

ESTTA Tracking number: **ESTTA807100**

Filing date: **03/14/2017**

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	Overbrook Farm, LLC
Granted to Date of previous extension	03/26/2017
Address	2525 Delong Road Lexington, KY 40515 UNITED STATES
Correspondence information	Overbrook Farm, LLC 2525 Delong Road Lexington, KY 40515 UNITED STATES tgwynne@whitakerchalk.com, rschwartz@whitakerchalk.com Phone:8178780500

### Applicant Information

Application No	87001382	Publication date	09/27/2016
Opposition Filing Date	03/14/2017	Opposition Period Ends	03/26/2017
Applicant	Crestview Genetics, LLC 4770 Bryant Irvin Ct. Fort Worth, TX 76107 UNITED STATES		

### Goods/Services Affected by Opposition

Class 044. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Veterinary services; breeding and stud services for horses

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Applicant not rightful owner of mark for identified goods or services	Trademark Act Section 1
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	STORM CAT
Goods/Services	Veterinary services; breeding and stud services for horses

Related Proceedings	Crestview Genetics, LLC v. Chris Young and Overbrook Farm, LLC, C.A. No. 4:16-cv-00295-A, United States District Court for the Northern District of Texas, Fort Worth Division
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Attachments	Notice Opposition.pdf(1952823 bytes )
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Signature	/richardlschwartz27227.02/
Name	Overbrook Farm, LLC
Date	03/14/2017

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APEAL BOARD

In the matter of trademark application Serial No. **87001382**  
For the mark **STORM CAT**  
Filed **April 14, 2016**  
Published in the Official Gazette on **September 27, 2016**

Opposer  
**Overbrook Farm, LLC**  
v.  
Applicant  
**Crestview Genetics, LLC**

**NOTICE OF OPPOSITION**

Overbrook Farm, LLC (“Opposer”), a Kentucky limited liability company, having a principal place of business at 2525 Delong Road, Lexington, Kentucky 40515, believes that it is being and will be damaged by Crestview Genetics, LLC’s (“Applicant”) registration of the mark shown in U.S. Application No. 87001382, and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Opposer has been active in breeding and raising thoroughbred horses since the 1980s, operating a 2,200 acre farm for thoroughbred horses in Lexington, Kentucky.
2. Opposer’s horses have been sold in Lexington, Kentucky, Saratoga, New York, and other locations in the United States, and shipped to numerous locations in the United States and throughout the world.
3. Opposer has become well known throughout the equine industry, and including the thoroughbred industry, and has been long-associated with its famous thoroughbred and foundation sire Storm Cat.
4. Opposer bred, owned, and raced Storm Cat, a championship thoroughbred, who was the grandson of the world-renowned thoroughbred, Secretariat.

5. Storm Cat had a breeding career that was legendary throughout the equine world, which career extended over twenty years.
6. Storm Cat is a leading sire, based on annual progeny earnings– the recognized measure in the industry.
7. Opposer has adopted and used the mark “STORM CAT” in connection with certain goods and services, including breeding services.
8. Opposer has been using “STORM CAT” since the horse started racing in the mid-1980s.
9. Storm Cat’s reputation and affiliation with Opposer has been used by Opposer as a valuable trademark throughout the life of Storm Cat, and thereafter.
10. The fame of Storm Cat and his association with Opposer is evidenced by literally hundreds of articles and advertisements in multiple equine publications having worldwide distribution, such as *Bloodhorse*, *Thoroughbred Times*, *Daily Racing Form*, and *Thoroughbred Daily News*.
11. Opposer has actively and continuously promoted its “STORM CAT” mark in commerce by donations to charities which in themselves enhance the value of the mark, prints of Storm Cat, and donations of halters which contain the trademark name “STORM CAT”. Additionally, the Storm Cat Award, designed to introduce young researchers to equine sciences, has been awarded for over a decade.
12. Opposer has invested significant effort and resources in advertising and promoting its “STORM CAT” mark and the goods offered in association therewith, with the result that the purchasing public has come to know, rely on, and recognize the Opposer’s goods by that mark. In short, in the equine industry, when anyone refers to “STORM CAT,” they think of Opposer and its multiple equine activities, breeding, services, and products.
13. Opposer has a common law, unregistered trademark or service mark, “STORM CAT.”

14. Also, as a thoroughbred, Storm Cat's name was protected by registration with the Thoroughbred Jockey Club. Storm Cat's name has been marked "P" for "permanent." This means that this official registry prohibits any other thoroughbred from bearing that name to avoid public confusion and to protect the horse owner.
15. Applicant filed a trademark application assigned Application Serial No. 87001382, in the United States Patent and Trademark Office ("USPTO") on April 14, 2016 ("the Application") to register the mark "STORM CAT" for Veterinary services; breeding and stud services for horses (originally "mammals" but amended on 8/4/2016 to "horses") in International Class 44 ("Applicant's Services").
16. The Application filed by Applicant on April 14, 2016 ("the Applicant's Filing Date") was based on Applicant's intent-to-use the mark "STORM CAT" in commerce.
17. The Applicant's Application for the "STORM CAT" mark was published for opposition in the Official Gazette on September 27, 2016. On October 12, 2016, the Opposer timely filed a first 90-day Request for Extension of Time to Oppose Applicant's registration of the "STORM CAT" mark, which was granted until January 25, 2017.
18. At the time of the filing of the Application for the "STORM CAT" mark, Opposer was using "STORM CAT" in the marketplace, and is still doing so to date. Therefore, Applicant did not have, and does not now have, "substantially exclusive" use of the "STORM CAT" trademark, as required under 15 U.S.C. § 1052(f). Accordingly, Applicant has not met the requirements of the Lanham Act for registration of the "STORM CAT" mark.
19. Applicant's "STORM CAT" mark is identical to Opposer's "STORM CAT" mark.
20. The Applicant's Services are closely related to and/or are in the natural zone of expansion of the Opposer's services.

