

TTAB

Our Ref. No. 008880.M003

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

Trademark: POINT TWO
Serial No.: 76/627,440
Filed: January 10, 2005
Published: October 25, 2005

Beniko, Inc.,)	
)	
Opposer,)	Opposition No. _____
)	
v.)	Serial No.: 76/627,440
)	
4 You America, LLC,)	
)	
Applicant.)	

11/17/2005 KGIBBONS 00000055 76627440

01 FC:6402

300.00 OP

NOTICE OF OPPOSITION

Opposer, Beniko, Inc. (hereinafter "Opposer" or "Beniko"), which has its principal place of business at 2707 S. Alameda Street, Los Angeles, California 90058, believes that it would be damaged by registration of the mark POINT TWO shown in United States Trademark Application Serial No. 76/627,440, filed by 4 You America, LLC (hereinafter "Applicant") and published for opposition in the *Official Gazette* dated October 25, 2005, and therefore Opposer opposes such application for registration. The application as published in the *Official Gazette* may be summarized as follows:

In re trademark application: 76/627,440
Filed: January 10, 2005
Applicant: 4 You America, LLC



11-15-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

For: Clothing, namely, sweaters, pants, shirts, jackets and suits in International Class 25.

International Class: 25

Published: October 25, 2005

The grounds for this opposition are as follows:

1. Opposer is a California corporation in the business of designing, manufacturing and distributing apparel, eyewear, jewelry, leather goods, and related accessories.
2. Upon information and belief, Applicant is a limited liability company organized under the laws of New York, located in New York, New York.
3. Applicant seeks to register the mark POINT TWO (hereinafter "Applicant's Mark") for use with clothing, namely, sweaters, pants, shirts, jackets, and suits (hereinafter "Applicant's Goods").
4. Commencing as early as August 1984, well prior to the January 10, 2005 filing date in the Applicant's application, Opposer has used and continues to use POINT ZERO as a trademark and trade name to promote its products.
5. Commencing as early as 1995, well prior to the January 10, 2005 filing date in the Applicant's application, Opposer has used and continues to use POINT X as a trademark to promote its products.

6. Opposer is the owner of numerous applications for registration and registrations for marks incorporating the mark POINT ZERO and POINT X, such as:

(a) POINT ZERO for men's and women's garments, namely sweatshirts, pants, shirts, t-shirts and jackets and men's and boy's wear, namely sweaters, pants, shirts, t-shirts, shorts, suits, outerwear jackets, raincoats, socks, belts, slacks, jeans, dress pants and jackets in Class 25, registered as U.S. Registration No. 1,439,274 (attached hereto as Exhibit A and incorporated herein by reference);

(b) POINT X for men's and women's garments, namely sweatshirts, pants, shirts, t-shirts, and jackets, men's and boy's wear, namely sweaters, pants, shirts, t-shirts, shorts, suits, jackets, raincoats, socks, belts, slacks, jeans, dress pants and jackets, shoes and hats in Class 25, registered as U.S. registration No. 2,801,041 (attached hereto as Exhibit B and incorporated herein by reference);

(c) POINT ZERO for sunglasses and eyeglasses in Class 9, allowed as U.S. Serial No. 78/400,123 (attached hereto as Exhibit C and incorporated herein by reference);

(d) POINT ZERO for jewelry, watches in Class 14, allowed as U.S. Serial No. 78/400,129 (attached hereto as Exhibit D and incorporated herein by reference);

(e) POINT ZERO for wallets, leather key chains, traveling bags, backpacks, garment bags, handbags, school bags, beach bags, luggage, purses, and umbrellas in Class 18, allowed as U.S. Serial No. 78/400,137 (attached hereto as Exhibit E and incorporated herein by reference); and

(e) POINT ZERO for footwear, namely, boots, shoes, running shoes, sports shoes, sandals, slippers, gloves, caps, hats, headwear, undergarments, underwear, mittens in Class 25, allowed as U.S. Serial No. 78/409,822 (attached hereto as Exhibit F and incorporated herein by reference).

