

TAB

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12-11-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #7

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

In the matter of:)	
)	Opposition No.:
Application Serial No. 76/201,759)	
)	
Applicant: Sturgis Area Chamber)	
of Commerce)	Atty. Docket No. 6633-01
)	
Filed on: January 30, 2001)	
)	
Mark: STURGIS)	
)	
Published: October 15, 2002)	

Assistant Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

Good Sports Sturgis, Inc., (Good Sports) a South Dakota corporation, having a
place of business located at 349 Progress Drive, Manchester, Connecticut 06045,
believes that it will be damaged by registration of the mark in the following

application:

12/27/2002 CHAY11 00000211 76201759

01 FC:6402

1500.00 DP

Application Serial No. 76/201,759 (Application) filed January 30, 2001 by the Sturgis Area Chamber of Commerce (Applicant) and published for opposition in the Official Gazette on October 15, 2002 on Page TM 121, seeking registration of the mark STURGIS in non-stylized form for the goods and/or services listed in the following classifications:

International Class: 006

Metal key rings, metal license plates, metal boxes, non-luminous and non-mechanical metal signs, and metal die-cast piggy banks, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 008

Hand-operated hand tools, namely, hunting knives, fishing knives, pocket knives, sidearm knives, folding knives, sport knives, knives made of precious metal, wrenches, pliers, socket sets, namely, socket wrenches and sockets, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 009

Sunglasses, novelty telephones, pre-recorded videotapes featuring live music concerts, music videos, documentaries, and footage of vehicle rallies, exhibits and competitions, and footage of the Black Hills area of South Dakota and Wyoming, computer mouse pads, magnets, electronic video game software, protective or safety helmets, motorcycle helmets, bicycle helmets, screen saver computer software, and neon signs, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 011

Lamps, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 012

License plate holders and motorcycle handlebar grips, and motorcycle bags, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 013

Firearms, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 014

Jewelry, watch bands, belt buckles of precious metal, non-monetary coins, medallions, non-monetary tokens, clocks, and watches, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 016

Pencils; pens; and paper goods and printed matter, namely, posters; bumper stickers; trading cards; decals; iron-on and plastic transfers; window stickers; wall calendars; note pads; desk sets; lithographs; mounted photographs; unmounted photographs; prints, namely, art prints, cartoon prints, color prints, photographic prints, lithographic prints, and pictorial prints; brochures and books about motorcycles, automobiles and trucks; paper pennants; paper banners; temporary tattoos; paper and plastic bags for packaging; paper and plastic gift bags; postcards, and picture frame mat boards, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 018

Wallets, athletic bags, all purpose sport bags, beach bags, book bags, carry-on bags, duffel bags, gym bags, shoulder bags, tote bags, travel bags, overnight bags, dog collars, and leashes for animals, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 020

Non-metal key rings, plastic novelty license plates, and jewelry boxes not of metal, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 021

Glassware, namely, shot glasses, drinking glasses, drinking cups, and drinking mugs; insulating sleeve holders made of rubber, plastic or foam for beverage cans; insulating sleeve holders made of rubber, plastic or foam for beverage bottles; paper cups; grease and polish rags; portable coolers; coasters not of paper and not

being table linen; bottle openers; water bottles sold empty; sports bottles sold empty; beer steins; and kitchen utensils, namely, spatulas, turners, tongs, pan scrappers, grill scrappers, and grill baskets, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 024

Afghans, towels, cloth flags, cloth pennants, cloth banners, and quilts, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 025

Clothing, namely, shirts, T-shirts, long sleeve T-shirts, sleeveless T-shirts, denim shirts, woven shirts, knit shirts, golf shirts, sport shirts, sweaters, jackets, anoraks, coats, tank tops, polo shirts, sweatshirts, pullovers, boxer shorts, sleepwear, women's tops, chemises, cloth wraps, bikinis, beachwear, bathing suits, swim wear, head wear, bandannas, caps, cloth headwraps, berets, hats, scarves, head bands, belts, chaps, jeans, dungarees, boots, footwear, gloves, and sun visors, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 026

Cloth and embroidered patches for clothing, ornamental cloth patches, hat pins for securing hats, belt buckles not of precious metal, and novelty ornamental pins, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 027

Floor mats for vehicles, textile floor mats for use in the home, rubber floor mats for use as door mats, textile floor mats for use as door mats, and rugs, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 028

Miniature toy vehicles, electric miniature toy vehicles, radio controlled toy vehicles, toy model vehicles, miniature toy banks in the shape of vehicles, Christmas tree ornaments, fishing lures, balloons, gaming chips, sports balls, and toy and/or decorative wind socks; die-cast toy

banks; and toy helmets, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 032

Bottled spring water and beer, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 033

Distilled liquor, all of the aforementioned goods relating to the STURGIS motorcycle rally.

