

ESTTA Tracking number: **ESTTA1097234**

Filing date: **11/23/2020**

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	Rocky Brands, Inc.
Granted to Date of previous extension	11/22/2020
Address	39 EAST CANAL STREET NELSONVILLE, OH 45764 UNITED STATES
Attorney information	MARTIN J. MILLER PORTER WRIGHT MORRIS & ARTHUR LLP 41 SOUTH HIGH STREET SUITE 2900 COLUMBUS, OH 43215 UNITED STATES Primary Email: ipdocket@porterwright.com Secondary Email(s): mmiller@porterwright.com, nbahhur@porterwright.com 5133694250
Docket Number	

Applicant Information

Application No.	88775577	Publication date	05/26/2020
Opposition Filing Date	11/23/2020	Opposition Period Ends	11/22/2020
Applicant	FeraDyne Outdoors, LLC 101 MAIN STREET SUPERIOR, WI 54880 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. First Use: 2017/01/00 First Use In Commerce: 2017/01/00 All goods and services in the class are opposed, namely: Crossbows, broadheads, points, non-telescopic bow sights, and crossbow kits featuring crossbows, crossbow bolts, field points, crossbow scopes, string suppressors, limb dampeners, quivers, quiver mounts, rope cockers and rail lubricant
--

Applicant Information

Application No.	88775572	Publication date	05/26/2020
Opposition Filing Date	11/23/2020	Opposition Period Ends	
Applicant	FeraDyne Outdoors, LLC		

	101 MAIN STREET SUPERIOR, WI 54880 UNITED STATES
--	--

Goods/Services Affected by Opposition

Class 028. First Use: 2017/01/00 First Use In Commerce: 2017/01/00 All goods and services in the class are opposed, namely: Crossbows, broadheads, points, non-telescopic bow sights, and crossbow kits featuring crossbows, crossbow bolts, field points, crossbow scopes, string suppressors, limb dampeners, quivers, quiver mounts, rope cockers and rail lubricant
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ROCKY		
Goods/Services	shirts, t-shirts, jackets, parkas, bib overalls, gloves, pants, socks, hats, caps, various other types of clothing, backpacks, and duffel bags		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ROCKY PROHUNTER		
Goods/Services	camouflage clothing for hunting, including parkas, bib overalls, pants, jackets, gloves, and hats		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ROCKY SILENTHUNTER		
Goods/Services	camouflage clothing for hunting, including shirts, pants, and jackets		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ROCKY BROADHEAD		
Goods/Services	waterproof hunting boots		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BROADHEAD		
Goods/Services	waterproof hunting boots		

U.S. Registration No.	1577871	Application Date	05/01/1989
Registration Date	01/16/1990	Foreign Priority	NONE

		Date	
Word Mark	ROCKY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1976/01/18 First Use In Commerce: 1976/01/18 BOOTS AND SHOES		

U.S. Registration No.	2898894	Application Date	05/19/2003
Registration Date	11/02/2004	Foreign Priority Date	NONE
Word Mark	ROCKY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 018. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 [LUGGAGE, DUFFELS,] BACKPACKS AND PACKS, NAMELY, WAIST PACKS</p> <p>Class 025. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 FOOTWEAR, namely, SHOES AND BOOTS and CLOTHING, namely, PARKAS, COVERALLS, [WADERS,] VESTS, PANTS, SOCKS, GLOVES, HEAD COVER MASKS, CAPS, HATS, COATS, BIB OVERALLS, T-SHIRTS, RAINWEAR, JACKETS, SHIRTS and PULLOVERS</p> <p>Class 028. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 [HUNTING SAFETY HARNESS SYSTEM CONSISTING OF VEST, PARKA AND PANT]</p>		

U.S. Registration No.	2538870	Application Date	03/29/1999
Registration Date	02/19/2002	Foreign Priority Date	NONE
Word Mark	ROCKY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 FOOTWEAR, namely, SHOES AND BOOTS [andCLOTHING, namely, WADING PANTS]		

U.S. Registration No.	1313519	Application Date	06/05/1981
Registration Date	01/08/1985	Foreign Priority Date	NONE
Word Mark	ROCKY BOOTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1979/08/14 First Use In Commerce: 1979/08/14 Boots and Shoes		

Attachments	Notice of Opposition.pdf(639208 bytes)
Signature	/Martin J. Miller/
Name	MARTIN J. MILLER
Date	11/23/2020

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

In re Matter of:

Applicant: FeraDyne Outdoors, LLC

Application Serial No.: 88/775,577

Mark: ROCKY

Application Filing Date: January 28, 2020

Date of Publication: May 26, 2020

AND

Applicant: FeraDyne Outdoors, LLC

Application Serial No.: 88/775,572

Mark: ROCKY MOUNTAIN (and design)

Application Filing Date: January 28, 2020

Date of Publication: May 26, 2020

ROCKY BRANDS, INC.

Opposer,

v.

Opposition No.: _____
(to be assigned)

FERADYNE OUTDOORS, LLC

Applicant.

