

ESTTA Tracking number: **ESTTA1108521**

Filing date: **01/19/2021**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	New England Patriots LLC
Granted to Date of previous extension	01/17/2021
Address	ONE PATRIOT PLACE FOXBOROUGH, MA 02035 UNITED STATES

Name	NFL Properties LLC
Granted to Date of previous extension	01/17/2021
Address	345 PARK AVENUE NEW YORK, NY 10154 UNITED STATES

Attorney information	DALE M. CENDALI KIRKLAND & ELLIS LLP 601 LEXINGTON AVENUE 44TH FLOOR NEW YORK, NY 10022 UNITED STATES Primary Email: dale.cendali@kirkland.com Secondary Email(s): shanti.conway@kirkland.com, erika.dillon@kirkland.com, eric.loverro@kirkland.com, karina.patel@kirkland.com 212-446-4800
Docket Number	

**Applicant Information**

Application No.	88585849	Publication date	07/21/2020
Opposition Filing Date	01/19/2021	Opposition Period Ends	01/17/2021
Applicant	Alpha Entertainment LLC 1266 EAST MAIN STREET STAMFORD, CT 06902 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Clothing, namely, tops and bottoms as

clothing; headwear; sports caps and hats;t-shirts; shirts; sweatshirts; shorts; tank tops; sweaters; pants; jackets; golf shirts; knit shirts; jerseys; wristbands as clothing; warm up suits; gloves; ties as clothing; cloth bibs; sleepwear, namely, bathrobes and pajamas; underwear; socks; footwear, namely, sneakers, slippers, flip flops; scarves; bandannas; swimwear; Halloween and masquerade costumes

Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Entertainment services in the nature of professional football games and exhibitions; providing sports and entertainment information via a global computer network, mobile applications, commercial on-line computer service or by cable, satellite, television and radio; arranging and conducting athletic competitions, namely, professional football games; production and distribution of radio and television programs in the field of sports; entertainment services in the nature of live shows featuring football games, organizing live exhibitions, competitions, and live musical and dance performances; organizing sports competitions in the nature of sporting activities, namely, football skills competitions and football showcases; distribution of television programming to cable and satellite television systems; distribution of television programs for others; entertainment services, namely, providing online electronic games; football fan club services; providing a web site featuring sports news and entertainment news in the field of sports; Entertainment services in the nature of a fantasy football game

## 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.	4668420	Application Date	09/19/2013
Registration Date	01/06/2015	Foreign Priority Date	NONE
Word Mark	PATRIOTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 2013/06/00 First Use In Commerce: 2013/06/00 Posters, calendars, decals, stickers, football souvenir programs, series of books in the field of football, magazines relating to football</p> <p>Class 025. First use: First Use: 2013/06/00 First Use In Commerce: 2013/06/00 Clothing, namely, headwear, footwear, shirts, t-shirts, tops, tank tops, golf shirts, sweatshirts, jackets, coats, poncho, pants, sweatpants, jeans, shorts, bibs not of paper, sleepwear, underwear, swimwear, ear muffs, socks, romper, and jerseys</p> <p>Class 041. First use: First Use: 2013/06/00 First Use In Commerce: 2013/06/00 Entertainment services, namely, football games and exhibitions; providing sports and entertainment information accessible by means of radio, television, cable, satellite, audio, video, web-based applications, mobile phone applications, computer networks; arranging and conducting athletic competitions, namely, professional football games and exhibitions; football fan club services; entertainment services, namely, musical and dance performances provided during intervals at sports events; educational services, namely, physical education programs; production of radio and television programs; organization of sports events; producing and distributing audio, visual, and multi-media presentations regarding the sport of football accessible by means of radio, television, cable, satellite, audio, video, web-based applications, mobile phone applications, computer networks; organizing sporting and cultural events featuring football</p>		

