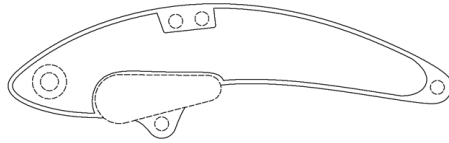


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Steel Shad Fishing Company LLC

Filed: March 8, 2019



Mark:

International Class: 28

DECLARATION UNDER SECTION 2(f)

I, Stephen Price, declare that:

1. I am the Chief Financial Officer of Steel Shad Fishing Company LLC (“Applicant”), and am authorized to make this Declaration on behalf of Applicant.
2. This Declaration is submitted in support of the application for registration of the product configuration mark depicted above (the “SteelShad Shape Mark”), and is made on information and belief.
3. The SteelShad Shape Mark has become distinctive of Applicant’s fishing lures (the “Goods”) as a result of the substantially exclusive use of the mark in commerce by Applicant for over eleven years, since at least as early as January 2008.
4. Applicant creates an association between itself and the SteelShad Shape Mark through extensive marketing, promotion, and sales of fishing lures in the configuration of the SteelShad Shape Mark.
5. The association between Applicant and the SteelShad Shape Mark is made directly on Applicant’s lures, many versions of which prominently feature Applicant’s federally registered STEELSHAD mark (U.S. Reg. No. 5260996) directly on the lure itself, as shown by representative examples of Applicant’s Goods below:



6. Additional association between Applicant and the SteelShad Shape Mark is evidenced by the packaging for Applicant's Goods, representative examples of which are shown below:



As you can see in the above examples of Applicant's product packaging, Applicant prominently features its federally registered STEELSHAD mark (U.S. Reg. No. 5260996) on the top of its packaging and further includes Applicant's corporate name, SteelShad Fishing Company LLC, and web address, www.steelshad.com, on the bottom of its packaging.

7. As evidenced by the articles attached as **Exhibit A**, referenced below, the media and Applicant's consumers refer to Applicant's lure in the configuration of the SteelShad Shape Mark as a "SteelShad," directly making the connection between the lure and Applicant's federally registered STEELSHAD mark (U.S. Reg. No. 5260996) and corporate name.

8. Since they were first launched, Applicant's fishing lures in the configuration of the SteelShad Shape Mark have been sold in several online retail stores accessible throughout the United States, including the most popular online stores for fishing equipment. As a result, consumers have been extensively exposed to the SteelShad Shape Mark and have come to associate that mark with Applicant. These online stores include, but are not limited to:

- Walmart.com (<https://www.walmart.com/search/?query=steelshad>);
- Amazon.com (https://www.amazon.com/s?k=steelshad&ref=nb_sb_noss_2);
- Costco.com (<https://www.costco.com/CatalogSearch?dept=All&keyword=steelshad>);
- Bass Pro Shops
[\(https://www.basspro.com/shop/en/SearchDisplay?categoryId=&storeId=715838534&catalogId=3074457345616676768&langId=-1&sType=SimpleSearch&resultCatEntryType=2&showResultsPage=true&searchSource=Q&pageView=&beginIndex=0&pageSize=24&searchTerm=steelshad#facet:&productBeginIndex:0&facetLimit:&orderBy:&pageView:grid&minPrice:&maxPrice:&pageSize:&\);](https://www.basspro.com/shop/en/SearchDisplay?categoryId=&storeId=715838534&catalogId=3074457345616676768&langId=-1&sType=SimpleSearch&resultCatEntryType=2&showResultsPage=true&searchSource=Q&pageView=&beginIndex=0&pageSize=24&searchTerm=steelshad#facet:&productBeginIndex:0&facetLimit:&orderBy:&pageView:grid&minPrice:&maxPrice:&pageSize:&)
- Cabela's
https://www.cabelas.com/browse.cmd?categoryId=734095080&CQ_search=steelshad&CQ_zstype=REG);
- Tackle Warehouse
https://www.tacklewarehouse.com/searchresults.html#search=products&searchtext=steel%20shad&opt_page=1&opt_sort=alphaAtoZ&opt_perpage=20);
- Scheels (https://www.scheels.com/search?q=steelshad&lang=en_US);
- FishUSA (<https://www.fishusa.com/search?keywords=steelshad>);
- Fisherman's Central
<https://www.fishermanscentral.com/catalogsearch/result/?q=steelshad>);
- TackleFreaks.com (https://www.tacklefreaks.com/products/the-original-steel-shad?_pos=1&_sid=0a3586c69&_ss=r)
- Pattern Tackle (<https://www.patterntackle.com/product/steel-shad/>)

