

ESTTA Tracking number: **ESTTA172153**

Filing date: **10/31/2007**

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	Swat.Fame, inc.
Granted to Date of previous extension	11/07/2007
Address	16425 East Gale Avenue City of Industry, CA 91745 UNITED STATES

Attorney information	William A. Finkelstein Dreier Stein & Kahan LLP 1620 26th Street6th Floor - North Tower Santa Monica, CA 90404 UNITED STATES wfinkelstein@dskllp.com Phone:424-202-6014
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Applicant Information

Application No	76652351	Publication date	07/10/2007
Opposition Filing Date	10/31/2007	Opposition Period Ends	11/07/2007
Applicant	GOREN, MELVINA 213 TAAFFE PLACE APT. #118 BROOKLYN, NY 11205 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: T-shirts, Tank Tops, Hooded Sweatshirt, Sweatshirt, Shorts, Pants, Skirts, Jackets, Trucker hats, Baseball caps, Flip Flops, Bandanas
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3194259	Application Date	07/27/2005
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	UNDERGROUND SOUL		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 025. First use: First Use: 2006/03/00 First Use In Commerce: 2006/03/00 skirts, pants, shorts, miniskirts and Bermuda shorts

U.S. Registration No.	3328014	Application Date	07/27/2005
Registration Date	10/30/2007	Foreign Priority Date	NONE
Word Mark	UNDERGROUND SOUL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2005/05/00 First Use In Commerce: 2005/05/00 Clothing, namely jeans, capris, crops, and overalls		

U.S. Application No.	78680003	Application Date	07/27/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	UNDERGROUND SOUL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: Clothing, namely slacks, trousers, gauchos, bottoms, coveralls, dresses, jumpsuits, blouses, halter tops, tank tops, cardigans, jerseys, T-shirts, tops, shirts, knit shirts, polo shirts, sweaters, turtlenecks, vests, sweatshirts, sweatpants, boxer shorts, underwear, socks, suits, sport coats, blazers, coats, jackets, raincoats, overcoats, and headwear		

Attachments	78977428#TMSN.jpeg (1 page)(bytes) 78978973#TMSN.jpeg (1 page)(bytes) 78680003#TMSN.jpeg (1 page)(bytes) Notice of Opposition to S.N. 76652351.pdf (6 pages)(253418 bytes)
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Signature	/waf/
Name	William A. Finkelstein
Date	10/31/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 76/652351 filed 12/22/05 for the mark SOUL STAR UNDERGROUND & Design and published in the Official Gazette on 7/10/07.

Swat.Fame, Inc.,

Opposer,

vs.

Melvina Goren,

Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Swat.Fame, Inc., a company organized and existing under the laws of the state of California, located and doing business at City of Industry, CA, believes that it will be damaged by registration of the mark SOUL STAR UNDERGROUND & Design by Applicant and hereby opposes the same.

As grounds for opposition it is alleged that:

1. Opposer for many years has been engaged in the manufacture and sale of a wide range of apparel in commerce in the United States.

2. On July 27, 2005, a date prior to Applicant's filing date, Opposer filed trademark application S.N. 78/680003 for the trademark UNDERGROUND SOUL

based on §1(b), "intent to use", for "apparel" in Class 25 which was later amended on June 23, 2006 to the following goods: "clothing, namely jeans, pants, slacks, trousers, gauchos, capris, crops, bottoms, shorts, Bermuda shorts, coveralls, overalls, skirts, miniskirts, dresses, jumpsuits, tops, blouses, halter tops, tank tops, cardigans, jerseys, T-shirts, shirts, knit shirts, polo shirts, sweaters, turtlenecks, vests, sweatshirts, sweatpants, boxer shorts, underwear, socks, suits, sport coats, blazers, coats, jackets, raincoats, overcoats, and headwear."

3. At various times after the filing of its aforesaid application, Opposer commenced use of the trademark UNDERGROUND SOUL as presented in its distinctive format as set forth in Exhibit A, also sometimes referred to as SOUL UNDERGROUND (collectively the "Marks"), for the following goods: "jeans, crops, skirts, pants, shorts, miniskirts, Bermuda shorts, overalls and capris", in commerce in the United States.

