

ESTTA Tracking number: **ESTTA716908**

Filing date: **12/28/2015**

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

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|---------------------------------------|---|
| Name | Spike's Holding, LLC |
| Granted to Date of previous extension | 12/27/2015 |
| Address | 3308 Mitthoeffer Road Indianapolis, IN 46236 UNITED STATES |
| Attorney information | David A. W. Wong Barnes & Thornburg LLP 11 S. Meridian St Indianapolis, IN 46204-3535 UNITED STATES dwong@btlaw.com, cbyczko@btlaw.com, tmindocket@btlaw.com Phone:3172361313 |

Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 86365213 | Publication date | 06/30/2015 |
| Opposition Filing Date | 12/28/2015 | Opposition Period Ends | 12/27/2015 |
| Applicant | Challenged Athletes, Inc. 9591 Waples Street San Diego, CA 92121 UNITED STATES | | |

Goods/Services Affected by Opposition


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| Class 025. First Use: 2008/03/31 First Use In Commerce: 2008/03/31 All goods and services in the class are opposed, namely: Clothing, namely, t-shirts, sweatshirts, cycling jerseys, triathlon singlets, bicycle shorts, triathlon shorts, polo shirts, technical running shirts, running shorts, sweatpants, jackets, race belts and warm-up suits; headgear, namely, hats, visors, swim caps and beanies; all of the foregoing offered in connection with the Challenged Athletes Foundation charitable fundraising |
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Grounds for Opposition

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| False suggestion of a connection | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Dilution | Trademark Act section 43(c) |
| Other | Likelihood of confusion based on common law rights |

Marks Cited by Opposer as Basis for Opposition

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1772105 | Application Date | 09/30/1992 |
| Registration Date | 05/18/1993 | Foreign Priority Date | NONE |
| Word Mark | FINISH LINE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 042. First use: First Use: 1982/07/20 First Use In Commerce: 1982/12/03 retail clothing, footwear and shoe store services | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1960883 | Application Date | 03/09/1994 |
| Registration Date | 03/05/1996 | Foreign Priority Date | NONE |
| Word Mark | FINISH LINE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | <p>Class 025. First use: First Use: 1994/02/24 First Use In Commerce: 1994/02/24 men's, women's and children's athletic and leisure footwear and shoes; and activewear; namely, sweatsuits, warm-up suits, shorts, T-shirts, socks, jackets and caps</p> <p>Class 042. First use: First Use: 1994/02/24 First Use In Commerce: 1994/02/24 retail store services featuring clothing and footwear</p> | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1960882 | Application Date | 03/09/1994 |
| Registration Date | 03/05/1996 | Foreign Priority Date | NONE |
| Word Mark | FINISH LINE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 025. First use: First Use: 1994/02/24 First Use In Commerce: 1994/02/24 men's, women's and children's athletic and leisure footwear and shoes; and act- | | |

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| | ivewear; namely, sweatsuits, warm-up suits, shorts, T-shirts, socks, jackets and caps Class 042. First use: First Use: 1994/02/24 First Use In Commerce: 1994/02/24 retail store services featuring clothing and footwear |
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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 1872538 | Application Date | 09/30/1992 |
| Registration Date | 01/10/1995 | Foreign Priority Date | NONE |
| Word Mark | FINISH LINE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 025. First use: First Use: 1982/07/20 First Use In Commerce: 1982/12/03 men's, women's and children's athletic and leisure footwear and shoes, activewear; namely, sweatsuits, warm-up suits, shorts, Tee-shirts, socks, jackets and caps | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3111990 | Application Date | 07/21/2005 |
| Registration Date | 07/04/2006 | Foreign Priority Date | NONE |
| Word Mark | FINISH LINE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 035. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 Retail stores and on-line retail storesfeaturing men's, women's, and children's clothing, footwear, and head wear, sporting goods, watches, sunglasses, bags, and apparel-, footwear- and sporting goods-related accessories | | |

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|-----------------------|-----------------|-----------------------|------------|
| U.S. Registration No. | 1913891 | Application Date | 09/30/1992 |
| Registration Date | 08/22/1995 | Foreign Priority Date | NONE |
| Word Mark | THE FINISH LINE | | |

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|---------------------|---|
| Design Mark | The Finish Line |
| Description of Mark | NONE |
| Goods/Services | Class 042. First use: First Use: 1982/07/20 First Use In Commerce: 1982/12/03 retail clothing, footwear and shoe store services |

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|---------------------|-----|
| Related Proceedings | N/A |
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| Attachments | 74500406#TMSN.png(bytes) 74500405#TMSN.png(bytes) 78675340#TMSN.png(bytes) 74318812#TMSN.png(bytes) Notice of Opposition FRONT LINE TO FINISH LINE .pdf(89436 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 | /dwong/ |
| Name | David A. W. Wong |
| Date | 12/28/2015 |

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

In the matter of application Serial No. 86365213

For the Mark: FRONTLINE TO FINISH LINE

Filed: Aug. 13, 2014

Published: Jun. 30, 2015

Spike's Holding, LLC

Opposer,

vs.