7. Upon information and belief, Applicant filed the application for registration of Applicant's Mark on January 10, 2005, based on an intent to use, and, as of the date of this Notice of Opposition, has not filed an Amendment to Allege Use, and priority of use is resolved in Opposer's favor.

8. Opposer has offered its products described above throughout the United States and the world under its aforesaid marks. Opposer is a leading apparel and accessories designer, manufacturer, and distributor. As a result of its strong presence in the marketplace, Opposer has developed valuable goodwill in the marks POINT ZERO and POINT X.

9. Opposer has further developed extensive common-law rights in all of the marks identified in Exhibits A through F in addition to the rights extended by federal registrations thereof.

10. By virtue of its efforts, and the expenditure of considerable sums for advertising and other forms of promotion, and by virtue of the consistent excellence of its products, Opposer has earned an extremely valuable reputation for the marks POINT ZERO and POINT X.

11. When applied to the Applicant's Goods, Applicant's Mark is highly similar to Opposer's marks, and as such is likely to be confused therewith and mistaken therefor.

12. Due to the highly similar appearance of Applicant's Mark and Opposer's marks, and due further to the identical nature of the goods intended to be offered under Applicant's Mark and presently offered under Opposer's marks, and the consumer recognition of Opposer's POINT ZERO and POINT X marks, it is alleged that Applicant's mark so resembles Opposer's family of "POINT" marks, as to be likely to cause confusion, or to cause mistake, or to deceive.

13. If Applicant is permitted to use and register Applicant's Mark for Applicant's Goods, confusion, deception or mistake in the trade would likely occur, thereby causing damage and injury to Opposer. Persons familiar with Opposer's marks would be likely to believe that Applicant's Goods are sponsored by or associated therewith.

14. Furthermore, any defect, objection or fault found with Applicant's Goods marketed under its mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for high-quality products.

15. Due to the identical nature of the Applicant's Goods to be used with the mark and the goods used with the Opposer's marks, Applicant's Goods under the mark would likely be seen as being sponsored by or affiliated with Opposer or its goods.

16. Applicant's U.S. Application for registration of the mark POINT TWO is highly similar to Opposer's famous POINT ZERO and POINT X marks as to be likely, when used in connection with Applicant's Goods, to cause or result in dilution of Opposer's famous POINT ZERO and POINT X marks as defined in Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(d).

WHEREFORE, the Opposer prays that application Serial No. 76/627,440 be rejected, and that the mark sought for the goods therein specified in Class 25 be denied and refused.

Opposer herewith submits this Notice of Opposition in duplicate along with the requisite filing fee in the amount of \$300. *Please charge any fees or credit any overpayment to our Deposit Account No. 02-2666.*

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

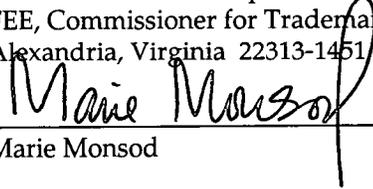
Dated: November 10, 2005

By: 
Dax Alvarez
Counsel for Opposer

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025-01026
(310) 207-3800

CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop TTAB - FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on November 10, 2005.


Marie Monsod
November 10, 2005

CERTIFICATE OF SERVICE

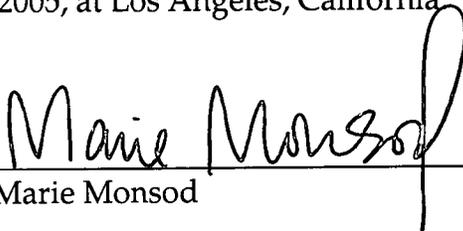
I hereby certify that a true and correct copy of the foregoing document entitled:

NOTICE OF OPPOSITION

was served on counsel for Applicant by first class mail, postage prepaid, in a sealed enveloped addressed as follows:

Barbara H. Loewenthal
Gottlieb, Rackman & Reisman, P.C.
270 Madison Avenue
New York, New York 10016-0601

