IN GUS WE TRUST functions as an indicia of origin for Opposer's goods and services sold by them and their Licensees and the personal publicity rights therein are the exclusive property of Opposer.

7. "In Gus We Trust" is effectively a pseudonym of Coach Malzahn, the collegiate football coach, all commercial uses of "In Gus We Trust" serve to associate Coach Malzahn with a commercial endeavor, and constitute his endorsement that the product or service supplied conforms to his personal standards. The term "In Gus We Trust" has been used to designate Coach Malzahn's, identity and has become and has been associated with Coach Malzahn, both long prior to Applicant's use of said term and to the filing date of the Application.

8. If the Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to use of the mark, IN GUS WE TRUST. Such registration would be a source of damage and injury to Opposer. Applicant's use and registration of the term "IN GUS WE TRUST" will constitute a false designation of origin of the goods sold with the mark IN GUS WE TRUST affixed thereof.

9. Applicant's use and registration of the term "IN GUS WE TRUST" will constitute willful and deliberate false representation of origin of the goods all to the considerable detriment of Opposer, by adversely affecting the business relations in commerce of Opposer with its licensees and others.

10. Applicant's use and registration of the term "IN GUS WE TRUST" will constitute a false representation that Coach Malzahn has endorsed the products on which it is used and comprises the name of a living individual without his written consent, all to the considerable detriment of Opposer.

11. Applicant's use and registration of the term "IN GUS WE TRUST" will create a false suggestion of connection between Applicant and its goods, on the one hand, and Opposer, on the other hand.

WHEREFORE, because Opposer believes that it will continue to be damaged by the registration of the IN GUS WE TRUST mark set forth in the Application, Opposer prays that Application Serial No. 85/796845 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposers.

Opposers have appointed Michael S. Drucker, Esq., of IMG College, LLC, and a member of the Bar of the State of Georgia, to prosecute this Opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

Michael S. Drucker, Esq.
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1075 Peachtree Street
Suite 3300
Atlanta, GA 30309

Respectfully submitted,



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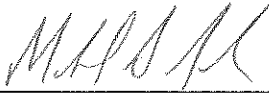
Date: November 22, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "NOTICE OF OPPOSITION" was served on Applicant's counsel by Express Mail Post Office to Addressee, on the 22nd day of November, 2013, at the following address:

Ann I. Dennen, Esq.
Lanier Ford Shaver & Payne P.C.
2101 Clinton Ave. W., Ste. 102
Huntsville, Alabama 35805-3093

And by electronic transmission to:
aid@lanierford.com

By 

Michael S. Drucker, Esq.
Attorney for Opposer

Dated: 11/22/13