NOTICE OF OPPOSITION

Rocky Brands, Inc., 39 East Canal Street, Nelsonville, Ohio 45764, a corporation of the State of Ohio, believes it will be damaged by, and hereby opposes registration of the following marks: (1) ROCKY, which is the subject of Application Serial No. 88/775,577, filed January 28, 2020 and published for opposition in the *Official Gazette* on May 26, 2020; and (2) ROCKY MOUNTAIN (and design), which is the subject of Application Serial No. 88/775,572, filed January 28, 2020 and published for opposition in the *Official Gazette* on May 26, 2020.

As ground for opposition, it is alleged that:

1. Applicant seeks to register the marks ROCKY (standard characters) and ROCKY MOUNTAIN (and design) (the “ROCKY MOUNTAIN Logo”), as depicted below, for use with “Crossbows, broadheads, points, non-telescopic bow sights, and crossbow kits featuring crossbows, crossbow bolts, field points, crossbow scopes, string suppressors, limb dampeners, quivers, quiver mounts, rope cockers and rail lubricant.” in International Class 028.






2. Priority is not an issue. The opposed applications were filed under Section 1(a) of the Trademark Act on January 28, 2020, alleging dates of first use in commerce of January 2017. Opposer, on the other hand, has used the word mark ROCKY (the “ROCKY Mark”) and the ROCKY (and design) mark (the “ROCKY Logo”) that it the subject of federal trademark reg. no. 2898894 in connection with footwear (including boots and shoes), for decades, throughout the United States. For example, Opposer has been continuously manufacturing, marketing and selling footwear under its ROCKY Mark since at least as early as 1976. Many of Opposer’s footwear products marketed and sold under its ROCKY Mark and ROCKY Logo are marketed to outdoor enthusiasts, particularly to bow hunters.
3. Opposer has also used the mark ROCKY in combination with various other terms and/or designs (including the ROCKY Logo) for shirts, t-shirts, jackets, parkas, bib overalls, gloves,

pants, socks, hats, caps, and various other types of clothing, for decades, throughout the United States, and long prior to Applicant's alleged dates of first use. Such uses include, but are not limited to, Opposer's ROCKY Logo. These clothing items bearing the ROCKY Logo or various forms of ROCKY in combination with other terms and/or designs are particularly marketed to outdoor enthusiasts, including to bow hunting enthusiasts.

4. Similarly, Opposer has also used the ROCKY Mark and the ROCKY Logo for accessory items for outdoor enthusiasts, including backpacks and duffel bags, throughout the United States since long prior to Applicant's alleged dates of first use. These accessories bearing the ROCKY Mark and the ROCKY Logo are particularly marketed to outdoor enthusiasts, including to bow hunting enthusiasts.
5. By way of example, Opposer has used the ROCKY Logo as well as the marks ROCKY PROHUNTER and ROCKY SILENTHUNTER in connection with various clothing such as camouflage parkas, bib overalls, pants, shirts, jackets, gloves, and hats, throughout the United States, since long prior to Applicant's alleged dates of first use. The ROCKY PROHUNTER and ROCKY SILENTHUNTER products are particularly designed for and marketed to hunters, including bow hunters.
6. By way of further example, Opposer has used the ROCKY Logo as well as the marks ROCKY BROADHEAD and BROADHEAD in connection with waterproof hunting boots, throughout the United States, since long prior to Applicant's alleged dates of first use. These boots are specifically designed for and marketed to bow hunters.
7. In addition to its common law rights noted above, as well as common law rights in various other marks that include the word ROCKY for footwear, clothing, and accessories marketed to hunters and other outdoor enthusiasts, Opposer is the owner of the valid and subsisting

United States Trademark Registrations identified below (collectively, with Opposer’s common law trademarks, the “ROCKY Family of Marks”).

Registered Trademark	Registration No. and Date	Goods
<p style="text-align: center;">ROCKY</p>	<p style="text-align: center;">1577871 January 16, 1990</p>	<p style="text-align: center;">boots and shoes</p>
	<p style="text-align: center;">2898894 November 2, 2004</p>	<p>Footwear, namely, shoes and boots and clothing, namely parkas, coveralls, vests, pants, socks, gloves, head cover masks, caps, hats, coats, bib overalls, T-shirts, rainwear, jackets, shirts, and pullovers, and backpacks and packs, namely, waist packs</p>
	<p style="text-align: center;">2538870 February 19, 2002</p>	<p style="text-align: center;">Footwear, namely, shoes and boots</p>
	<p style="text-align: center;">1313519 January 8, 1985</p>	<p style="text-align: center;">Boots and shoes</p>

8. Opposer has used its ROCKY Family of Marks extensively in publicizing, promoting and selling its goods. By reason of these activities by Opposer over a long period of time, Opposer’s ROCKY Mark, ROCKY Logo, and other marks in the ROCKY Family of Marks have become well known to the relevant public, especially to hunters, as identifying and

distinguishing Opposer, Opposer's business and Opposer's clothing, footwear, and other goods from those of others. Opposer, through great expense and quality control, has built up and is the owner of substantial goodwill in its ROCKY Family of Marks.