U.S. Registration No.	3429547	Application Date	03/06/2007
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Registration Date	05/20/2008	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of the image of a patriot's head.		
Goods/Services	<p>Class 009. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 Football helmets, decorative magnets, pre-recorded DVD's featuring the sport offotball, computer game software and disks, mouse pads [ and video game cartridges ]</p> <p>Class 014. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 Jewelry, watches, clocks, ornamental pins, earrings, necklaces, charms, collectible coins, coins of precious metal, pendants and key chains made of precious metal</p> <p>Class 028. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 Toys and sporting goods, namely, plush toys, stuffed toy animals, play figures, golf balls, golf bags, golf club covers, footballs, toy banks, board games relating to football, Christmas tree ornaments, toy trucks, billiard balls, playing cards and miniature toy helmets</p>		

U.S. Registration No.	2711199	Application Date	06/12/2002
Registration Date	04/29/2003	Foreign Priority Date	NONE
Word Mark	PATRIOTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 education and entertainment services inthe nature of organizing and presenting-professional football games and exhibitions; providing sports and entertain-mentinformation via a global computer network or a commercial on-line service; organization of sports events; fan club services; educational services, namely, physical education programs and seminars in the field of football; entertainment services, namely, musical and dance performances provided during intervals at sports events; production of radio and television programs, football games, ex-hibitions, competitions and musical, comedy anddance performances performed before live audiences and broadcast via television, cable television, satellite tele-visionand radio broadcast; producing and distributing audio visual and multi-media presentations regarding the sport of football via a global communications network</p>		

U.S. Registration No.	2755546	Application Date	06/12/2002
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1993/04/00 First Use In Commerce: 1993/04/00 football helmets, [ telephones, ] cell phone covers, [ cell phone straps, magnetic</p>		

	<p>coded charge cards and prepaid telephone calling cards, ] decorative magnets, [ compact discs, tapes, pre-recorded videotapes ] and dvd's featuring the sport of football, computer game software [ and disks ] and [ video game cartridges,] computer mouse pads, [ camera cases, ] sunglasses, [ eyeglass cases, eye-glasschains, ] light switch covers</p> <p>Class 016. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 posters, calendars, trading cards, series of books relating to football, magazines relating to football, [ newsletters relating to football, ] stickers, bumperstickers, [ credit cards without magnetic coding, ] note paper, [ paper pennants ] and greeting cards; [ non-magnetically coded prepaid phone cards, ] pens and pencils, [ pencil cases, ] rub on decorative transfers, pictorial prints, [ picture postcards, ] art pictures, stationery, [ envelopes, ] stationery-type portfolios, [ photo albums, scrapbook albums,] [ ring binders, checkbook covers, tissue paper, ] wrapping paper, playing cards, [ paper table cloths, ] paper napkins, [ paper party hats, ] paper party invitations, [ paper gift cards; ] paper gift bags, [ paper gift boxes, ] paper decorations, collectible cards; collectible card and memorabilia holders, souvenir programs for sports events</p> <p>Class 025. First use: First Use: 1993/04/00 First Use In Commerce: 1993/04/00 men's, women's and children's clothing, namely, fleece tops and bottoms, caps, headwear, T-shirts, sweatshirts, shorts, tank tops, jeans, sweaters, pants, jackets, [ turtlenecks, jumpsuits, ] golf shirts, woven shirts, knit shirts, jerseys, wristbands, warm up suits, swimwear, wind resistant jackets, raincoats, parkas, ponchos, gloves, ties, [ suspenders, ] cloth bibs, sleepwear, namely, robes, [ night shirts ] and pajamas, mittens, knit hats and caps, scarves, aprons, headbands, ear muffs, underwear; footwear</p> <p>Class 028. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 toys and sporting goods, namely, plush toys, stuffed animals, play figures, golf balls, golf bags, [ golf clubs, ] golf club covers, [ bowling balls, ] [ bowling bags, ] footballs, toy banks, [ hand held unit for playing electronic games; hand held unit for playing video games; ] board games relating to football, Christmas tree ornaments, balloons, jigsaw puzzles, windsocks, [ kites, ] [ toy trucks ] and replica miniature football helmets</p> <p>Class 041. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 education and entertainment services in the nature of organizing and presenting professional football games and exhibitions; providing sports and entertainment information via a global computer network or a commercial on-line service; organization of sports events; fan club services; educational services, namely, physical education programs and seminars in the field of football; entertainment services, namely, musical and dance performances provided during intervals at sports events; production of radio and television programs, football games, exhibitions, competitions and [ musical, comedy and ] dance performances performed before live audiences and broadcast via television, cable television, satellite television and radio broadcast; producing and distributing audio visual and multi-media presentations regarding the sport of football via a global communications network</p>
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U.S. Registration No.	2029693	Application Date	06/30/1995
Registration Date	01/14/1997	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1993/05/00 First Use In Commerce: 1993/05/00		

