

ESTTA Tracking number: **ESTTA1077818**

Filing date: **08/26/2020**

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	World Wrestling Entertainment, Inc.
Granted to Date of previous extension	08/26/2020
Address	1241 EAST MAIN STREET STAMFORD, CT 06902 UNITED STATES
Attorney information	CHRISTOPHER M. VERDINI K&L GATES LLP 210 SIXTH AVENUE PITTSBURGH, PA 15222 UNITED STATES Primary Email: TTABLitigationdocket@klgates.com Secondary Email(s): christopher.verdini@klgates.com, curtis.krasik@klgates.com 412-355-6766
Docket Number	

Applicant Information

Application No.	88800452	Publication date	04/28/2020
Opposition Filing Date	08/26/2020	Opposition Period Ends	08/26/2020
Applicants	Daniel Wheeler 1000 JACKSON ST. TOLEDO, OH 43604 UNITED STATES David Harwood 1000 JACKSON ST. TOLEDO, OH 43604 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Hats; Hooded sweatshirts; Pants; Shirts
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment in the nature of wrestling contests; Entertainment services, namely, live appearances by a professional wrestling and sports entertainment personality; Entertainment services, namely, personal appearances by a professional wrestler and sports entertainment personality; Entertainment services, namely, wrestling exhibits and

performances by a professional wrestler and entertainer; Providing wrestling news and information via a global computer network; Providing online interviews featuring professional wrestlers and sports entertainers in the field of professional wrestling and sports entertainment for entertainment purposes

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

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Top Guys		
Goods/Services	Wrestling entertainment services and clothing		

Attachments	Top Guys Notice of Opposition.pdf(30984 bytes)
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Signature	/Christopher M. Verdini/
Name	Christopher M. Verdini
Date	08/26/2020

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

Applicants: Daniel Wheeler and David Harwood
Serial No.: 88/800,452
Mark: Top Guys
Classes: 25 and 41
Filing Date: February 18, 2020
Publication Date: April 28, 2020

WORLD WRESTLING)
ENTERTAINMENT, INC.,)
)
Opposer,)
)
v.)
)
DANIEL WHEELER and)
DAVID HARWOOD,)
)
Applicants.)

Opposition No. _____

NOTICE OF OPPOSITION

World Wrestling Entertainment, Inc. (“Opposer” or “WWE”), a Delaware corporation with its principal place of business at 1241 East Main Street, Stamford, Connecticut 06902, believes that it will be damaged by registration of the mark Top Guys, which is the subject of Application Serial No. 88/800,452 (“Top Guys Application”). As such, WWE opposes the Top Guys Application and requests that registration be refused. The Top Guys Application was filed by Daniel Wheeler and David Harwood, individuals with an address of 1000 Jackson Street, Toledo, Ohio 43604 (“Applicants”). Applicants are represented by Michael E. Dockins and have an authorized email address of mdockins@shumaker.com.

As grounds in support of its opposition, Opposer asserts as follows:

I. Introduction

1. WWE is an integrated media and entertainment company that has been involved

in the sports entertainment business for approximately four decades and has developed WWE into one of the most recognized and popular brands in global entertainment today. WWE develops unique and creative content centered around its wrestlers and presents that content via its subscription network (WWE Network), television, online, and live events.

2. At the heart of WWE's success are the athletic and entertainment skills and appeal of its wrestlers and the consistently innovative and multifaceted storylines WWE creates for its wrestlers. WWE also licenses and sells consumer products that prominently display, among other things, WWE's distinctive trademarks, logos and images associated with its wrestlers.

3. WWE's unique content, for which it coined the term "sports entertainment," is perhaps best described as an action-adventure episodic drama that is akin to an ongoing, ever-developing soap opera based around WWE's wrestlers. WWE creates colorful characters that generally wrestle under a trademarked name and are distinctively delineated with unique persona, history, relationships, music, visual appearance, and behavior.

4. WWE promotes hundreds of live events each year that take place in arenas and stadiums in cities around the world.

5. WWE also produces pay-per-view events, which are extensively promoted and widely attended and viewed. For example, in 2018, WWE's marquee pay-per-view event, WrestleMania[®], took place at the Superdome in New Orleans, Louisiana, drew over 75,000 spectators from all 50 states and 67 countries, and grossed approximately \$14.1 million. On April 7, 2019, WrestleMania[®] took place at MetLife Stadium in East Rutherford, New Jersey, drew over 82,000 fans from all 50 states and 68 countries, and grossed approximately \$16.9 million.

6. In addition to its pay-per-view events, WWE produces television and online programs under various “brands,” including RAW[®], Smackdown[®] and NXT[®].

7. In or around February 2014, WWE launched the WWE Network, the first-ever 24/7 direct-to-consumer online video-streaming network, available in over 180 countries and territories. Currently, the WWE Network has over 1.5 million paid subscribers.

