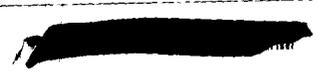


TTAB

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

In the matter of Application Serial No. 76/103,090  
For the mark: APB AMERICAN PIG BRAND  
Filing Date: August 7, 2000  
Publication Date: October 1, 2002



05-29-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

THIS LITTLE PIGGY WEARS COTTON,	)	
	)	
OPPOSER,	)	NOTICE OF OPPOSITION
	)	
v.	)	OPPOSITION NO.:
	)	
THE EITAN HAGLER AND DANIEL	)	
MARTINEZ PARTNERSHIP,	)	
	)	
APPLICANT.	)	

BOX TTAB - FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

03 JUN 12 11 58 AM

In the matter of the application of THE EITAN HAGLER AND DANIEL MARTINEZ PARTNERSHIP, a partnership formed and existing under the laws of the State of California, having a mailing address of P.O. Box 928392, San Diego, California 92192, (hereinafter "Applicant"), for registration of the trademark APB AMERICAN PIG BRAND, Application Serial No. 76/103,090, published in the *Official Gazette* dated October 1, 2002, THIS LITTLE PIGGY WEARS COTTON, a corporation organized and existing under the laws of the State of California, having a business address of 901 Linden Avenue, Carpinteria, California 93013 (hereinafter "Opposer"), believes it will be damaged by registration of the mark shown in Application Serial No. 76/103,090 as it pertains to the specific goods identified in Class 25 only and hereby

opposes the same. Applicant does not oppose the registration of Applicant's Mark for use on the goods identified in Class 16.

As grounds for the opposition, Opposer alleges the following:

1. Opposer, for many years and long prior to any date of first use upon which Applicant can rely, has continuously manufactured, sold, distributed, and advertised in interstate commerce clothing, accessories and related retail services in Classes 25, 35 and 42 in conjunction with a family of marks incorporating the word PIGGY, including the mark PIGGY BRAND.

2. Opposer is the owner of the following trademarks consisting of or incorporating the word mark PIGGY (collectively "Opposer's Marks"):

<u>MARK</u>	<u>CLASS</u>	<u>GOODS/SERVICES</u>	<u>REG/ SERIAL NO.</u>	<u>REG/FILING DATE</u>
THIS LITTLE PIGGY & DES.	042	Retail store services in the field of hosiery and other legwear.	1,375,204	12/10/1985
THIS LITTLE PIGGY & DES.	025	Hosiery, socks and panty hose.	1,378,183	01/14/1986
THIS LITTLE PIGGY & DES.	025	Clothing, footwear and head wear.	2,344,646	04/25/2000
	035	Retail store services featuring children's clothing, toys, furniture, and accessories.		
LITTLEPIGGY	035	Retail store services and online retail store services featuring children's clothing, toys, books, bedding, furniture, and accessories.	78/184,862	11/13/2002

THIS LITTLE PIGGY	025	Clothing, namely, pants, underwear, boxer shorts, shorts, shirts, t-shirts, blouses, skirts, dresses, jackets, coats, socks, sleepwear, pajamas, nightgowns, loungewear, leggings, socks, hosiery, hats, slippers, and caps.	78/184,855	11/13/2002
PIGGY TOES	025	Children's clothing and shoes.	78/224,928	03/12/2003
PIGGY BRAND	025	Clothing, namely, pants, underwear, boxer shorts, shorts, shirts, t-shirts, blouses, skirts, dresses, jackets, coats, socks, sleepwear, pajamas, nightgowns, loungewear, leggings, socks, hosiery, hats, slippers, and caps.	78/224,936	03/12/2003
PIGGY BASICS	025	Clothing, namely, pants, underwear, boxer shorts, shorts, shirts, t-shirts, blouses, skirts, dresses, jackets, coats, socks, sleepwear, pajamas, nightgowns, loungewear, leggings, socks, hosiery, hats, slippers, and caps.	N/A	N/A
PIGSKINS	025	Clothing, namely, pants, underwear, boxer shorts, shorts, shirts, t-shirts, blouses, skirts, dresses, jackets, coats, socks, sleepwear, pajamas, nightgowns, loungewear, leggings, socks, hosiery, hats, slippers, and caps.	N/A	N/A
OINK!	025	Clothing, namely, pants, underwear, boxer shorts, shorts, shirts, t-shirts, blouses, skirts, dresses, jackets, coats, socks, sleepwear, pajamas, nightgowns, loungewear, leggings, socks, hosiery, hats, slippers, and caps.	N/A	N/A

