ESTTA Tracking number: **ESTTA378585**
Filing date: **11/15/2010**

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	SandraEllis
Granted to Date of previous extension	11/14/2010
Address	1956 Sperrys Forge Trail Westlake, OH 44145 UNITED STATES

Attorney information	D. Ari Sherwin Curatolo Sidoti Co., LPA 24500 Center Ridge Road Suite 280 Cleveland, OH 44145 UNITED STATES docket@patentandtm.com

Applicant Information

Application No	77900545	Publication date	05/18/2010
Opposition Filing Date	11/15/2010	Opposition Period Ends	11/14/2010
Applicant	Beyond The Box, Inc. 116 Lowes Food Drive, #132 Lewisville, NC 27023 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, hats and caps, athletic uniforms excluding footwear

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)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85022163	Application Date	04/23/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	FIGHT LIKE A GIRL CLUB - CLAIM YOUR POWER
Design Mark	FIGHT LIKE A GIRL CLUB - CLAIM YOUR POWER
Description of Mark	NONE
Goods/Services	Class 045. First use: First Use: 2010/05/12 First Use In Commerce: 2010/05/12 Organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases

U.S. Application No.	85082681	Application Date	07/12/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FIGHT LIKE A GIRL CLUB		
Design Mark	FIGHT LIKE A GIRL CLUB		
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2010/07/09 First Use In Commerce: 2010/07/09 Jewelry Class 025. First use: First Use: 2010/07/09 First Use In Commerce: 2010/07/09 Clothing Class 045. First use: First Use: 2010/05/12 First Use In Commerce: 2010/05/12 Organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases		

Attachments	85022163#TMSN.jpeg (1 page)(bytes) 85082681#TMSN.jpeg (1 page)(bytes) FLGC2200NoticeOfOpposition.pdf (16 pages)(976889 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	/D. Ari Sherwin/
Name	D. Ari Sherwin
Date	11/15/2010

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

In the matter of Application Serial No. 77/900,545
Filed on December 23, 2009
For the mark FIGHT LIKE A CAROLINA GIRL
Published in the *Official Gazette* (Trademarks) on May 18, 2010

TSDC, LLC	)	
	)	
	)	
and	)	
	)	
	)	
Sandra Ellis	)	
	)	
Opposers,	)	Opposition No.:_____
	)	
	)	
v.	)	
	)	
	)	
Beyond the Box, Inc.,	)	
	)	
Applicant.	)	
	)	
	)	

UNITED STATES PATENT AND TRADEMARK OFFICE
ATTN: TRADEMARK TRIAL AND APPEAL BOARD
P.O. BOX 1451
ALEXANDRIA, VA. 22313-1451

NOTICE OF OPPOSITION

TSDC, LLC (hereinafter referred to as "TSDC"), a limited liability company organized and existing under the laws of the State of Ohio, having a business address at P.O. Box 45034, Cleveland, Ohio 44145 and Sandra Ellis (hereinafter referred to as "ELLIS"), a sole proprietor with her business located in the State of Ohio, having a business address at P.O. Box 45034, Cleveland, Ohio 44145 (TSDC and ELLIS are hereinafter collectively referred to as "OPPOSERS"), believe that they will be damaged by the registration of FIGHT LIKE A CAROLINA GIRL shown in Trademark Application Serial No. 77/900,545 and hereby oppose the same.

The grounds for opposition are as follows:

1. TSDC was organized and is operated by ELLIS.

2. OPPOSERS use the FIGHT LIKE A GIRL, FIGHT LIKE A GIRL CLUB and FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER marks in connection with the marketing and sale of wearing apparel and other products, and the marketing and provision of services for organizing and providing a forum for the fight against cancer and the interaction between those who suffer or are affected by ailments and life-threatening diseases.

3. TSDC owns United States Trademark Serial No. 85/022,163 for the mark FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER for organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases in International Class 045.

4. An Amendment to Allege Use for United States Trademark Serial No. 85/022,163 for the mark FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER was filed on July 8, 2010.

5. United States Trademark Serial No. 85/022,163 for the mark FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER bears a date of first use in commerce of at least as early as May 12, 2010 for organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases.

6. TSDC also owns United States Trademark Serial No. 85082681 for the mark FIGHT LIKE A GIRL CLUB for jewelry in International Class 014, clothing in International Class 025, and organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases in International Class 045.

7. United States Trademark Serial No. 85/082,681 for the mark FIGHT LIKE A GIRL CLUB was filed on July 12, 2010 and bears a date of first use in commerce of at least as early as July 9, 2010 for jewelry and clothing, and at least as early as May 12, 2010 for organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases.

