

ESTTA Tracking number: **ESTTA966491**

Filing date: **04/11/2019**

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 System		
Entity	Institute of Higher Learning	Citizenship	Texas
Address	124 Administration Building Box 42013 Lubbock, TX 79409 UNITED STATES		
Attorney information	Daniel J. Chalker Chalker Flores, LLP 14951 N. Dallas Parkway Suite 400 Dallas, TX 75254 UNITED STATES dchalker@chalkerflores.com, cminchillo@chalkerflores.com, dock- et@chalkerflores.com 214-866-0001		

### Applicant Information

Application No	87954352	Publication date	03/12/2019
Opposition Filing Date	04/11/2019	Opposition Period Ends	04/11/2019
Applicant	Lambda Theta Phi Latin Fraternity, Inc. PO BOX 771975 OCALA, FL 34477 UNITED STATES		

### Goods/Services Affected by Opposition


Class 035. First Use: 1975/12/01 First Use In Commerce: 1975/12/01  
All goods and services in the class are opposed, namely: Association services, namely, organizing chapters of a fraternity and promoting the interests of the members thereof

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

Other	False suggestion of sponsorship of approval, Trademark Act Section 43(a)
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## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4229220	Application Date	02/08/2012
Registration Date	10/23/2012	Foreign Priority Date	NONE
Word Mark	GUNS UP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/12/00 First Use In Commerce: 2006/12/00 Clothing and headgear, namely, shorts, t-shirts, sweatshirts, sweatpants, uniforms, and caps		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Guns Up Hand mark is made by extending the index finger outward while extending the thumb upward and tucking in the middle, little and fourth fingers to form a gun.		
Goods/Services	Educational Services, Entertainment Services, Clothing		

Attachments	85536684#TMSN.png( bytes ) Notice of Opposition 041119.pdf(49713 bytes ) Exhibits.pdf(729035 bytes )
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Signature	/Daniel J. Chalker/
Name	Daniel J. Chalker
Date	04/11/2019



3. Opposer has common law rights to the “Guns Up” Sign, which is a “widely recognized greeting” to students, faculty, staff, alumni and fans of Opposer. (Exhibit 1)(<https://www.ttu.edu/traditions/gunsup.php> (April 11, 2019)). The “Guns Up” Sign “is made by extending the index finger outward while extending the thumb upward and tucking in the middle, little and fourth fingers to form a gun.” (Id.). The index finger of the “Guns Up” Sign can be pointed upward (Exhibit 1), (Exhibit 2)(<https://www.redraideroutfitter.com/texas-tech-red-raiders-guns-up-statue/> (April 11, 2019)), (Exhibit 3)(<https://texastech.com> (April 11, 2019)) or at an angle (Exhibit 3), (Exhibit 4)(<https://texastech.com/sports/2016/6/19/gear-on-guns-up.aspx> (April 11, 2019)). The “Guns Up” Sign has become a widely recognized trademark of Opposer (hereinafter referred to as “Guns Up Hand mark”), and has been in use at least as early as 1971.

4. Opposer’s common law rights in the Guns Up Hand mark are valid, subsisting, and in full force and effect.

5. Opposer is also the owner of the GUNS UP word mark, Registration Number 4,229,220 registered on October 23, 2012 in International Classification 025 for clothing, headgear, namely, shorts, t-shirts, sweatshirts, sweatpants, uniforms, and caps.

6. Opposer’s rights in the GUNS UP word mark are valid, subsisting, and in full force and effect.

7. Opposer also has common law rights in the GUNS UP word mark.


8. Opposer’s common law rights in the GUNS UP word mark are valid, subsisting, and in full force and effect.

9. Opposer’s Guns Up Hand mark and GUNS UP word mark have also appeared in advertising and promotion of Opposer’s athletics, clothing, websites, and educations services,


such that Guns Up Hand mark is closely identified with Opposer's goods and services, and has gained very valuable public recognition. Opposer has established an outstanding reputation as to the quality of its goods and services sold under the Guns Up Hand mark.


10. Opposer has used its Guns Up Hand mark in interstate commerce since prior to any date upon which Applicant can rely. By virtue of its services and goods bearing Opposer's Guns Up Hand mark in interstate commerce, its expenditures of sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Guns Up Hand mark and a valuable reputation.

11. Notwithstanding the rights of Opposer, Lambda Theta Phi Latin Fraternity, Inc., ("Applicant"), filed U.S. Trademark Application Serial Number 87/954,352 on June 8, 2018


seeking to register the  design mark, for association services, namely, organizing chapters of a fraternity and promoting the interests of the members thereof, in International Classification 018, based on the use of said mark.

12. Opposer's trademark rights for the Guns Up Hand mark has priority over Applicant's Application, inasmuch as Opposer has continuously used its Guns Up Hand mark since at least 1971, which is prior to Applicant's filing date of June 8, 2018 and claim of use since 1975.

13. Applicant's adoption of the  design mark is without license or permission of Opposer.


14. Applicant's  design mark consists of a forward facing right hand with the index finger pointing upward, other fingers closed and pointing downward and thumb extended



horizontally to the right.



15. Applicant's  design mark is virtually identical to Opposer's Guns Up Hand mark as shown in Exhibits 1 and 2 in that both marks have the index finger outward, the other fingers tucked in and the thumb extended.

