

ESTTA Tracking number: **ESTTA165034**

Filing date: **09/26/2007**

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	Swank, Inc.
Granted to Date of previous extension	09/26/2007
Address	90 Park Avenue New York, NY 10016 UNITED STATES
Correspondence information	Darby & Darby P.C. P.O. Box 770 New York, NY 10008-0770 UNITED STATES kstarnella@darbylaw.com, tmdocket@darbylaw.com Phone:212-527-7700

**Applicant Information**

Application No	77025099	Publication date	05/29/2007
Opposition Filing Date	09/26/2007	Opposition Period Ends	09/26/2007
Applicant	Fliegler, Beth Apt 2R 258 Third Street Hoboken, NJ 07030 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 014. First Use: 2006/05/01 First Use In Commerce: 2006/05/01 All goods and services in the class are opposed, namely: Jewelry
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2211415	Application Date	03/08/1996
Registration Date	12/15/1998	Foreign Priority Date	NONE
Word Mark	SWANK		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 014. First use: First Use: 1997/11/05 First Use In Commerce: 1997/11/05 horological instruments, namely, wristwatches and parts thereof

U.S. Registration No.	1131853	Application Date	08/28/1978
Registration Date	03/11/1980	Foreign Priority Date	NONE
Word Mark	SWANK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1978/08/10 First Use In Commerce: 1978/08/10 NECKWEAR		

U.S. Registration No.	735683	Application Date	11/22/1961
Registration Date	08/07/1962	Foreign Priority Date	NONE
Word Mark	SWANK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U037 (International Class 016). First use: First Use: 1961/08/03 First Use In Commerce: 1961/08/03 Mechanical Pens and Pencils		

Attachments	scan3277.pdf ( 9 pages )(5177083 bytes )
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Signature	/Kathryn Starnella/
Name	Darby & Darby P.C.
Date	09/26/2007

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

SWANK, INC.,

*Opposer,*

v.

BETH FLIEGLER,

*Applicant.*

OPPOSITION NO.

(Serial No.77/025,099)

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**NOTICE OF OPPOSITION**

Swank, Inc. ("Opposer"), a Delaware corporation located at 90 Park Avenue, New York, New York 10016, believes it will be damaged by the registration of the designation SWANKY BAUBLES BY BETH (the "Mark") as shown in Application Serial No. 77/025,099 (the "Application"), for "jewelry" in Class 14, filed by Beth Fliegler, and hereby opposes the same. The Application was filed on October 19, 2006 and published for opposition on May 29, 2007. Opposer has previously obtained an extension of time to oppose, up to and including September 26, 2007.

The grounds for opposition are:

1. Applicant filed application Serial No. 77/025,099 to register the Mark in respect of "jewelry" on October 19, 2006, claiming a first use date of May 1, 2006.

2. Continuously since at least as early as 1927 -- long prior to Applicant's first use date -- Opposer has used SWANK in the United States in connection with the promotion and sale of jewelry, including without limitation watches, cuff links, dress sets, tie holders, collar pins, and key rings; and other closely related goods such as wallets, luggage accessories, military brush sets, clothes brush sets, belts, suspenders, belt buckles, and mechanical pens and pencils.

3. Long prior to Applicant's first use date, Opposer has operated retail stores in the United States and has provided retail store services under the SWANK name. The stores sell various items under the SWANK mark, including jewelry and related goods such as belts, wallets, umbrellas, and briefcases. Photos of one of the SWANK stores are attached hereto as Exhibit A and clearly illustrate the use of the SWANK mark both in connection with the façade and within the store.

4. Opposer has spent large sums of money and expended tremendous effort in promoting products and rendering services under its SWANK marks, which marks have become extremely well known and famous and are associated exclusively with Opposer and its products and services. The goodwill of the business connected with the use of, and symbolized by, the SWANK marks is a valuable asset of Opposer.

5. Opposer is the sole owner, *inter alia*, of the following United States trademark registrations and of all the business and goodwill connected with said marks issued on the dates and under the number set out beside them. The following SWANK marks are now in full force and effect and have not been canceled. Registration Nos. 2,211,415; 1,131,853; and 735,683 have become incontestable.

TRADEMARK	REGISTRATION DATE	REGISTRATION NUMBER	GOOD/SERVICES
SWANK	December 15, 1998	2211415	horological instruments, namely, wristwatches and parts thereof
SWANK	March 11, 1980	1131853	neckwear
SWANK	August 7, 1962	0735683	mechanical pens and pencils
SWANK	March 24, 1959	0675988	watches
SWANK	June 28, 1949	0511654	jewelry for personal wear, not including watches - namely, collar holders, cuff links, dress sets, shirt clips, tie holders, waldemar chains; and the following items made in whole of, in part of, or plated with precious metal-namely, cigarette cases, belt buckles, key rings, and money clips

6. In addition to the above Registrations, on May 1, 2007, Opposer filed Application No. 77169842 for the SWANK mark for numerous goods such as jewelry, accessories, and leather goods with first use dates between 1927 and 1935.

7. Since "BAUBLES BY BETH" is descriptive, the dominant portion of Applicant's applied-for SWANKY BAUBLES BY BETH mark is SWANKY, which is similar in sight, sound and meaning to Opposer's SWANK mark, such that the use of the Mark is likely to cause confusion, mistake or deception with Opposer's SWANK mark.

8. Applicant's Mark and Opposer's SWANK mark are confusingly similar such that consumers are likely to conjure an association between Applicant's Mark and

Opposer's SWANK mark and are likely to be confused, mistaken and deceived into believing that the goods of Applicant are provided, sponsored, licensed or approved by Opposer, that Applicant's and Opposer's goods emanate from the same source and/or that Applicant is in some other fashion connected or associated with Opposer, all to Opposer's injury.

9. Applicant's Mark will diminish and dilute the famous and distinctive quality of Opposer's famous trademark SWANK because one viewing Applicant's Mark will associate the trademark SWANK with Opposer less strongly or exclusively, or conclude that the SWANK products of Opposer are now associated with a new product or service, resulting in damage to Opposer.

10. The goods identified in the Application overlap with and/or are related to Opposer's Goods.

11. Registration of the Mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's SWANK mark as to be likely, when applied to the goods of Applicant, to cause confusion, mistake or to deceive.

12. Registration of the Mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(f), because when used, would cause dilution under § 43(c), thereby damaging Opposer as a result of dilution by blurring and would lessen the capacity of Opposer's Mark to identify goods having their source in Opposer.

WHEREFORE, Opposer prays that the registration sought by Applicant be refused and that this Opposition be sustained.

The required fee of \$300 is enclosed. Please charge any additional costs to our  
Deposit Account No. 04-0100.

September 26, 2007

Respectfully submitted,

DARBY & DARBY P.C.

By

  
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Paul Fields  
Kathryn Starnella

Attorneys for Opposer  
*Swank, Inc.*

P.O. Box 770  
Church Street Station  
New York, NY 10008-0770  
(212) 527-7722

# **EXHIBIT A**

**DOWN  
OUTLET**

GE FRAGRANCE  
SMETICS inc.  
PPER LEVEL

WY OPEN...  
**SWANK**  
ORY STORE  
S DESIGNED NAMES  
LADIES JEWELRY  
N LEATHER GOODS  
RCHANGES... GIFTS

CAMBRIDGE  
DRY GOODS  
EST. 1852

FACTORY OUTLET

**SWANK**  
FACTORY STORE

LOWER LEVEL

LET





# SWANK FACTORY STORE

SWANK  
FACTORY STORE  
JEWELRY  
WATCHES  
BELTS  
HANDSOME - GIFT

