

ESTTA Tracking number: **ESTTA659612**

Filing date: **03/06/2015**

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	Greenball Corporation
Granted to Date of previous extension	03/11/2015
Address	222 S. Harbor Boulevard - Suite 700 Anaheim, CA 92805 UNITED STATES

Attorney information	Kathryn Jennison Shultz Jennison & Shultz, P.C. 2001 Jefferson Davis Highway, Suite 1102 Arlington, VA 22202 UNITED STATES kjs@jennisonlaw.com Phone:(703) 415-1640
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Applicant Information

Application No	86375813	Publication date	11/11/2014
Opposition Filing Date	03/06/2015	Opposition Period Ends	03/11/2015
Applicant	Duck Commander, Inc. 117 Kings Lane West Monroe, LA 71292 UNITED STATES		

Goods/Services Affected by Opposition

Class 012. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Tires for vehicle wheels; Tires for vehicles

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.	3521233	Application Date	11/30/2006
Registration Date	10/21/2008	Foreign Priority Date	NONE
Word Mark	DIRT COMMANDER		

Design Mark	DIRT COMMANDER		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 Tires		

U.S. Registration No.	4447884	Application Date	05/13/2013
Registration Date	12/10/2013	Foreign Priority Date	NONE
Word Mark	TERRA COMMANDER		
Design Mark	TERRA COMMANDER		
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2013/01/28 First Use In Commerce: 2013/01/28 Tires		

Attachments	77053978#TMSN.png(bytes) 85930470#TMSN.png(bytes) notice of opp sn86375813_001.pdf(424527 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	/Kathryn Jennison Shultz/
Name	Kathryn Jennison Shultz
Date	03/06/2015

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

In the matter of trademark application Serial No. 86375813
Filed August 25, 2014
For the mark DUCK COMMANDER
Published in the Official Gazette on November 11, 2014

GREENBALL CORPORATION,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
DUCK COMMANDER, INC.,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Greenball Corporation, with a business address of 222 S. Harbor Boulevard, Suite 700, Anaheim, California 92805, believes that it would be damaged by the issuance of a registration for the mark DUCK COMMANDER, as applied for in Application Serial No. 86375813, and therefore opposes the same. As grounds for the opposition, Opposer, by his attorneys Jennison & Shultz, P.C., alleges as follows:

1. Opposer is now, and for many years past, has been engaged in the business of advertising, promoting and selling tires, wheels and wheel accessories.
2. Opposer is the owner of U.S. Registration No. 3,521,233, registered October 21, 2008, for the mark DIRT COMMANDER for "tires." This registration is valid, subsisting and in full force and effect. As such, the registration serves as evidence of Opposer's exclusive right to use the mark. Current TSDR printout showing status and title is attached.

3. Opposer is the owner of U.S. Registration No. 4,447,884, registered December 10, 2013, for the mark TERRA COMMANDER for "tires." This registration is valid, subsisting and in full force and effect. As such, the registration serves as evidence of Opposer's exclusive right to use the mark. Current TSDR printout showing status and title is attached.
4. On August 25, 2014, Applicant Duck Commander, Inc. filed the application at issue to register the mark DUCK COMMANDER for "tires for vehicle wheels; tires for vehicles" in Class 12, on the basis of intent to use. This application is identified by Serial No. 86375813.
5. On information and belief, Applicant made no use of the DUCK COMMANDER mark on or in connection with tires for vehicle wheels or tires for vehicles prior to the August 25, 2014, filing date of the subject application.
6. Since at least as early as March 31, 2008, which is prior to the filing of the application herein opposed to register the mark DUCK COMMANDER and any date alleged by the Applicant, Opposer has used the designation DIRT COMMANDER as its trademark in connection with tires.
7. Since at least as early as January 28, 2013, which is prior to the filing of the application herein opposed to register the mark DUCK COMMANDER and any date alleged by the Applicant, Opposer has used the designation TERRA COMMANDER as its trademark in connection with tires.
8. The applied-for mark DUCK COMMANDER and the Opposer's marks DIRT COMMANDER and TERRA COMMANDER contain the same term

COMMANDER and are used or intended to be used on or in connection with tires.

9. The mark that Applicant seeks to register, DUCK COMMANDER is similar in appearance, sound and commercial impression to Opposer's DIRT COMMANDER and TERRA COMMANDER trademarks.
10. The Applicant's DUCK COMMANDER application covers goods identical or closely related to those covered by the Opposer's COMMANDER formative registrations, specifically, "tires."
11. The goods of Applicant and the goods of the Opposer may be promoted and sold to the same customers through the same channels of trade.
12. Based on the similarities of the marks and the named goods, the public is likely to associate the goods offered by Applicant under the mark DUCK COMMANDER with Opposer's DIRT COMMANDER and TERRA COMMANDER marks for tires, or to believe that Applicant's goods are sponsored, endorsed or licensed by Opposer, or that there is some relationship between Applicant and Opposer.
13. Opposer is likely to be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.
14. For the reasons set forth above, any use of the mark DUCK COMMANDER by Applicant is likely to cause confusion, cause mistake or deceive the public,

and cause the public to believe that the goods sold under the DUCK
COMMANDER mark emanate from or are otherwise sponsored by or
endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15
U.S.C. § 1052(d).

WHEREFORE, Opposer respectfully prays that the registration sought by
Applicant be refused, and that this Notice of Opposition be sustained.

Respectfully submitted,

GREENBALL CORPORATION

Date: March 6, 2015

By: 

Kathryn Jennison Shultz

John N. Jennison

Carl E. Jennison

JENNISON & SHULTZ, P.C.

