

ESTTA Tracking number: **ESTTA56515**

Filing date: **12/07/2005**

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	LELLIKELLY S.P.A. (f/n/a STEFCOM S.P.A.)
Granted to Date of previous extension	12/07/2005
Address	VIA BOCCHI 233/235 LAMMARI (LUCCA), 55013 ITALY

Domestic Representative	Mark Lebow Attorney Young & Thompson 745 South 23rd Street Arlington, VA 22202 UNITED STATES mlebow@young-thompson.com Phone:703-521-2297
-------------------------	---

Applicant Information

Application No	76977203	Publication date	08/09/2005
Opposition Filing Date	12/07/2005	Opposition Period Ends	12/07/2005
Applicant	CRONK, DENNIS B. 110 East 9th Street, No. A763 Los Angeles, CA 90079 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 025. First Use: 2004/04/01 First Use In Commerce: 2004/04/01 All goods and services in the class are opposed, namely: MEN'S AND BOY'S WEARING APPAREL, NAMELY, T-SHIRTS, SWEATSHIRTS, TANK TOPS, WOVEN SHIRTS, SWEATERS, CARDIGANS, VESTS, JACKETS, PANTS, SWEATPANTS, JEANS, SHORTS, HATS, CAPS, COATS, SCARVES, NECKERCHIEFS, NECK BANDS, WRIST BANDS, HEAD BANDS, GLOVES, BELTS, PAJAMAS, SHOES, SOCKS, UNDERWEAR, SWIM WEAR, AND TRUNKS; AND WOMEN'S AND GIRL'S WEARING APPAREL, NAMELY, T-SHIRTS, SWEATSHIRTS, TANK TOPS, WOVEN SHIRTS, SWEATERS, CARDIGANS, VESTS, JACKETS, PANTS, SWEATPANTS, JEANS, SHORTS, HATS, CAPS, COATS, BELTS, SCARVES, NECKERCHIEFS, NECK BANDS, WRIST BANDS, HEAD BANDS, GLOVES, PAJAMAS, SHOES, SOCKS, UNDERWEAR, FOUNDATIONS, PANTYHOSE, TEDDIES, BRAS, SKIRTS, DRESSES, BLOUSES, SWIM WEAR, AND BIKINIS</p>
--

Attachments	Notice of Opposition.pdf (8 pages)
-------------	--------------------------------------

Signature	/Mark Lebow/
-----------	--------------

Name	Mark Lebow
Date	12/07/2005

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

LELLIKELLY S.p.A.,

Opposer,

v.

DENNIS B. CRONK

Applicant.

In the matter of
Application Serial No.
76/977,203

For the mark: JELLY KELLY

Published in the Official
Gazette on August 9, 2005

Opposition No.

NOTICE OF OPPOSITION

Opposer, LELLIKELLY S.p.A. (formerly known as STEFCOM S.p.A., is an Italian corporation with offices located at Via Bocchi 233/235, Lammari (Lucca), 55013 Italy.

Applicant, DENNIS B. CRONK, is an individual with offices located at 110 East 9th Street, No. A763, Los Angeles, California 90079.

Opposer believes that it will be damaged by registration of the mark JELLY KELLY as shown in Application Serial No. 76/977,203 for goods in International Class 25 and hereby opposes the same.

The grounds for opposition are as follows:

COUNT I - LIKELIHOOD OF CONFUSION

1. Opposer has used the mark LELLI KELLY on or in connection with boots, shoes and slippers in commerce prior to any use of the mark JELLY KELLY by Applicant.
2. Opposer intends to continue use of the mark LELLI KELLY in connection with the goods described in numbered paragraph 1 above.
3. As a result of its continuous and exclusive use of the LELLI KELLY mark in commerce on or in connection with the goods described in numbered paragraph 1 above, Opposer has developed substantial good will.
4. As a result of the high quality of the goods in provides under the LELLI KELLY mark, Opposer has garnered a valuable reputation.
5. Furthermore, Opposer has developed substantial common law rights in its LELLI KELLY mark.
6. Opposer also owns U.S. Trademark Registration No. 1,954,121 for the mark LELLIKELLY (stylized) for use on or in connection with boots, shoes and slippers in

International Class 25, which registered on February 6, 1996 and has a priority date of April 21, 1994 pursuant to Section 44 of the Trademark Act.

