

ESTTA Tracking number: **ESTTA132015**

Filing date: **03/26/2007**

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	Platypus Wear, Inc.
Granted to Date of previous extension	03/25/2007
Address	701 N. Green Valley Parkway, Suite 200 Henderson, NV 89074 UNITED STATES

Attorney information	Lisa A. Osman Dorsey & Whitney LLP 370 17th Street, Suite 4700 Denver, CO 80202-5647 UNITED STATES banks.katina@dorsey.com Phone:(303) 629-3400
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Applicant Information

Application No	78644445	Publication date	09/26/2006
Opposition Filing Date	03/26/2007	Opposition Period Ends	03/25/2007
Applicant	Hip Chicks do Wine, L.L.C. 4510 SE 23rd Avenue Portland, OR 97202 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2005/02/11 First Use In Commerce: 2005/03/08
All goods and services in the class are opposed, namely: wine

Attachments	Opposition.pdf (11 pages)(302566 bytes)
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Signature	/3463 LAO/
Name	Lisa A. Osman
Date	03/26/2007

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

In the matter of Trademark Serial No. 78/644445 for the trademark BAD GIRL BLANC filed June 6, 2005, by Hip Chicks do Wine, L.L.C.

Platypus Wear, Inc.,
Opposer,

v.

Hip Chicks do Wine, L.L.C.,
Applicant.

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Opposition No. _____

NOTICE OF OPPOSITION

Platypus Wear, Inc. dba Bad Boy Brands, a corporation duly organized and existing under the laws of the state of California and having a principal place of business at 701 North Green Valley Parkway, Suite 200, Henderson, NV 89074 ("Opposer"), believes it will be damaged by the registration of the mark BAD GIRL BLANC shown in Application Serial No. 78/644,445, filed by Hip Chicks do Wine, L.L.C. on June 6, 2005 ("Applicant's Mark"), and hereby opposes the same.

The grounds for this opposition are as follows:

1. By the application herein opposed, Applicant Hip Chicks do Wine, L.L.C. ("Applicant"), with an address at 4510 SE 23rd Avenue, Portland, Oregon 97202, seeks to register the mark BAD GIRL BLANC on the Principal Register based on alleged use of the mark in connection with the following goods in International Class 33: *wine*.

2. Applicant's application was published for opposition in the *Official Gazette* (Trademarks) dated September 26, 2006.

3. Opposer is the owner of the trademark BAD GIRL[®] and is the owner of the following United States Trademark Registrations:

In the matter of Trademark Serial No. 78/644,445 for the trademark BAD GIRL BLANC filed June 6, 2005, by Hip Chicks do Wine, L.L.C.

Trademark	Reg. No.	Goods	Reg. Date
	1,564,707	Women's wearing apparel, namely, tops	Nov. 7, 1989
	2,095,747	Women's and children's clothing, namely shirts, blouses, knit tops, woven tops, jackets, sweatshirts, sweatpants, T-shirts, shorts, pants, dresses, skirts, swimsuits and hats.	Sept. 9, 1997
BAD GIRL	2,662,346	Clothing, namely shirts, blouses, tops, jackets, jerseys, sweatshirts, coveralls, wraps, vests, sweatpants, T-shirts, tank tops, shorts, pants, dresses, skirts, swimsuits, belts, hats and shoes	Dec. 17, 2002
BAD GIRL	2,998,553	Entertainment in the nature of live performances by a musical group	Sept. 20, 2005

True and correct copies of the registration certificates for the foregoing registrations are attached hereto as Exhibit A.

4. Opposer's registrations are valid and subsisting and in full force and effect. Registration Nos. 1,564,707 and 2,095,747 have become incontestable pursuant to 15 U.S.C. § 1065.

5. In addition, Opposer owns U.S. Trademark Applications to register the following marks:

Trademark	Ser. No.	Goods	Appl. Date
BAD GIRL & COMPANY	78/082333	Providing online retail store services for consumer goods for others featuring beauty products, beauty travel kits, books, word magnets, phones, purses, and cosmetic bags; providing an online yard sale	Sept. 2, 2001
BAD GIRL	78/853494	All-purpose carrying bags; backpacks; carry-all bags; clutch bags; clutches; duffle bags; purses; tote bags	Apr. 4, 2006
BAD GIRL	78/853477	Frames for spectacles and sunglasses; spectacles; sunglasses	Apr. 4, 2006
BAD GIRL	78/853455	Beauty gels; body and beauty care cosmetics; cosmetics; deodorants and antiperspirants; face and body lotions; skin moisturizer	Apr. 4, 2006
BAD GIRL	78/920956	Bath linen; bath towels; beach towels; bed blankets; bed linen; bed sheets; pillow cases; pillow covers; pillow shams; table linen	June 30, 2006
BAD GIRL	78/920927	Address books; adhesive note pads; albums for stickers; appointment books; blank cards;	June 30, 2006

bumper stickers; calendars; daily planners;
decals; diaries; envelopes; gift cards; gift wrap
paper; greeting cards; note books; note pads;
occasion cards; organizers for stationery use;
paper napkins; pencil boxes; pencils;
penholders; signs; personal organizers;
photograph albums; postcards; posters; rubber
stamps; school writing books; scrapbooks;
stamp albums; stamp pads; stationery stickers;
wrapping paper; writing pads

Opposer's registrations and rights in and to the family of marks containing the words "bad girl" are collectively referred to as the "BAD GIRL Marks."

