

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

B'S INTERNATIONAL

Opposer,

v.

INTERNATIONAL APPAREL GROUP, LLC  
Applicant.

Opposition No. \_\_\_\_\_

04-17-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #58

Serial No.: 76/023,613

Mark: X GIRLS

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Assistant Commissioner for Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, VA 22202-3513, on April 14, 2003.

By: *Kristina M. Foudray*

Name: Kristina M. Foudray

**NOTICE OF OPPOSITION**

To The Assistant Commissioner for  
Trademarks  
ATTN: BOX TTAB  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Sir:

B's International, a corporation duly organized and existing under the laws of Japan, with a business address of 22-16 Kamiyamacho, Shibuya-Ku, Tokyo 150-0047, Japan, believes that it will be damaged by the registration of the mark in Class 25 shown in Application Serial No. 76/023,613, filed April 11, 2000 by International Apparel Group, LLC, with a business address of 2708 South La Paz, Suite 189, Aliso Viejo, California 92656-3041, and hereby opposes registration of the mark in Class 25. The grounds for opposition are as follows:

05/06/2003 KGIBBONS 00000237 76023613

01 FC:6402

300.00 DP

1. By application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the trademark **X GIRLS** for "clothing, namely t-shirts, shirts, shorts, pants, sweaters, hats, jackets, socks, and underwear" in International Class 25; "promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks," in International Class 35; and "providing information of general interest to young adults and teenagers by means of a global computer network," in International Class 42." The application is based on an intention to use the mark pursuant to section 1(b) of the Trademark Act. No Amendment to Allege Use has been filed.

2. Opposer, or its predecessor in interest, has sold "womens clothing; namely, pants, shirts, dresses, skirts, jackets, vests, hats, t-shirts, undergarments and leggings," in interstate commerce since at least as early as May 1, 1993 under the mark **THE X-GIRL CLOTHING COMPANY** and has common law rights in and to the **THE X-GIRL CLOTHING COMPANY** mark. Opposer also owns an incontestable U.S. Trademark Registration No. 1,858,672 for its **THE X-GIRL CLOTHING COMPANY** mark.

3. There is no issue priority concerning application Serial No. 76/023,613 since Opposer has a first use date at least seven years prior to Applicant's filing date and Applicant asserts no date of first use for this mark.

4. Opposer's mark **THE X-GIRL CLOTHING COMPANY** has been in use in interstate commerce, has been advertised and promoted by Opposer or its predecessors in interest, and has developed and represents valuable good will in the benefit of Opposer. Opposer's mark has trademark significance to purchasers and potential purchasers.

5. Applicant's mark is confusingly similar to Opposer's mark. Opposer disclaims the words "clothing company" in its mark. Furthermore, Opposer admits that the words "the" and "clothing company" are descriptive in nature. Thus, emphasis is placed on the "X-GIRL" portion of Opposer's mark. Applicant's mark **X GIRLS** is nearly identical in sight, sound, and meaning to the distinctive portion of Opposer's mark. Applicant's mark is confusingly similar to the distinctive portion of Opposer's mark and confusingly similar to Opposer's entire mark.

6. Applicant's goods in Class 25 are "clothing, namely t-shirts, shirts, shorts, pants, sweaters, hats, jackets, socks, and underwear." Opposer's goods are also clothing items and particularly "womens clothing namely, pants, shirts, dresses, skirts, jackets, vests, hats, t-shirts, undergarments and leggings." Consumers are likely to view Applicant's goods as Opposer's goods or a line extension of Opposer's goods marketed under a shortened version of Opposer's mark.

7. The goods to be sold by Applicant under the **X GIRLS** mark are closely related and directly competing with the goods sold by Opposer under **THE X-GIRL CLOTHING COMPANY** mark.

8. Opposer's and Applicant's goods may be sold in the same channels of trade to the same consumers or class of consumers.

9. Due to the similarity of Opposer's previously used **THE X-GIRL CLOTHING COMPANY** trademark with Applicant's **X GIRLS** trademark application and the closely related nature of the goods of the respective parties, customers and potential customers are likely to believe that Applicant's goods originate from Opposer, resulting in a likelihood of confusion in the marketplace and damage to Opposer.

10. The use or registration by Applicant of the mark **X GIRLS** is likely to cause confusion or to cause mistake or deception in the wholesale and the retail trade, and among purchasers and potential purchasers, with Opposer's previously used mark **THE X-GIRL CLOTHING COMPANY**, again resulting in damage to Opposer.

11. Because of the related nature of the goods and the near identity of the marks, use and registration of the mark **X GIRLS** by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer or otherwise endorsed, sponsored, or approved for Opposer causing further damage to Opposer.

12. Registration of the mark shown in Application Serial No. 76/023,613 in International Class 25 will result in damage to Opposer under provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer asks that its opposition to this application be sustained and that the registration in International Class 25 of the term **X GIRLS** set forth therein be refused.

Please direct all correspondence to the attention of Kristina Foudray:

MERCHANT & GOULD P.C.  
PO Box 2910  
Minneapolis, MN 55402  
612/332-5300

Opposer hereby appoints Kristina M. Foudray; Brian H. Batzli, Reg. No. 32,960; John L. Beard, Reg. No. 27,612; Linda M. Byrne, Reg. No. 32,404; John A. Clifford, Reg. No. 30,247; Sandra Epp Ryan, 39,667; Gregory C. Golla; John D. Gould, Reg. No. 18,223; Curtis B. Hamre, Reg. No. 29,165; Scott W. Johnston, Reg. No. 39,721; Anna W. Manville; Allen W. Hinderaker and Paul A. Welter, Reg. No. 20,890 of Merchant & Gould as attorneys with the full power to represent the Opposer in connection with this application.

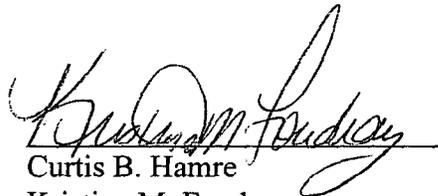
Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Opposer's counsel noted above.

Respectfully submitted,

THE X-GIRL CLOTHING COMPANY

By its Attorneys,

Dated: April 14, 2003

  
Curtis B. Hamre  
Kristina M. Foudray  
MERCHANT & GOULD P.C.  
PO Box 2910  
Minneapolis, MN 55402  
612/332-5300

# Merchant & Gould

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04-17-2003

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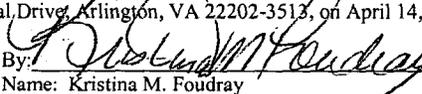
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Mark: X GIRLS  
Serial No.: 76/023,613  
Docket Number: 10838.4USTA  
Official Gazette: January 14, 2003

Due Date: April 14, 2003  
Filing Date: April 11, 2000

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Commissioner for Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, VA 22202-3513, on April 14, 2003.

By:   
Name: Kristina M. Foudray

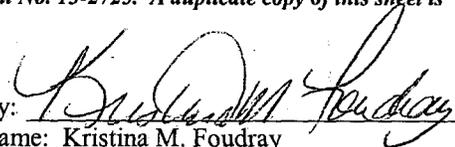
Commissioner for Trademarks  
Box TTAB  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Commissioner:

We are transmitting herewith the attached:

- Return postcard.
- Transmittal Sheet in duplicate containing Certificate Under 37 C.F.R.-1.8
- Notice of Opposition (1 Original and 1 Copy)
- Check in the amount of \$300.00 to cover Filing Fee.

*Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. A duplicate copy of this sheet is enclosed.*

By:   
Name: Kristina M. Foudray  
KFoudray:thollom

(CONTESTED MATTER)