International Class: 035

Promoting sports competitions of others, namely, motorcycle and vehicle rallies, exhibits, and competitions; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with the STURGIS motorcycle rally; promoting economic development in the City of Sturgis and the Black Hills area of South Dakota and Wyoming; and mail order, catalog, retail store, wholesale store, on-line retail store, and retail television store services featuring general merchandise and souvenirs relating to the STURGIS motorcycle rally.

International Class: 041

Entertainment services in the nature of organizing and conducting motorcycle and vehicle exhibitions and rallies; organizing and conducting the entertainment events of others, namely, motorcycle and vehicle exhibitions, rallies, and competitions; and entertainment services in the nature of live civic productions and live music concerts.

Accordingly, Good Sports opposes the Application, and in particular opposes registration in the following international classes (IC):

- 1) IC: 14, Jewelry;
- 2) IC: 21, Housewares and glass;
- 3) IC: 25, Clothing;
- 4) IC: 26, Fancy goods; and
- 5) IC: 35, Advertising and business.

The grounds for the Opposition are as follows:

1. Good Sports has continuously used the name STURGIS in commerce on or in connection with the sale of "Rally Products" as defined in the Application, including, clothing, t-shirts, bandanas, jewelry, pins, patches, and glassware at the

Sturgis Motorcycle Rally (Rally), also as defined in the Application, held in and around Sturgis in the Black Hills area of South Dakota each year since at least 1985.

2. Good Sports has continuously used the name STURGIS in the promotion of the Rally since at least 1985.

3. Good Sports' use of the name STURGIS in its sales of Rally Products at the Rally has been through the same channels of trade and to the same class of customers as the Rally Products allegedly offered by the Applicant at the Rally and bearing the mark BLACK HILLS MOTOR CLASSIC STURGIS RALLY & RACES BLACK HILLS S.D. and Design of Applicant's Trademark Registration No. 1,948,097 (the '097 Registration).

4. Good Sports has had gross sales of Rally Products totaling approximately \$1.5 million each year at the Rally since at least the year 2000.

5. Good Sports has had gross sales of Rally Products totaling approximately \$7.5 million since 1987.

6. Good Sports has had gross sales of Rally Products bearing the name STURGIS totaling approximately \$2.6 million since 1987.

7. Good Sports has owned and operated an on-line retail store since 1996 featuring Rally Products and promoting the Rally on the Internet at the web sites www.hotleathers.com and www.good-sports.com.

8. Many of over 700 vendors use the name STURGIS in connection with the sale of Rally Products each year at the Rally.

9. Many of over 700 vendors use the name STURGIS in connection with the promotion of the Rally.

First Ground of Opposition

The name STURGIS is Primarily Geographically Descriptive

10. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

11. STURGIS is the name of a city in the State of South Dakota.

12. The name STURGIS is primarily recognized in the State of South Dakota as the identifier for the city of Sturgis, South Dakota.

13. Applicant admitted in the application for the mark in the '097 Registration that the name STURGIS is primarily geographically descriptive.

14. The Rally is held each year in and around the City of Sturgis, South Dakota since at least 1938.

15. The name STURGIS is primarily geographically descriptive when used on or in connection with Rally Products and related services.

Second Ground of Opposition

The name STURGIS is Merely Descriptive

16. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

17. The name STURGIS is merely descriptive when used on or in connection with Rally Products and related services.

Third Ground of Opposition

The name STURGIS has not become distinctive of Applicant's goods or services as alleged by Applicant to establish its claim under Section 2(f), (15 U.S.C. § 1052(f))

a) Applicant and its licensees have not been substantially exclusive users of the name STURGIS in connection with the sale of Rally Products or the Promotion of the Rally for at least five years preceding November 1, 2001

18. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

19. Good Sports, as well as others, has used the name STURGIS continuously since at least as early as 1982 in connection with the sale of Rally Products at the Rally and elsewhere.

20. Good Sports, as well as others, has used the name STURGIS continuously since at least as early as 1985 in connection with promoting the Rally.

21. Good Sports, as well as others, continues to use the name STURGIS in commerce on or in connection with the sale of Rally Products at the Rally and otherwise.

