

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

In re Trademark Application

Trademark: DUNHAM

TTAB

DUNHAM'S ATHLEISURE)
CORPORATION)

Opposer,)

v.)

NEW BALANCE ATHLETIC SHOE, INC.,)

Applicant.)

06-21-2004

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

Opposition No. 91159972

**RESPONSE IN OPPOSITION TO APPLICANT'S
MOTION TO DISMISS AND REQUEST TO CONVERT
THE PROCEEDING TO A PETITION FOR CANCELLATION**

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

Sir:

Opponent, Dunham's Athleisure Corporation (hereinafter "Dunham's"), hereby opposes Applicant's motion and request to dismiss the Opposition filed by Dunham's. The application for the mark "DUNHAM" as reflected in Application Serial No. 75758998 was published in the *Official Gazette* on March 26, 2002. The application was originally filed seeking registration on the principal register and to date, has been approved for registration on the

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:

June 18, 2004
Date of Deposit

Robyn Lederman
Name of Person Signing


Signature

principal register subject to opposition as reflected on the TESS and TARR database of the USPTO.

1. Dunham's commenced a proper, timely and legitimate Opposition pursuant to the provisions of the Trademark Manual of Examining Procedure and Trademark Trial (TMET) and Appeal Board Manual of Procedure (TBMP).

2. The allegations set forth in Dunham's Notice of Opposition were true at the time of filing on March 18, 2004 and remain true today. Dunham's incorporates the Notice of Opposition by reference herein.

3. Based on the record of the USPTO, the relevant TMET and TBMP Rules, the fact that the Applicant's mark was published for opposition, and Applicant's failure to timely correct a clerical error, this opposition should remain in effect and the Trademark Trials and Appeal Board ("TTAB") should allow this proceeding to move forward.

Pursuant to TBMP § 1502.01, the Applicant is obligated to provide a written request for a correction of a clerical error within one week of the publication of the mark in the Trademark Official Gazette. The deadline for Applicant to correct the alleged error was June 2, 2002.

4. In the alternative, the TTAB should allow and deem the Notice of Opposition to be converted to a Petition to Cancel and to follow the schedule already in place for discovery and proceedings. Otherwise, Dunham's would be severely prejudiced in its reliance upon the USPTO policy and procedures.

5. In the event that the TTAB grants applicant's request, opposer requests that the official fee of \$300.00 be reimbursed.

Accordingly, Dunham's respectfully requests that this Opposition be allowed to stand and progress as filed or, in the alternative, as a Cancellation proceeding.

Respectfully submitted,

DUNHAM'S ATHLEISURE CORPORATION

By 

Ronald Nabozny

Robyn Lederman

Attorney/Agent for Opposer

Date: June 18, 2004

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351