	<p>trading cards, posters, magazines relating to football, [ postcards, ] calendars, wrapping paper, [ paper gift boxes, ]paper stickers, [ paper napkins, paper towels, ] books relating to football [ posterbooks, notepads, paper party hats and greeting cards ]</p> <p>Class 025. First use: First Use: 1993/04/00 First Use In Commerce: 1993/04/00 men's, women's and children's clothing and footwear, namely, [ coaches caps, ] wool hats, [ painters caps, ] baseball caps, visors, [ headbands ] [ ear muffs,] [ knit face masks, ] [ belts, wristbands, ] T-shirts, tank tops, pajamas, golfshirts, sweaters, sweatshirts, jackets,neckties, [ suspenders, ] cloth bibs, [jerseys, night shirts, coats, robes, ] raincoats, parkas, ponchos, [ sneakers, gloves, ] scarves, [ snow suits ] [ mittens, ]aprons, [ down jackets, ] leatherjackets, shorts, sweat-pants, [ jeans, ]pants [ knickers, ] [ socks, underwear, bathing suits ][ and leg warmers ]</p> <p>Class 041. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 entertainment services in the form of professional football games and exhibitions</p>
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U.S. Registration No.	2035889	Application Date	04/02/1993
Registration Date	02/04/1997	Foreign Priority Date	NONE
Word Mark	PATRIOTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 1993/05/00 First Use In Commerce: 1993/05/00 trading cards, posters, magazines relating to football, [ postcards, ] calendars, wrapping paper, [ paper gift boxes, ]paper stickers, paper napkins, [ paper towels, ] books relating to football, [ posterbooks,] notepads, and greeting cards</p> <p>Class 025. First use: First Use: 1993/04/00 First Use In Commerce: 1993/04/00 men's, women's and children's clothing and footwear; namely, [ coaches caps, ] wool hats, [ painters caps, ] baseball caps, [ visors, headbands, ] [ear muffs,][ knit face masks, ] [ belts, ] wristbands, T-shirts, tank tops, pajamas, golf shirts, sweaters, sweatshirts, jackets, neckties, [ suspenders,] bibs, jerseys, night shirts, coats, robes, raincoats, parkas, ponchos, [ sneakers, ] gloves, scarves, [ snow suits ] [ mittens], aprons, down jackets, [ leather jackets, ] shorts, sweat-pants, [ jeans, ] pants, [ knickers, ] [ socks, ] underwear, bathing suits [ and leg warmers ]</p>		

Attachments	Notice of Opposition.pdf(230013 bytes )
Signature	/Dale M. Cendali/
Name	Dale M. Cendali
Date	01/19/2021

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

In the Matter of Application Serial No. 88/585,849



For the mark:  
Filed: August 20, 2019  
Published: July 1, 2020

NFL PROPERTIES LLC and NEW  
ENGLAND PATRIOTS LLC,

Opposers,

v.

ALPHA OPCO, LLC,

Applicant.

Opposition No.