7. On August 25, 2003, Applicant filed an application seeking to register the mark JELLY KELLY as a trademark for various goods in International Classes 18 and 25, including "men's and boy's wearing apparel, namely, t-shirts, sweatshirts, tank tops, woven shirts, sweaters, cardigans, vests, jackets, pants, sweatpants, jeans, shorts, hats, caps, coats, scarves, neckerchiefs, neck bands, wrist bands, head bands, gloves, belts, pajamas, shoes, socks, underwear, swim wear, and trunks; and women's and girl's wearing apparel, namely, t-shirts, sweatshirts, tank tops, woven shirts, sweaters, cardigans, vests, jackets, pants, sweatpants, jeans, shorts, hats, caps, coats, belts, scarves, neckerchiefs, neck bands, wrist bands, head bands, gloves, pajamas, shoes, socks, underwear, foundations, pantyhose, teddies, bras, skirts, dresses, blouses, swim wear, and bikinis" in Class 25 (as amended). The application was assigned Serial No. 76/542,695.
8. On October 29, 2004, following the Examining Attorney's maintenance of a descriptiveness refusal pertaining to

Applicant's Class 18 goods, Applicant filed a request to divide Application Serial No. 76/542,695 in order to permit its Class 25 goods to move forward notwithstanding the continued refusal pertaining to the Class 18 goods. Applicant's request to divide was granted and, on November 26, 2004, a new filing receipt was issued designating Application Serial No. 76/977,203 as the new serial number for Applicant's Class 25 goods.

9. Priority is not an issue. The priority, filing and registration dates accorded to Opposer's registration noted in paragraph 6 above all precede Applicant's claimed date of first use of the mark JELLY KELLY for its Class 25 goods now assigned to Application Serial No. 76/977,203.
10. The mark proposed for registration by Applicant in Application Serial No. 76/977,203 is closely similar in appearance, connotation, sound and/or commercial impression to the mark used by Opposer in connection with its goods described in numbered paragraphs 1 and 6 above.
11. The goods described in Application Serial No. 76/977,203 are closely related to and/or are overlapping with

Opposer's goods described in numbered paragraphs 1 and 6 above.

12. Upon information and belief, Opposer avers that the goods described in Application Serial No. 76/977,203 are advertised and provided, or will be advertised and provided, in similar channels of trade and to similar customers as Opposer's goods.
13. Applicant's use of the mark JELLY KELLY in connection with the goods described in Application Serial No. 76/977,203 interferes with Opposer's use of its LELLI KELLY marks and is likely to cause the public to believe that the goods of Applicant originate with Opposer, or vice versa, or that Applicant is owned or controlled by or in some manner affiliated or associated with Opposer, or vice versa, and is otherwise likely to cause confusion, cause mistake or deceive.
14. Any defect, inadequacy or deficiency found in Applicant's goods marketed, sold or otherwise provided under the JELLY KELLY mark would reflect negatively upon and seriously injure the reputation and goodwill associated with the goods provided by Opposer and provided in connection with its LELLI KELLY mark.

15. If Applicant were granted a registration based on Application Serial No. 76/977,203, Applicant would thereby obtain at least a prima facie exclusive right to use the JELLY KELLY mark. Any such registration would be a source of damage and injury to Opposer and its customers.

COUNT II - FRAUD

16. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 15 herein.

17. On October 29, 2004, Applicant filed an Allegation of Use covering all of the goods in Class 25.

18. Upon information and belief, Applicant has not used the mark JELLY KELLY in commerce on or in connection with each and every good identified in Application Serial No. 76/977,203.

19. Upon information and belief, Applicant had not used the mark JELLY KELLY in commerce on or in connection with each and every good identified in Application Serial No. 76/977,203 at the time it filed its Allegation of Use.

20. Upon information and belief, and notwithstanding his knowledge that the mark JELLY KELLY had not been used in

commerce on all of the goods identified in Application Serial No. 97/977,203, Applicant filed an allegation of use covering all of the Class 25 goods in the application in order to obtain registration.

21. On the basis of the actions plead in the immediately preceding paragraphs, Applicant has committed fraud against the U.S. Patent and Trademark Office in order to obtain its registration.

WHEREFORE, Opposer prays that Application Serial No. 76/977,203 will be rejected, that no registration be issued thereon to Applicant, that registration of the mark JELLY KELLY for the goods specified therein be denied and refused, and that this opposition be sustained in favor of Opposer.

The fee of \$300.00 pursuant to 37 C.F.R. § 2.6(a)(17) is being paid pursuant to the electronic filing of this Notice of Opposition. If the fee paid is insufficient, please charge our debit account no. 25-0120.

Opposer has appointed Robert J. Patch, Andrew J. Patch, Benoît Castel, Thomas W. Perkins, Eric Jensen, Roland E. Long, Jr., Douglas Rigler, who are attorneys admitted to practice in Virginia, and Mark Lebow, an attorney admitted to practice in Florida and New York, all of whom are affiliated with the firm

Young & Thompson, 745 South 23rd Street, Arlington, Virginia 22202, as its duly authorized agents and attorneys in the matter of this opposition, with full power of substitution and revocation, to transact all business with the Patent and Trademark Office and elsewhere in the United States courts in connection with this opposition, to sign all papers which may be hereinafter filed in connection with this opposition, and to receive all communications relating to this opposition.

Respectfully submitted,

/Mark Lebow/

Mark Lebow
Attorney for Opposer

Young & Thompson
745 South 23rd Street
Arlington, Virginia 22202
Tel: (703) 521-2297
Fax: (703) 685-0573

December 7, 2005