

ESTTA Tracking number: **ESTTA368704**

Filing date: **09/16/2010**

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	Levi Strauss & Co.		
Entity	Corporation	Citizenship	Delaware
Address	Levi's Plaza, 1155 Battery Street San Francisco, CA 94111 UNITED STATES		

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

Applicant Information

Application No	77665211	Publication date	08/17/2010
Opposition Filing Date	09/16/2010	Opposition Period Ends	09/16/2010
Applicant	A.V. Denim, Inc. Suite 3601 1407 Broadway New York, NY 10018 UNITED STATES		

Goods/Services Affected by Opposition

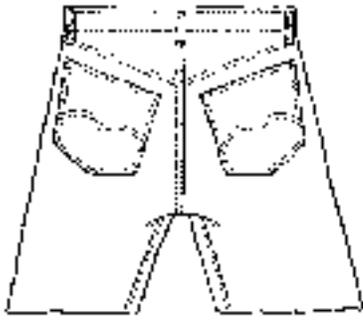
Class 025. First Use: 2004/09/30 First Use In Commerce: 2004/09/30 All goods and services in the class are opposed, namely: Pants
--

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	404248	Application Date	09/25/1942
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.	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

Attachments	71455769#TMSN.gif (1 page)(bytes) 73169399#TMSN.gif (1 page)(bytes) 78142765#TMSN.gif (1 page)(bytes) AV Denim Notice of Opposition.pdf (6 pages)(86641 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	/Gia L. Cincone/
Name	Gia L. Cincone
Date	09/16/2010

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

In re application of:

A.V. DENIM, INC.

For: **MISCELLANEOUS DESIGN**

Serial No.: 77/665,211

Filed: February 6, 2009

Published: August 17, 2010

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 Miscellaneous Design mark illustrated in and covered by Application Serial No. 77/665,211, filed on February 6, 2009, by A.V. Denim, Inc. (“Applicant” or “A.V. Denim”), 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. Applicant is, upon information and belief, a New York corporation with its principal place of business at 1407 Broadway, Suite 3601, New York, New York 10018. 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 August 17, 2010, Applicant seeks to register the Miscellaneous Design mark that is the subject of Application Serial No. 77/665,211 in International Class 25 for pants. Applicant claims a first use date of September 30, 2004.

2. Registration of the proposed mark 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.*

3. Pocket flaps generally are functional features of clothing and therefore are not entitled to trademark registration. A.V. Denim has attempted to avoid functionality by describing, and depicting in its drawing of its proposed mark, a pocket flap that has a particular shape, is stitched in a particular shape, and is “raised.”

4. Opposer has used pocket flaps that are, and has stitched pocket flaps in a manner that is, identical or similar to Applicant’s proposed mark. These uses predate Applicant’s alleged date of first use, are associated with Opposer, and are so similar to Applicant’s proposed mark that Applicant’s proposed mark is likely to cause confusion, or to cause mistake, or to deceive.

5. Opposer is also 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
2,794,649	December 16, 2003

Since at least as early as 1873, LS&Co. continuously has used its Arcuate Trademark on a variety of goods, including jeans, pants, shorts, and skirts. LS&Co.'s dates of adoption and first use of its Arcuate Trademark long precede Applicant's alleged date of first use.

6. 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 recognizes LS&Co. as the source of goods displaying the mark. 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.

7. Because of Opposer's prior uses of pocket flaps and stitching on pocket flaps, and/or Opposer's ownership, registration, and use of the Arcuate Trademark, registration of Applicant's mark will lead the public to conclude, incorrectly, that Applicant is or has been, and Applicant's goods displaying the mark are or have been, authorized, sponsored, or licensed by LS&Co. Issuance of any registration to Applicant 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.

8. Applicant's mark is deceptively similar to Opposer's prior uses of pocket flaps and stitching on pocket flaps, and/or Opposer's Arcuate Trademark, so as to cause confusion, or to cause mistake or to deceive the public as to the origin of Applicant's goods, to the harm and damage of LS&Co. and the public. Therefore, registration of Applicant's 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). The proposed mark has caused 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 the proposed mark may be refused under 15 U.S.C. §§ 1052 and 1063(a).

10. Registration of the proposed mark would constitute prima facie evidence of the validity of such registration, Applicant's ownership of the mark, and Applicant's exclusive right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b). Opposer and the public would be harmed as a result.

WHEREFORE, LS&Co. prays that this Opposition be sustained, and that registration to Applicant for the Miscellaneous Design mark illustrated in and covered by Application Serial No. 77/665,211 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
Facsimile: (415) 576-0300

Respectfully submitted,

TOWNSEND *and* TOWNSEND *and* CREW LLP

Dated: September 16, 2010

By: /s/ Gia L. Cincone

Gia L. Cincone

Attorneys for Opposer

Levi Strauss & Co.

Townsend and Townsend and Crew LLP

Two Embarcadero Center, 8th Floor

San Francisco, CA 94111-3834

Telephone: (415) 576-0200

Facsimile: (415) 576-0300

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2010, the foregoing **NOTICE OF OPPOSITION** is being deposited with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

JOSEPH T. NABOR
SELENA M. SPRITZ
FITCH, EVEN, TABIN & FLANNERY
120 South LaSalle, Suite 1600
Chicago, IL 60603

/s/ Linda Tan
Linda Tan

62885426 v1