

ESTTA Tracking number: **ESTTA5302**

Filing date: **02/03/2004**

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

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Name	Specialty Retailers (TX) LP		
Opposer Entity	Limited Partnership	Citizenship of Opposer	Texas
Opposer Address	10201 Main Street Houston, TX 77025 UNITED STATES		

Attorney information	Michael G. Saenz McKinney & Stringer, P.C. Corporate Tower 101 N. Robinson, Suite 1300 Oklahoma City, OK 73102 UNITED STATES saenzm@mckinneystringer.com Phone:405-272-3144
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Applicant Information

Application No	76520469	Publication date	01/06/2004
Opposition Filing Date	02/03/2004	Opposition Period Ends	02/05/2004
Applicant	J.E.M. INTERNATIONAL, INC.		
Address	10 West 33rd Street, Suite 1018 New York, NY 10001 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 20010000 First Use In Commerce: 20010000

All goods and services in the class are opposed, namely: Footwear

Attachments

NoticeofOppositionJEM.pdf (3 pages)

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

SPECIALTY RETAILERS (TX) LP,
Opposer,
v.
J.E.M. INTERNATIONAL, INC.
Applicant.

Opposition No.: Not Yet Assigned

NOTICE OF OPPOSITION

Specialty Retailers (TX) LP, a Texas Limited Partnership, having its principal place of business in Houston, Texas, believes it will be damaged by the registration of the mark **WHISPERS**, Application Serial No. 76/520469, and hereby opposes the same.

As grounds for opposing registration of the mark **WHISPERS** (Serial No. 76/520469) it is alleged that:

1. For more than nineteen years, Opposer has continuously used in interstate commerce, its trademark **WHISPERS** in connection with the advertising, promotion, distribution and sale of lingerie.

2. For more than nine years, Opposer has continuously used in interstate commerce, its trademark **WHISPERS** in connection with the advertising, promotion, distribution and sale of cosmetics.

3. Opposer has obtained and owns the following United States trademark registrations for its **WHISPERS** mark, which registrations are valid and subsisting pursuant to 15 U.S.C. §§ 1065 and 1115:

<i>Mark:</i>	<i>Reg. No.</i>	<i>Reg. Date</i>	<i>Goods</i>
WHISPERS	1,294,565	09/11/84	Lingerie, in International Class 25.
WHISPERS	2,094,031	09/09/97	Cosmetics, namely, body lotion, bath and shower gel, bubble bath, bath scrub, bath crystals, soap and potpourri, in International Class 3.

4. Opposer has sold a great amount of goods under its trademark **WHISPERS** and has expended considerable effort and devoted substantial resources toward promoting Opposer's goods and services offered under its **WHISPERS** trademark, with the result that the purchasing public has come to know, rely upon and recognize the goods of Opposer by the trademark **WHISPERS**.

5. Applicant filed the subject Application Serial No. 76/520469 with the U.S. Patent and Trademark Office on May 28, 2003, for footwear in International Class 25.

6. Applicant's Application Serial No. 76/520469 was published for opposition in the Trademark Official Gazette on January 6, 2004.

7. Applicant's goods – footwear - identified in the application opposed herein are related to goods sold under Opposer's **WHISPERS** trademark.

8. Applicant has alleged a first use in commerce date of 2001 for the **WHISPERS** mark in connection with footwear.

9. Opposer has priority over Applicant as a result of earlier continuous use of Opposer's mark **WHISPERS** in connection with lingerie and cosmetics, related goods to those of Applicant.

10. Use of the trademark **WHISPERS**, for which registration is sought in the application opposed herein, for "footwear" is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Applicant's products in that purchasers or others are likely to believe that Applicant's products are Opposer's products or are in some way legitimately connected with, sponsored, endorsed, affiliated, licensed or approved by Opposer. Applicant's mark therefore should be denied registration under 15 U.S.C. §§ 1052(d) and 1063.

11. Applicant's mark **WHISPERS** so resembles Opposer's **WHISPERS** mark as to be likely, when used in connection with Applicant's goods, to cause confusion, or to cause mistake or deceive.

12. Any use by Applicant of the trademark **WHISPERS** for which registration is sought in the application opposed herein is without Opposer's consent or permission.

13. The filing of the subject Application Serial No. 76/520469 by Applicant of the trademark **WHISPERS** is without Opposer's consent or permission.

WHEREFORE, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, Opposer respectfully requests that Application Serial No. 76/520469 be rejected, and that the registration of the mark **WHISPERS**, for the goods therein specified, be refused and that the present opposition be sustained.

Dated this 3rd day of February, 2004.

Respectfully submitted,

//Michael G. Saenz//

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