

ESTTA Tracking number: **ESTTA584447**

Filing date: **01/29/2014**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	GlennPreece
Granted to Date of previous extension	01/29/2014
Address	1 Kenneth Road Manley Vale, NSW, 2093 AUSTRALIA

Name	T.D. PREECE PTY LTD
Granted to Date of previous extension	01/29/2014
Address	1 Kenneth Road Manley Vale, NSW, 2093 AUSTRALIA

Attorney information	Julia C. Archer Enns & Archer LLP 939 Burke Street Winston-Salem, NC 27101 UNITED STATES jarcher@ennsandarcher.com Phone:336-723-5180
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**Applicant Information**

Application No	76710958	Publication date	10/01/2013
Opposition Filing Date	01/29/2014	Opposition Period Ends	01/29/2014
Applicant	The A B Biller Company Post Office Box 316 Bloomingdale, IL 60108 ISRAEL		

**Goods/Services Affected by Opposition**

Class 028. First Use: 1982/02/08 First Use In Commerce: 1982/02/08  
All goods and services in the class are opposed, namely: Scuba diving equipment, namely, spring activated spearguns, spears for use in fishing shafts, spear points, sling-stylebags specifically designed for spring-activated spearguns, and parts and accessories therefor

**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/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SEA HORNET		
Goods/Services	spears, spearguns, pole spears, powerheads, slings, spear tips, handspear guns, handspears and related products and accessories including SCUBA equipment (underwater breathing apparatus) buoyancy compensators, submersible gauges, high pressure valves and many other related underwater equipment		

Attachments	SEA HORNET Notice of Opposition.pdf(16479 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	/jarcher/
Name	Julia C. Archer
Date	01/29/2014

**In the matter of U.S. Trademark Application Serial No. 76710958  
Published in the *Official Gazette* on October 1, 2013**

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

**GLENN PREECE and T.D. PREECE PTY  
LTD,**

**Opposers,**

v.

**THE A B BILLER COMPANY,**

**Applicant.**

**Opposition No. \_\_\_\_\_**

**NOTICE OF OPPOSITION**

Opposer Glenn Preece, an Australian citizen with an address at 1 Kenneth Road, Manley Vale, New South Wales, 2093 Australia (“Mr. Preece”), and opposer T.D. Preece Pty Ltd, a proprietary company limited by shares, organized under the laws of Australia, with offices at 1 Kenneth Road, Manley Vale, New South Wales, 2093 Australia (“T.D. Preece”) (collectively referred to as “Opposers”), believe that they will be damaged by registration to Applicant, The A B Biller Company, of the trademark shown in U.S. Trademark Application Serial No. 76710958, published in the Official Gazette on October 1, 2013, and hereby oppose the same. Both Opposers requested and were granted extensions of time to oppose this application until January 29, 2014. As grounds for this opposition, Opposers allege the following:

1. Opposers and their predecessors have used the SEA HORNET mark in connection with spears, spearguns, pole spears, powerheads, slings, spear tips, handspear guns,

handspears and related products and accessories including SCUBA equipment (underwater breathing apparatus) buoyancy compensators, submersible gauges, high pressure valves and many other related underwater equipment for more than 50 years. In the United States, Opposers, their predecessors and licensees/distributors have used the SEA HORNET mark since at least as early as 1972. In the mid 1980s, Applicant was an authorized distributor of SEA HORNET equipment in the U.S. under an agreement with T.D. Preece & Co. Pty Ltd, a predecessor of Opposers. Applicant applied for and registered the SEA HORNET mark in its own name for “underwater diving and hunting equipment namely, spring-activated spearguns, spears, gun barrels, shafts, slings, spearpoints, tip adapters, tips, pole spears, poles, pole handles, travel spears, gaff hooks, and parts and accessories therefor” under U.S. Reg. No. 1450991, which issued on August 4, 1987. In 1991, Applicant assigned the SEA HORNET registration to T.D. Preece & Co. Pty Ltd., as the rightful owner of the mark. T.D. Preece & Co. Pty Ltd. filed the Section 8 and 15 affidavits to maintain that registration in 1993, however, that company failed to file the renewal application and Section declaration of continued use in 2007 and the registration expired as of May 9, 2008.

