

ESTTA Tracking number: **ESTTA325030**

Filing date: **01/04/2010**

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	Abercrombie & Fitch Trading Co.
Granted to Date of previous extension	01/03/2010
Address	6301 Fitch Path New Albany, OH 43016 UNITED STATES

Attorney information	Susan M. Kayser Howrey LLP 2941 Fairview Park Drive, Suite 200 Falls Church, VA 22042 UNITED STATES IPDocketing@howrey.com, KayserS@howrey.com, SmithC@howrey.com, McCartyK@howrey.com, RenneM@howrey.com, ipdocketingwest@abercrombie.com Phone:202-783-0800
----------------------	--

Applicant Information

Application No	79064732	Publication date	07/07/2009
Opposition Filing Date	01/04/2010	Opposition Period Ends	01/03/2010
International Registration No.	0991757	International Registration Date	12/08/2008
Applicant	Artemides Holdings Pty Ltd 63 Victoria Crescent ABBOTSFORD VIC 3067 AUSTRALIA		

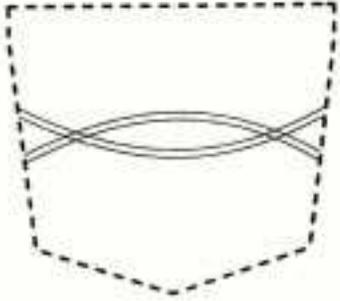
Goods/Services Affected by Opposition

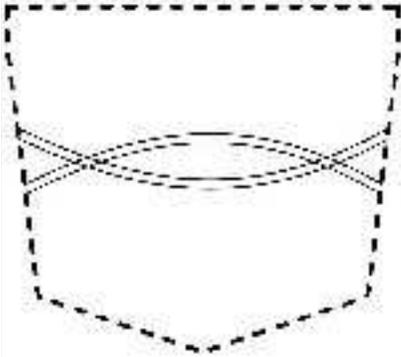
Class 025. All goods and services in the class are opposed, namely: Clothing, namely, dresses, skirts, jackets, vests, coats, blazers, jumpers, sweaters, caftans, ponchos, shirts, blouses, knit shirts, T-shirts, sweatshirts, tops, polo shirts, trousers, pants, overalls, jeans, and denim trousers, shorts, camisoles, lingerie, sleepwear, women's underwear, swimwear, gloves, ties, scarves, headscarves, shawls, leather belts, fabric belt, socks, hosiery
--

Grounds for Opposition

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 No.	2626917	Application Date	05/17/2001
Registration Date	09/24/2002	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a pair of double-lined stitches, extending continuously across the rear pocket of the goods. The stitches are curved, intersecting twice, forming an oval shape in the center of the pocket. The dotted lines are used to indicate the positioning of the mark on the goods and are not a feature of the mark.		
Goods/Services	Class 025. First use: First Use: 2001/02/00 First Use In Commerce: 2001/02/00 clothing, namely, denim jeans sold in specialty retail clothing stores, [specialty mail order catalog] and Internet website		

U.S. Registration No.	3135750	Application Date	09/20/2005
Registration Date	08/29/2006	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a pair of double-lined stitches, extending continuously across the pocket of the goods. The stitches are curved, intersecting twice, forming an eye shape in the center of the pocket. The broken lines outlining the pockets are used to indicate the positioning of the mark on the goods and are not a feature of the mark.		
Goods/Services	Class 025. First use: First Use: 2001/02/01 First Use In Commerce: 2001/02/01 jeans; skirts, shorts; pants; jackets		

U.S. Application No.	77896032	Application Date	12/17/2009
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a miscellaneous design element.		
Goods/Services	Class 025. First use: First Use: 2001/02/01 First Use In Commerce: 2001/02/01 Denim bottoms, namely, jeans, skirts, shorts, pants; denim jackets; pants		

