

ESTTA Tracking number: **ESTTA347125**

Filing date: **05/12/2010**

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	H&M Hennes & Mauritz AB		
Entity	Corporation	Citizenship	Sweden
Address	Salen-H/O Regeringsgatan 48 Stockholm, SE-106 38 SWEDEN		

Attorney information	David Ehrlich Fross Zelnick 866 UN Plaza New York, NY 10017 UNITED STATES ehrllich-docket@fzlj.com Phone:212 813-5920
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Applicant Information

Application No	77888150	Publication date	04/27/2010
Opposition Filing Date	05/12/2010	Opposition Period Ends	05/27/2010
Applicant	Undivided Design, LLC 292 Maryfield Drive Salt Lake City, UT 84108 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: T-shirts

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.	2766051	Application Date	05/16/2000
Registration Date	09/23/2003	Foreign Priority Date	NONE
Word Mark	DIVIDED		

Design Mark	DIVIDED
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: [Soaps, perfume, essential oils for personal use, hair lotions, skin clarifiers, facial cleansers, hand cream, foot cream, face creams, body creams, skin emollients, skin lighteners, hair lighteners, skin lotions, skin cleansing lotions, lotions for cellulite reduction, skin masks, skin moisturizer, skin scrubs and toners;] non-medicated lip balm; [shower gel; body firming gels and lotions, body cream, oil, emulsions, masks and scrubs; makeup; lipstick;] lip gloss; [lip pencils; nail polish;] eye makeup; [eye pencils; eyebrow pencils;] blush; [mascara; exfoliating body scrubs; self-tanning skin preparations; facial emulsions; cologne; toilet water; eau de parfum; shaving lotions; scented body spray; personal deodorant; antiperspirant; makeup remover; toilet soap; bath beads, crystals, foam and gel; nail care preparations; hair care preparations; hair cleaning preparations; hair shampoo; hair waving lotions; hair styling lotions; aromatherapy oils; potpourri; room fragrances; adhesives for cosmetic use; depilatories; cotton and cotton swabs, sticks and puffs for cosmetic purposes]</p> <p>Class 014. First use: Imitation jewelry and jewelry of precious metal and stones; cuff links; tie pins</p> <p>Class 018. First use: handbags; toiletry bags sold empty; [all-purpose sports bags, athletic bags,] beach bags, book bags, carry-on bags, clutch bags, [duffel bags,] traveling bags; [trunks;] backpacks; wallets; umbrellas</p> <p>Class 025. First use: headwear; footwear; and clothing, namely, t-shirts, shirts, cardigans, blouses, [body suits, coats,] jackets, pants, skirts, dresses, belts, hats, scarf, gloves, [kimonos, muffs, suits,] tunics, [waistcoats, denim wear, namely, jeans, skirts, shirts, hats, shorts, dresses, trousers, jackets and coats; suede and leather clothing, namely, gloves, trousers, skirts, jackets, coats, hats, belts, shirts, dresses; linen clothing, namely, dresses, trousers, jackets, shirts, blouses;] knit wear, namely, [jersey and] heavy knitwear; [jumpsuits,] shorts, sweatshirts, underwear, lingerie, bras, [bustiers,] hot pants, [camisoles,] suspenders, [chemises, pantyhose,] leggings, tights, socks, [stockings, long johns, singlets,] swimwear, bikinis, [sarongs, ponchos, pullovers,] bandanas, [polo shirts, fake fur jackets and coats, sweaters, hoods, anoraks, wind resistant jackets,] tank tops, slippers, [footwear, neckwear,] mittens, [rainwear, parkas, overalls, jogging suits; skiwear, masquerade costumes]</p>

U.S. Registration No.	3476969	Application Date	08/29/2007
Registration Date	07/29/2008	Foreign Priority Date	06/08/2007
Word Mark	DIVIDED		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 025. First use: Clothing, namely trousers, T-shirts, coats, jackets, cardigans, skirts, dresses, blouses, overalls, underwear, jumpers, vests, fur coats and jackets, pants, hoods, shorts, blazers, men's suits, women's suits, evening gowns, tops, jeans, belts, shoulder wraps, gloves, mittens, scarves, ties, wraps, dressing gowns, night gowns, pajamas, sleepwear, bathing suits, swimwear, bikinis, socks, stockings, hats, caps, shawls, berets, and veils; headwear; footwear</p> <p>Class 035. First use: Retail store services and online retail store services featuring soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, costume jewelry, leather and imitation leather goods, clocks and watches, bags and luggage, umbrellas, clothing, footwear and headwear</p>

Attachments	76049274#TMSN.gif (1 page)(bytes) 79044294#TMSN.jpeg (1 page)(bytes) UNDIVIDED Notice of Opposition (F0624584).PDF (3 pages)(282330 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	/dwe/
Name	David Ehrlich
Date	05/12/2010

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

Opposer's Ref: HMH 10/03723

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H&M Hennes & Mauritz AB,	:	
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Opposer,	:	Opposition No. _____
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- against -	:	
	:	
Undivided Design, LLC,	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Opposer believes that it would be damaged by the issuance of a registration for the trademark UNDIVIDED as applied for in Application SN 77/888,150, and therefore opposes same. As grounds for its opposition, Opposer, by its attorneys, Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer adopted and began to use the mark DIVIDED in the United States for clothing long prior to the December 7, 2009 filing date of the opposed application, and continues to use that mark for clothing sold in its many H&M stores in the U.S.

2. Opposer owns U.S. Registration No. 2,766,051 and U.S. Registration No. 3,476,969, both for DIVIDED for t-shirts and various other clothing items and other goods. Opposer's registrations are valid and subsisting, and in full force and effect.

3. Applicant's mark is likely, when applied to the goods listed in the application, to cause confusion, mistake or deception, and cause the public to believe that the goods offered under Applicant's mark emanate from or are otherwise sponsored by or endorsed by Opposer, in

violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent damage to Opposer and the public.

4. Opposer will be damaged by the issuance of the registration of the mark in this application to Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark and damage Opposer's good will.

WHEREFORE, it is respectfully requested that this opposition be sustained.

Dated: New York, New York
May 12, 2010

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

David Ehrlich

Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by First Class mail upon the Attorney for Applicant, Peter K. Johnson, Reputrust, LLC, 4557 Cambridge Court, Bountiful, UT 84010-5830 on this date, May 12, 2010.



David Ehrlich