

ESTTA Tracking number: **ESTTA351143**

Filing date: **06/04/2010**

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	Family Time Sporting Apparel, LLC
Granted to Date of previous extension	06/06/2010
Address	P.O. Box 50233 Austin, TX 78763 UNITED STATES

Attorney information	Dwayne K. Goetzel Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. P.O. Box 398 Austin, TX 78767-0398 UNITED STATES dkgpto@intprop.com Phone:512-853-8800
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### Applicant Information

Application No	77744327	Publication date	12/08/2009
Opposition Filing Date	06/04/2010	Opposition Period Ends	06/06/2010
Applicant	TEX-RAY INDUSTRIAL CO., LTD. NO. 126, I LIN RD., HSIN TIEN TSUN JEN TE HSIANG TAINAN HSIEN, TAIWAN		

### Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: BRASSIERES; VESTS; OVERCOATS; READY-MADE CLOTHING, NAMELY, KNIT TOPS AND BOTTOMS, WOVEN SHIRTS AND BOTTOMS, COATS, JACKETS, GLOVES, UNDERWEAR AND SOCKS; SHOES; SCARVES; TURBANS; HATS; FOOTWEAR; MITTENS
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### Grounds for Opposition

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

U.S. Registration No.	3719370	Application Date	04/15/2008
Registration Date	12/01/2009	Foreign Priority Date	NONE
Word Mark	STRENGTH INSIDE & OUT		

Design Mark	<b>STRENGTH INSIDE &amp; OUT</b>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2008/03/01 First Use In Commerce: 2009/06/08 Clothing, namely, shorts, pants, jackets, sweatshirts, sweatpants, sweatsuits, socks, shirts, T-shirts, hats and caps

Attachments	77448292#TMSN.jpeg ( 1 page )( bytes ) Ntc of Opposition.pdf ( 4 pages )(125663 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	/Dwayne K. Goetzel/
Name	Dwayne K. Goetzel
Date	06/04/2010

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

In the Matter of the Trademark Application Serial No. 77744327 for  
the mark "SMART INSIDE OUT" filed by Tex-Ray Industrial Co., Ltd. and  
Published in the Official Gazette on December 8, 2009

_____	)	
Family Time Sporting Apparel LLC	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No.: _____
	)	
Tex-Ray Industrial Co., Ltd.	)	
	)	
Applicant	)	
_____	)	

**NOTICE OF OPPOSITION**

Family Time Sporting Apparel LLC, a Texas limited liability company having an address of P.O. Box 50233, Austin, Texas 78763 ("Opposer"), believes that it will be damaged by the registration of the mark SMART INSIDE OUT shown in the above-identified application filed by Tex-Ray Industrial Co., Ltd. ("Applicant"), and hereby opposes the mark.

The grounds for opposition are as follows:

1. On April 15, 2008, Opposer filed a trademark application for the mark STRENGTH INSIDE & OUT, which is used in connection with "clothing, namely, shorts, pants, jackets, sweatshirts, sweatpants, sweatsuits, socks, shirts, T-shirts, hats and caps," in International Class 25.
2. The application for Opposer's STRENGTH INSIDE & OUT mark was published for opposition on July 8, 2008, and a Notice of Allowance was issued on September 30, 2008.

3. After filing one extension request, Opposer filed a Statement of Use for its STRENGTH INSIDE & OUT mark on or about September 4, 2009.

4. A registration certificate was issued to Opposer on or about December 1, 2009.

5. On May 26, 2009, Applicant filed an intent-to-use application seeking to register SMART INSIDE OUT for use in connection with “brassieres; vests; overcoats; ready-made clothing, namely, knit tops and bottoms, woven shirts and bottoms, coats, jackets, gloves, underwear and socks; shoes; scarves; turbans; hats; footwear; mittens,” in International Class 25.

6. The application for Applicant’s SMART INSIDE OUT mark was published in the Official Gazette on December 8, 2009. On or about January 6, 2010, Opposer filed a request for an extension of time to oppose, which was granted until April 7, 2010. On April 6, 2010, with the consent of Applicant, Opposer filed a request for a 60-day extension of time to oppose, which was granted until June 6, 2010.

7. The application for Opposer’s STRENGTH INSIDE & OUT mark was filed, published for opposition, a notice of allowance issued, prior to the filing date for Applicant’s intent-to-use application for SMART INSIDE OUT.

8. Applicant’s mark is confusingly similar to Opposer’s mark. For example, the respective marks share several visual and aural similarities, including use of an initial word that starts with the letter “S,” and use of the words “inside” and “out” in the same order.

9. In addition, both of the marks at issue, STRENGTH INSIDE & OUT and SMART INSIDE OUT are (or in Applicant’s case, will be) used in connection with general categories of clothing in International Class 25.

10. In light of the foregoing, the registration of Applicant’s SMART INSIDE OUT mark is likely to cause confusion, irreparable damage, and injury to Opposer and its STRENGTH

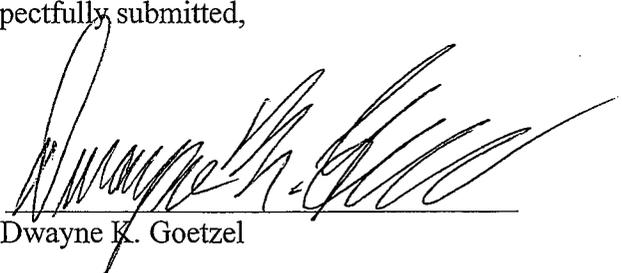
INSIDE & OUT mark. In the event of registration of Applicant's mark, Opposer may be damaged by a loss of revenue and sales of its goods/services marketed under Opposer's STRENGTH INSIDE & OUT mark. Opposer may suffer other potential injuries such as damage to its reputation.

11. If Applicant's mark is registered, Applicant may obtain at least a *prima facie* exclusive right to use Applicant's mark in connection with the specified goods. Such continued registration may be a source of confusion, irreparable damage and injury to the Opposer, for the reasons set forth above.

12. The Patent and Trademark Office should refuse to register Applicant's SMART INSIDE OUT mark in light of Opposer's prior filing date, publication date, and notice of allowance date for the STRENGTH INSIDE & OUT mark.

WHEREFORE, Opposer prays that U.S. Serial No. 77744327 for the mark SMART INSIDE OUT filed by Tex-Ray Industrial Co., Ltd. be refused registration.

Respectfully submitted,

By: 

Dwayne K. Goetz

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**ATTORNEYS FOR OPPOSER**  
**FAMILY TIME SPORTING APPAREL LLC**

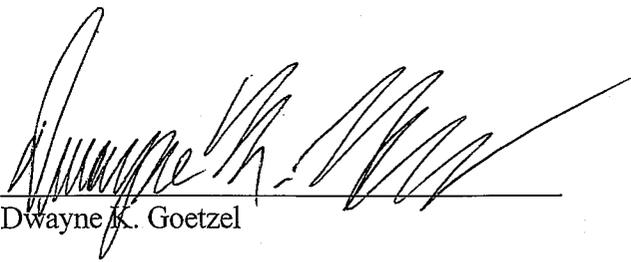
Date: June 4, 2010

**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of Opposer's *Notice of Opposition* has been sent by facsimile and first class U.S. mail, postage prepaid, to Applicant's attorney of record as follows:

Joe M. Muncy  
Muncy, Geissler, Olds & Lowe, PLLC  
P.O. Box 1364  
Fairfax, VA 22038-1364  
703-621-7155 (facsimile)

on this 4<sup>th</sup> day of June 2010.



Dwayne K. Goetzel