

ESTTA Tracking number: **ESTTA32126**

Filing date: **05/04/2005**

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	NathanD.Pratt
Granted to Date of previous extension	05/04/2005
Address	6250 North Ridgecrest Lane Somis, CA 93066 UNITED STATES

Attorney information	Roger H. Stein Wallenstein Wagner & Rockey, Ltd. 311 South Wacker Drive, 53rd Floor Chicago, IL 60606 UNITED STATES docket@wwrfirm.com,rstein@wwrfirm.com,vkoleno@wwrfirm.com,mmorneault@wwrfirm.com Phone:312-554-3300
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Applicant Information

Application No	78290107	Publication date	01/04/2005
Opposition Filing Date	05/04/2005	Opposition Period Ends	05/04/2005
Applicant	Z Gear, Inc. 256 N. State Street		

	Salt Lake City, UT 84103 UNITED STATES
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Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: clothing, namely, jackets, parkas, jumpsuits, sleeping suits, pants, gloves, vests, baby clothes, namely baby buntings, baby pajamas, baby jackets

Attachments	Opposition.pdf (4 pages)
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Signature	/Roger H. Stein/
Name	Roger H. Stein
Date	05/04/2005

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

In re the matter of Application)	
Serial No. 78/290,107)	
for "Z GEAR")	
)	Published: January 4, 2005
Nathan D. Pratt,)	
)	
Opposer,)	Opposition No.
)	
v.)	
)	
Z Gear, Inc.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Box TTAB
Commissioner of Trademarks
P.O. Box 1451
ALEXANDRIA, VA 22313-1451

Opposer Nathan D. Pratt ("Pratt" or "Opposer"), an individual residing at 6250 North Ridgecrest Lane, Somis, California 93066, believes he will be damaged by registration of the mark shown in Serial No. 78/290,107 in International Class 25 and hereby opposes the same.

The grounds for opposition are as follows:

1. Z Gear, Inc. ("Applicant") seeks to register Z GEAR as a trademark for clothing, namely, jackets, parkas, jumpsuits, sleeping suits, pants, gloves, vests, baby clothes, namely baby buntings, baby pajamas, and baby jackets in International Class 25 with a U.S. filing date of August 20, 2003 as evidenced by publication of said mark in the *Official Gazette* on January 4, 2005. This application was filed as an Intent-to-Use Trademark Application.

2. Opposer owns Registration No. 2,770,125 for the mark Z-BOY for clothing, namely sports clothing and casual clothing, namely, shirts, jackets, bathing trunks, shorts, pants, swimwear, wetsuits and fleecewear, namely, sweat pants; sweat shorts, sweatshirts and jackets in International Class 25, Registration No. 2,770,126 for the mark Z-BOYS for clothing, namely sports clothing and casual clothing, namely, shirts, jackets, bathing trunks, shorts, pants, swimwear, wetsuits and fleecewear, namely, sweat pants; sweat shorts, sweatshirts and jackets in International Class 25, and Application Serial No. 76/613,161 for the mark Z-CULT for clothing, namely sports clothing and casual clothing, namely, shirts, jackets, bathing trunks, shorts, pants, swimwear, wetsuits and fleecewear, namely, sweat pants, sweat shorts, sweatshirts and jackets, and shoes, caps, hats, belts and socks in International Class 25 (“Opposer’s Marks”).

3. Since at least as early as June 1, 2002, Opposer has continually used, marketed, distributed and sold the products set forth in its registrations above (Reg. Nos. 2,770,125 and 2,770,126) in interstate commerce using Opposer’s Z-BOY and Z-BOYS marks. Opposer’s use has not been abandoned, and Opposer is now using, marketing, distributing and selling the products set forth in its registrations above (Reg. Nos. 2,770,125 and 2,770,126) in interstate commerce using Opposer’s Z-BOY and Z-BOYS marks.

4. Since at least as early as January 23, 2003, Opposer has continually used, marketed, distributed and sold the products set forth in its application above (Appl. Serial No. 76/613,161) in interstate commerce using Opposer’s Z-CULT mark. Opposer’s use has not been abandoned, and Opposer is now using, marketing, distributing and selling the products set forth in its application above (Appl. Serial No. 76/613,161) in interstate commerce using Opposer’s Z-CULT Mark.

5. Opposer’s Z-BOY and Z-BOYS marks were both registered on September 30, 2003. Both registrations are valid and have not been abandoned by Opposer.

6. Opposer’s application to register the Z-CULT mark was filed in the United States Patent & Trademark Office on September 21, 2004. This application is valid and has not been abandoned by Opposer.

7. Opposer provides its goods listed above under Opposer’s Marks in interstate commerce. Opposer spends considerable sums for promotional activities, packaging, and printed material promoting these goods, resulting in valuable goodwill with respect to Opposer’s Marks. Opposer’s Marks have gained a valuable reputation in connection with Opposer’s high quality products.

8. It is alleged that the mark proposed for registration by Applicant, namely, Z GEAR, is confusingly similar to Opposer’s Marks. Applicant’s mark will be used in connection with clothing, namely, jackets, parkas, jumpsuits, sleeping suits, pants, gloves, vests, baby clothes, namely baby buntings, baby pajamas, and baby jackets in International Class 25 which are substantially similar, if not identical, to the goods of Opposer. Opposer markets its goods to a broad spectrum of customers, which are the same customers to whom Applicant will be marketing its goods. Applicant’s mark so nearly resembles Opposer’s Marks that Applicant’s mark is likely to cause confusion or cause mistake or deceive the purchasing public.

9. It is further alleged that Applicant’s mark is deceptively similar to Opposer’s Marks so as to cause confusion and lead to deception as to the origin of Applicant’s goods sold under Applicant’s mark.

10. It is also alleged that if Applicant is permitted to use and register the mark for these goods, as specified in the application herein opposed, confusion in trade, resulting in damage and injury to Opposer, would be caused and would result by reason of this similarity between the Applicant’s mark and Opposer’s Marks. Persons familiar with Opposer’s Marks would be likely to see Applicant’s goods expecting the goods to be somehow associated with Opposer. Any defect, objection, or fault found with Applicant’s goods marketed under its mark would necessarily reflect upon, and seriously injure, the reputation and goodwill that Opposer has established for its goods marketed under its Marks.

11. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer. Therefore, Applicant should be denied registration of its mark under Section 2(d) of the Lanham Act.

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