22. Good Sports, as well as others, continues to use the name STURGIS in connection with promoting the Rally.

b) The name STURGIS is not the same as or similar to the mark in the '097 Registration

23. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

24. Applicant's claim of acquired distinctiveness under § 2(f) of the Lanham Act is based on Applicant's use of the mark BLACK HILLS MOTOR CLASSIC STURGIS RALLY & RACES BLACK HILLS S.D. and Design identified on the Principal Register as Registration No. 1,948,097 (the '097 Registration).

25. The mark in the '097 Registration is a combined word and design mark.

26. The name STURGIS is not the same as the mark of the '097 Registration.

27. The name STURGIS is not the legal equivalent of the mark of the '097 Registration.

28. Applicant has previously distinguished the name STURGIS from the mark of the '097 Registration as follows: "Applicant's mark, on the other hand, is not merely STURGIS, but is a composite design mark including ten stars, an eagle, a pair of motorcyclists, a procession of six bison and two groups of feathers, along with the words BLACK HILLS MOTOR CLASSIC and STURGIS RALLY & RACES". (See Amendment filed January 31, 1995 in Application No. 74/533,873 for the '097 Registration, p. 2, ll. 3 - 7).

29. Applicant asserted in the application for the '097 Registration that there is no likelihood of confusion between the name STURGIS and the mark of the '097 Registration.

30. The name STURGIS does not create the same continuing commercial impression as the BLACK HILLS MOTOR CLASSIC STURGIS RALLY & RACES BLACK HILLS S.D. and Design mark registered in the '097 Registration such that a consumer would consider them the same mark.

31. The name STURGIS is not a dominant part of the mark of the '097 Registration.

32. The name STURGIS is not a separable element of the mark of the '097 Registration.

33. Applicant has acknowledged that the name STURGIS is not the same as or similar to the mark in the '097 Registration.

c) Rally Products are not the same as or similar to or related to the services identified in the '097 Registration

34. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

35. Rally Products are unrelated to the services in International Class 35 for "promoting sports competitions and/or events of others, namely motorcycle rallies, exhibits and competitions and promoting economic development in the city of Sturgis and the Black Hills area of South Dakota and Wyoming."

36. The source of Rally Products sold at or in connection with the Rally is not likely to be perceived to be the same as the source of the promotional services identified in the '097 Registration.

d) Applicant's reliance on its prior trademark registration, the '097 Registration, is improper and unavailing

37. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

38. Applicant admitted in the '097 Registration that the name STURGIS is geographically descriptive.

39. Due to Applicant's admission of the name STURGIS being geographically descriptive, Applicant's '097 Registration cannot be deemed prima facie evidence of distinctiveness or of any evidentiary value with respect to Applicant's claim of acquired distinctiveness for the name STURGIS.

e) **Applicant's claim for distinctiveness is based on a defective Declaration**

40. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

41. Applicant's Declaration of November 1, 2001, claims substantially exclusive and continuous use of the name STURGIS in connection with the marketing and promotion of the Rally.

42. Applicant's Declaration of November 1, 2001 claims distinctiveness of STURGIS on Rally Products by association with Applicant's marketing and promotional services.

43. Applicant's Declaration of November 1, 2001 fails to claim substantially exclusive and continuous use of STURGIS on Rally Products.

Fourth Ground of Opposition

The mark in U.S. Trademark Registration No. 1,948,097 is not distinctive because Applicant has failed to supervise and control the nature of the quality of goods and services of its licensees

44. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

45. Applicant has failed to supervise and control the use of the name STURGIS on Rally Products.

46. Because Applicant has failed to supervise and control the use of the name STURGIS, the mark is not distinctive and cannot serve as a trademark.

Fifth Ground of Opposition

**Applicant has attempted to procure registration
of the name STURGIS by fraud**

47. Good Sports repeats and realleges all of the above allegations as if fully restated herein.

48. Applicant knows it has not used the name STURGIS substantially exclusively in conjunction with the sale of Rally Products in the five years preceding November 1, 2001.

49. Applicant has knowledge of the substantial use by others of the name STURGIS in conjunction with the promotion of the Rally.

50. Applicant knows that many of over 700 vendors use the name STURGIS on or in connection with Rally Products.

51. At least as early as 1990, Applicant knew of Good Sports use of the name STURGIS in commerce in connection with the sale of Rally Products.

52. Applicant's claim of acquired distinctiveness of the name STURGIS is fraudulent and contains false information because on November 1, 2001, Applicant knew of the substantial use of the name STURGIS by Good Sports and others, in commerce, on or in connection with the sale of Rally Products.