**NOTICE OF OPPOSITION**

**NFL Properties LLC** (“NFLP”), a corporation organized and existing under the laws of Delaware with a principal place of business at 345 Park Avenue, New York, NY 10154 and **New England Patriots LLC** (“Patriots”), a corporation organized and existing under the laws of Delaware with a principal place of business at One Patriot Place, Foxborough, MA 02035, (collectively, “Opposers”), believe that they will be damaged by the issuance of a registration for

the service mark underlying Application Serial No. 88/585,849,



(“Applicant’s Mark”),

for goods in Classes 25 and 41, and hereby oppose the same.

As grounds for their opposition, Opposers allege as follows, with knowledge concerning their own acts, and on information and belief as to all other matters:

## **INTRODUCTION**

1. On August 20, 2019, Alpha Entertainment LLC filed use-based Application Serial No. 88/585,849 to register Applicant's Mark for "[c]lothing, namely, tops and bottoms as clothing; headwear; sports caps and hats; t-shirts; shirts; sweatshirts; shorts; tank tops; sweaters; pants; jackets; golf shirts; knit shirts; jerseys; wristbands as clothing; warm up suits; gloves; ties as clothing; cloth bibs; sleepwear, namely, bathrobes and pajamas; underwear; socks; footwear, namely, sneakers, slippers, flip flops; scarves; bandannas; swimwear; Halloween and masquerade costumes" in International Class 25; and "[e]ntertainment services in the nature of professional football games and exhibitions; providing sports and entertainment information via a global computer network, mobile applications, commercial on-line computer service or by cable, satellite, television and radio; arranging and conducting athletic competitions, namely, professional football games; production and distribution of radio and television programs in the field of sports; entertainment services in the nature of live shows featuring football games, organizing live exhibitions, competitions, and live musical and dance performances; organizing sports competitions in the nature of sporting activities, namely, football skills competitions and football showcases; distribution of television programming to cable and satellite television systems; distribution of television programs for others; entertainment services, namely, providing online electronic games; football fan club services; providing a web site featuring sports news and entertainment news in the field of sports; Entertainment services in the nature of a fantasy football game" in International Class 41 (collectively, "Applicant's Services").

2. On August 21, 2020, Alpha Entertainment LLC assigned its entire interest and goodwill in Applicant's Mark, among other things, to Alpha Opco, LLC ("Applicant").

3. Applicant's Mark is not registrable because it so closely resembles Opposers' well-



known New England Patriots "Flying Elvis" trademark (the "Patriots Mark"), as to be likely to cause confusion, mistake, or deception in the minds of consumers as to the origin, sponsorship or source of Applicant's Services or the affiliation between Applicant and Opposers in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

### **OPPOSERS AND THE PATRIOTS MARK**

4. NFLP is the licensing arm of the National Football League ("NFL"), which controls the licensing and merchandising for the NFL's 32 member clubs and related entities.

5. The New England Patriots Club is a member of the NFL and a professional football team based in Foxborough, Massachusetts.

6. Since at least as early as 1993, Opposers have extensively promoted, marketed, advertised, distributed, and sold goods and services in connection with the Patriots Mark, which is inherently distinctive and also has acquired secondary meaning.

7. The Patriots Mark is recognized by football fans across the country and has become associated with Opposers in connection with football-related goods and services, including entertainment services in the nature of professional football games and exhibitions, as well as various merchandise, such as apparel.

8. For instance, NFLP provides a number of clothing and other products via an online retail portal where consumers may purchase goods bearing the Patriots Mark, located at <https://www.nflshop.com/new-england-patriots>, as shown below:





**Ships Free**

**Ready to Ship**

**\$69.99**  
Men's New England Patriots Fanatics Branded Navy Iconic Embossed Defender Pullover Hoodie

Most Popular in Sweatshirts & Fleece



**Ready to Ship**

**Reduced: \$23.79**  
Regular: \$33.99

Men's New England Patriots New Era Gray/Navy Helmet Head Trapper Knit Hat

Most Popular in Mens Hats




**Ready to Ship**


**\$19.99**  
Adult New England Patriots New Era Black On-Field Face Covering


Most Popular in New England Patriots

9. Opposers own registered trademarks in the United States for, and extensive common law rights to, the Patriots Mark, including:

