

ESTTA Tracking number: **ESTTA240191**

Filing date: **10/01/2008**

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	Levi Strauss & Co.
Granted to Date of previous extension	10/01/2008
Address	Levi's Plaza 1155 Battery St. San Francisco, CA 94111 UNITED STATES

Attorney information	Gia L. Cincone Townsend and Townsend and Crew LLP Two Embarcadero Ctr., 8th Floor San Francisco, CA 94111 UNITED STATES gcincone@townsend.com, hgaudreau@townsend.com Phone:415-576-0200
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Applicant Information

Application No	77373496	Publication date	06/03/2008
Opposition Filing Date	10/01/2008	Opposition Period Ends	10/01/2008
Applicants	Daly Franco Carrillo 1816 North C Street Oxnard, CA 93030 UNITED STATES MARES, MARGARITA 1816 NORTH "C" STREET OXNARD, CA 93030 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Retail discount store services in the field of clothing and general consumer merchandise and consumer electronics
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration	404248	Application Date	09/25/1942
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No.			
Registration Date	11/16/1943	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The trade-mark consists of double arcuate designs of orange color displayed on the hip pockets of the overalls as shown on the drawing. The mark is applied to the overalls by stitching the double arcuate designs on the hip pockets with orange colored thread, or by painting the lines of said design on the hip pockets with orange colored paint.		
Goods/Services	Class U039 (International Class 025). First use: First Use: 1873/00/00 First Use In Commerce: 1873/00/00 Waistband Type Overalls		

U.S. Registration No.	1139254	Application Date	05/08/1978
Registration Date	09/02/1980	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1873/00/00 First Use In Commerce: 1873/00/00 PANTS, JACKETS, SKIRTS, AND SHORTS		

U.S. Registration No.	2791156	Application Date	07/16/2002
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of the combination of a double arcuate and tab design shown on the shape of a pocket, as indicated by a solid line.		
Goods/Services	Class 025. First use: First Use: 1936/09/01 First Use In Commerce: 1936/09/01 Pants, jeans, shorts, shirts, t-shirts, blouses, skirts and jackets		

U.S. Registration No.	2794649	Application Date	07/10/2002
Registration Date	12/16/2003	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a double arcuate design.		
Goods/Services	Class 025. First use: First Use: 1873/00/00 First Use In Commerce: 1873/00/00 Pants, jeans, shorts, shirts, t-shirts, blouses, skirts and jackets		

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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	/s/ Gia L. Cincone
Name	Gia L. Cincone
Date	10/01/2008

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

In re application of:

MARGARITA MARES and DALY FRANCO
CARRILLO

For: SIMBOLS AND DESIGN

Serial No.: 77/373,496

Filed: January 16, 2008

Published: June 3, 2008

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir or Madam:

Levi Strauss & Co. (“Opposer” or “LS&CO.”) believes it will be damaged by the registration of the SIMBOLS and Design mark illustrated in and covered by Application Serial No. 77/373,496, filed on January 16, 2008, by Margarita Mares and Daly Franco Carrillo (hereinafter “Applicants’ mark”), and hereby opposes such registration.

LS&CO. is a Delaware corporation with its headquarters and principal place of business at Levi’s Plaza, 1155 Battery Street, San Francisco, California 94111. Applicants are, upon information and belief, individuals with an address at 1816 North C Street, Oxnard, California 93030. This Notice of Opposition has been timely filed. As grounds of opposition, LS&CO. alleges as follows:

1. As illustrated in the Official Gazette dated June 3, 2008, Applicants seek to register the SIMBOLS and Design mark that is the subject of Application Serial No. 77/373,496 in International Class 35 for retail discount store services in the field of clothing, among others.

2. LS&CO. is the owner of the distinctive Arcuate Stitching Design Trademark (hereinafter the “Arcuate Trademark”), as reflected in the following representative registrations issued on the Principal Register, which are in full force and effect:

<u>Registration No.</u>	<u>Registration Date</u>
404,248	November 16, 1943
1,139,254	September 2, 1980
2,791,156	December 9, 2003
2,794,649	December 16, 2003

Since at least as early as 1873, LS&CO. continuously has used its Arcuate Trademark on a variety of goods, including but not limited to jeans, pants, jackets, skirts, dresses and shorts.

3. No issue of priority exists with respect to LS&CO.’s Arcuate Trademark and Applicants’ mark. LS&CO.’s dates of adoption and first use of its Arcuate Trademark long precede the date of Applicants’ first use, if any.

4. Since adoption and first use of LS&CO.’s Arcuate Trademark, LS&CO. continuously has marketed and is presently marketing its goods nationwide. LS&CO. has expended and continues to expend substantial time, money, and effort in promoting its Arcuate Trademark to identify LS&CO. as the source of the goods displaying that trademark. As a result, LS&CO.’s goods are identified as originating from LS&CO. through the display of the Arcuate Trademark, and the public has come to recognize LS&CO. as the source of goods displaying the mark.

5. By virtue of its long use and promotion of the Arcuate Trademark, LS&CO. has gained a valuable reputation for the mark and has developed exceedingly valuable goodwill in the mark.

6. Registration of Applicants' mark will lead the public to conclude, incorrectly, that Applicants are or have been, and Applicants' services displaying the mark are or have been, authorized, sponsored, or licensed by LS&CO. Issuance of any registration to Applicants for the mark at issue is therefore contrary to the provisions of 15 U.S.C. § 1052(a) and will result in damage to LS&CO. and the public.

7. Applicants' mark is deceptively similar to LS&CO.'s Arcuate Trademark so as to cause confusion, or to cause mistake or to deceive the public as to the origin of Applicants' services bearing that trademark. Therefore, registration of Applicants' mark is prohibited by 15 U.S.C. § 1052(d).

8. Because Applicants' mark is not associated with Applicants and creates the same, or essentially the same, commercial impression as LS&CO.'s Arcuate Trademark, registration of Applicants' mark is likely to cause confusion, or to cause mistake or to deceive the public as to the source of Applicants' services, to the harm and damage of LS&CO. and the public. Therefore, registration of Applicants' mark is prohibited by 15 U.S.C. § 1052(d).

9. LS&CO.'s Arcuate Trademark is distinctive and famous within the meaning of 15 U.S.C. § 1125(c). Applicants' mark has or is likely to cause dilution of the distinctive quality of LS&CO.'s Arcuate Trademark, in violation of 15 U.S.C. § 1125(c), to the harm and damage of LS&CO. and the public. Therefore, registration of Applicants' mark may be refused under 15 U.S.C. §§ 1052 and 1063(a).

10. Registration of Applicants' mark would constitute prima facie evidence of the validity of such registration, Applicants' ownership of the mark, and Applicants' exclusive right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b). Such registration would be a source of damage and injury to LS&CO. and the public, and would be contrary to the principles of registration set out in 15 U.S.C. §§ 1051 *et seq.*

WHEREFORE, LS&CO. prays that this Opposition be sustained, and that registration to Applicants for the SIMBOLS and Design mark illustrated in and covered by Application Serial No. 77/373,496 be denied.

Please charge any necessary fee regarding this Opposition to the Deposit Account of Townsend and Townsend and Crew LLP, No. 20-1430, and credit any overpayment to such deposit account.

Please direct all notices, pleadings and process regarding this matter to:

Gia L. Cincone, Esq.
TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Telephone: (415) 576-0200
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Respectfully submitted,

TOWNSEND *and* TOWNSEND *and* CREW LLP

Dated: October 1, 2008

By: /s/ Gia L. Cincone
Gia L. Cincone
Attorneys for Opposer
Levi Strauss & Co.

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