

ESTTA Tracking number: **ESTTA106807**

Filing date: **10/30/2006**

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	TEXAS TECH UNIVERSITY		
Entity	ACADEMIC TEACHING INSTITUTION	Citizenship	TEXAS
Address	2500 BROADWAY LUBBOCK, TX 79409 UNITED STATES		

Attorney information	ALICIA GRAHN JONES KILPATRICK STOCKTON LLP 1100 PEACHTREE STREET SUITE 2800 ATLANTA, GA 30309 UNITED STATES aljones@kilpatrickstockton.com Phone:404-815-6500		
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Applicant Information

Application No	78620437	Publication date	10/17/2006
Opposition Filing Date	10/30/2006	Opposition Period Ends	11/16/2006
Applicant	Spiegelberg, John 2416 Broadway Lubbock, TX 79401 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: clothing and accessories, namely shirts, pants, jackets, shorts, sweat bands, sweat suits, socks, and hats

Attachments	10.30 NOO to Raiderland.PDF (4 pages)(242190 bytes) Exh A to NOO Opposer's Motion to Suspend.PDF (32 pages)(1865623 bytes)
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Signature	/alicia grahn jones/
Name	ALICIA GRAHN JONES
Date	10/30/2006

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

TEXAS TECH UNIVERSITY,)	
)	
Opposer,)	In the matter of Application
)	
v.)	Serial No. 78/620,437
)	Mark: RAIDERLAND
)	
)	
JOHN SPIEGELBERG d/b/a RED)	
RAIDER OUTFITTER,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer Texas Tech University is a general academic teaching institution of the State of Texas, having its principal location at 2500 Broadway, Lubbock, Texas 79409 (“Opposer”). Opposer believes it will be damaged by the registration of the mark RAIDERLAND (Serial No. 78/620,437), and opposes the same pursuant to 15 U.S.C. § 1063, and 37 C.F.R. §§ 2.101 and 2.104(a). Application Serial No. 78/620,437 is currently at issue in a case between the parties pending before the United States District Court for the Northern District of Texas and, therefore, Opposer is filing a Motion to Suspend Proceedings concurrently with this Notice of Opposition.¹ The ground for the opposition are as follows.

1. On information and belief, on April 30, 2005, Applicant John Spiegelberg d/b/a Red Raider Outfitter (“Applicant”) filed an application to register the mark RAIDERLAND (Serial No. 78/620,437) (“Applicant’s Mark”) for use in connection with “clothing and accessories, namely shirts, pants, jackets, shorts, sweat bands, sweat suits, socks, and hats” in

¹ Opposer’s Motion to Suspend Proceedings is attached as Exhibit A.

International Class 25. Applicant's trademark was first published for Opposition in the Official Gazette dated October 17, 2006. Thus, Opposer has timely filed this Notice of Opposition.

2. Texas Tech University ("TTU") was founded in 1923, and its academic and athletic programs are well known and respected across the United States. TTU's athletic teams and others affiliated with TTU are often referred to as RED RAIDERS and TTU's mascot is RAIDER RED.

3. In 1936, TTU adopted the RED RAIDERS mark for use in connection with its athletic programs. TTU has used the RED RAIDERS mark for more than sixty years in connection with a wide range of goods and services, including T-shirts, hats, and the like.² Tech has also long been known as "RAIDERS," an abbreviation of RED RAIDERS. As a result, Tech extensively has used and promoted the terms RED RAIDERS and RAIDERS as a trademarks of the university.

4. TTU has used the mark RAIDER RED for more than thirty years and the design of RAIDER RED (the "Raider Red Design Mark") since at least as early as 1971 in connection with various goods and services in the educational and entertainment realm, including in connection with its highly acclaimed athletic programs. TTU owns United States Trademark Registration No. 2,433,675 for the Raider Red Design Mark for "paper goods and printed matter, namely, notecards and game programs; clothing, namely, shirts, t-shirts, caps and boxer shorts; and entertainment services, namely, arranging and conducting athletic events, tournaments and exhibitions," registered on March 6, 2001.

5. TTU's famous marching band is the "Goin' Band from Raiderland." Because the band was one of the few that would travel to away games, and because it came from the home of

² TTU owns State of Texas trademark Registration No. 49,917 for the RED RAIDERS mark and Registration No. 49,912 for the TEXAS TECH UNIVERSITY RED RAIDERS mark.

the RED RAIDERS, it came to be known as the “Goin’ Band From Raiderland.” TTU has used the RAIDERLAND mark in connection with the “Goin’ Band From Raiderland” for more than thirty years, and TTU has used and licensed the RAIDERLAND mark in connection with apparel since as early as 1975.

6. Opposer’s RED RAIDERS, RAIDERS, RAIDER RED, Raider Red Design, and RAIDERLAND marks are collectively referred to as “Opposer’s Marks.”

7. As a result of TTU’s longstanding and extensive use, Opposer’s Marks are symbolic of the extensive goodwill and consumer recognition established by TTU. By virtue of TTU’s expenditure of substantial amounts of time, effort and money in advertising and promoting its goods and services under Opposer’s Marks, Opposer’s Marks have come to identify TTU’s athletic and other goods and services.

8. Opposer will be damaged by the registration of Applicant’s Mark because the mark and its associated goods so resemble Opposer’s Marks and the associated goods and services as to be likely to cause confusion, mistake and deception. Applicant’s Mark contains the term “RAIDER” which is a reference Opposer’s mascot, nickname, athletic identity and its Goin’ Band from Raiderland marching band.

9. Persons familiar with Opposer’s Marks are likely to believe erroneously that Applicant’s goods are offered by TTU or are authorized, licensed, endorsed or sponsored by TTU, and registration of Applicant’s Mark on the Principal Register will be inconsistent with Opposer’s rights in the Opposer’s Marks.

10. Applicant’s applied-for mark also falsely suggests a connection with TTU, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

11. Registration of Applicant's Mark would cause dilution to the distinctiveness of Opposer's Marks by eroding consumers' exclusive identification of these famous marks with Opposer, tarnishing and degrading the positive associations and prestigious connotations of the marks, and otherwise lessening the capacity of the marks to identify and distinguish the goods and services of Opposer.

12. Registration of Applicant's Mark should be refused because the application is being procured by fraud. Specifically, either Applicant knows or should have known that: (1) Opposer is the owner of the RAIDERLAND mark; (2) Applicant is not entitled to use the RAIDERLAND mark in commerce; and (3) Opposer has the right to use the RAIDERLAND mark in commerce.

13. On information and belief, Applicant's attorney was acting on behalf of Applicant without his authority when Applicant's counsel filed the application to register the mark RAIDERLAND.

14. Enclosed is the PTO-2038 authorizing the credit card payment of the \$300.00 filing fee.

WHEREFORE, Opposer requests that Application Serial No. 78/620,437 be refused registration and this Notice of Opposition be sustained in favor of Opposer.

Dated: October 30, 2006

Respectfully submitted,

/s/ Alicia Grahn Jones
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