

ESTTA Tracking number: **ESTTA24735**

Filing date: **01/31/2005**

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

Notice of Opposition

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

Opposer Information

Name	Yellowstone Imports, Inc.
Granted to Date of previous extension	01/29/2005
Address	11 West 32nd Street New York, NY 10001 UNITED STATES

Attorney information	Jane Linowitz, Esq. Levisohn, Berger & Langsam, LLP 805 Third Avenue, 19th Floor New York, NY 10022 UNITED STATES JLINOWITZ@LLBL.COM Phone:212-486-7272
-----------------------------	--

Applicant Information

Application No	76576676	Publication date	11/30/2004
Opposition Filing Date	01/31/2005	Opposition Period Ends	01/29/2005
Applicant	Jay-Y Enterprise Co., Inc. 632 New York Drive Pomona, CA 91768		

UNITED STATES

Goods/Services Affected by Opposition

Class 009. First Use: 20020815 First Use In Commerce: 20020815 All goods and services in the class are opposed, namely: Sunglasses, Optical Frames, and Reading Glasses
--

Attachments	005 - opposition.txt (2 pages)
--------------------	----------------------------------

Signature	/jane linowitz/
------------------	-----------------

Name	Jane Linowitz, Esq.
-------------	---------------------

Date	01/31/2005
-------------	------------

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

Applicant: Jay-Y Enterprise Co., Inc. International Class:

9

Serial No.: 76/576,676 Published for Opposition:
November 30, 2004

Filed: February 23, 2004 Attorney Docket No.
1687.005

Mark: DESIGN
Goods: Sunglasses, optical frames, and reading glasses

Yellowstone Imports, Inc.,

Opposer,

v.

Jay-Y Enterprise Co., Inc.,

Applicant.

NOTICE OF OPPOSITION

ESTTA Tracking No.: ESTTA21691

Yellowstone Imports, Inc. is a New York corporation, located and doing business at 11 West 32nd Street, New York, NY 10001 and is owner of a Design trademark consisting of two interlocking circles pictured in the attached JPEG file, U.S. Serial No. 78/555,014.

Yellowstone Imports, Inc. believes that it will be damaged by registration of the trademark shown in Application Serial No. 76/576,676 for DESIGN filed February 23, 2004 for use in conjunction with sunglasses, optical frames, and reading glasses. As grounds for this opposition, Yellowstone Imports, Inc. (hereinafter "Opposer") alleges as follows:

1. On information and belief, Jay-Y Enterprise Co., Inc. (hereinafter "Applicant") is a California corporation, located and doing business at 632 New York Drive, Pomona, California 91768.
2. Continuously, since as early as May 1999, Opposer has used the mark DESIGN U.S. Serial No. 78/555,014 in conjunction with eyewear.
3. The mark shown in Application Serial No. 76/576,676 so resembles Opposer's mark and previously used in commerce by Opposer, and not abandoned, as to be likely when applied to the goods upon which Applicant intends to use the mark to cause confusion, or to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15, U.S.C. ? 1052(d).
4. Opposer will be damaged by the registration sought by Applicant insofar as the registration will be prima facie evidence of the validity of the

registration, Applicant's ownership of the mark shown in the application, and Applicant's exclusive right to use the mark shown in the application, when in fact Applicant is not entitled to such rights by virtue of Opposer's prior and continuous use of the mark.

5. Based upon the foregoing, registration of the mark depicted in Application Serial No. 76/576,676, filed February 23, 2004 on the Principal Register of the United States Patent and Trademark Office will cause injury and damage to Opposer.

6. WHEREFORE, Opposer respectfully requests that registration of the mark shown in application Serial No. 76/576,676 be denied under Section 2(d) of the Lanham Act and that this opposition be sustained.

Please charge Deposit Account No. 02-2105 in the amount of \$300.00. In connection with this transmittal, the Commissioner is hereby authorized to charge payment of any deficiency in the fee due or to credit any overpayment to our deposit account No. 02-2105.

Please direct all correspondence to Jane Linowitz, Levisohn, Berger & Langsam, LLP, 805 Third Avenue, New York, NY 10022. Telephone calls should be directed to the same at (212) 486-7272.

Dated this 31st day of January, 2005.

Respectfully submitted,
LEVISOHN, BERGER & LANGSAM, LLP

Jane Linowitz
Attorneys for Opposer
Levisohn, Berger & Langsam, LLP
805 Third Avenue, Suite 2400
New York, NY 10022
Telephone: (212) 486-7272