- Canal Bait & Tackle (<https://www.canalbaitandtackle.com/steel-shad/>)
- TheTackleTrap.com
(https://tackletrap.com/index.php?main_page=advanced_search_result&search_in_description=1&keyword=steelshad&x=0&y=0)
- All Season Sports
(<https://www.allseasonssports.com/searchresults.asp?Search=steel+shad&Submit=>);
- Fishing Online (<https://www.fishingonline.com/pages/search-results-page?q=steelshad>);
- TackleDirect (<https://www.tackledirect.com/search.html?query=steelshad>); and
- D&R Sports Center
(<https://store.radvandamwarehouse.com/categories.aspx?Keyword=steelshad>)

See **Exhibit B**, attached; *see also* <https://steelshad.com/steelshad-dealers/>, attached as **Exhibit C**.

9. In addition to online stores, Applicant's fishing lures in the configuration of the SteelShad Shape Mark are also sold nationwide in brick and mortar stores operated by, among others, Bass Pro Shops (nationwide), Cabela's (nationwide), Sportsman's Warehouse (nationwide), Gander Outdoors, Runnings, All Season Sports, Herb Philipson's, Field & Stream, FishUSA, Scheels, Fat Nancy's, Kentucky Lake Outdoors, Baits N More, Ken's Tradewater Baits, Fisherman's Headquarters, Fisherman's Central, Fast Eddies Bait & Tackle, HITEC Outdoors, Backwater Outfitters, Sweet Lips, US Bass, First Stop Outdoors, The Tackle Box, Big Ideas Gun, Pawn Bait & Tackle, Tackle Pro Deland, South Moon Fish Camp, ACS Marine, Eagles Landing, Lake Hartwell Fishing & Marine, Tampa Fishing Outfitters, Big Toho Marina Bait & Tackle, Anglers Riverside Retreat, Bull Creek Fish Camp, Buck N Bass Sports Center, Sugar Creek Marina, Hamond's Fishing Center, Oakwood Bait and Tackle, The Outdoor Depot, The Bait House, Midway Marine, Hunters Haven, Sports Hub, Lonnie's Sporting Goods, The

Bait Shop, Exit Store, Primary Tackle Co., Lake World, Lake Murray Hardware & Outdoors, Big Fish Outfitters LLC, Montgomery Farmers Co-Op, The Cabin Bait & Tackle, Bells & Whistles Community Market, Oceans East, Clyde's Sport Shop, Tochterman's Fishing Tackle, Brinkman's Bait & Tackle, Dream Weaver Custom Rods, Tackle & Field, Keep It Reel Bait and Tackle, Klems, Jim's Quick Stop, The Reel Angler, Fish307, Dattilio's Gun & Tackle, Rack N Reel Sporting Goods, Vermont Field Sports, 1000 Island Bait Store, Woody's Tackle, Erie Outfitters Tackle, Vance Outdoors, Jay's Midlake Bait & Tackle, Frank's Great Outdoors, M & J Hardware & Video, Brenner's Bait & Auto, Johnson's Great Outdoors, The Reel Shot, Doug's Lures, Hayward Bait and Bottle Shop, Gamble's Tackle Shop, Ted's Sports Center, 3 Rivers Marine, Guns N Stuff, Rockport Tackle Town, and several other outdoor recreation and fishing specialty retailers. You can see the precise locations of these stores on the Dealers page of Applicant's website at <https://steelshad.com/dealers/>, attached as **Exhibit C**.

