

ESTTA Tracking number: **ESTTA177735**

Filing date: **11/29/2007**

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	Filter Mfg.		
Entity	Partnership	Citizenship	California
Composed Of:	Richard Jay Guerra & Theodore Wayne Quong, U.S. citizens		
Address	766 Towne Ave. Los Angeles, CA 90021 UNITED STATES		

Attorney information	Craig O. Correll Craig O. Correll, Attorney at Law 4245 Sunnyhill Drive Carlsbad, CA 92008 UNITED STATES zcraig@earthlink.net Phone:760 434 6800		
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Applicant Information

Application No	76671752	Publication date	10/30/2007
Opposition Filing Date	11/29/2007	Opposition Period Ends	11/29/2007
Applicant	Dyment, Victor c/o Jane Parker 41 Quail Close Irvington, NY 10533 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2004/08/23 First Use In Commerce: 2004/08/23
All goods and services in the class are opposed, namely: Clothing, namely, shirts, hats, caps, gloves, jackets, underwear, t-shirts, bras, underpants, socks, shoes, sneakers, and sandals

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3267726	Application Date	05/31/2005
Registration Date	07/24/2007	Foreign Priority Date	NONE
Word Mark	FILTER		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1996/07/01 First Use In Commerce: 1997/03/25 Clothing, namely, button down shirts, polo shirts, dress shirts, sweaters, jeans, skirts, blouses, T-shirts, jackets, surf trunks, namely, swimming trunks, walking shorts; outerwear, namely, lined jackets, coats, wind resistant jackets, warm-up jackets, sweatshirts, and sweat pants; headwear, namely, hats, caps and visors not sold at concert venues, or sold via concert related merchandise outlets

U.S. Registration No.	2165417	Application Date	01/27/1997
Registration Date	06/16/1998	Foreign Priority Date	NONE
Word Mark	FILTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1996/07/01 First Use In Commerce: 1997/03/25 clothing and apparel, namely, button down shirts, polo shirts, fashion tops, sweaters, jeans, pants, skirts, blouses, dresses, swim wear, T-shirts, jackets, undergarments, surf trunks, walk shorts, and snowboard jackets; footwear, namely, shoes, sandals, and socks; outerwear, namely, lined jackets, coats, wind resistant jackets, warm-up jackets, sweatshirts and sweat pants; headwear, namely, hats, caps, visors, beanies, and bandannas; none of the foregoing items are sold at concert venues, or sold via concert related merchandise outlets		

Attachments	78639927#TMSN.jpeg (1 page)(bytes) NoticeOppFREQ-FILTER.pdf (5 pages)(86855 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Craig O. Correll/
Name	Craig O. Correll
Date	11/29/2007

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

In the matter of service mark application Serial Number 76/671752 published in the Official Gazette-Trademarks on October 30, 2007.

<u>Filter Mfg.</u>)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
Victor Dyment)	
)	
Applicant.)	
)	
<u>Mark: FREQUENCY FILTER</u>)	

NOTICE OF OPPOSITION

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

Dear Sir:

Opposer, Filter Mfg., a California general partnership, doing business at: 766 Towne Ave. Los Angeles, CA 90021, (hereinafter referred to as "Opposer"), believes it will be damaged by registration of the mark shown in Serial No. 76/671752 filed by Victor Dyment (hereinafter referred to as "Applicant") and therefore opposes the same.