Executed on November 10, 2005, at Los Angeles, California



Marie Monsod

EXHIBIT A



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Typed Drawing

Word Mark POINT ZERO

Goods and Services IC 025. US 039. G & S: MEN'S AND WOMEN'S GARMENTS, NAMELY SWEATSHIRTS, PANTS, SHIRTS, T-SHIRTS AND JACKETS AND MEN'S AND BOY'S WEAR, NAMELY SWEATERS, PANTS, SHIRTS, T-SHIRTS, SHORTS, SUITS, OUTERWEAR JACKETS, RAINCOATS, SOCKS, BELTS, SLACKS, JEANS, DRESS PANTS AND JACKETS. FIRST USE: 19840829. FIRST USE IN COMMERCE: 19840829

Mark Drawing Code (1) TYPED DRAWING

Serial Number 73619974

Filing Date September 15, 1986

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition February 17, 1987

Registration Number 1439274

Registration Date May 12, 1987

Owner (REGISTRANT) BENIKO, INC. CORPORATION CALIFORNIA SUITE 1102 850 SOUTH BROADWAY LOS ANGELES CALIFORNIA 90014

Attorney of Record NORMAN ZAFMAN

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 8 (6-YR).

Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	POINT X
Goods and Services	IC 025. US 022 039. G & S: Men's and women's garments, namely sweatshirts, pants, shirts, t-shirts, and jackets, men's and boy's wear, namely sweaters, pants, shirts, t-shirts, shorts, suits, jackets, raincoats, socks, belts, slacks, jeans, dress pants and jackets, shoes and hats. FIRST USE: 19950000. FIRST USE IN COMMERCE: 19950000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76382880
Filing Date	March 15, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	April 29, 2003
Registration Number	2801041
Registration Date	December 30, 2003
Owner	(REGISTRANT) Beniko, Inc. CORPORATION CALIFORNIA 2707 S. Alameda Street Los Angeles CALIFORNIA 90058
Attorney of Record	Dax Alvarez
Prior Registrations	1439274
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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POINT ZERO

Word Mark	POINT ZERO
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Sunglasses and eyeglasses
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78400123
Filing Date	April 12, 2004
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	January 25, 2005
Owner	(APPLICANT) Beniko, Inc. CORPORATION CALIFORNIA 2707 S. Alameda Street Los Angeles CALIFORNIA 90046
Attorney of Record	Dax Alvarez
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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POINT ZERO

Word Mark	POINT ZERO
Goods and Services	IC 014. US 002 027 028 050. G & S: Jewelry, watches
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78400129
Filing Date	April 12, 2004
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	April 19, 2005
Owner	(APPLICANT) Beniko, Inc. CORPORATION CALIFORNIA 2707 S. Alameda Street Los Angeles CALIFORNIA 90058
Attorney of Record	Dax Alvarez
Prior Registrations	1439274
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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POINT ZERO

Word Mark POINT ZERO
Goods and Services IC 018. US 001 002 003 022 041. G & S: Wallets, leather key chains, traveling bags, backpacks, garment bags, handbags, school bags, beach bags, luggage, purses, and umbrellas
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 78400137
Filing Date April 12, 2004
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition April 26, 2005
Owner (APPLICANT) Beniko, Inc. CORPORATION CALIFORNIA 2707 S. Alameda Street Los Angeles CALIFORNIA 90058
Attorney of Record Dax Alvarez
Prior Registrations 1439274
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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POINT ZERO

Word Mark	POINT ZERO
Goods and Services	IC 025. US 022 039. G & S: Footwear, namely, boots, shoes, running shoes, sports shoes, sandals, slippers, gloves, caps, hats, headwear, undergarments, underwear, mittens
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78409822
Filing Date	April 28, 2004
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	June 7, 2005
Owner	(APPLICANT) Beniko, Inc. CORPORATION CALIFORNIA 2707 S. Alameda Street Los Angeles CALIFORNIA 90058
Attorney of Record	Dax Alvarez
Prior Registrations	1439274
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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