TRADEMARK	REG. NO.	REG. DATE	GOODS/SERVICES (FIRST USE/PRIORITY DATE)
	4,668,420	Jan. 6, 2015	<p>Class 16: Posters, calendars, decals, stickers, football souvenir programs, series of books in the field of football, magazines relating to football (first use June 2013)</p> <p>Class 25: Clothing, namely, headwear, footwear, shirts, t-shirts, tops, tank tops, golf shirts, sweatshirts, jackets, coats, poncho, pants, sweatpants, jeans, shorts, bibs not of paper, sleepwear, underwear, swimwear, ear muffs, socks, romper, and jerseys (first use June 2013)</p> <p>Class 41: Entertainment services, namely, football</p>


			<p>games and exhibitions; providing sports and entertainment information accessible by means of radio, television, cable, satellite, audio, video, web-based applications, mobile phone applications, computer networks; arranging and conducting athletic competitions, namely, professional football games and exhibitions; football fan club services; entertainment services, namely, musical and dance performances provided during intervals at sports events; educational services, namely, physical education programs; production of radio and television programs; organization of sports events; producing and distributing audio, visual, and multi-media presentations regarding the sport of football accessible by means of radio, television, cable, satellite, audio, video, web-based applications, mobile phone applications, computer networks; organizing sporting and cultural events featuring football (first use June 2013)</p>
	<p>3,429,547</p>	<p>May 20, 2008</p>	<p>Class 9: Football helmets, decorative magnets, pre-recorded DVD's featuring the sport of football, computer game software and disks, mouse pads [ and video game cartridges ] (first use September 1993)</p> <p>Class 14: Jewelry, watches, clocks, ornamental pins, earrings, necklaces, charms,</p>


			<p>collectible coins, coins of precious metal, pendants and key chains made of precious metal (first use September 1993)</p> <p>Class 28: Toys and sporting goods, namely, plush toys, stuffed toy animals, play figures, golf balls, golf bags, golf club covers, footballs, toy banks, board games relating to football, Christmas tree ornaments, toy trucks, billiard balls, playing cards and miniature toy helmets (first use September 1993)</p>
	<p>2,711,199</p>	<p>Apr. 29, 2003</p>	<p>Class 41: Education and entertainment services in the nature of organizing and presenting professional football games and exhibitions; providing sports and entertainment information via a global computer network or a commercial on-line service; organization of sports events; fan club services; educational services, namely, physical education programs and seminars in the field of football; entertainment services, namely, musical and dance performances provided during intervals at sports events; production of radio and television programs, football games, exhibitions, competitions and musical, comedy and dance performances performed before live audiences and broadcast via television, cable television, satellite television and radio broadcast; producing and distributing audio visual</p>

			and multi-media presentations regarding the sport of football via a global communications network (first use September 1993)
	2,755,546	Aug. 26, 2003	<p>Class 9: Football helmets, [ telephones, ] cell phone covers, [ cell phone straps, magnetic coded charge cards and prepaid telephone calling cards, ] decorative magnets, [ compact discs, tapes, pre-recorded videotapes ] and dvd's featuring the sport of football, computer game software [ and disks ] and [ video game cartridges, ] computer mouse pads, [ camera cases, ] sunglasses, [ eyeglass cases, eyeglass chains, ] light switch covers (first use April 1993)</p> <p>Class 16: Posters, calendars, trading cards, series of books relating to football, magazines relating to football, [ newsletters relating to football, ] stickers, bumper stickers, [ credit cards without magnetic coding, ] note paper, [ paper pennants ] and greeting cards; [ non-magnetically coded prepaid phone cards, ] pens and pencils, [ pencil cases, ] rub on decorative transfers, pictorial prints, [ picture postcards, ] art pictures, stationery, [ envelopes, ] stationery-type portfolios, [ photo albums, scrapbook albums,] [ ring binders, checkbook covers, tissue paper, ] wrapping paper, playing cards, [ paper table cloths, ] paper napkins, [ paper</p>

