



TTAB (PPL)

12-26-2001

U.S. Patent & TMO/c/TM Mail Rpt Dt. #71

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

In the matter of Trademark Application Serial No. 78077719  
For the mark "Bungee"  
Published in the Official Gazette on December 4, 2001

Greg S. Berdan  
v.  
Chic Optic Inc Corporation Canada

CT

NOTICE OF OPPOSITION

Greg S. Berdan, and Retail Optical Accessories  
8872 W. Linne Rd  
Tracy, CA 95304

The above identified opposer believes that he will be damaged by registration of the mark shown in the above-identified application and hereby opposes the same.

The chain of events regarding the development of the "Bungeez" line of eyewear is as follows:

1. On February 20<sup>th</sup>, 2001, the "Bungeez" line was created by myself exclusively for Retail Optical Accessories. This line pertains to eyewear and accessories thereof. Our marketing and sales team accepted the word "Bungees", although the design of the logo/word had yet to be finalized. At this time, a background search was done on the word "Bungee" and "Bungees". No records were found for any trademarks pending or approved using this word for eyewear.
2. After several meetings with our marketing team, a decision was made to contract an outside source for creation of a logo due to unsuccessful attempts of creating one internally.
3. On March 28<sup>th</sup>, 2001, Retail Optical Accessories commissioned Creative Edge, a graphics design company, to assist in the development of logos for the "Bungees" line.
4. After reviewing several different concepts of the logo, on April 19<sup>th</sup>, 2001, the logo "Bungeez" was accepted. Creative Edge had suggested the change of spelling of the word "Bungees" to "Bungeez" to create a more appealing appearance of the logo while maintaining the plural of the word "Bungee" as our marketing and sales team had agreed.
5. On April 23<sup>rd</sup>, 2001 an order was placed for the "Bungeez" line with YCC International, our manufacturer/supplier. A copy of this purchase order is attached.
6. Performa invoice # 010426 is a confirmation of the order being placed with YCC International. A copy of this is attached.

12/14/01  
YCC

12/31/2001 6THOMAS2 00000018 78077719

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300.00 OP

Gr

7. On June 7<sup>th</sup>, 2001, YCC International notified us that our order had been completed and would be shipping on this date. This order was received in our warehouse on June 13<sup>th</sup>, 2001. A copy of the invoice is attached. This order was intended as tools for our sales representative to present to our customers/potential customers. Within two weeks our sales representatives had received these samples and set forth with presentations on the "Bungeez" line.
8. Approximately five to six weeks after the sales reps receiving the samples, the response from the presentation confirmed that the "Bungeez" name was acceptable to our customers and suitable for the eyewear line.
9. On July 31<sup>st</sup>, 2001, we received our first order for the "Bungeez" line.
10. Due to the positive response and incoming orders for this line, a decision was made to trademark "Bungeez" on August 9<sup>th</sup> in order to protect our customer and us. Our attorney, James McGrail, was contacted to perform the necessary services to apply for this trademark. A copy of the logo being used is attached.
11. On September 13<sup>th</sup>, 2001 our attorney notified us that a second search was carried out upon which the above-identified application was found. Since that date we had to wait until the publication date of December 4, 2001 to contest it.

The grounds for opposition are as follows:

1. The "Bungeez" line/logo is currently used in commerce.
2. There is a likelihood of confusion between "Bungee" and "Bungeez".
3. When "Bungee" is used in connection with eyewear goods, it is likely to cause confusion, or cause mistake, or to deceive the consumer.
4. The mark "Bungee" is similar in sound and meaning to "Bungeez". It only differs by subtracting the letter "z" in the typed form. The literal portions are nearly identical thus confusion is likely.

Our intent is to trademark "Bungeez" for the use in eyewear and accessories thereof. We are awaiting the outcome of this procedure to move forward with the application.

By: \_\_\_\_\_

  
Opposer

Date: \_\_\_\_\_

12/4/01

Retail Optical Accessories, Inc.

# Purchase Order

DBA: hard CASE  
8872 West Linne Road  
Tracy, CA 95376, USA  
Ph: 209-833-6464 Fax: 209-833-767.



DATE	P.O. #
4/23/2001	1155

<b>Vendor</b>
YCC International 1525 N.E. Merman Drive Pullman, WA 99163

<b>SHIP TO</b>
Retail Optical Accessories, Inc. DBA: hard CASE 8872 West Linne Road Tracy, CA 95376, USA Ph: 209-833-6464 Fax: 209-833-7676

<b>DUE DATE</b>	<b>SHIP VIA</b>
5/23/2001	UPS

DESCRIPTION	QTY	RATE	AMOUNT
MODEL # 2304 BUNGEEZ, SILVER +2.00	25	2.10	52.50
MODEL # 2305 BUNGEEZ, SILVER +2.00	25	2.10	52.50
MODEL # 2309 BUNGEEZ, SILVER +2.00	25	2.10	52.50
MODEL # 2310 BUNGEEZ, SILVER +2.00	25	2.10	52.50
<b>Total</b>			<b>\$210.00</b>

PLEASE CONFIRM DELIVERY DATES.