4. On July 24, 2006, Opposer filed an Amendment to Allege Use of trademark application S.N. 78/680003 for the following goods: "skirts, pants, shorts, miniskirts and Bermuda shorts" and requested that said application be divided. On August 12, 2006, the Patent and Trademark Office accepted the Amendment to Allege Use, divided the application and created a new "child" application S.N. 78/977428 which subsequently issued as Registration No. 3,194,259 on January 2, 2007 to Opposer for the trademark UNDERGROUND SOUL, for "skirts, pants, shorts, miniskirts and Bermuda shorts" in Class 25, with a priority constructive use date of July 27, 2005, a date prior to Applicant's filing date.

5. On June 29, 2007, Opposer filed a Statement of Use for trademark application S.N. 78/680003 for the following goods: "jeans, capris, crops and overalls" and requested that said application be divided again. On August 20, 2007, the Patent and Trademark Office processed the Request to Divide, and on September 27, 2007 accepted the Statement of Use, dividing the application and created a second new "child" application S.N. 78/978973, which subsequently issued as Registration No. 3,328,014 on October 30, 2007 to Opposer for the trademark UNDERGROUND SOUL, for "jeans, capris, crops and overalls" in Class 25, with a priority constructive use date of July 27, 2005, a date prior to Applicant's filing date.

6. Opposer's "parent" application S.N. 78/680003 for the trademark UNDERGROUND SOUL has received a Notice of Allowance and continues to be pending for the remaining following goods: "clothing, namely slacks, trousers, gauchos, bottoms, coveralls, dresses, jumpsuits, blouses, halter tops, tank tops, cardigans, jerseys, T-shirts, tops, shirts, knit shirts, polo shirts, sweaters, turtlenecks, vests, sweatshirts, sweatpants, boxer shorts, underwear, socks, suits, sport coats, blazers, coats, jackets, raincoats, overcoats, and headwear." If and when a registration issues for any or all of these goods, it will have a priority constructive use date of July 27, 2005, a date prior to Applicant's filing date.

7. Through extensive marketing and sales, Opposer's Marks have acquired and now possess a favorable reputation and goodwill and said Marks have acquired a reputation among the trade and consumers as identifying quality apparel produced and sold exclusively by Opposer.

8. Applicant filed trademark application S. N. 76/652351 on December 22, 2005 to register the mark SOUL STAR UNDERGROUND & Design based on §1(b), "intent to use", for "t-shirts, tank tops, hooded sweatshirt, sweatshirt, shorts, pants, skirts, jackets, trucker hats, baseball caps, flip flops, bandanas " in Class 25.

9. The goods to which Applicant's claimed trademark is intended to be applied and the goods on and for which Opposer uses, has registered, and has applied for its Marks are identical or similar goods that are sold through the same channels of trade to the same purchasers.

10. When Applicant's claimed trademark would be applied to its goods, there is a likelihood of confusion, mistake or deception in that purchasers will erroneously believe that Applicant's goods either originate with, or are sponsored, approved or licensed by, or are in some way legitimately connected with Opposer.

11. Registration of the mark sought to be registered by Applicant is barred by the provisions of Section 2(d) (15 U.S.C. 1052(d)) of the Trademark Act of 1946 for the reason that it consists of or comprises a mark which so resembles marks previously applied for, registered, and/or used by Opposer, and not abandoned, as to be likely, when applied to the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer believes that it will be damaged by registration of Application S.N 76/652351 and therefore prays that this Opposition be sustained and the registration sought by Applicant be refused.

Opposer hereby appoints William A. Finkelstein, member of the Bar of the State of California, and Dreier Stein & Kahan LLP, 6th Floor - North Tower, 1620 26th

Street, Santa Monica, California 90404, as its attorneys to prosecute this Opposition, with full power of substitution and revocation, and to transact all business in the Patent and Trademark Office in connection therewith. All correspondence is to be forwarded to the said William A. Finkelstein.

By: 

William A. Finkelstein, Esq.
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6th Floor - North Tower
1620 26th Street
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Dated: October 31, 2007

EXHIBIT A

Soul underground

