

ESTTA Tracking number: **ESTTA590707**

Filing date: **03/05/2014**

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	Franci Cohen		
Entity	Individual	Citizenship	UNITED STATES
Address	1113 East 7th Street Brooklyn, NY 11230 UNITED STATES		

Attorney information	Lynne Petillo Esq. 1041 State Route 36 Suite 203 Atlantic Highlands, NJ 07716 UNITED STATES lpetillo@petillolaw.com Phone:732-291-0002
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Applicant Information

Application No	86066696	Publication date	02/11/2014
Opposition Filing Date	03/05/2014	Opposition Period Ends	03/13/2014
Applicant	Rogers, Kim PO BOX 2 Silvana, WA 98287 USX		


Goods/Services Affected by Opposition

Class 028. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Exercise equipment, namely, adjustable support stand for performing callisthenic and stretching exercises

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.	4391039	Application Date	10/18/2012
Registration Date	08/27/2013	Foreign Priority Date	NONE
Word Mark	SPIDERBANDS		
Design Mark			

Description of Mark	The mark consists of the word "SPIDERBANDS" outlined in red and white with the inner portions appearing in grey with a texture like surface with a stylized design on the last letter "S" consisting of a white spider web and red spider over the letter "S". The color black appearing in the mark is merely for shading purposes and is not claimed as a feature of the mark.
Goods/Services	Class 041. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 physical fitness and training services

U.S. Application No.	86208609	Application Date	03/02/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SPIDERBANDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 Exercise equipment and accessories; gym equipment and accessories Class 041. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 Physical fitness training and instruction services; Exercise and physical fitness conditioning classes		

Attachments	85758029#TMSN.jpeg(bytes) Notice of Opposition SPIDERWINGS.pdf(1080710 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/lp/
Name	Lynne Petillo Esq.
Date	03/05/2014

Filing Date: September 17, 2013

Publication Date: Published in the Official Gazette on Feb. 11, 2014

FRANCI COHEN,

Opposer,

v.

KIM ROGERS,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
ATTN: TTAB

Dear Sir or Madam:

Franci Cohen ("Opposer"), an individual U.S. citizen, with an address of 1113 East 7th Street, Brooklyn, New York 11230, believes that she will be damaged by the registration by Kim Rogers ("Applicant") of the mark which is the subject of the above-identified application ("the Application") and hereby opposes the same.

the following goods and services: physical fitness and exercise instruction, training and conditioning services in International Class 41; exercise equipment and accessories and gym equipment and accessories in International Class 28; and workout clothing and sportswear in International Class 25.

2. Opposer has used Opposer's Mark in commerce since at least prior to September 17, 2013, the date of the filing of Applicant's intent-to-use Application, and is presently using Opposer's Mark in connection with physical fitness and exercise instruction, training and conditioning services in International Class 41; and with exercise equipment and accessories and gym equipment and accessories in International Class 28.

3. Opposer's Mark is the subject of the following United States trademark registrations and applications: Reg. No. 4,391,039 and App. No. 86208609. Additionally, Opposer is in the process of obtaining patents on the equipment and services covered by Opposer's Mark.

4. By virtue of Opposer's extensive and continuous use of Opposer's Mark, extensive efforts and the expenditure of large sums for promotional activities, and by virtue of the quality of the goods and services offered under Opposer's Mark, Opposer's Mark has developed extensive goodwill and consumer recognition and become well-known.

and Opposer's Mark are nearly visually and phonetically identical as to the SPIDER portion of the Marks, except for the Applicant's use of the word WINGS to the end of the mark, and the goods and services offered under the marks are virtually identical and highly related, and are likely to be sold, marketed and/or offered to the same class of consumer (i.e. people interested in workout and physical fitness classes) and through similar channels of trade (i.e. health and fitness establishments, gyms, etc.).

7. Applicant's Mark is deceptively similar to Opposer's Mark so as to cause confusion and deceive the public as to origin of Applicant's goods to be offered under Applicant's Mark. Consumers and persons in the trade will assume, contrary to fact, that Applicant's goods are associated with, endorsed by or in some other way related to Opposer and/or Opposer's goods and services.

8. Opposer alleges and believes, for the reasons set forth above, that if Applicant is permitted to use and/or register Applicant's Mark in connection with Applicant's goods, as specified in the Application, confusion in the trade would occur, resulting in damage and injury to Opposer.

9. If Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a prima facie exclusive right to the use of Applicant's Mark. Such registration would be a source of damage and injury to Opposer.

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