

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

In re Trademark Application

Serial No.: 75758998

Filed: July 23, 1999

Trademark: DUNHAM

03-22-2004

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

Atty. Docket No.: DUA 0134 A

Published in the Official Gazette on March 26, 2002

DUNHAM'S ATHLEISURE)
CORPORATION)
)
Opposer,)
)
v.)
)
NEW BALANCE ATHLETIC SHOE, INC.,)
)
Applicant.)

Serial No. 75758998

Opposition No. _____

NOTICE OF OPPOSITION

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

03/24/2004 SWILSON1 00000009 502337 75758998
Sale Ref: 00000054 DAW: 502337 75758998
01 FC:6402 300.00 DA

Sir:

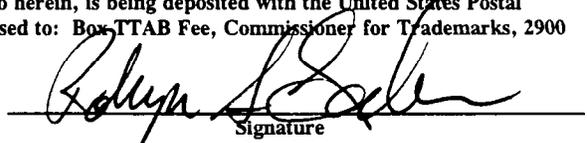
Dunham's Athleisure Corporation (hereinafter referred to as "DUNHAM'S"), a Delaware corporation, having its principle place of business at 5000 Dixie Highway, Waterford,

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box TTAB Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513:

March 18, 2004
Date of Deposit

Robyn Lederman
Name of Person Signing


Signature

MI 48329, believes that it will be damaged by the registration of the mark "DUNHAM" shown in Application Serial No. 75758998 published in the *Official Gazette* on March 26, 2002, and hereby opposes registration of the same.

As grounds for opposition, DUNHAM'S states as follows:

1. The Applicant, NEW BALANCE ATHLETIC SHOE, INC. ("NEW BALANCE"), upon information and belief filed a use-based application on July 23, 1999, which currently seeks to register "DUNHAM" as a trademark for "clothing namely, t-shirts, golf shirts, denim shirts, and wind resistant jackets" in Class 25.

2. The Opposer, DUNHAM'S, is the owner of the marks "DUNHAM'S SPORTS" and "DUNHAM'S" (the "DUNHAM'S Trademarks") including DUNHAM'S stylized format and as used and filed under Serial Nos. 75828266 and 75828267 respectively on October 22, 1999, both for "retail store services featuring sporting goods and clothing" in Class 35; and has used DUNHAM'S SPORTS in connection with these services since at least as early as November 1992 and has used DUNHAM'S in connection with these services since at least as early as October 2, 1977 and in another form as early as 1937.

3. Opposer has expended considerable effort and expense in promoting its use of the DUNHAM'S trademarks and the services associated with these marks, with the result that the purchasing public has come to know and recognize the services promoted and sold in connection with this mark as those associated with the Opposer. Opposer has an exceedingly valuable goodwill established in the marks.

4. Opposer has extensively and continuously used, promoted, and advertised its DUNHAM'S trademarks in commerce since at least 1977 and as early as 1935. Opposer has used its DUNHAM'S trademarks in connection with Class 35 services since that time. Upon information and belief, the Applicant's date of first use on the goods in the application is subsequent to Opposer's first use of the mark on their services.

5. If Applicant is permitted to register the confusingly similar "DUNHAM" mark for its goods as specified in its application, such registration and use would be likely to cause confusion, mistake, or deception as to the origin of Applicant's goods resulting in damage and injury to the Opposer. Such confusion, mistake, or deception would result by reason of the similarity between the Applicant's mark and Opposer's mark and the relatedness of the goods to retail services for the goods in the minds of prospective customers. Persons familiar with Opposer's mark would be likely to purchase Applicant's goods bearing the mark "DUNHAM" in the belief that the Applicant's goods originate from, are sponsored by or approved by Opposer.

6. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and registration of the mark as sought by Applicant be refused.

Three copies of this Notice of Opposition required under 37 C.F.R. §2.6(a)(17) is enclosed. Please charge the filing fee to Deposit Account No. 502337.

Respectfully submitted,

DUNHAM'S ATHLEISURE CORPORATION

By 

Ronald Mabozy
Robyn Lederman
Attorney/Agent for Opposer

Date: March 18, 2004

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