

ESTTA Tracking number: **ESTTA1059733**

Filing date: **06/03/2020**

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	SR84 S.r.L.		
Entity	Limited Liability Company	Citizenship	Italy
Address	Via Vittorio Emanuele, 119 Pozzoleone (Vicenza), I-36050 ITALY		

Attorney information	James J. Bitetto Tutunjian & Bitetto, P.C. 401 Broadhollow Road, Suite 402 Melville, NY 11747 UNITED STATES susan@tb-iplaw.com, trademarks@tb-iplaw.com 6318440080		
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Applicant Information

Application No	88764830	Publication date	05/05/2020
Opposition Filing Date	06/03/2020	Opposition Period Ends	06/04/2020
Applicant	Amir Cehaja 5470 Brighton Rose Lane Sugar Hill, GA 30518 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2019/06/01 First Use In Commerce: 2019/06/01 All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic footwear; Athletic pants; Athletic shirts; Athletic shoes; Athletic shorts; Athletic skirts; Athletic tights
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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.	2045461	Application Date	07/28/1995
Registration Date	03/18/1997	Foreign Priority Date	05/30/1995
Word Mark	FI'ZI:K		

Design Mark	
Description of Mark	The mark consists of the stylized depiction of the phonetic spelling of the word "physique".
Goods/Services	Class 012. First use: First Use: 0 First Use In Commerce: 0 bicycle seats and bicycle saddles; parts of bicycles, namely, [casings for pneumatic tires, bells, pump stands,] mudguards, handle bars [, bicycle frames, brakes, cranks, gears, chains, wheels, rims, spokes, hubs, tires and inner tubes] Class 025. First use: First Use: 0 First Use In Commerce: 0 [sports clothing and shoes, namely, socks, head bands, bib tights, jerseys, shorts, gloves, caps, jackets, T-shirts, shoes, shoe covers] *JERSEYS, SHORTS, JACKETS, SOCKS, CAPS AND SHOES, ALL THE AFOREMENTIONED GOODS FOR CYCLING PURPOSE *

U.S. Registration No.	3468144	Application Date	04/11/2007
Registration Date	07/15/2008	Foreign Priority Date	NONE
Word Mark	FI'ZI:K		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 0 First Use In Commerce: 0 Saddles and bicycle accessories, namely, water bottle holders for bicycles, bicycle handles, bicycle pedals [, kickstands, kits for bicycles composed of tools- and tire repair kits for bicycles] Class 021. First use: First Use: 0 First Use In Commerce: 0 Bottle gourds Class 025. First use: First Use: 0 First Use In Commerce: 0 Footwear and clothing, namely, tracksuits, salopettes, shirts, [trousers, shorts,] jackets, socks, hats, caps and shoes, all these goods for cycling purposes		

Attachments	74707851#TMSN.png(bytes) 79039869#TMSN.png(bytes) 374-646 - Notice of Opposition.pdf(241463 bytes)
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Signature	/Susan Paik/
Name	Susan Paik
Date	06/03/2020

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

SR84 S.r.L.,,

Opposer,
v.

Opposition No.: [TBD]
Serial No.: 88764830
Mark: **PHYZK**
Published: May 5, 2020

Amir Cehaja,
Applicant(s).

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Notice of Opposition

SR84 S.r.L. (“Opposer”), a Limited Liability Company organized and existing under the laws of Italy, and having a principal place of business at **Via Vittorio Emanuele, 119, Pozzoleone (Vicenza) I-36050 ITALY**, believes that it will be damaged by, and hereby opposes, the grant of the application of Amir Cehaja (“Applicant”), an Individual of United States citizenship at 5470 Brighton Rose Lane, Sugar Hill, GEORGIA 30518, to register the mark “PHYZK” (Word mark) shown in the application Serial Number 88/764,830 filed January 18, 2020 for “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic footwear; Athletic pants; Athletic shirts; Athletic shoes; Athletic shorts; Athletic skirts; Athletic tights” in International Class 025.

Pursuant to 15 U.S.C. Section 1052, by and through its attorneys, Opposer hereby opposes the same.

1. By the application Serial No. 88/764,830 herein opposed, Applicant is seeking to

obtain registration on the Principal Register of “PHYZK” (Word mark) (hereinafter “Applicant’s ‘830 mark”) for goods in class 025, and particularly, for “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic footwear; Athletic pants; Athletic shirts; Athletic shoes; Athletic shorts; Athletic skirts; Athletic tights” in International Class 025.

2. Applicant’s application Serial No. 88/764,830 for “PHYZK” (Word mark) is a 1(a) basis application filed on January 18, 2020 and such mark was published for opposition on May 5, 2020. This Notice of Opposition is timely filed.