10. Applicant's fishing lures in the configuration of the SteelShad Shape Mark are also sold via Applicant's website at <https://steelshad.com/>. The SteelShad Shape Mark is prominently featured on the website, and a variation of the mark is also incorporated into Applicant's STEELSHAD Logo. A true and correct copy of Applicant's online store at <https://steelshad.com/steelshad-store/> is attached as **Exhibit D**.

11. Applicant's marketing materials prominently feature the SteelShad Shape Mark. Attached as **Exhibit E** is a full and complete copy of Applicant's product catalog, which prominently features several lures in the configuration of the SteelShad Shape Mark.

12. Sales of the Goods in the configuration of the SteelShad Shape Mark have increased significantly since Applicant first launched its Goods in January 2008. Between 2008 and 2016, approximately 5,000-10,000 lures were sold per year. In 2017, Applicant sold

approximately 20,000 lures. In 2018, Applicant sold approximately 50,000 lures. In 2019, Applicant sold over 100,000 lures prior to the peak Christmas sales season commencing with “Black Friday,” and expects to sell several thousand more lures from “Black Friday” through the end of the year.

13. Estimated gross U.S. sales of the Goods each year, all identified with the SteelShad Shape Mark, are as follows:

TIME FRAME	APPROX. GROSS U.S. SALES
Jan 2014-Dec 2014	\$20,000
Jan 2015-Dec 2015	\$25,000
Jan 2016-Dec 2016	\$30,000
Jan 2017-Dec 2017	\$90,000
Jan 2018-Dec 2018	\$220,000
Jan 2019 – Dec 2019 (est.)	\$450,000
Total	\$ 835,000

14. Over the past several years, Applicant has devoted a significant amount of money to promote the Goods offered under the SteelShad Shape Mark, for example investing in catalogs, trade shows, websites, digital marketing, media placement, and press releases. The approximate amount spent on advertising for the Goods offered under the SteelShad Shape Mark over the past five years is as follows:

TIME FRAME	ADVERTISING EXPENDITURES
Jan 2014-Dec 2014	\$10,000
Jan 2015-Dec 2015	\$15,000
Jan 2016-Dec 2016	\$20,000
Jan 2017-Dec 2017	\$75,000

Jan 2018-Dec 2018	\$150,000
Jan 2019-Dec 2019 (est)	\$160,000
Total	\$ 430,000

15. Applicant also promotes its SteelShad Shape Mark via its Facebook page at <https://www.facebook.com/SteelShadLures/>, which surpassed 5,000 “Likes” in 2017, and as of November 27, 2019, had 9,144 “Likes.”

16. Over the past several years, Applicant has received significant publicity in both print and online media. Representative examples include, but are not limited to:

- Outdoor Enthusiast Lifestyle (<http://www.oelmag.com/steel-shad-blade-baits-bendable-and-dependable/>);
- Fishing Online (https://www.fishingonline.com/blogs/news/fishing-the-steelshad-blade-bait?fbclid=IwAR3s6s4yNx0nvC_t6o0jyAgA0AUMI0rY4BqyCfZ1-x5lzFBGeMUV_T2hAVE);
- On The Water (<https://www.onthewater.com/featured-lure-steelshad-bladebait>);
- Field & Stream Magazine (<https://www.fieldandstream.com/blades-glory-best-bladed-lures-for-spring-fishing#page-6>);
- Fishing Tackle Retailer (<https://fishingtackleretailer.com/steelshad-announces-new-product-lineup-for-2020/> and <https://fishingtackleretailer.com/steelshad-icast-hot-new-lures/> and <https://fishingtackleretailer.com/steelshad-expands-dealer-base-free-starter-kits/>);
- Bassmaster Magazine (<https://www.bassmaster.com/gear/gear-review-steelshad-mini-and-college-series>);