A description of Applicant's mark is as follows:

Mark:	FREQUENCY FILTER
Serial No.:	76/671752
Filed:	January 23, 2007
Published:	October 30, 2007
First Use:	August 23, 2004
Goods:	Clothing, namely, shirts, hats, caps, gloves, jackets, underwear, t-shirts, bras, underpants, socks, shoes, sneakers, and sandals

As grounds of opposition, it is alleged:

1. Opposer owns and uses and has continuously used its trademark FILTER (former Reg. No. 2165417 and current Registration No. 3267726) for “Clothing, namely, button down shirts, polo shirts, dress shirts, sweaters, jeans, skirts, blouses, T-shirts, jackets, surf trunks, namely, swimming trunks, walking shorts; outerwear, namely, lined jackets, coats, wind resistant jackets, warm-up jackets, sweatshirts, and sweat pants; headwear, namely, hats, caps and visors not sold at concert venues, or sold via concert related merchandise outlets.” Applicant has fully incorporated the Registrant’s mark and added the prefix term “FREQUENCY”. The dominant portion of the marks have an identical connotation and meaning. The addition of the term “FREQUENCY” may be interpreted as simply a modification or subspecies of the Opposer’s mark or as an affiliated brand. The likelihood of confusion, mistaken association or other mischief is palpable and must be avoided. Hence, this opposition has been filed.

2. Opposer’s “FILTER” brand and mark has been continuously in use on clothing since approximately March 25, 1997. Opposer has used the mark in interstate commerce in the United States and overseas for many years. Its goods have been advertised in nationally distributed magazines and the mark has been connected with Opposer by its customers well before Applicant’s first use or its first application for the mark in November of 2004.

3. Opposer's use of the FILTER mark has been valid and continuous since approximately March 25, 1997, and has not been abandoned. Said mark of Opposer was granted U.S. Trademark registration number 2165417 on June 16, 1998. Due to an oversight the registration was inadvertently permitted to lapse on March 19, 2005. As soon as this was discovered, a new application was filed, which registered on July 24, 2007. Had either the Registration been kept current, it is doubtful that the U.S. Patent & Trademark Office would have permitted Applicant's application to be published for opposition. Opposers trademark is symbolic of goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks in spelling, sound and connotation, and the fashion /clothing nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's "FILTER" mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive. Furthermore, Applicant's use of the mark "FREQUENCY FILTER" for any goods and more particularly clothing will be perceived by the trade and public as derived from Opposer's "FILTER" mark, and therefore, the public will be confused as to the source of the goods.

4. The registration of Applicant's mark "FREQUENCY FILTER" would be further damaging to Opposer by reason of the similarity of the channels of

trade in which the goods are advertised and/or distributed. Specifically, and without limitation, the goods under the conflicting marks in the marketplace and the fashion /clothing industry in particular, would confuse the public into believing that Applicant's goods were those of Opposer, that the Applicant's goods were a part of Opposer's goods, or that Applicant was somehow authorized by Opposer or vice versa. Further, any fault or defect in the Applicant's goods under the mark "FREQUENCY FILTER" would reflect adversely upon Opposer and would seriously injure the reputation and goodwill that Opposer has carefully built and established for its goods under the "FILTER" mark, resulting in damage to Opposer.

5. Opposer's interstate use and registration of the mark, "FILTER" pre-dates Applicant's filing of its Federal application. In view of the similarity of the respective marks and the related nature of the goods and markets of the respective parties, it is alleged that Applicant's mark so resembles Opposer's mark as to be likely to cause confusion or to cause mistake or to deceive.

6. The continuing use of Applicant's mark will inexorably and unavoidably have an adverse effect upon the value of Opposer's mark. If this Opposition is not sustained, Opposer's mark will eventually be deprived of all distinctiveness, since the Applicant's use of the confusing and derivative "FREQUENCY FILTER" mark for closely related goods will blur customers'

recognition of Opposer's "FILTER" mark, for clothing and will therefore tarnish the good identification and associations which Opposer's mark has come to represent or convey.

WHEREFORE, Opposer prays that Application Serial No. 76/671752, be rejected and stricken, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer. Pursuant to 37 CFR 2.6 (e), submitted herewith is payment of \$300.00 for the requisite fee for filing this Notice of Opposition.

Dated: November 29, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig O. Correll", is written over a horizontal line. The signature is stylized and cursive.

Craig O. Correll,
Attorney for Opposer, FILTER Mfg.
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