Attachments	76258313#TMSN.jpeg (1 page)(bytes) 78716362#TMSN.jpeg (1 page)(bytes) 77896032#TMSN.jpeg (1 page)(bytes) Notice of Opposition (04-JAN-2010).pdf (6 pages)(49320 bytes)
-------------	--

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	/susan m kayser/
Name	Susan M. Kayser
Date	01/04/2010

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

Abercrombie & Fitch Trading Co.)	
)	Opposition No. _____
Opposer,)	
)	Application No.: 79/064,732
v.)	
)	Date of Filing: December 8, 2008
Artemides Holdings Pty Ltd)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Abercrombie & Fitch Trading Co., an Ohio corporation with its principal place of business at 6301 Fitch Path, New Albany, Ohio 43054, believes that it is or will be damaged by registration of Application No. 79/064,732, owned by Artemides Holdings Pty Ltd, an Australian corporation, with a principal address at 63 Victoria Crescent, Abbotsford, Victoria, 3067 Australia, and hereby opposes same.

The opposed application, Application No. 79/064,732, was filed for registration on the Principal Register on December 8, 2008 under § 66A of the Trademark Act based on International Registration No. 0991757, which issued December 8, 2008, and covers:

clothing, namely, dresses, skirts, jackets, vests, coats, blazers, jumpers, sweaters, caftans, ponchos, shirts, blouses, knit shirts, t-shirts, sweatshirts, tops, polo shirts, trousers, pants, overalls, jeans, and denim trousers, shorts, camisoles, lingerie, sleepwear, women's underwear, swimwear, gloves, ties, scarves, headscarves, shawls, leather belts, fabric belt, socks, hosiery, in International Class. 25.

The mark in the application is described as:

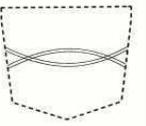
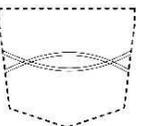
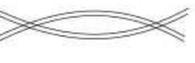
The mark consists of two semi-circles that intersect to form an oval in the center.

The grounds for the opposition are as follows:

1. The parent company of Opposer, Abercrombie & Fitch Co., is one of the largest manufacturers, wholesalers and retailers of high quality, casual apparel and accessories for men, women, and children with an active, youthful lifestyle in the U.S.A. The parent company and its predecessors in interest have been engaged in the business of manufacturing and selling high-end apparel and related accessories in the United States since 1892, well over a century.

2. Opposer, Abercrombie & Fitch Trading Co., is a wholly-owned subsidiary and holding company of Abercrombie & Fitch Co., the parent company, a Delaware corporation.

3. Opposer is the owner of the following U.S. Application and Registrations of the “A&F Design” mark.

APPLICATION/ REGISTRATION NO.	MARK	REG. DATE	FIRST USE DATE	GOODS
U.S. Reg. No. 2,626,917		September 24, 2002	February, 2001	clothing, namely, denim jeans sold in specialty retail clothing stores, and via an Internet website
U.S. Reg. No. 3,135,750		August 29, 2006	February, 2001	jeans; skirts, shorts; pants; jackets
U.S. Serial No. 77/896,032		n/a	February, 2001	denim bottoms, namely, jeans, skirts, shorts, pants; denim jackets; pants

4. In accordance with § 5 of the Federal Trademark Act, all use of the A&F Design mark by Opposer’s affiliated and related companies, as alleged herein, inures to the benefit of Opposer.

5. Opposer's Registration No. 3,135,750 identified above is *prima facie* evidence of the validity thereof and Opposer's ownership and exclusive right to use the mark in commerce, and is constructive notice of Opposer's ownership thereof, as provided by § 22 of the Federal Trademark Act of 1946, as amended.

6. The A&F Design mark shown in Opposer's Registration No. 3,135,750 is described as "the mark consists of a pair of double-lined stitches, extending continuously across the pocket of the goods. The stitches are curved, intersecting twice, forming an eye shape in the center of the pocket. The broken lines outlining the pockets are used to indicate the positioning of the mark on the goods and are not a feature of the mark."

