Date of Deposit: **June 3, 2006**. I, Alia A. Pecot, hereby certify that this correspondence is being deposited with the U.S. Postal Service under 37 C.F.R. 1.10 on the date indicated above and is addressed to Trademark Trial and Appeal Board, U.S. Patent & Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451. Signed:

TTAB

Alia A. Pecot
195 Santa Rosa Ave.
Sausalito, CA 94965

June 3, 2006

Trademark Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Answer to Notice of Opposition, Motion to Dismiss Opposition and Proof of Service in Proceeding No. 91170558 in the Application of Serial No. 78/512665 for RED STATE

Dear Sir:

Enclosed for filing is an Answer to Notice of Opposition, which is being submitted subject to a Motion to Dismiss Opposition, a copy of which is herewith attached.

Applicant request suspension of the proceedings subject to the Motion to Dismiss which is being filed immediately prior to the Answer. Thus, this Answer should only be considered if the Motion to Dismiss is denied.

Applicant attaches herein a proof of service by mail of the Answer and Motion to Dismiss to Opposer. Please acknowledge receipt of these materials by stamping the date on the enclosed, stamped self-addressed card.

Respectfully submitted,

Alia A. Pecot
Joint Applicant / Attorney for Applicant

06-05-2006
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

700471061V1

Date of Deposit: **June 3, 2006**. I, Alia A. Pecot, hereby certify that this ANSWER is being deposited with the U.S. Postal Service under 37 C.F.R. 1.10 on the date indicated above and is addressed to Trademark Trial and Appeal Board, U.S. Patent & Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451. Signed: _____

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

JANTZEN APPAREL CORP.,	)	
Opposer,	)	Serial No. 78/512665
	)	Opposition No. 91170558
v.	)	
ALIA A. PECOT, Individual	)	
DEVIN R. CUYLER, Individual	)	
Applicant.	)	

Trademark Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER

Subject to the Motion to Dismiss, submitted herewith, Applicant for its answer avers as follows:

1. Applicant has insufficient knowledge or information as to the truth of the allegations in Paragraph 1 of the Opposition and, therefore, denies said allegations.

2. (a) Applicant has insufficient knowledge or information as to the truth of the allegations in Paragraph 2(a) of the Opposition and, therefore, denies said allegations.

   (b) Applicant has insufficient knowledge or information as to the truth of the allegations in Paragraph 2(b) of the Opposition and, therefore, denies said allegations.

(c) Applicant has insufficient knowledge or information as to the truth of the allegations in Paragraph 2(c) of the Opposition and, therefore, denies said allegations.

(d) Applicant has insufficient knowledge or information as to the truth of the allegations in Paragraph 2(d) of the Opposition and, therefore, denies said allegations.

3. Applicant admits that Applicant seeks registration of the word mark RED STATE in international classes 025 and 035 and that the mark was published for opposition on February 28, 2006. Applicant denies the remaining allegations in paragraph 3.

4. Applicant denies the allegations in paragraph 4.

AFFIRMATIVE DEFENSES

5. There is no likelihood of confusion between Applicant's RED STATE mark and Petitioner's alleged trademarks.

6. The goods and services offered in connection with Applicant's mark and Petitioner's alleged RED SAND trademarks are not sufficiently similar to create a likelihood of confusion.

Dated: June 3, 2006

BY:

ALIA A. PECOT
195 Santa Rosa Ave.
Sausalito, CA 94965

ALIA A. PECOT
Joint Applicant / Attorney for Joint Applicant

700471061V1

PROOF OF SERVICE BY MAIL

I, Blythe Rainey-Cuyler, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause.

2. My address is:
55 Marinero Circle, # 104 A
Tiburon, CA 94920.

3. On June 3, 2006, I served a true copy of the attached documents entitled ANSWER and MOTION TO DISMISS OPPOSITION for Proceeding No. 91170558 before the Trademark Trial and Appeal Board by placing them in an addressed, sealed envelope clearly labeled to identify the person being served in the address shown below and depositing them in a United States Postal Service mailbox:

Kim Kolback
Sarah Steinbaum, PA
Suite 2175
44 West Flagler Street
Miami, FL 33130

I declare under penalty of perjury that the foregoing is true and correct. Executed this day of June 3, 2006 in Tiburon, California.