- Trib Live (<https://triblive.com/sports/outdoors-xtras-elite-lure-freezing-fish-and-bluegill-chowder/>);
- Wired2fish.com (<https://www.wired2fish.com/winter-fishing/blade-bait-basics/> and https://www.wired2fish.com/fall-fishing/how-to-fish-blade-baits-for-fall-and-winter-bass/#slide_1);
- Major League Fishing (<https://majorleaguefishing.com/tips/lefebvre-doesnt-just-fish-blade-baits-in-the-winter/> and https://majorleaguefishing.com/tips/breaking-down-the-blade-bait-with-dave-lefebvre/?fbclid=IwAR0WbxNp0MdZrpWPPkEa-fpqcZTU1c9mqkx8W4FEJM_JgSZGxPFwZA92Egc);
- Bass Angler Magazine (https://cdn7.bigcommerce.com/s-binno4lkb2/product_images/uploaded_images/bam-winter-2018-19-pg-074.jpg?t=1548190154&_ga=2.209264146.18310626.1548017658-347683480.1489760477); and
- Northwoods Sporting Journal (https://cdn11.bigcommerce.com/s-binno4lkb2/product_images/uploaded_images/p.1-nwsjoct2019.steelshad.jpg?t=1570460466&_ga=2.81111060.2004575956.1570458868-347683480.1489760477 and https://cdn11.bigcommerce.com/s-binno4lkb2/product_images/uploaded_images/oct-nwsj.jayvelas.p.2.jpg?t=1570460498&_ga=2.81111060.2004575956.1570458868-347683480.1489760477).

Copies of these articles are attached as **Exhibit A**.

17. In a February 2019 article about Applicant's Goods in the configuration of the SteelShad Shape Mark in *Outdoor Enthusiast Lifestyle* magazine (<http://oelmag.com/steel-shad->

[blade-baits-bendable-and-dependable/](#)), the author noted “This thin metal blade bait is a unique concept *with a look unlike anything on the market* and has proven to be a winner for targeting fresh and salt water fishes.” See **Exhibit A**, attached (emphasis added).

18. Amazon.com named Applicant to participate in its “Small Business Spotlight Program,” which provided Applicant with another opportunity to expose consumers to the SteelShad Shape Mark. See <https://www.prnewswire.com/news-releases/steelshad-fishing-company-named-as-one-of-seven-companies-nationwide-to-join-amazons-small-business-spotlight-for-2017-300525827.html>, attached as **Exhibit A**.

19. In 2018, Applicant began offering officially licensed Goods in the configuration of the SteelShad Shape Mark and bearing the names, logos, and branding of Auburn University, Clemson University, University of Alabama, and University of Tennessee. This marketing promotion has been extremely popular and exposed many consumers to the SteelShad Shape Mark.

20. Professional anglers use and promote, as evidenced by some of the articles attached as **Exhibit A**, Applicant’s lures in the configuration of the SteelShad Shape Mark.

21. Applicant advertises its Goods in the configuration of the SteelShad Shape Mark at Major League Fishing and Bassmaster events, the two most prominent bass tournament series in the United States.

22. Customers viewing the SteelShad Shape Mark associate such mark with a single source in Applicant and with the high quality of Applicant’s Goods.

23. As a result of Applicant’s lengthy, extensive, and substantially exclusive use in the U.S. of the unique SteelShad Shape Mark in connection with the Goods, its substantial and increasing sales in the U.S. of the Goods identified by the SteelShad Shape Mark, and the

significant publicity Applicant has received since it began using its mark in connection with the Goods in 2008, the SteelShad Shape Mark has acquired distinctiveness among the relevant purchasers.

24. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Respectfully submitted,

Date: December 3, 2019

By: 

Stephen Price