

ESTTA Tracking number: **ESTTA1092700**

Filing date: **11/02/2020**

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	Hyper Ice, Inc.		
Entity	Corporation	Citizenship	California
Address	525 TECHNOLOGY DRIVE SUITE 100 IRVINE, CA 92618 UNITED STATES		
Attorney information	JONATHAN PINK LEWIS BRISBOIS BISGAARD & SMITH LLP 633 WEST 5TH STREET SUITE 4000 LOS ANGELES, CA 90071 UNITED STATES Primary Email: USDocket@lewisbrisbois.com Secondary Email(s): jonathan.pink@lewisbrisbois.com 2132501800		
Docket Number	36366-2160OP		

Applicant Information

Application No.	88939107	Publication date	10/13/2020
Opposition Filing Date	11/02/2020	Opposition Period Ends	11/12/2020
Applicant	Tyra Stokes 1017 N PINE ST. DERIDDER, LA 70634 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Electric massage appliances, namely, electric vibrating massager; Foot massage apparatus; Massage apparatus and instruments; Electric foot spa massagers

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.	5498668	Application Date	11/21/2016
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Registration Date	06/19/2018	Foreign Priority Date	NONE
Word Mark	HYPERVOLT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2018/01/31 First Use In Commerce: 2018/02/24 Massage apparatus		

U.S. Registration No.	6084864	Application Date	11/22/2019
Registration Date	06/23/2020	Foreign Priority Date	NONE
Word Mark	HYPERVOLT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2018/01/31 First Use In Commerce: 2018/02/24 Battery chargers, battery charging bases Class 018. First use: First Use: 2018/01/31 First Use In Commerce: 2018/02/24 Carrying cases		

U.S. Registration No.	6167853	Application Date	02/27/2020
Registration Date	10/06/2020	Foreign Priority Date	NONE
Word Mark	HYPERVOLT PLUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2019/08/01 First Use In Commerce: 2019/08/01 Electric massage appliances, namely, electric vibrating massager; Massage apparatus and instruments		

U.S. Application No.	88904137	Application Date	05/06/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HYPERVOLT GO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 0 First Use In Commerce: 0 massage apparatus; percussive massage apparatus		

Attachments	GALVOLT - US - Opposition Notice.pdf(14647 bytes) GALVOLT - US - Exhibit A.pdf(1729347 bytes)
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Signature	/jp/
Name	Jonathan Pink
Date	11/02/2020

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

Serial No.: 88/939,107
Filed: May 29, 2020
Published: October 13, 2020
Applicant: Tyra Stokes
Mark: GALVOLT
International Classes: 3, 10, 21

Hyper Ice, Inc.)	
)	
)	Opposition No.
Opposer,)	
)	
Tyra Stokes,)	
Applicant.)	

NOTICE OF OPPOSITION

1. Opposer, Hyper Ice, Inc. (“HYPER ICE”), is a California corporation having its principal place of business at Suite 100, 525 Technology Drive, Irvine, CA 92618.
2. Upon information and belief, Applicant, Tyra Stokes (“STOKES”), is a U.S. individual having an address of 1017 N Pine St., Deridder, LA 70634.
3. STOKES is the owner of USSN 88/939,107, filed May 29, 2020, for the mark GALVOLT, based on an intent-to-use (“STOKES application”).
4. HYPER ICE is the owner of multiple marks (“HYPERVOLT marks”) (“Exhibit A”), namely:
 - a. U.S. Registration No. 5,498,668 for HYPERVOLT, covering “Massage apparatus”, based on application 87/243,201, filed on an intent-to-use basis on November 21, 2016, registered June 19, 2018;

- b. U.S. Registration No. 6,167,853 for HYPERVOLT PLUS, covering “Electric massage appliances, namely, electric vibrating massager; Massage apparatus and instruments”, based on application 88/813,780, filed based on use in commerce since at least as early as August 1, 2019, on February 27, 2020, registered on October 6, 2020;
 - c. U.S. Registration No. 6,084,864 for HYPERVOLT, covering “Battery chargers, battery charging bases” and “Carrying cases”, based on application 88/702,569, filed based on use in commerce since at least as early as February 24, 2018, on November 22, 2019, registered on June 23, 2020; and
 - d. U.S. Application No. 88/904,137 for HYPERVOLT GO, covering “massage apparatus; percussive massage apparatus”, filed on an intent-to-use basis on May 6, 2020, and published for opposition on September 8, 2020.
5. Since at least as early as January 2018, HYPER ICE has used the mark HYPERVOLT in commerce in connection with a massage apparatus, and an electric massage apparatus and a massage device that provides percussion therapy.
 6. Because of the widespread and extensive use of the HYPERVOLT mark, it has become well-known among the public as a means by which the HYPERVOLT product is known and by which source and origin are identified.
 7. As a result of extensive use and promotion of goods under the HYPERVOLT marks, consumers and the public have come to know, rely upon, and recognize the HYPERVOLT marks as strong indicators of the source of the goods provided in connection with the mark. As a result, the HYPERVOLT marks represent significant goodwill.
 8. Due to the continuous and extensive use of the HYPERVOLT marks in connection with

its massage apparatus, the mark HYPERVOLT has become nationally known in the massage apparatus industry, and achieved great success. HYPER ICE has expended significant effort and sums of money in advertising and promoting Petitioner's mark in connection with its goods, and in creating and maintaining the goodwill symbolized by the mark.

