

ESTTA Tracking number: **ESTTA1288786**

Filing date: **06/01/2023**

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	ModuForm, Inc.		
Entity	Corporation	Citizenship	Massachusetts
Address	172 INDUSTRIAL ROAD FITCHBURG, MA 01420 UNITED STATES		

Correspondence information	JOHN L. DUPRE' HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD, P.O. BOX 9133 FITCHBURG, MA 01420 UNITED STATES Primary email: trademarks@hbsr.com Secondary email(s): john.dupre@hbsr.com, kristen.salvaggio@hbsr.com, christopher.jensen@hbsr.com 978-341-0036
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Applicant information

Application no.	97207081	Publication date	05/16/2023
Opposition filing date	06/01/2023	Opposition period ends	06/15/2023
Applicant	Bodypoint, Inc. SUITE 300 558 FIRST AVENUE S. SEATTLE, WA 98104 UNITED STATES		

Goods/services affected by opposition

Class 010. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Arm supports adapted for medical use or for use by physically injured or handicapped persons; therapeutic and assistive devices adapted for persons with disabilities, namely, arm supports
Class 012. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Apparatuses and accessories specially adapted for manual wheelchairs and electrically-powered wheelchairs namely, arm supports; apparatus for supporting and positioning handicapped persons as they occupy wheelchairs and power chairs, namely, arm supports specially adapted for wheelchairs

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.	1068987	Application date	09/21/1976
Register	Principal		
Registration date	07/05/1977	Foreign priority date	NONE
Word mark	MODU FORM		
Design mark			
Description of mark	NONE		
Goods/services	Class 020. First use: First Use: Jun 17, 1976 First Use In Commerce: Jun 17, 1976 PLASTIC FURNITURE		

U.S. registration no.	5758354	Application date	08/07/2017
Register	Principal		
Registration date	05/21/2019	Foreign priority date	NONE
Word mark	MODUFORM		
Design mark			
Description of mark	NONE		
Goods/services	Class 020. First use: First Use: Jun 17, 1976 First Use In Commerce: Jun 17, 1976 Furniture		

Attachments	0238.0051-000 - Notice of Opposition.pdf(123196 bytes)
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Signature	/John L. DuPre'/
Name	John L. DuPre'
Date	06/01/2023

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

ModuForm, Inc.,

Opposer,

v.

Bodypoint, Inc.,

Applicant.

Opposition No.:
Serial No. 97207081

NOTICE OF OPPOSITION

In the matter of an application for registration of the mark MODUFORM, Serial No. 97207081, filed January 7, 2022 by Bodypoint, Inc., of Suite 300, 558 First Avenue S., Seattle, Washington 98104, and published for Opposition in the Official Gazette of May 16, 2023.

Opposer, ModuForm, Inc., a Massachusetts corporation, having a place of business at 172 Industrial Road, Fitchburg, Massachusetts 01420, believes that it would be damaged by registration of the mark as sought in the foregoing application and hereby opposes the same.

The grounds of the opposition are as follows:


1. By the application herein opposed, Applicant seeks to register the standard character mark MODUFORM as a trademark for certain goods and services in Classes 10 and
12. This Opposition opposes the registration of such mark.
2. Opposer is the owner of all right, title, and interest in its MODUFORM mark for use in connection with furniture.

3. Since the initial use of the MODUFORM mark at least as early as June 17, 1976, Opposer has made broad and substantial use of the mark in connection with the promotion and selling of its goods and services.

4. The MODUFORM mark was adopted by Opposer at least as early as June 17, 1976, and has been used by Opposer continuously in connection with the advertising, promotion and offering of its goods and services in interstate commerce and in connection with its business operations .

5. Opposer's MODUFORM mark is of significant value to Opposer as an identification of source in connection with the promotion and offering of its goods and services and in connection with its operations. Opposer's MODUFORM mark distinguishes such goods and services from the goods and services of others.

6. Opposer has registered the mark MODUFORM as a standard character mark on the Principal Register for furniture, issued on May 21, 2019, as U.S. Trademark Registration No. 5,758,354.

7. Opposer has registered the mark MODU FORM and design  as a word and design mark on the Principal Register for use in connection with plastic furniture, issued on September 21, 1976, as U.S. Trademark Registration No. 1,068,987. The trademark registration is now incontestable.

8. Opposer is in the business of selling furniture and mattresses, including products designed for high-use and active environments such as, but not limited to, rehabilitation facilities, healthcare facilities and offices, detention facilities, mental health facilities, public spaces, nursing homes, group homes, and schools.

9. Since at least as early as 1976 and continuously to the present, Opposer has marked and sold its furniture in association with the MODUFORM mark to healthcare providers and institutions, such as State Mental Health Hospitals, Behavioral Health facilities, Private Psychiatric Hospitals, VA Hospitals, Acute Care Hospitals, and nursing homes. Since at least as early as 1976, Opposer has continued to send national mailings of its brochures promoting and advertising its products in association with the MODUFORM mark to healthcare providers and institutions, and has continued to show its products in association with the MODUFORM mark at mental health conferences and industry events.

10. On its website at www.moduform.com (the “ModuForm Website”), Opposer provides detailed product information about its products, its primary markets, and other salient product features. The ModuForm Website includes information and marketing materials directed to Behavior Health Hospitals, Group Homes, Residential Treatment Facilities, and other medical care providers at least on the following pages: <https://moduform.com/behavioral-health/>; <https://moduform.com/residential-treatment/>; <https://moduform.com/doctor-on-call-sleep-room/>; and <https://moduform.com/group-homes/>

11. Sales of furniture and other products to hospitals and other healthcare providers is an important part of Opposer’s business. Focusing on 2018 to the present, Opposer’s customers have included more than 350 different hospitals and healthcare providers.

12. The MODUFORM mark as sought to be registered by Applicant is identical to Opposer’s MODUFORM mark and is likely to cause confusion or mistake or to deceive purchasers of goods and services provided by Opposer and/or provided by Applicant.

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