3. Opposer is the owner of at least the following federal trademark registrations:

- a. **No. 2,045,461 (hereinafter “Opposer’s ‘461 Registration”)**, registered on the Principal Register on March 18, 1997 for the trademark “FI’ZI:K”(design mark) shown as follows:

fi’zi:k

for:

- i. “bicycle seats and bicycle saddles; parts of bicycles, namely, casings for pneumatic tires, bells, pump stands, mudguards, handle bars, bicycle frames, brakes, cranks, gears, chains, wheels, rims, spokes, hubs, tires and inner tubes” in International Class 012, and
- ii. “JERSEYS, SHORTS, JACKETS, SOCKS, CAPS AND SHOES, ALL THE AFOREMENTIONED GOODS FOR CYCLING PURPOSE” in International Class 025;
- b. **No. 3,468,144 (hereinafter “Opposer’s ‘144 Registration”)**, registered on the Principal Register on July 15, 2008 for the trademark “FI’ZI:K”(design mark) shown as follows:

fi'zi:k

for:

- i. “Saddles and bicycle accessories, namely, water bottle holders for bicycles, bicycle handles, bicycle pedals” in International Class 012,
- ii. “Bottle gourds” in International Class 021, and
- iii. “Footwear and clothing, namely, tracksuits, salopettes, shirts, jackets, socks, hats, caps and shoes, all these goods for cycling purposes” in International Class 025.

4. Opposer’s **‘461 Registration** and **‘144 Registration** listed above (hereinafter also referred to collectively as “*Opposer’s marks*”) have not been cancelled, are valid, and are currently in full force and effect.

5. Opposer’s **‘461 Registration** and **‘144 Registration** are incontestable under Section 15 of the Lanham Act, 15 U.S.C. §1605. Consequently, at least Registration Nos. 2,045,461 and 3,468,144 are conclusive evidence of the validity of the corresponding registered marks, of Opposer’s ownership of the marks, and its exclusive right to use the marks in commerce under Section 33 of the Lanham Act, 15, U.S.C. §1115.

6. The Opposer has been continuously and prominently using its “FI’ZI:K” trademarks in connection with the goods and/or services listed in its registrations and has been actively promoting and expanding its use of the marks.

7. As a result of the prior prominent, longtime and widespread use in commerce by the Opposer of the aforesaid “FI’ZI:K” trademarks in connection with its respective goods and/or services, the marks have acquired extensive goodwill, have developed a high degree of distinctiveness, are assets of the Opposer, and are well known and recognized as identifying at least the listed goods and services which have their origin with or have been authorized by the

Opposer. In addition, Opposer's "FI'ZI:K" trademarks have reached the good reputation they enjoy, long prior to the filing date of Applicant's '830 mark.

8. Opposer has priority with respect to the mark at issue in this Opposition. Opposer adopted and commenced use of its "FI'ZI:K" marks as trademarks long before Applicant filed their application for their '830 mark.

9. Applicant's mark "PHYZK" is confusingly and deceptively similar to Opposer's previously used and duly registered "FI'ZI:K" trademarks at least in sight, sound and/or commercial impression.

10. In particular, the overall pronunciation of the Applicant's mark "PHYZK" is substantially identical to the Opposer's "FI'ZI:K" trademarks.

11. Thus, the overall appearance and sound of Applicant's "PHYZK" mark is composed in a way which is highly similar and/or identical to the Opposer's "FI'ZI:K" trademarks.

12. Applicant's goods are in Class 025 and encompass, overlap with and/or are identical to the goods in Class 025 provided in connection with Opposer's "FI'ZI:K" trademarks, and such goods would travel and/or be promoted through the same channels of trade, marketing and/or advertising to be provided to and/or used by, the same class of purchasers/clients.

13. Due to the strong similarities between Applicant's mark and Opposer's previously used and duly registered "FI'ZI:K" trademarks, and in view of their identical Class 025 designations and overlapping/identical goods therein, Applicant's mark "PHYZK" is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods in that the public, the trade and others are likely to believe that Applicant's goods are: (a) the same goods as Opposer's and/or (b) endorsed, provided, sponsored, approved, licensed by, affiliated with or in some other way legitimately related and/or connected to Opposer and/or its goods, licensed products and/or services.

14. Thus, the use and registration of the Applicant's '830 mark for "PHYZK" for goods in Class 025 is likely to cause confusion or to cause mistake or deception in the trade and among purchasers/users and potential purchasers/users with Opposer's previously used and duly registered "FI'ZI:K" trademarks, causing damage to Opposer.

15. The use and registration of the Applicant's '830 mark for the "PHYZK" is likely to dilute the distinctive quality of Opposer's "FI'ZI:K" trademarks, again causing damage to Opposer.

16. Registration of the mark shown in the Application Serial No. 88/764,830 will result in damage to Opposer under at least the provisions of Section 2(d) of United States Trademark Act, 15 U.S.C. 1052(d), pursuant to the allegations stated above.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and Application Serial Number 88/764,830 be refused registration.

Accompanying this Notice of Opposition is the required fee of \$400.00.

Dated: June 3, 2020

Respectfully submitted,
SR84 S.r.L.

By its attorneys,

/Susan Paik/

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