8. The WWE Network carries all of WWE’s pay-per-view events as well as original programming. WWE also provides WWE Network subscribers with “on demand” access to a massive and continuously growing video library of historical pay-per-view events and television programs from WWE and its predecessors as well as footage that WWE has acquired from third party wrestling promotions.

9. Each year, thousands of hours of WWE programming can be seen in 800 million homes worldwide in 28 languages.

10. Ancillary to its sports entertainment programming, WWE engages in an extensive licensing program to create and sell products featuring its trademarks, including its wrestler names, copyrighted works, copyrighted characters and other intellectual property in diverse categories including, among other things, apparel, video games, toys and DVDs. In 2019, WWE earned over \$90 million in revenues from its licensing and sale of consumer products.

II. Opposer Owns the TOP GUYS Mark

11. Applicants entered into contracts with Opposer effective as of April 10, 2017 to exclusively perform professional wrestling services for Opposer in connection with WWE live and televised professional wrestling exhibitions (the “Booking Agreements”).

12. Pursuant to Section 3 of the Booking Agreements entitled “Intellectual Property,” Applicants expressly agreed that Opposer owned, in perpetuity, any and all trademarks, service

marks, and/or distinctive and identifying indicia, including among other things, ring name, nickname, likeness, personality, characters, gestures, routines, themes and any other items of tangible or intangible intellectual property written, composed, submitted, added, improvised, created, used by or associated with Applicants' performance during the term of the Booking Agreements.

13. The sole exception to the intellectual property rights owned by WWE under the Booking Agreements is any intellectual property specifically identified in Exhibit A to the Booking Agreements, defined in the Booking Agreements as "WRESTLER Intellectual Property."

14. The mark Top Guys is not identified as WRESTLER Intellectual Property in Exhibit A to the Booking Agreements.

15. During the term of the Booking Agreements, WWE created and used the mark TOP GUYS in connection with its wrestling goods and services related to wrestling characters portrayed by Applicants.

16. Thus, pursuant to Paragraph 3 of the Booking Agreements, WWE owns the mark TOP GUYS in perpetuity.

17. In or around April 2020, Applicants and WWE terminated the Booking Agreements ("Termination Agreements"). Consistent with the plain language of Paragraph 3 of the Booking Agreements and WWE's ownership of TOP GUYS, Applicants agreed and confirmed in the Termination Agreements that they were forever precluded from using any intellectual property not identified as WRESTLER Intellectual Property.

18. The Termination Agreements explicitly provide that Applicants were forever precluded from using any WWE intellectual property including but not limited to "the names,

likenesses, costumes, props, gimmicks, gestures, routines, themes, sayings (e.g., WWE tag team references or sayings such as the Top Guys, ‘No flips, Just fists’ or FTKRO [sic]), personalities, caricatures or finishing moves (e.g. Shatter Machine) which refer or relate to, or which are confusingly similar to those used in connection with your performances” with WWE.

19. Accordingly, Applicants are not, and at the time of filing the Top Guys Application were not, the rightful owners of the TOP GUYS mark.

20. WWE has not consented to the Top Guys Application.

21. Accordingly, WWE, as the rightful owner of the TOP GUYS mark, will be damaged if the mark is registered to Applicants.

III. In the Alternative, WWE has Priority of Rights in the TOP GUYS Mark and a Likelihood of Confusion Exists

22. Prior to any date of first use upon which Applicants can rely, WWE adopted and has used the TOP GUYS mark in U.S. commerce in connection with its professional wrestling goods and services. As such, WWE is the owner of common law rights in the TOP GUYS mark.

23. Applicants’ Top Guys Application is for the identical TOP GUYS mark in connection with identical goods and services provided by WWE and is likely, when used on or in connection with the goods and services set forth in the Top Guys Application, to cause confusion, or to cause mistake, or to deceive relative to WWE’s TOP GUYS mark within the meaning of Section 2(d) of the Lanham Act.

24. By applying for a mark that is identical in sight, sound and commercial meaning to Opposer’s TOP GUYS mark in connection with identical goods and services that Opposer provides, Applicants’ Top Guys Application is likely to cause confusion among consumers as to Opposer’s affiliation and/or sponsorship of Applicants’ goods and services.

25. Accordingly, Opposer, as the owner of the TOP GUYS mark, will be damaged if

Applicant's Top Guys Application is registered to Applicant.

WHEREFORE, Opposer prays that the Notice of Opposition be sustained and that registration of U.S. Trademark Application Serial No. 88/800,452 be refused.

Respectfully submitted,

/s/ Christopher M. Verdini
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Attorneys for Opposer
World Wrestling Entertainment, Inc.

August 26, 2020