

ESTTA Tracking number: **ESTTA940842**

Filing date: **12/12/2018**

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	Bushwacker, Inc.
Granted to Date of previous extension	12/12/2018
Address	4325 Hamilton Mill Rd., Suite 400 Buford, GA 30518 UNITED STATES

Attorney information	Edward A. Schlatter Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@Knobbe.com 949 760 0404
----------------------	--

Applicant Information

Application No	87372357	Publication date	08/14/2018
Opposition Filing Date	12/12/2018	Opposition Period Ends	12/12/2018
Applicant	BESTOP, INC. 333 Centennial Parkway, Suite B Louisville, CO 80027 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: Soft tops for sport utility vehicles; Vehicle parts and accessories, namely, enclosures and windows sold as a unit for the cargo area of sport utility vehicles
--

Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
The mark is generic	Trademark Act Sections 1, 2 and 45

Attachments	Notice of Opposition - Bushwacker.pdf(24201 bytes)
-------------	---

Signature	/Lauren Keller Katzenellenbogen/
-----------	----------------------------------

Name	Lauren Keller Katzenellenbogen
Date	12/12/2018

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

Bushwacker, Inc.,

Opposer,

v.

Bestop, Inc.,

Applicant.

Application No. 87/372,357

Mark: FASTBACK

Opposition No. _____

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Bushwacker, Inc., a corporation of Oregon, doing business at 4325 Hamilton Mill Rd. Suite 400, Buford, Georgia 30518 (“Opposer”), believes that it will be damaged by the registration of the mark shown in Application Serial No. 87/372,357 (“Application”), and hereby opposes the same.

A description of the Application is as follows:

Mark:	FASTBACK (“Applicant’s Mark”)
Serial No.:	87/372,357
Filing Date	March 15, 2017
Publication Date:	August 14, 2018
Goods:	Class 12: Soft tops for sport utility vehicles; Vehicle parts and accessories, namely, enclosures and windows sold as a unit for the cargo area of sport utility vehicles
Filing Basis:	Intent-to-Use
Owner:	Bestop, Inc. (“Applicant”)

As grounds for opposition, it is alleged that:

1. Opposer is, and has for many years been, engaged in the sale of vehicle parts and accessories including a truck accessory that can be described as a “fastback.”

2. The term “fastback” is, and has been for many years been, widely used in the automotive industry as a generic term for a particular style of vehicle top or vehicles having that style of top.

3. Since long before Applicant filed its Application, Opposer has been using the term “fastback” descriptively to refer to certain of its products.

4. According to Road and Track magazine (<https://www.roadandtrack.com/car-culture/g6460/10-best-looking-european-fastbacks/>), “[f]astbacks are easily identified by that signature, unbroken roofline that extends from the top of the windshield down to the tail of the car.”

5. Merriam-Webster online (merriam-webster.com) defines “fastback” as “an automobile with a roof having a long curving downward slope to the rear[;] also: the back of such an automobile.”

6. Car and Driver magazine similarly uses the generic term “fastback” to refer to an automobile with a roof having a long curving downward slope to the rear. See <https://www.caranddriver.com/news/hyundai-i30-fastback-n-turbo-performance>.

7. Numerous manufacturers and retailers in the automotive industry use the term “fastback” to describe their vehicles.

8. Ford Motor Company uses the term “fastback” to describe its automobiles having roofs with a long curving downward slope to the rear. See e.g. (<https://www.ford.com/cars/mustang/models/gt-fastback>).

9. Vehicle parts/accessories manufacturers and retailers such as Quadratec, DV8 OffRoad, Wild Boar, Lifted Off Road also use the term “fastback” to refer to a vehicle roof having a long curving downward slope to the rear.

10. Applicant seeks to register the term “fastback” for “Soft tops for sport utility vehicles; Vehicle parts and accessories, namely, enclosures and windows sold as a unit for the cargo area of sport utility vehicles.” However, the term “fastback” is generic, or at least merely descriptive, when used with vehicle “tops” and “enclosures” or roofs.

11. Applicant has not established any secondary meaning in the term “fastback,” and the term “fastback” does not function as an indicator of source associated with Applicant.

12. Under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), Applicant is not entitled to registration of the generic or merely descriptive term “fastback,” which would interfere with Opposer’s right to use this term.

13. Opposer will be damaged by the registration of Applicant’s Application for registration of the term “fastback” because registration would give Applicant the *prima facie* exclusive right to use this generic term.

WHEREFORE, Opposers’ pray that Application Serial No. 87/372,357 be rejected and stricken, that no registration issue thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 12, 2018

By: Lauren Keller Katzenellenbogen

Edward A. Schlatter

Lauren Keller Katzenellenbogen

Elenore Niu

2040 Main Street

Fourteenth Floor

Irvine, CA 92614

(949) 760-0404

efiling@knobbe.com

Attorneys for Opposer,

Bushwacker, Inc.