6. Applicant filed the application opposed herein on June 6, 2006, based on Applicant's alleged use the mark BAD GIRL BLANC in commerce on or in connection with the goods specified in the application, specifically wine.

7. Opposer's mark BAD GIRL has been used continually since at least 1989 on a variety of clothing, swimsuits, hats, belts, accessories, and other products, and in other manners customary in the trade.

8. There is no question as to priority. Since 1989, long before the Applicant's alleged intention to use as stated in the opposed application, Opposer, its wholly-owned related companies, predecessors, and/or their licensees have engaged and now are engaged in the business of developing, manufacturing, marketing, and selling a variety of products under the BAD GIRL Marks throughout the United States and in other countries.

9. For many years preceding Applicant's alleged use, Opposer, its wholly-owned related companies, predecessors, and/or their licensees have extensively advertised and promoted its products and services making clear and prominent use of the BAD GIRL Marks to identify and distinguish Opposer's products and services from those of others. As a result of such advertising and promotion, Opposer has enjoyed widespread sales of its products offered and sold under Opposer's BAD GIRL Marks, such that the mark BAD GIRL is widely recognized as an indicator of source for Opposer's products and services, and represents assets of enormous goodwill and inestimable value to Opposer.

10. Opposer, its wholly-owned related companies, predecessors, and/or their licensees have expended substantial amounts of money, time and effort in advertising, promoting and popularizing its

In the matter of Trademark Serial No. 78/644,445 for the trademark BAD GIRL BLANC filed June 6, 2005, by Hip Chicks do Wine, L.L.C.

BAD GIRL Marks, so that the trade in general, and the purchasing public in particular, have come to know and recognize Opposer's BAD GIRL Marks and products and services, and to know that the same originate with and belong to Opposer.

11. Applicant's Mark so resembles Opposer's BAD GIRL Marks and the goods identified in Applicant's application are related to the goods and services that Opposer provides under its BAD GIRL Marks as to be likely, when used in connection with Applicant's goods, to confuse, to deceive, or to cause consumers to mistake Applicant's goods for goods authorized, sponsored by or otherwise associated with Opposer.

12. Applicant's BAD GIRL BLANC mark encompasses Opposer's BAD GIRL marks. During the prosecution of its application Applicant has disclaimed the word "BLANC" as descriptive, thereby acknowledging that the distinctive portions of Applicant's Mark is the wording "Bad Girl," which is identical to Opposer's BAD GIRL mark and associated in the minds of consumers with Opposer's goods and services.

13. Opposer's BAD GIRL Marks and Applicant's Mark are similar and are so close to one another as to be likely to confuse or mislead persons familiar with Opposer (and wholly-owned related companies, predecessors, and/or their licensees) and its goods and services. Thus, Applicant's Mark is a confusingly and deceptively similar mark to Opposer's BAD GIRL Marks.

14. The goods with which Applicant uses Applicant's Mark fall within the natural zone of expansion of the goods and services for which Opposer already has obtained senior rights, in light of the close connection between clothing and alcoholic beverage products that Applicant sells. Moreover, Applicant has used its BAD GIRL BLANC mark on clothing, thereby confirming the likelihood of expansion between the products listed in Opposer's senior registrations and the goods listed for Applicant's Mark.

15. The products involved are highly-related, appeal to the same class of purchasers, and are likely to be advertised and sold in the same markets through the same channels of trade.

16. Opposer has built up exclusive goodwill and an excellent reputation in connection with its BAD GIRL Marks. Opposer's goodwill and reputation will be damaged and jeopardized by Applicant's use and registration of the BAD GIRL BLANC mark.

In the matter of Trademark Serial No. 78/644,445 for the trademark BAD GIRL BLANC filed June 6, 2005, by Hip Chicks do Wine, L.L.C.

17. The registration and use by the Applicant of the mark BAD GIRL BLANC will impair Opposer's trademark rights and will eventually result in a lack of designation or indication of origin and loss of distinctiveness or exclusivity of Opposer's BAD GIRL Marks.

18. Opposer clearly has superior and paramount rights as compared to Applicant, and Opposer has used the trademark BAD GIRL in commerce continuously and for a time long prior to any date claimed by Applicant, and, consequently, Opposer avers that confusion, mistake and deception in the trade and in the minds of purchasers both as between Opposer's BAD GIRL Marks and Applicant's Mark and as to the source, origin, affiliation, sponsorship or connection of the respective products and services will be likely and bound to occur, with resulting damage to Opposer. Accordingly, Applicant's mark is not entitled to registration under 15 U.S.C. § 1052(d).