2. Although T.D. Preece & Co. Pty Ltd allowed the registration to lapse, it continued to use the SEA HORNET mark in the United States in connection with spears, spearguns and related equipment. The distribution agreement between T.D. Preece & Co. Pty Ltd and Applicant ended in approximately 1992. T.D. Preece & Co. Pty Ltd continued to offer SEA HORNET products in the United States through another distributor at least through December 31, 2010. Although T.D. Preece & Co. Pty Ltd did not have any sales in the United States of SEA HORNET equipment following the expiration of the last distribution agreement, it actively continued to seek a U.S. distributor and at no time did it abandon the SEA HORNET mark

without intent to resume use.

3. T.D. Preece & Co. Pty Ltd dissolved in June of 2013, with all the assets divesting to Glenn Preece as the sole director of the company. Mr. Preece has authorized Opposer T.D. Preece Pty Ltd to use the SEA HORNET mark and other assets formerly owned by T.D. Preece & Co. Pty Ltd. Opposer T.D. Preece has begun negotiations again with a possible distributor for SEA HORNET equipment in the U.S., and is currently making additional preparations to reenter the U.S. market with its SEA HORNET branded equipment.

4. As successors to the trademark rights of T.D. Preece & Co. Pty Ltd in the SEA HORNET mark, and based on the continued efforts of Opposers and their predecessors to resume use of the SEA HORNET mark in the U.S., Opposers have not abandoned the SEA HORNET mark and have common law trademark rights in the SEA HORNET mark that are senior to any rights claimed by Applicant.

5. Applicant filed a new application to register the SEA HORNET mark (“Applicant’s Mark”) on March 20, 2012, for “Scuba diving equipment, namely, spring activated spearguns, spears for use in fishing shafts, spear points, sling-style bags specifically designed for spring-activated spearguns, and parts and accessories therefor,” (“Applicant’s Goods”), claiming the original 1982 first use date from the prior trademark registration owned by T.D. Preece & Co. Pty Ltd. Any use by Applicant of the SEA HORNET mark prior to 1992 was in the capacity of a U.S. distributor of T.D. Preece & Co. Pty Ltd, which Applicant acknowledged by assigning the earlier registration to T.D. Preece & Co. Pty Ltd. All such use inured to the benefit of Opposers and their predecessors.

6. Applicant seeks to register the identical mark SEA HORNET for identical and closely related goods to those in which Opposers have prior rights in the SEA HORNET mark.

7. Under all the circumstances, Applicant's Mark, when used in connection with Applicant's Goods as identified in the subject application, so resembles Opposers' previously used SEA HORNET mark as to be likely to cause confusion, to cause mistake, and/or to deceive actual and prospective purchasers concerning an affiliation, connection, association or sponsorship with Opposer as the source of goods featuring the SEA HORNET mark, in violation of Sections 2(d) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1052(d) and 1125(a), with consequent injury to Opposers and the relevant customers.

8. Pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a), Opposers believe they will be damaged by registration of Applicant's Mark in that actual and prospective purchasers and users are likely to be confused or mistaken that Applicant's Goods offered under Applicant's Mark originate from Opposers, or that such goods of Applicant are sponsored by, endorsed by, or affiliated with Opposers. Registration of Applicant's Mark will support and assist Applicant in the confusing and misleading use of Applicant's Mark, and will give color of exclusive statutory right to Applicant in violation and derogation of prior and superior rights of Opposers.

WHEREFORE, Opposers pray that registration of Applicant's Mark, as shown in Application Serial No. 76710958, not be allowed.

This Notice of Opposition is being filed through the ESTTA system and the fee for this proceeding in the amount of \$600 is being charged to Deposit Account No. 501779. Please recognize the undersigned Julia C. Archer and Rodrick J. Enns as attorneys for Opposers in connection with this opposition proceeding, and address all correspondence regarding this proceeding as shown below.

Respectfully submitted,

/ Julia C. Archer/

Julia C. Archer

Rodrick J. Enns

Attorneys for Opposers Glenn Preece  
and T.D. Preece Pty Ltd

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Dated: January 29, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I served the foregoing NOTICE OF OPPOSITION upon Applicant by depositing a copy thereof with the United States Postal Service, first-class postage prepaid, and addressed to Applicant at its correspondence address of record in the U.S.

Trademark Office:

DILLIS V. ALLEN  
1701 E. Woodfield Road  
One Woodfield Place  
Schaumburg, IL 60173

This the 29th day of January, 2014.

/Julia C. Archer/  
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Julia C. Archer

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