1525 N.E. Merman Drive; Pullman, WA 99163 USA  
 Phone: 509-332-7117, 800-800-9495  
 Fax: 509-332-8509; E-mail: yccic@turbonet.com

**CONFIRMATION/PROFORMA INVOICE**

**010426**

Buyer: Retail Optical Accessories, LLC  
 Greg Berdan  
 8872 W. Linne Rd  
 Tracy, CA 95304  
 Tel: 1-209-833-6464  
 Fax: 1-209-833-7676

Terms: Net 30  
 Order Date: 26-Apr-2001  
 Sample Del. Date: NA

**Delivery Date. Please initial your choice:**

- A) By Sea: no additional charge 25-Jul-2001 \_\_\_\_\_
- B) By Sea-Air: add \$.15 per piece for shipping 10-Jul-2001 \_\_\_\_\_
- C) By Air, add \$.20 per piece for shipping. 3-Jul-2001 \_\_\_\_\_

YCC							Unit	
P.O. #	Model	Model Name	Frame Color	Temple Tip	Size	Qty.	Price	Sub-Total
	NE 2304	Bungeez	Silver per sample	Black (S)	per sample	25	\$2.10	\$52.50
	NE 2305	Bungeez	Silver per sample	Black (S)	per sample	25	\$2.10	\$52.50
	NE 2309	Bungeez	Silver per sample	Black (S)	per sample	25	\$2.10	\$52.50
	NE 2310	Bungeez	Silver per sample	Black (S)	per sample	25	\$2.10	\$52.50
<b>Totals:</b>						100		\$210.00

- Notes: 1) No Frame Markings or backing cards  
 2) For sample only make a +2.00 power.  
 3) Do not wrap metal with plastic tubing.

This order will be processed upon receipt of your signature.  
 If any corrections are necessary, please notify YCC.

Signature Greg S. Berdan  
 Date 4/27/01



1525 N.E. Merman Dr.  
 Pullman, WA 99163  
 Tel: 509-332-7117  
 Fax: 509-332-8509

# Invoice

DATE	INVOICE #
6/7/2001	ROA 010607

**BILL TO**  
 Retail Optical Accessories, LLC  
 8872 W. Linne Rd  
 Tracy, CA. 95304

**SHIP TO**  
 Retail Optical Accessories, LLC(ROA)  
 8872 W. Linne Rd  
 Tracy, CA 95304  
 209-833-7676

Ctn. #	P.O.#	REP	TERMS	DUE DATE	SHIP DATE	SHIP VIA
		RLT	Net 30	7/7/2001	6/7/2001	UPS 3rd Day
		STYLE, COLOR, AND SIZE	QUANTITY	RATE	AMOUNT	
		Bungeez, Silver, +2.00	25	2.10	\$2.50	
		Bungeez, Silver, +2.00	24	2.10	\$50.40	
		Bungeez, Silver, +2.00	25	2.10	\$52.50	
		Bungeez, Silver, +2.00	25	2.10	\$52.50	
		Subtotal			207.90	
		Freight - UPS			10.62	

We appreciate your business

**Total** \$218.52

Payment Policy: Terms as stated on Invoice. Finance charge of 1.50% per month will be assessed on past due amounts. Return Policy: All returns must be pre-approved by YCC and must be in original factory packaging or repacking fees will be charged. Defective frames must be returned within 30 days of receipt, to receive full credit. With YCC preapproval, frames with soldering point or temple defects may be returned for full credit after 30 days.

**BUNDEZ**

8872 W. Linne Road  
Tracy, CA 95304  
Ph: 209-833-6464  
Fax: 209-833-7676

**Retail Optical Accessories, LLC**  
**dba hard CASE®**

December 20, 2001

To Whom It May Concern:

This is to certify that I, Praveena Basant, mailed a copy of the Notice of Opposition to the following address:

THIERRY IFERGAN  
ASPEX EYEWEAR, INC.  
3950 EXECUTIVE WAY  
MIRAMAR FL 33025  
United States

This was sent via UPS tracking number: 1Z 559 1AR 03 4205 7281.

With Regards,

  
\_\_\_\_\_  
Praveena Basant