Signed: Blythe Rainey-Cuyler

700471061V1

Date of Deposit: **June 3, 2006.** I, Alia A. Pecot, hereby certify that this MOTION TO DISMISS is being deposited with the U.S. Postal Service under 37 C.F.R. 1.10 on the date indicated above and is addressed to Trademark Trial and Appeal Board, U.S. Patent & Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451.
Signed: [signature]

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

JANTZEN APPAREL CORP.,	)	
Opposer,	)	Serial No. 78/512665
	)	Opposition No. 91170558
v.	)	
ALIA A. PECOT, Individual	)	
DEVIN R. CUYLER, Individual	)	
Applicant.	)	

Trademark Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION TO DISMISS OPPOSITION

In response to the Notice of Opposition ("Opposition") (attached hereto as Exhibit A) filed by Jantzen Apparel Corp. ("Opposer") against Trademark Application No. 78/512665 for the mark RED STATE (Applicant's Mark), owned by Devin R. Cuyler and Alia A. Pecot (collectively, "Applicant"), Applicant hereby moves for dismissal of the proceeding pursuant to TBMP §306.04 for Opposer's failure to timely file an opposition in accordance with TBMP §306.01.

FACTS

Applicant's Mark was published in the Official Gazette on February 28, 2006. On March 30, 2006, PEI Licensing, Inc. ("PEI Licensing") applied for an extension of time to oppose Applicant's Mark. The Board granted PEI Licensing's request, thereby extending its deadline to oppose from March 30, 2006 to April 29, 2006 (request and extension attached hereto as Exhibit B). On April 24, 2006, Opposer filed the Opposition against Applicant's Mark based on its alleged REDSAND marks (Reg. Nos. 1506035; 1762943 and 3017832).

In its Opposition, Opposer alleged that the initial identification of PEI Licensing as the opposer in the request for extension was "mistakenly" made. In addition, Opposer stated that Jantzen Apparel Corp. and PEI Licensing "are both wholly owned subsidiaries of a [common parent] and in privity with each other."

DISCUSSION

The law is clear that "an extension of time to oppose is a personal privilege, inuring only to the benefit of the party to which it was granted or a party shown to be in privity therewith." TMBP §206.01; Cass Logistics, Inc. v. McKesson Corp., 27 USPQ2d 1075 (TTAB 1993).

Upon information and belief, Applicant asserts that Opposer is not entitled to the benefit of the extension granted to PEI Licensing because the naming of PEI Licensing in the request for extension was not an excusable "mistake" and because PEI Licensing and Opposer are not in privity with respect to the REDSAND marks and, that therefore, the Opposition should be dismissed.

"Mistake" Under TMBP §206.03

Opposer's allegation of "mistak[e]" is not sufficient to permit Opposer to benefit from the extension granted to PEI Licensing. Opposer states that it "mistakenly" identified PEI Licensing as the opposer. PEI Licensing is an existing legal entity. "Mistake" means a mistake in the form of the potential opposer's name or its entity type, not the naming of a different legal entity that is not in privity with the party that should have been named. TMBP §206.03; Cass Logistics, Inc. v. McKesson Corp., 27 USPQ2d 1075 (TTAB 1993).

Privity Under TMBP §206.03

Opposer has not alleged facts sufficient to show privity with PEI Licensing. Therefore Opposer is not entitled to benefit from PEI Licensing's extension of time. Privity between a party filing a request for extension and a party filing an opposition requires mutual or successive relations to the same rights of property, namely, the successive ownership of a mark, or use by related companies as defined by Sections 5 and 45 of the Lanham Act. 15 U.S.C. §§ 1055 and 1127; TMBP §206.02. "The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used." 15 U.S.C. §1127.