2001 Jefferson Davis Highway – Suite 1102

Arlington, Virginia 22202

Telephone: (703) 415-1640

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that true and complete copy of the foregoing NOTICE OF
OPPOSITION was served upon Applicant, by forwarding same via First Class Mail,
postage prepaid, to Edward D. Lanquist, Jr., Waddey & Patterson PC, Suite 500, 1600
Division Street, Nashville, Tennessee 37203, this 6th day of March, 2015



Kathryn Jennison Shultz

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Mark: DIRT COMMANDER

DIRT COMMANDER

US Serial Number: 77053978 Application Filing Date: Nov. 30, 2006
US Registration Number: 3521233 Registration Date: Oct. 21, 2008
Register: Principal
Mark Type: Trademark
Status: A Section 8 declaration has been accepted.
Status Date: May 14, 2014
Publication Date: Jun. 19, 2007 Notice of Allowance Date: Sep. 11, 2007

Mark Information

Mark Literal Elements: DIRT COMMANDER
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US Registrations: 2981431, 3018275

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Tires

International Class(es): 012 - Primary Class

U.S Class(es): 019, 021, 023, 031, 035, 044

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 31, 2008

Use In Commerce: Mar. 31, 2008

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Greenball Corporation
Owner Address: 222 S. Harbor Boulevard - Suite 700
Anaheim, CALIFORNIA 92805
UNITED STATES
Legal Entity Type: CORPORATION State or Country Where Organized: CALIFORNIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kathryn Jennison Shultz

Correspondent

Correspondent Name/Address: Kathryn Jennison Shultz
Jennison & Shultz, P.C.
2001 JEFFERSON DAVIS HIGHWAY, SUITE 1102
ARLINGTON, VIRGINIA 22202
UNITED STATES

Phone: (703) 415-1640

Fax: (703) 415-0788

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 14, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 - MAILED	
May 14, 2014	REGISTERED - SEC. 8 (6-YR) ACCEPTED	74886
Apr. 30, 2014	REGISTERED - SEC. 8 (6-YR) FILED	74886
May 14, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	74886
Apr. 30, 2014	TEAS SECTION 8 RECEIVED	
Feb. 18, 2010	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Feb. 18, 2010	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Oct. 21, 2008	REGISTERED-PRINCIPAL REGISTER	
Sep. 13, 2008	LAW OFFICE REGISTRATION REVIEW COMPLETED	70629
Sep. 11, 2008	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Sep. 09, 2008	STATEMENT OF USE PROCESSING COMPLETE	66530
Aug. 27, 2008	USE AMENDMENT FILED	66530
Sep. 09, 2008	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66530
Aug. 27, 2008	PAPER RECEIVED	
Mar. 14, 2008	EXTENSION 1 GRANTED	64657
Feb. 14, 2008	EXTENSION 1 FILED	64657
Feb. 14, 2008	PAPER RECEIVED	
Sep. 11, 2007	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jun. 19, 2007	PUBLISHED FOR OPPOSITION	
May 30, 2007	NOTICE OF PUBLICATION	
Apr. 12, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	70629
Apr. 09, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 06, 2007	AMENDMENT FROM APPLICANT ENTERED	70629
Apr. 06, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	70629
Apr. 06, 2007	ASSIGNED TO LIE	70629
Mar. 05, 2007	PAPER RECEIVED	
Mar. 02, 2007	NON-FINAL ACTION MAILED	
Mar. 01, 2007	NON-FINAL ACTION WRITTEN	73708
Feb. 28, 2007	ASSIGNED TO EXAMINER	73708
Dec. 05, 2006	NEW APPLICATION ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 105

Date in Location: May 14, 2014

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Mark: TERRA COMMANDER

TERRA COMMANDER

US Serial Number: 85930470
Application Filing Date: May 13, 2013
US Registration Number: 4447864
Registration Date: Dec. 10, 2013
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Dec. 10, 2013
Publication Date: Sep. 24, 2013

Mark Information

Mark Literal Elements: TERRA COMMANDER
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US 2971815
Registrations:

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Tires

International Class(es): 012 - Primary Class

U.S Class(es): 019, 021, 023, 031, 035, 044

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 28, 2013

Use in Commerce: Jan. 28, 2013

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Greenball Corporation
Owner Address: 222 S. Harbor Boulevard, Suite 700
Anaheim, CALIFORNIA 92805
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: CALIFORNIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kathryn Jennison Shultz
Attorney Primary Email: jennisonlaw@jennisonlaw.com
Attorney Email: No

Address:

Authorized:

Correspondent

Correspondent Name/Address: KATHRYN JENNISON SHULTZ
JENNISON & SHULTZ, P.C.
2001 JEFFERSON DAVIS HWY STE 1102
ARLINGTON, VIRGINIA 22202-3618
UNITED STATES

Phone: 7034151640

Fax: 7034150788

Correspondent e-mail: jennisonlaw@jennisonlaw.com

Correspondent e-mail No Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 10, 2013	REGISTERED-PRINCIPAL REGISTER	
Sep. 24, 2013	PUBLISHED FOR OPPOSITION	
Sep. 04, 2013	NOTICE OF PUBLICATION	
Aug. 17, 2013	LAW OFFICE PUBLICATION REVIEW COMPLETED	70884
Aug. 14, 2013	EXAMINER'S AMENDMENT MAILED	
Aug. 13, 2013	ASSIGNED TO LIE	70884
Aug. 13, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 13, 2013	EXAMINER'S AMENDMENT ENTERED	88888
Aug. 13, 2013	EXAMINERS AMENDMENT -WRITTEN	63030
Aug. 13, 2013	ASSIGNED TO EXAMINER	63030
May 21, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 16, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None
File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Dec. 10, 2013