9. The mark STOKES seeks to register, namely, GALVOLT contains an identical term, namely VOLT, and so resembles HYPER ICE's mark HYPERVOLT as to be likely, when applied to STOKES' goods in Class 10, namely, "Electric massage appliances, namely, electric vibrating massager; Foot massage apparatus; Massage apparatus and instruments; Electric foot spa massagers ", so as to cause confusion or mistake or to deceive persons by creating the erroneous impression that STOKES' goods originate with or come from the same source as HYPER ICE's goods, or that STOKES or STOKES' goods are authorized by HYPER ICE, are endorsed by HYPER ICE, are sponsored by HYPER ICE, or are connected in some way with HYPER ICE or its goods in violation of Section 2(d) of the Lanham Act.
10. The mark STOKES seeks to register, namely, GALVOLT, is confusingly similar and so resembles HYPER ICE's mark HYPERVOLT, when applied to STOKES' Class 10 goods, which are similar or related to HYPER ICE's goods, that it has already caused confusion by creating the erroneous impression that STOKES' goods originate with or come from HYPER ICE, or from the same source as HYPER ICE's goods, or that STOKES, or STOKES' goods are authorized by HYPER ICE or are endorsed by HYPER ICE, are sponsored by HYPER ICE, or are connected in some way with HYPER ICE or its goods, in violation of Section 2(d) of the Lanham Act.

11. STOKES was likely aware of HYPER ICE's rights in and to the HYPERVOLT mark prior to its use of the mark on the goods listed in the STOKES' GALVOLT application.
12. HYPER ICE has priority based on its filing and use dates for HYPERVOLT, all prior to both the use and application dates of STOKES' mark.
13. HYPER ICE will be damaged if application Serial No. 88/939,107 should be granted in Class 10, because STOKES will obtain statutory rights in the designation GALVOLT in violation and derogation of the established prior rights and goodwill in the HYPERVOLT mark of HYPER ICE.

WHEREFORE, HYPER ICE prays that its opposition be sustained, that application Serial No. 88/939,107 be rejected in regards to Class 10, and that registration of GALVOLT as a trademark of STOKES be refused and denied in Class 10.

Respectfully submitted,

Hyper Ice, Inc.

Dated: November 2, 2020

By /s/ Jill Anderfuren
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Jill Anderfuren
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United States of America

United States Patent and Trademark Office

HYPERVOLT

Reg. No. 5,498,668

Registered Jun. 19, 2018

Int. Cl.: 10

Trademark

Principal Register

Hyper Ice, Inc. (CALIFORNIA CORPORATION)
Suite 230
15440 Laguna Canyon Road
Irvine, CALIFORNIA 92618

CLASS 10: Massage apparatus

FIRST USE 1-31-2018; IN COMMERCE 2-24-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-243,201, FILED 11-21-2016



Andrei Iancu

Director of the United States
Patent and Trademark Office

EXHIBIT A

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

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NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

United States of America

United States Patent and Trademark Office

Hypervolt Plus

Reg. No. 6,167,853

Registered Oct. 06, 2020

Int. Cl.: 10

Trademark

Principal Register

Hyper Ice, Inc. (CALIFORNIA CORPORATION)
Suite 100
525 Technology Drive
Irvine, CALIFORNIA 92618

CLASS 10: Electric massage appliances, namely, electric vibrating massager; Massage apparatus and instruments

FIRST USE 8-1-2019, The mark was first used anywhere in a different form other than that sought to be registered at least as early as 11/21/2016; IN COMMERCE 8-1-2019, The mark was first used in commerce in a different form other than that sought to be registered at least as early as 02/24/2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

OWNER OF U.S. REG. NO. 5498668

SER. NO. 88-813,780, FILED 02-27-2020



Andrei Iancu

Director of the United States
Patent and Trademark Office



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Requirements in Successive Ten-Year Periods*

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United States of America

United States Patent and Trademark Office

HYPERVOLT

Reg. No. 6,084,864

Registered Jun. 23, 2020

Int. Cl.: 9, 18

Trademark

Principal Register

Hyper Ice, Inc. (CALIFORNIA CORPORATION)
Suite 100
525 Technology Drive
Irvine, CALIFORNIA 92618

CLASS 9: Battery chargers, battery charging bases

FIRST USE 1-31-2018; IN COMMERCE 2-24-2018

CLASS 18: Carrying cases

FIRST USE 1-31-2018; IN COMMERCE 2-24-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

OWNER OF U.S. REG. NO. 5498668

SER. NO. 88-702,569, FILED 11-22-2019



Andrei Iancu

Director of the United States
Patent and Trademark Office



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