Here, Opposer has neither alleged facts showing mutual or successive ownership of the REDSAND marks, nor has it shown that PEI Licensing and Opposer are "related companies," as defined under 15 U.S.C. §1127, with respect to the REDSAND marks. Opposer has only alleged that PEI Licensing and Opposer are wholly owned subsidiaries of the same parent company, commonly known as "sister" companies.

It is well established that "sister" companies are not in privity by virtue of having a common parent. "The fact that two sister corporations are controlled by a single parent corporation does not mean that they are related companies. Where two corporations are wholly

owned subsidiaries of a common parent, use by one sister corporation is not considered to inure to the benefit of the other unless the... sister corporation exercises appropriate control over the nature and quality of the goods or services on or in connection with which the mark is used." TMEP §1201.03(e); In re Pharmacia Inc., 2 USPQ2d 1883 (TTAB 1987); Greyhound Corp. v. Armour Life Insurance Co., 214 USPQ 473 (TTAB 1982). Here, Opposer has not alleged any facts regarding control that support the substitution of Opposer on privity grounds.

Identity of Opposer Continues to Remain Not Reasonably Certain

Opposer's request that "Jantzen Apparel Corp." be substituted for PEI Licensing is also defective and requires dismissal of the Opposition. It does not appear to Applicant that "Jantzen Apparel Corp." is a currently existing company name in incorporation records – thus Applicant is unclear as to whether its opposer has yet been correctly identified. The attempt to substitute with "Jantzen Apparel Corp." may itself have been a further error by Opposer. However, permitting Opposer to remedy error after error to take advantage of an extension of time to oppose is prejudicial to Applicant, who is entitled to reasonable certainty as to the identity of its opposer. Trademark Rule 2.012(b). In re Spang Industries, Inc., 225 USPQ 888 (Commissioner 1985).

CONCLUSION

Timely filing of an opposition is a statutory requirement that cannot be waived. 15 U.S.C. §1063; TMBP §306.04. Neither Opposer nor any party with requisite privity has satisfied the timeliness requirements. Failure to reasonably identify the potential opposer in an extension of time fails to comply with the requirements of Trademark Rule 2.102(b) and is non-remediable. In re Spang Industries, Inc., 225 USPQ 888. Accordingly, Applicant respectfully requests that the Opposition be dismissed with prejudice.

Dated: June 3, 2006

BY:

ALIA A. PECOT
195 Santa Rosa Ave.
Sausalito, CA 94965
617-256-4115

ALIA A. PECOT
Joint Applicant / Attorney for Joint Applicant

EXHIBIT A

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA77571**

Filing date: **04/24/2006**

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	Jantzen Apparel Corp.
Granted to Date of previous extension	04/29/2006
Address	3000 N.W. 107th Avenue Miami, FL 33172 UNITED STATES
Party who filed Extension of time to oppose	PEI Licensing, Inc.
Relationship to party who filed Extension of time to oppose	PEI Licensing, Inc. was mistakenly identified as the Opposer in the original Request To Extend Time To File An Opposition. Instead, Jantzen Apparel Corp. is the appropriate Opposer. PEI Licensing, Inc. and Jantzen Apparel Corp. are both wholly owned subsidiaries of Perry Ellis International, Inc. and in privity with each other. Accordingly, Jantzen Apparel Corp. requests that it be substituted as Opposer pursuant to U.S. Trademark Law Rules Of Procedure §2.102 (b).

Correspondence information	Kim Kolback Attorney Sarah Steinbaum, PA 44 West Flagler Street Suite 2175 Miami, FL 33130 UNITED STATES kkolback@bellsouth.net Phone:305 858 2627

Applicant Information

Application No	78512665	Publication date	02/28/2006
Opposition Filing Date	04/24/2006	Opposition Period Ends	04/29/2006
Applicants	Cuyler, Devin Rainey 195 Santa Rosa Ave. Sausalito, CA 94965 UNITED STATES Pecot, Alia Aresa 195 Santa Rosa Ave. Sausalito, CA 94965 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and sevices in the class are opposed, namely: Apparel, namely, baseball caps, hats, shirts, sweatshirts, underwear, scarves and pants.