WHEREFORE Opposer requests that Trademark Application Serial No. 76/201,759 be denied and rejected on the following grounds:

1. STURGIS used on Rally Products is primarily geographically descriptive, 15 U.S.C. § 1052(e)(2).
2. STURGIS used on Rally Products is merely descriptive, 15 U.S.C. § 1052(e)(1).
3. STURGIS used on Rally Products has not become distinctive of Applicant's goods or services, 15 U.S.C. § 1052(f), because:
 - a) Applicant never claimed or established substantially exclusive use of the name STURGIS on Rally Products;
 - b) STURGIS is not the same as or similar to the mark in Trademark Registration No. 1,948,097;
 - c) Rally Products bearing the name STURGIS are not the same as or related to the services in Trademark Registration No. 1,948,097;
 - d) Use of the STURGIS name on Rally Products by Applicant or its licensees has not been substantially exclusive for the five years prior to November 2001, nor at any time since 1981; and
 - e) Applicant's admission of the geographically descriptiveness of the name STURGIS in the application for Trademark Registration No. 1,948,097 precludes Applicant's ownership of the '097 Registration from being deemed prima facie evidence of distinctiveness or of any evidentiary value with respect to Applicant's claim of acquired distinctiveness for the name STURGIS.
4. Rally Products have been sold under mark in Trademark Registration 1,948,097 without proper supervision or control of the products by Applicant.

5. Rally Products bearing the name STURGIS have been sold by many vendors over the past five years and longer at the Rally and elsewhere without supervision or control by Applicant.

6. Applicant has attempted to procure a registration for the name STURGIS by fraud by submitting a declaration in support of its claim of acquired distinctiveness containing statements known by Applicant to be false.

POWER OF ATTORNEY

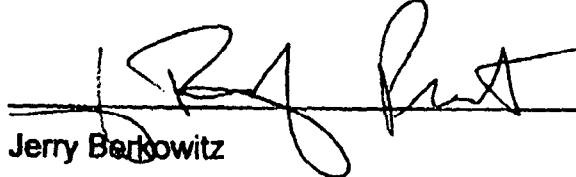
The undersigned hereby appoints John C. Linderman, Donald K. Huber, John C. Hilton, Frederick J. Haesche, J. Kevin Grogan, Arthur F. Dionne, Richard R. Michaud, Daniel G. Mackas, Marina F. Cunningham, Nicholas J. Tuccillo, Wm. Tucker Griffith, Susan C. Oygard, Stephen P. Scuderi, Richard D. Getz, William Gowanlock, Donald J. MacDonald, Timothy A. Johnson, all of the firm of McCORMICK, PAULDING & HUBER LLP, CityPlace II, 18th Floor, 185 Asylum Street, Hartford, CT 06103-4102, (860) 549-5290, its attorneys with full power of substitution and revocation to prosecute this Opposition, to make alterations and amendments therein and to transact all business in the U.S. Patent and Trademark Office and elsewhere in connection therewith.

DECLARATION

The undersigned, declares that he is an officer of GOOD SPORTS STURGIS, INC. named in the foregoing NOTICE OF OPPOSITION and that he has been warned that willful false statements and the like so made herein are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code; he further declares that he is duly appointed and authorized to execute this instrument on behalf of said corporation; that he has read signed the foregoing NOTICE and knows the contents thereof, and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

12/9/02
Date

GOOD SPORTS STURGIS, INC.


Jerry Berkowitz
President



McCormick, Paulding & Huber LLP
Intellectual Property Law

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December 11, 2002

BOX TTAB - FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



12-11-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #

Re: Notice of Opposition for U.S. Trademark
Application No. 76/201,759 for mark STURGIS
(Our File No. 6633-01)

Dear Sirs:

Attached hereto, in duplicate in accordance with Rule 2.104, is a Notice of Opposition to be filed against U.S. Trademark Application Serial No. 76/201,759 for the mark STURGIS in the following International Classes (IC):

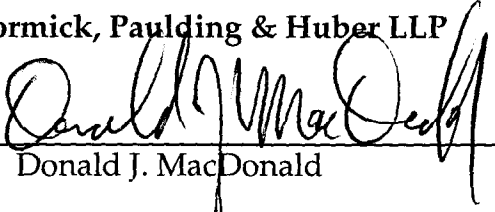
- 1) IC: 14, Jewelry;
- 2) IC: 21, Housewares and glass;
- 3) IC: 25, Clothing;
- 4) IC: 26, Fancy goods; and
- 5) IC: 35, Advertising and business.

A check in the amount of \$1,500.00 is enclosed in payment of the Notice of Opposition filing fee. Please charge any deficiency in this fee, and any additional fees which may be due to our Deposit Account No. 13-0235.

Very truly yours,

McCormick, Paulding & Huber LLP

By


Donald J. MacDonald

DJM/can
Enclosures