7. Opposer and its predecessors in interest have sold jeans, pants, shorts, skirts and jackets bearing its A&F Design mark since 2001, well prior to the filing date of the opposed application. Opposer's A&F Design mark has been in valid and continuous use since the date of first use and has not been abandoned.

8. Opposer's sales revenue for Abercrombie & Fitch and abercrombie brand pants, skirts and shorts bearing the A&F Design mark in the United States is over \$1 billion.

9. Opposer's A&F Design branded clothing are sold in over 350 "Abercrombie & Fitch" stores and in over 200 "abercrombie" stores across the country, as well as through its websites www.abercrombie.com and www.abercrombiekids.com.

10. As of August 2009, Opposer's parent company's website, www.abercrombie.com, which prominently displays and offers for sale clothing items bearing the A&F Design mark, received over 6.3 million hits per month. Likewise, Opposer's parent company's website, www.abercrombiekids.com, which also prominently displays and offers for sale clothing items bearing the A&F Design mark, received over 1.4 million hits per month.

11. Opposer released and distributed catalogs prominently displaying and offering for sale clothing bearing the A&F Design mark until 2007. The distribution for Opposer's last catalog, Back to School 2007, was 750,000 copies.

12. Opposer also promotes its A&F Design branded clothing via promotional emails to customers who have registered for Opposer's e-mail distribution list. As of August 2009, more than 1.9 million customers subscribed to the Abercrombie & Fitch e-mail distribution list and more than 600,000 subscribed to the abercrombie e-mail distribution list.

13. As a result of Opposer's extensive advertisement, marketing and promotion, the Abercrombie & Fitch brand has become exceedingly popular. For years, the Abercrombie & Fitch brand has been recognized as one of the trendiest retail concepts in the United States for Opposer's target market.

14. Given the volume of sales, extensive advertisement and popularity of clothing bearing the A&F Design mark, Opposer's A&F Design mark has become famous, well-known and recognized as a distinctive symbol of Opposer's goodwill.

15. Opposer's A&F Design mark became famous, well-known and recognized long prior to the filing date of the opposed application to register Applicant's mark.

16. Opposer also has common law rights in the A&F Design mark that it relies upon in its opposition to the opposed application.

17. Applicant's mark so resembles Opposer's mark as to cause mistake, or to deceive, or to cause confusion as to source, sponsorship or affiliation.

18. The goods included in Opposer's Registration Nos. 3,135,750, 2,626,917, and Application No.77/896,032 are the same as and/or are commercially related to the goods covered by Application No. 79/064,732.

19. The goods covered by Application No. 79/064,732 are likely to be sold to the same or overlapping classes of purchasers as goods bearing the A&F Design mark.

20. Prospective purchasers, purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's goods covered by its the mark in the opposed application emanate from and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

21. Any use by Applicant of the mark shown in Application No. 79/064,732 is likely to dilute the A&F Design mark.

22. Registration of Applicant's mark will lessen the capacity of Opposer's famous and well-known mark to identify and distinguish its goods.

23. Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that Applicant's Design mark so resembles the A&F Design mark as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of the Federal Trademark Act, and to dilute Opposer's A&F Design mark thereby damaging Opposer.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present opposition be sustained and the registration of Application No. 77/586,350 be refused.

The requisite filing fee for this Notice of Opposition is submitted herewith.

Respectfully submitted,

Abercrombie & Fitch Trading Co

January 4, 2010

By:



Susan M. Kayser, Esq.
Caroline C. Smith, Esq.
Attorneys for Opposer
Howrey LLP
2941 Fairview Park Drive
Falls Church, VA 22042-4522
(202) 783-0800

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition was served on Applicant at the address shown below by depositing same in the United States mail, first class, postage prepaid, this 4th day of January 2010:

Sally M. Abel
Fenwick & West LLP
Silicon Valley Center 801 California Street
Mountain View, CA 94041

H. M. Renee