19. Opposer will be damaged by the registration sought by Applicant within the meaning of 15 U.S.C. § 1063, because such registration would support and assist Applicant in the confusing, misleading and dilutive use of Applicant's BAD GIRL BLANC mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer, Platypus Wear, Inc., prays that trademark Serial No. 78/928,409 be rejected and that the mark therein sought be refused and denied registration.

The United States Patent and Trademark Office is authorized to charge the fee required by 37 C.F.R. § 2.6(a)(17) to Deposit Account No. 04-1415.

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In the matter of Trademark Serial No. 78/644,445 for the trademark BAD GIRL BLANC filed June 6, 2005, by Hip Chicks do Wine, L.L.C.

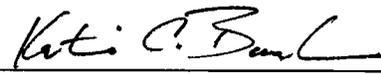
ATTORNEYS FOR OPPOSER

Please recognize as attorneys for Opposer in this proceeding Lisa A. Osman, Gregory S. Tamkin, Katina C. Banks and Jason L. Johnson, members of the Bar of the State of Colorado, whose address is Dorsey & Whitney LLP, Republic Plaza Building, Suite 4700, 370 Seventeenth Street, Denver, Colorado 80202-5647, telephone number (303) 629-3400.

Dated: March 26, 2007

Respectfully submitted,

DORSEY & WHITNEY LLP

By:  _____

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ATTORNEYS FOR OPPOSER
PLATYPUS WEAR, INC.

In the matter of Trademark Serial No. 78/644,445 for the trademark BAD GIRL BLANC filed June 6, 2005, by Hip Chicks do Wine, L.L.C.

EXHIBIT A

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office

Reg. No. 1,564,707

Registered Nov. 7, 1989

**TRADEMARK
PRINCIPAL REGISTER**



**LIFES A BEACH, INC. (ILLINOIS CORPORATION)
1979 PALOMAR OAKS WAY
CARLSBAD, CA 92009**

**FIRST USE 10-17-1988; IN COMMERCE
10-17-1988.**

SER. NO. 788,152, FILED 3-21-1989.

**FOR: WOMEN'S WEARING APPAREL,
NAMELY SKIRTS, TOPS, AND PANTS, IN
CLASS 25 (U.S. CL. 39).**

ROBERT C. CLARK JR., EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,095,747

Registered Sep. 9, 1997

**TRADEMARK
PRINCIPAL REGISTER**

Bad Girl

PLATYPUS WEAR, INC. (CALIFORNIA CORPORATION)
6100 AVENIDA ENCINAS, SUITE "A"
CARLSBAD, CA 92009

FOR: WOMEN'S AND CHILDREN'S CLOTHING, NAMELY SHIRTS, BLOUSES, KNIT TOPS, WOVEN TOPS, JACKETS, SWEATSHIRTS, SWEATPANTS, T-SHIRTS, SHORTS, PANTS,

DRESSES, SKIRTS, SWIMSUITS AND HATS ,
IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-27-1995; IN COMMERCE
11-27-1995.

OWNER OF U.S. REG. NO. 1,564,707.

SN 74-730,805, FILED 9-18-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,662,346

Registered Dec. 17, 2002

**TRADEMARK
PRINCIPAL REGISTER**

BAD GIRL

PLATYPUS WEAR, INC. (CALIFORNIA CORPORATION)
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 921302592

FOR: CLOTHING, NAMELY, SHIRTS, BLOUSES, TOPS, JACKETS, JERSEYS, SWEATSHIRTS, COVERALLS, WRAPS, VESTS, SWEATPANTS, T-SHIRTS, TANK TOPS, SHORTS, PANTS, DRESSES, SKIRTS, SWIMSUITS, BELTS, HATS AND SHOES, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 10-17-1988; IN COMMERCE 10-17-1988.

OWNER OF U.S. REG. NOS. 1,564,707 AND 2,095,747.

SER. NO. 76-305,353, FILED 8-27-2001.

LA TONIA FISHER, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 2,998,553

Registered Sep. 20, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

BAD GIRL

PLATYPUS WEAR, INC. (CALIFORNIA COR-
PORATION)
501 WEST BROADWAY, SUITE 2020
SAN DIEGO, CA 92101

OWNER OF U.S. REG. NOS. 1,564,707 AND
2,095,747.

FOR: ENTERTAINMENT IN THE NATURE OF
LIVE PERFORMANCES BY A MUSICAL GROUP, IN
CLASS 41 (U.S. CLS. 100, 101 AND 107).

SN 76-304,102, FILED 8-23-2001.

FIRST USE 8-23-2001; IN COMMERCE 6-4-2005.

REBECCA GILBERT, EXAMINING ATTORNEY