		<p>party hats, ] paper party invitations, [ paper gift cards; ] paper gift bags, [ paper gift boxes, ] paper decorations, collectible cards; collectible card and memorabilia holders, souvenir programs for sports events (first use September 1993)</p> <p>Class 25: Men's, women's and children's clothing, namely, fleece tops and bottoms, caps, headwear, T-shirts, sweatshirts, shorts, tank tops, jeans, sweaters, pants, jackets, [ turtlenecks, jumpsuits, ] golf shirts, woven shirts, knit shirts, jerseys, wristbands, warm up suits, swimwear, wind resistant jackets, raincoats, parkas, ponchos, gloves, ties, [ suspenders, ] cloth bibs, sleepwear, namely, robes, [ night shirts ] and pajamas, mittens, knit hats and caps, scarves, aprons, headbands, ear muffs, underwear; footwear (first use April 1993)</p> <p>Class 28: Toys and sporting goods, namely, plush toys, stuffed animals, play figures, golf balls, golf bags, [ golf clubs, ] golf club covers, [ bowling balls, ] [ bowling bags, ] footballs, toy banks, [ hand held unit for playing electronic games; hand held unit for playing video games; ] board games relating to football, Christmas tree ornaments, balloons, jigsaw puzzles, windsocks, [ kites, ] [ toy trucks ] and replica</p>
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			<p>miniature football helmets (first use September 1993)</p> <p>Class 41: Education and entertainment services in the nature of organizing and presenting professional football games and exhibitions; providing sports and entertainment information via a global computer network or a commercial on-line service; organization of sports events; fan club services; educational services, namely, physical education programs and seminars in the field of football; entertainment services, namely, musical and dance performances provided during intervals at sports events; production of radio and television programs, football games, exhibitions, competitions and [ musical, comedy and ] dance performances performed before live audiences and broadcast via television, cable television, satellite television and radio broadcast; producing and distributing audio visual and multi-media presentations regarding the sport of football via a global communications network (first use September 1993)</p>
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	<p>2,029,693</p>	<p>Jan. 14, 1997</p>	<p>Class 16: Trading cards, posters, magazines relating to football, [ postcards, ] calendars, wrapping paper, [ paper gift boxes, ] paper stickers, [ paper napkins, paper towels, ] books relating to football [ posterbooks, notepads, paper party hats and greeting cards ] (first use May 1993)</p> <p>Class 25: Men's, women's and children's clothing and footwear, namely, [ coaches caps, ] wool hats, [ painters caps, ] baseball caps, visors, [ headbands ] [ , ear muffs, ] [ knit face masks, ] [ belts, wristbands, ] T-shirts, tank tops, pajamas, golf shirts, sweaters, sweatshirts, jackets, neckties, [ suspenders, ] cloth bibs, [ jerseys, night shirts, coats, robes, ] raincoats, parkas, ponchos, [ sneakers, gloves, ] scarves, [ snow suits ] [ , mittens, ] aprons, [ down jackets, ] leather jackets, shorts, sweatpants, [ jeans, ] pants [ , knickers, ] [ socks, underwear, bathing suits ] [ and leg warmers ] (first use April 1993)</p> <p>Class 41: Entertainment services in the form of professional football games and exhibitions (first use September 1993)</p>
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	2,035,889	Feb. 4, 1997	<p>Class 16: Trading cards, posters, magazines relating to football, [ postcards, ] calendars, wrapping paper, [ paper gift boxes, ] paper stickers, paper napkins, [ paper towels, ] books relating to football, [ posterbooks,] notepads, and greeting cards (first use May 1993)</p> <p>Class 25: Men's, women's and children's clothing and footwear; namely, [ coaches caps, ] wool hats, [ painters caps, ] baseball caps, [ visors, headbands, ] [ear muffs,] [ knit face masks, ] [ belts, ] wristbands, T-shirts, tank tops, pajamas, golf shirts, sweaters, sweatshirts, jackets, neckties, [ suspenders,] bibs, jerseys, night shirts, coats, robes, raincoats, parkas, ponchos, [ sneakers, ] gloves, scarves, [ snow suits ] [ , mittens], aprons, down jackets, [ leather jackets, ] shorts, sweatpants, [ jeans, ] pants, [ knickers, ] [ socks, ] underwear, bathing suits [ and leg warmers ] (first use April 1993)</p>
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10. The Patriots Mark is valid and in full force and effect. Indeed, affidavits have been filed and accepted pursuant to Sections 8, 9, and 15 of the Lanham Act for Registrations Nos. 3,429,547, 2,711,199, 2,755,546, 2,029,693, and 2,035,889, rendering such registrations incontestable.