9. Because of Opposer's extensive sales, revenues, and advertising expenditures associated with its ROCKY Family of Marks, and longstanding use and exposure of these marks for boots and other footwear, these marks have become well known and exclusively associated with Opposer, and Opposer has acquired an eminent reputation therein.
10. Opposer's ROCKY Mark, ROCKY Logo, and other marks in the ROCKY Family of Marks and Applicant's applied-for word mark ROCKY contain the identical and dominant "ROCKY" component. Indeed, Applicant's applied-for mark ROCKY is identical to Opposer's ROCKY Mark.
11. Opposer's ROCKY Mark, ROCKY Logo and other marks in the ROCKY Family of Marks and Applicant's applied-for mark ROCKY MOUNTAIN (and design) contain the identical and dominant "ROCKY" component. Applicant's applied-for mark ROCKY MOUNTAIN (and Design) includes the word "ROCKY" in such large and prominent text that the word "MOUNTAIN" is barely discernible, thereby principally presenting the mark as ROCKY (and design). Indeed, Applicant used an image of the ROCKY MOUNTAIN (and design) logo on a product container as its specimen of use for the application to register the ROCKY word mark. Furthermore, Opposer's registered, and well-known ROCKY Logo and Applicant's applied-for mark ROCKY MOUNTAIN (and design) include mountain imagery in immediate proximity to "ROCKY", with the word "ROCKY" presented in similar fonts in the two marks, further creating a confusingly similar visual impression and connotation:



12. Thus, the applied-for marks ROCKY and ROCKY MOUNTAIN (and design) are confusingly similar to Opposer’s ROCKY Mark, ROCKY Logo and other marks in the ROCKY Family of Marks.
13. While Opposer’s goods sold under its ROCKY Family of Marks are not identical to the goods identified in the opposed applications, the goods are closely related. The goods identified in the opposed applications are: “Crossbows, broadheads, points, non-telescopic bow sights, and crossbow kits featuring crossbows, crossbow bolts, field points, crossbow scopes, string suppressors, limb dampeners, quivers, quiver mounts, rope cockers and rail lubricant.” Opposer’s goods sold under its ROCKY Family of Marks include footwear (e.g., hunting boots) and clothing (e.g., parkas) specifically designed for and marketed and sold to bow hunters – the same purchasers of applicant’s goods.
14. Purchasers of crossbows, broadheads, and crossbow scopes (Applicant’s goods), for example, not only purchase hunting boots and camouflage clothing (Opposer’s goods), they use these goods at the same time. Bow hunters, when out hunting with crossbows using broadheads and crossbow scopes, will almost always wear hunting boots and camouflage clothing. In fact, Applicant’s advertising under the opposed marks for the goods specified in its applications often depicts hunters wearing the very same type of goods Opposer markets and sells under its ROCKY Family of Marks.

15. Applicant's goods are and, on information and belief, will be offered through the same channels of marketing and trade, to the same classes of customers who purchase the products with which Opposer has used and is using its ROCKY Family of Marks. The relatedness of goods, marketing and trade channels, and target customers only serve to increase the likelihood that prospective purchasers will mistakenly associate the respective marks and believe that the parties' goods emanate from, are sponsored by, or are otherwise connected with a single source. Consumers are likely to erroneously believe that Opposer has licensed, or consented to Applicant's use of the applied-for marks in connection with the goods listed in Applicant's opposed trademark applications.
16. Applicant's registration and use of ROCKY and ROCKY MOUNTAIN (and design) for the specified goods in class 28 will, or are likely to, cause confusion, or cause mistake or deceive consumers into the erroneous belief that Applicant's goods offered under the opposed marks emanate from, or are authorized by, licensed by, sponsored by, or otherwise connected with Opposer's business. Any fault or defect found in Applicant's goods will reflect upon and injure the reputation of Opposer. The use and registration of ROCKY and ROCKY MOUNTAIN (and Design) by Applicant would allow Applicant to reap the financial, reputation-related rewards associated with Opposer's goods, and misappropriate Opposer's goodwill to Applicant. Opposer would be injured in the provision of its goods and in the conduct of its business because, among other reasons, Opposer has no control over the quality of Applicant's goods.
17. If Applicant is granted the registrations herein opposed, it would thereby obtain a prima facie exclusive right to use of the ROCKY and ROCKY MOUNTAIN (and design) marks, which would be a further source of damage to Opposer.

WHEREFORE, Opposer prays that this Opposition be sustained, that said application serial nos. 88/775,577 and 88/775,572 hereby opposed be refused, and for such other and further relief as may be deemed appropriate.

Respectfully Submitted by,

Date: November 23, 2020

By: /Martin J. Miller/
Martin J. Miller
Noor E. Bahhur
Porter Wright Morris & Arthur LLP
41 S. High Street
Columbus, Ohio 43215
(513) 369- 4250
Attorneys for Opposer

13911657v1