3. Each of Opposer's Marks is valid and subsisting and is conclusive evidence of Opposer's exclusive right to use Opposer's Marks on the goods and services. Furthermore, with the exception of Registration No. 2,344,646, Opposer's registered marks are incontestable under 15 U.S.C. §1065. Because Opposer's Marks are arbitrary and strong and further because Opposer has used Opposer's Marks and variations thereof continuously since at least as early as 1983 in connection with the sale of apparel, accessories and related services and long before any use which Applicant could rely upon regarding the mark displayed in Application Serial No. 76/103,090, Opposer is entitled to protection of its distinctive marks.

4. Opposer's apparel, accessories and related retail services have been offered and advertised continuously to the public throughout the United States through various channels of trade in conjunction with Opposer's Marks since at least as early as September 1983. By reason of such advertising and wide distribution of Opposer's goods and services, the public recognizes Opposer's Marks as a family of marks which signify Opposer and Opposer's goods and services. Additionally, Opposer has built extensive goodwill in connection with Opposer's family of marks.

5. Notwithstanding Opposer's long prior rights in and to Opposer's Marks, Applicant, on August 7, 2000, filed an application to register the trademark APB AMERICAN PIG BRAND, for use on "*clothing, namely, golf shirts, dresses, jumpers, cardigans, suits, overcoats, overalls, trousers, jackets, singlets, lingerie, belts, knit shirts, sport shirts, sweat shirts, T-shirts, pants, sweaters, socks, ties, bow ties, shorts, beach visors, beachwear, swimsuits, hats, caps, beanies, blouses, underwear, jackets, pull overs and jerseys*" in International Class 25 (as well as for various goods in Class

16, the use of which Opposer does not object to in the present proceeding) ("Applicant's Mark"). Said application was assigned Serial No. 76/103,090 and was published for opposition in the *Official Gazette* dated October 1, 2002.

6. Applicant has claimed a date of first use of Applicant's Mark in commerce in association with the goods identified in Class 25 as April 29, 1999.

7. Applicant's Mark so resembles Opposer's family of marks that the registration and use of Applicant's Mark is likely, when applied to the goods in Class 25 identified in Applicant's pending application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act, all to Opposer's damage.

8. Opposer's Marks are strong and distinctive, qualifying them collectively and individually for protection under Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c), as amended.

9. Application Serial No. 76/103,090 was filed on August 7, 2000 and therefore is subject to the provisions of Section 43(c) of the Lanham Act, as amended.

10. Opposer avers that Applicant's Mark is confusingly similar to Opposer's Marks and thus interferes with Opposer's use of said marks. Opposer believes that the registration of Applicant's mark APB AMERICAN PIG BRAND in Class 25 will seriously and substantially damage Opposer and its distinctive family of marks in violation of Section 43(c) of the Lanham Act, as amended.

WHEREFORE, Opposer believes it will be damaged by said registration and requests that Application Serial No. 76/103,090 for the mark APB AMERICAN PIG BRAND be denied registration for

the goods identified in International Class 25 only on the grounds set forth herein and that this Opposition be sustained.

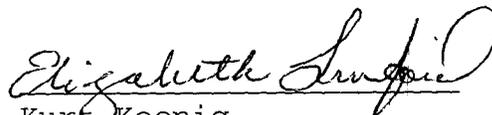
This Notice of Opposition is submitted in duplicate according to 37 CFR 2.104(a) along with the filing fee in the amount of \$300.

Respectfully submitted,

KOENIG & ASSOCIATES  
Attorneys for Opposer

Dated: May 29, 2003

By:



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**CERTIFICATE OF MAILING BY EXPRESS MAIL**

I hereby certify that the foregoing document entitled "Notice of Opposition" is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Box TTAB/FEE, Arlington, VA 22202-3513, on the date indicated below.

Express Mail Mailing Label No. EV066295637US

Dated: May 29, 2003

  
Elizabeth A. Linford