## APPLICANT AND ITS APPLICATION

11. Applicant owns and operates the XFL, a professional football league formed in 2019 consisting of eight football teams, including the Houston Roughnecks (“Roughnecks”), a football team located in Houston, Texas.

12. Notwithstanding Opposers’ prior rights, and well after Opposers obtained common law rights and registrations for the Patriots Mark, Applicant filed its application to register Applicant’s Mark as the secondary logo for the Roughnecks, as shown below:



13. Opposers filed, first used in commerce, and registered the Patriots Mark prior to the August 20, 2019 filing date of Applicant’s application.

14. Applicant adopted, attempted to use, and applied to register Applicant’s Mark with knowledge of Opposers’ Patriots Mark and Opposers’ rights thereto.

15. By attempting to obtain a trademark registration in a logo for Applicant’s Houston-based football team that unequivocally mimics the logo of the famous New England Patriots, Applicant is making a clear attempt to draw on the goodwill and recognition that Opposers have built up over decades of use.

16. Applicant’s adoption of Applicant’s Mark was willful and with knowledge of Opposers’ prior trademark rights. Applicant’s adoption of Applicant’s Mark was intended to trade off on the goodwill that Opposers have built in the Patriots Mark.

**LIKELIHOOD OF CONFUSION**

17. Consumers encountering Applicant’s Mark, particularly in connection with Applicant’s Services, are likely to associate the mark with Opposers, based on the similarity of the parties’ marks and their respective goods and services.

18. Applicant’s Mark is highly similar visually to, and creates a highly similar overall commercial impression as, Opposers’ Patriots Mark. As shown below, both marks feature a heavily outlined, male figure in profile facing to the right with a downturned frown, a pointed chin, shadowed eyes (without pupils), a decorative swoosh design to the left featuring stripes, and the same blue, red and white colors.

**The Patriots Mark:**



**Applicant’s Mark:**



19. In addition, Applicant’s application to register Applicant’s Mark covers services highly similar and complementary to Opposers’ products and services, including Opposers’ online retail offerings for clothing and merchandise bearing the Patriots Mark, as well as entertainment services in the nature of professional football games and exhibitions.

20. Opposers thus will be damaged by the registration of Applicant’s Mark, as Applicant’s Mark and Applicant’s Services are confusingly similar to the Patriots Mark and the goods and services that Opposers offer in connection thereto.

21. Specifically, if Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* exclusive right to use Applicant’s Mark in connection with

Applicant's Services. Such registration would conflict with Opposers' trademark rights and be a source of damage and injury to Opposers.

**WHEREFORE**, Opposers request that this opposition be sustained and that the registration of Application Serial No. 88/585,849 in connection with Applicant's Services be denied.

Dated: January 19, 2021

Respectfully submitted,  
Kirkland & Ellis LLP

By: /s/ Dale M. Cendali  
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eric.loverro@kirkland.com

*Attorneys for Opposers*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2021, I caused a true and correct copy of the foregoing **NOTICE OF OPPOSITION** to be served via email upon the following individuals:

Joel E. Tragesser  
Quarles & Brady, LLP  
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*Counsel for Applicant*

Dated: January 19, 2021

*/s/ Dale M. Cendali*  
\_\_\_\_\_  
Dale M. Cendali