21. Purchasers familiar with the Opposer's goods and services are likely to mistakenly believe that the Applicant's Services are sponsored by, authorized, endorsed, affiliated with, or otherwise approved by the Opposer because the "STORM CAT" Mark sought to be registered and used by the Applicant is identical to or confusingly similar to Opposer's "STORM CAT" mark .
22. USPTO registration of the "STORM CAT" mark by Applicant would damage Opposer because registration of that mark by Applicant would be likely to cause customer confusion.
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23. Applicant is in the genetics industry and clones certain animals for profit. In 2010, Applicant initiated discussions with Opposer regarding a possible business relationship wherein Applicant would potentially clone Opposer's prize thoroughbred, Storm Cat.
24. A dispute arose between Applicant and Opposer, and on March 18, 2016, Applicant filed suit against Opposer in an action styled *Crestview Genetics, LLC v. Chris Young and Overbrook Farm, LLC*, Cause No. 153-284442-16, filed in the 153rd Judicial District Court, Tarrant County, Texas (the "State Court Action").
25. The State Court Action was removed to the United States District Court for the Northern District of Texas, Fort Worth Division, in an Action styled *Crestview Genetics, LLC v. Chris Young and Overbrook Farm, LLC*, C.A. No. 4:16-cv-00295-A ("Federal Court Action"). In its Federal Court Action counterclaims, Opposer seeks ancillary injunctive relief, requesting that the Court order Applicant to dismiss its ITU trademark proceeding and not use the mark "STORM CAT" in the future.
26. On March 15, 2016, before Applicant's Application Filing Date, Opposer sent Applicant a letter demanding that Applicant not use or reference Storm Cat.

27. Applicant knew that Opposer had the exclusive right to protect “STORM CAT” and entered into licensing negotiations with Opposer to use “STORM CAT”. However, upon information and belief, Applicant filed its “STORM CAT” Application on April 14, 2016 to gain an advantage in the State Court Action it filed on March 18, 2016, thereby acting in bad faith. Accordingly, Applicant should not be rewarded for such actions by having the mark “STORM CAT” issue to it.

28. Opposer's first use date for the “STORM CAT” mark is earlier than the Applicant's Filing Date for its Intent-to-Use Application.

29. Based upon the foregoing, Applicant committed fraud on the USPTO, as Applicant had knowledge of Opposer’s use of “STORM CAT” since at least the discussions in 2010.

30. Allowing Applicant’s registration of the “STORM CAT” mark would allow Applicant to interfere with the legitimate long standing, unchallenged rights of Opposer to use the “STORM CAT” mark and would place Applicant in a position to harass and cause annoyance to Opposer and Opposer’s customers and potential customers, all to the damage of Opposer.

31. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes that it would be damaged thereby.

WHEREFORE, Opposer respectfully requests that registration of the mark shown in Application Serial No. 87/069,184 be refused and that this Opposition be sustained in favor of Opposer.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of

Whitaker Chalk Swindle & Schwartz PLLC, Account No. 50-2555, if there is any problem with the process of the electronically submitted fee.

Dated: March 14, 2017

Respectfully submitted,



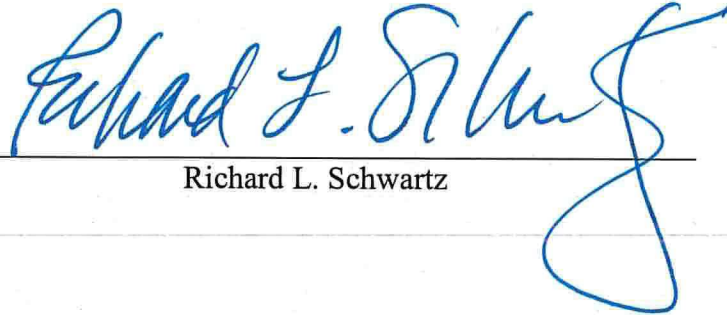
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Attorney for Opposer  
Overbrook Farm, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Opposition has been served via First Class Mail, postage pre-paid, to Applicant at the address below, on March 14, 2017.

George R. Schultz  
SCHULTZ & ASSOCIATES, P.C.  
5400 LBJ Freeway, Suite 1200  
Dallas, Texas 75240-1067

A handwritten signature in blue ink, reading "Richard L. Schwartz", is written over a horizontal line. The signature is stylized with a large, looping "S" at the end.

Richard L. Schwartz