Challenged Athletes, Inc.

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

Spike's Holding, LLC, an Indiana limited liability company with a place of business at 3308 North Mitthoeffer Road, Indianapolis, Indiana 46235 (“Opposer”) believes that it will be damaged by registration of Application Serial No. 86365213 for the trademark FRONTLINE TO FINISH LINE and hereby opposes the same.

As grounds for its opposition, Opposer alleges as follows, with knowledge concerning its own acts, and on information and belief as to all other matters:

1. Opposer is a well-known provider of apparel and retail and online retail store services featuring athletic footwear, apparel, gear, equipment, accessories and sporting goods.

2. Opposer is the owner of the trademarks FINISH LINE and THE FINISH LINE for use in connection with various goods and services, including the sale of apparel, clothing, footwear, sports accessories, retail store services, etc. (collectively the “Finish Line Marks”).

3. Opposer owns several registrations for the Finish Line Marks, in the U.S. and in numerous foreign jurisdictions, including U.S. Registration Nos. 1772105, 1960883, 1960882, 1872538, 3111990, and 1913891, all of which are incontestable under the United States Trademark Act.

4. Opposer's registrations constitute constructive notice to others of Opposer's rights in and to the Finish Line Marks.

5. Opposer has made significant investments to advertise and promote the above-noted goods and services in connection with the Finish Line Marks. Opposer has used the Finish Line Marks in commerce since at least as early as 1982 and, as such, has established extensive goodwill in the Finish Line Marks. In addition, Opposer operates an active e-commerce and informational website at www.finishline.com.

6. The Finish Line Marks are famous and distinctive and have acquired substantial secondary meaning in the minds of relevant consumers.

7. Opposer is widely recognized as the source of origin of the wide variety of goods and services marketed and sold under the Finish Line Marks, including the apparel, clothing, footwear, sports accessories, etc. sold via its retail and online retail store services.

8. Challenged Athletes, Inc. ("Applicant") seeks registration of the trademark FRONTLINE TO FINISH LINE in connection with "Clothing, namely, t-shirts, sweatshirts, cycling jerseys, triathlon singlets, bicycle shorts, triathlon shorts, polo shirts, technical running shirts, running shorts, sweatpants, jackets, race belts and warm-up suits; headgear, namely, hats, visors, swim caps and beanies; all of the foregoing offered in connection with the Challenged

Athletes Foundation charitable fundraising” in International Class 25, as evidenced by the subject Application Serial No. 86365213 (“Applicant’s Mark”).

9. Applicant’s Mark incorporates Opposer’s well-known and famous FINISH LINE mark in its entirety.

10. Applicant’s Mark is confusingly similar in appearance, sound, and meaning to the Finish Line Marks.

11. Applicant’s Mark presents a near identical commercial impression as do the Finish Line Marks.

12. Applicant’s Mark is likely to travel through the same channels of marketing and trade and be presented to the same sets of consumers as the Finish Line Marks.

13. The apparel in connection with which Applicant seeks registration is identical and confusingly similar to the apparel sold by Opposer, as identified in Opposer’s registrations for the Finish Line Marks.

14. The subject application was filed August 13, 2014 and claims a date of first use of the subject mark of Mar. 31, 2008. Applicant’s use of the subject mark thus began some twenty-six (26) years after use of the Finish Line Marks.

15. Opposer’s applications to register its Finish Line Marks were filed and resulting registrations issued well prior to the filing of the subject trademark application.

16. The Finish Line Marks have priority over Applicant’s Mark.

17. Applicant’s Mark falsely suggests a connection with Opposer within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a).

18. Applicant's Mark is likely to cause confusion, or to cause mistake, or to deceive, as consumers familiar with the Finish Line Marks are likely to be confused that Applicant's goods emanate from or are in some way affiliated with Opposer.

19. Opposer would be injured by the granting of the registration sought by Applicant in connection with the identified goods as it would serve to confuse consumers, dilute the Finish Line Marks, falsely suggest a connection with Opposer, risk bringing Opposer into disrepute, and damage Opposer's goodwill in the Finish Line Marks.

WHEREFORE, Opposer believes that it would be damaged by the registration of Application Serial No. 86365213 and prays that the registration be denied.

Respectfully submitted,

Date: December 28, 2015

/s/ David A. W. Wong

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Indianapolis, Indiana 46204-3535
Telephone: (317) 236-1313

Attorneys for Opposer,
Spikes Holding, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Notice of Opposition has been served December 28, 2015 by transmitting the same by United States mail, first class postage prepaid, and properly addressed to the Applicant and its attorney for record:

Challenged Athletes, Inc.
9591 Waples Street
San Diego, California 92121

and its attorney of record:

Mark I. Reichenthal
Branfman Law Group P C
708 Civic Center Dr
Oceanside, California 92054-2504

 /s/ Kristina Tinsley