16. On information and belief, Applicant's association services are associated with educational institutions.


17. On information and belief, Applicant has a chapter in Lubbock, Texas in close proximity to Opposer.


18. Registration of Applicant's  design mark would be contrary to and violate Trademark Act Section 2(a), 15 U.S.C. § 1052(a); Section 2(d), 15 U.S.C. § 1052(d); Section 43(a), 15 U.S.C. §1125(a); and Section 43(c), 15 U.S.C. §1125(c), and, therefore, violate and diminish the prior and superior rights of Opposer in its Guns Up Hand mark.



19. Registration of Applicant's  design mark would be contrary to and violate Trademark Act Section 2(a), 15 U.S.C. §1052(a) as the  design mark falsely suggests an association with Opposer.


20. Registration of Applicant's  design mark would be contrary to and violate Trademark Act Section 2(d), 15 U.S.C. §1052(d) as the  design mark is confusingly similar to Opposer's Guns Up Hand mark.

21. Registration of Applicant's  design mark would be contrary to and violate



Trademark Act Section 43(a), 15 U.S.C. §1125(a) as the  design mark falsely suggests a sponsorship or approval by Opposer when none exists.


22. Under the circumstances, registration of the  design mark will injure Opposer by causing the trade and/or purchasing public to be confused and/or deceived into believing that Applicant's services are those of Opposer, or are sponsored by Opposer, to Opposer's damage and detriment, and will place a cloud over Opposer's title to its Guns Up Hand mark.


23. Under the circumstances, registration of the  design mark would diminish and dilute the distinctive quality of Opposer's rights in its Guns Up Hand mark. Moreover, registration of the  design mark would diminish the advertising value of Opposer's Guns Up Hand mark, and such registration would, in the event of any quality problems involving the goods offered by Applicant, tarnish the distinctiveness of Opposer's Guns Up Hand mark.

24. Under the circumstances, registration of the  design mark is likely to dilute and lessen the capacity of Opposer's Guns Up Hand mark to identify and distinguish Opposer's goods and services.

25. The Application should be refused because Opposer's rights of continuing its present use of its Guns Up Hand mark in commerce are, or would be, threatened by the

registration of the  design mark for Applicant's services, and because Opposer's business would otherwise be damaged by the registration of the  design mark for Applicant's services.

26. Opposer will be damaged if the PTO grants registration of the  design mark because Applicant will obtain statutory rights in violation and derogation of the established prior and superior rights of Opposer.

27. WHEREFORE, Opposer believes that it will be damaged by registration of the  design mark and prays that the Trademark Trial and Appeal Board sustain this opposition and refuse to register Application Serial No. 87/954,352 with prejudice.

Dated: April 11, 2019

Respectfully submitted,

CHALKER FLORES, LLP

By: 

Daniel J. Chalker  
State Bar No. 00794951  
14951 N. Dallas Parkway, Suite 400  
Dallas, Texas 75254  
(214) 866-0001 (telephone)  
(214) 866-0010 (telecopy)  
dchalker@chalkerflores.com

**ATTORNEY FOR OPPOSER**



**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing OPPOSER'S NOTICE OF OPPOSITION was served on all counsel of record, this the 11<sup>th</sup> of April of 2019, by sending the same via electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") and through U.S. first class mail.

Lambda Theta Phi Latin Fraternity, Inc.  
P.O. Box 771975  
Ocala, Florida 34477

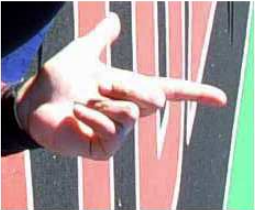
A handwritten signature in black ink, appearing to read "Daniel J. Chalker", is written over a solid horizontal line.

Daniel J. Chalker



# Guns Up

The "Guns Up" sign is the widely recognized greeting of one Red Raider to another. It is also the sign of victory displayed by the crowd at every athletic event. The sign is made by extending the index finger outward while extending the thumb upward and tucking in the middle, little and fourth fingers to form a gun.



The sign can be traced back to L. Glenn Dippel, a 1961 alumnus of Texas Tech. He and his wife Roxie were living in Austin and faced the daily presence of the "Hook 'em Horns" hand sign used by University of Texas fans. So, the Dippels decided to retaliate. They looked to mascot Raider Red and his raised guns for their inspiration and in 1971 developed the Guns Up hand symbol. The Saddle Tramps and Texas Tech cheerleaders immediately adopted Guns Up and a new tradition was born.

Source: [Texas Tech Traditions from A to Z](#)



The Fan's Favorite Since 1975.-  
A portion of all proceeds goes to support  
Texas Tech University.\*

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DESCRIPTION


FIND SIMILAR PRODUCTS BY CATEGORY


- ▶ Guns up bronze statue with Texas Tech in bronze on the front
- ▶ Giving a hardy "Guns Up" is the traditional greeting between Red Raiders past,present and future.
- ▶ Measures approx. 10.5" x 5"
- ▶ Perfect gift for this holiday season!
- ▶ Show your Texas Tech spirit! Display on your office desk, mantle or bookcase!

## EXHIBIT 2




SPORTSTICKETSTEXASTECH.TVDONATEINSIDE TECHFANSSHOP





# WATCH: RED RAIDERS WELCOMED BACK TO LUBBOCK

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 LIVE CHAT

EXHIBIT 3

Gear On. Guns Up.



We want to make sure our die-hard fans know where they can shop for Texas Tech gear, from Lubbock to the Metroplex, and across the State of Texas. The below lists of retailer locations ONLY represent those locations that retailers have provided us. Many more retailers across Texas carry Texas Tech product, we just might not have received their exact store location list.  
#gearongunsup | ❤️

OFFICIAL ONLINE STORE

Metroplex RetailersTexas RetailersLubbock RetailersFan Feedback

EXHIBIT 4