Class 035. All goods and sevices in the class are opposed, namely: On-line retail store featuring a variety of consumer goods including baseball caps, t-shirts, shirts, sweatshirts, scarves, pants; paper goods and printed material such as bumper stickers, stationary, postcards, posters, memo pads, stickers and decals; pins and bracelets; banners; cups, mugs and glasses.

Attachments	opposition.txt (1 page)(2041 bytes)

Signature	/s/ Kim Kolback
Name	Kim Kolback
Date	04/24/2006

1. Since 1986, Opposer and its predecessor (hereafter collectively referred to as "Opposer") have engaged in the manufacture, sale, distribution and/or licensing of a famous line of clothing and related products pursuant to a family of REDSAND word and design registered and common law trademarks (hereafter referred to as the "REDSAND Marks"). The trademarks include, but are not limited to, U.S. Trademark Registration Nos. 1506035, 1762943 and 3017832 attached hereto as composite Exhibit 1. In fact, Registration Nos. 1506035 and 1762943 are incontestable as defined under the Federal Trademark Act and related statutes.

2. For the past two decades:

a. Opposer has made a substantial investment in developing, advertising and promoting the sales and goodwill in relation to the Opposer's REDSAND Marks;

b. Opposer has extensively used, advertised, promoted and offered for sale to the public through various channels of trade and commerce, products displaying the REDSAND Marks;

c. Opposer's customers, and the public in general, have come to know and recognize the REDSAND Marks and associate these Marks with Opposer and the goods sold by Opposer; and,

d. Opposer intends to expand the family of REDSAND Marks to include new marks, designs and products.

3. Pursuant to U.S. Trademark Application Serial Number 78/512665, Applicant seeks registration of the word mark RED STATE in International Classes 025 and 035. The mark was published for opposition in the Official Gazette on February 28, 2006. The Trademark Trial And Appeal Board grant an extension in which Opposer could file a Notice Of Opposition until April 29, 2006.

4. Opposer will be damaged if Applicant is granted registration of the RED STATE word mark in International Classes 025 and 035 because: such registration will likely be confused, individually and as a family, with Opposer's registered and common law REDSAND Marks; and, Applicant's mark will result in niche market dilution of Opposer's REDSAND Marks.

EXHIBIT B

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA73595**

Filing date: **03/30/2006**

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

Applicants:	**Cuyler, Devin Rainey** **Pecot, Alia Aresa**
Application Serial Number:	**78512665**
Application Filing Date:	**11/07/2004**
Mark:	**RED STATE**
Date of Publication	**02/28/2006**

First 30 Day Request for Extension of Time to Oppose

Pursuant to 37 C.F.R. Section 2.102, PEI Licensing, Inc., 3000 N.W. 107th Avenue, Miami, FL 33172, UNITED STATES, a corporation organized under the laws of Delaware , respectfully requests that it be granted a 30-day extension of time to file a notice of opposition against the above-identified mark .

The time within which to file a notice of opposition is set to expire on 03/30/2006. PEI Licensing, Inc. respectfully requests that the time period within which to file an opposition be extended until 04/29/2006.

Respectfully submitted,
/s/ Kim Kolback/
03/30/2006

Kim Kolback

Sarah Steinbaum, PA

44 West Flagler StreetSuite 2175

Miami, FL 33130

UNITED STATES

kkolback@bellsouth.net

305-358-7676

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Kim Kolback
Sarah Steinbaum, PA
44 West Flagler StreetSuite 2175
Miami, FL 33130

Mailed: March 30, 2006

Serial No.: 78512665
ESTTA TRACKING NO: ESTTA73595

The request to extend time to oppose is granted until **4/29/2006** on behalf of potential opposer **PEI Licensing, Inc.**

Please do not hesitate to contact the Trademark Trial and Appeal Board at (703) 308-9300 if you have any questions relating to this extension.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, petition for cancellation, notice of ex parte appeal, and inter partes filings are now available at http://estta.uspto.gov. Images of TTAB proceeding files can be viewed using TTABVue at http://ttabvue.uspto.gov.

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. *See* Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.