8. A true copy of the USPTO TESS database records for United States Trademark Serial Nos. 85/022,163 and 85/082,681 are attached hereto as Exhibits 1 and 2, respectively.

9. OPPOSERS use the federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER mark in connection with the marketing and provision of services for organizing and providing a forum for the fight against cancer and the interaction between those who suffer or are affected by ailments and life-threatening diseases.

10. OPPOSERS also use the federally applied for FIGHT LIKE A GIRL CLUB mark in connection with the marketing and sale of wearing apparel and other products, and the marketing and provision of services for organizing and providing a forum for the fight against cancer and the interaction between those who suffer or are affected by ailments and life-threatening diseases.

11. The use of the federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER mark on or in connection with the marketing and provision of services in commerce by OPPOSERS has been valid and continuous since the date of first use and has not been abandoned.

12. The use of the federally applied for FIGHT LIKE A GIRL CLUB mark on or in connection with the marketing and sale of goods in commerce by OPPOSERS has been valid and continuous since July 9, 2010 and has not been abandoned.

13. The use of the federally applied for FIGHT LIKE A GIRL CLUB mark on or in connection with the marketing and provision of services in commerce by OPPOSERS has been valid and continuous since May 12, 2010 and has not been abandoned.

14. Upon information and belief, Beyond the Box, Inc. (hereinafter referred to as "APPLICANT"), is a corporation duly organized and existing under the laws of the State of North Carolina, having a mailing address of 116 Lowes Food Drive, #132, Lewisville, North Carolina 27023.

15. APPLICANT has filed Trademark Application Serial No. 77/900,545 (hereafter referred to as the "Application") to register FIGHT LIKE A CAROLINA GIRL on the Principal Register of the United States Patent and Trademark Office for athletic apparel, namely, shirts, pants, jackets, hats and caps, athletic uniforms excluding footwear in International Class 025.

16. The Application was published for opposition in the *Official Gazette* (Trademarks) on May 18, 2010.

17. The Application was filed based on an intent to use on December 23, 2009 and no Allegation of Use has been filed to date.

18. APPLICANT has not filed an Allegation of Use in the Application, and TSDC nor ELLIS have found any evidence of use of the mark FIGHT LIKE A CAROLINA GIRL by APPLICANT in commerce.

19. The goods for which APPLICANT seeks to register the term FIGHT LIKE A CAROLINA GIRL are related to, substantially similar to, or of the same general nature as the goods recited in OPPOSERS' federal application for the FIGHT LIKE A GIRL CLUB mark.

20. The goods and services of OPPOSERS' are offered for sale and advertised at least through the internet.

21. Upon information and belief, APPLICANT's goods are intended to be offered for sale and advertised through the internet, and therefore constitute similar trade channels.

22. OPPOSERS market and sell goods, and market and provide services to people fighting cancer and who suffer or are affected by ailments and life-threatening diseases.

23. Upon information and belief, APPLICANT's goods are intended to be marketed and sold to people fighting cancer and who suffer or are affected by ailments and life-threatening diseases, and therefore are directed to the same general class of purchasers as OPPOSERS' goods.

24. OPPOSERS have spent significant time, effort, and money extensively advertising, marketing and otherwise promoting its federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER and FIGHT LIKE A GIRL CLUB marks to the purchasing public in connection with the sale of goods and provision of services in interstate commerce throughout the United States.

25. By extensively advertising, marketing and promoting goods and services under the federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER and FIGHT LIKE A GIRL CLUB marks, the purchasing public has come to recognize OPPOSERS' federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER and FIGHT LIKE A GIRL CLUB marks as signifying OPPOSERS as the source or origin of those goods and services.

26. By extensively advertising, marketing and promoting goods under the federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER and FIGHT LIKE A GIRL CLUB marks, OPPOSERS have developed exceedingly valuable goodwill and consumer recognition throughout the United States with respect to the trademarks.

27. Upon information and belief, APPLICANT's registration of the mark FIGHT LIKE A CAROLINA GIRL in connection with the goods recited in the Application is such that it will create or is likely to create confusion, deception, or mistake among purchasers as to the origin or source of APPLICANT's goods.

28. Upon information and belief, APPLICANT's registration of the mark FIGHT LIKE A CAROLINA GIRL is such that purchasers will be misled and deceived into mistakenly believing that APPLICANT's goods are approved or sponsored by TSDC and OPPOSERS, which they are not.

29. Upon information and belief, APPLICANT's registration of the mark FIGHT LIKE A CAROLINA GIRL is such that purchasers will be misled and deceived into mistakenly believing that APPLICANT or APPLICANT's products are in some way affiliated, connected to, or associated with OPPOSERS, which they are not.

30. Upon information and belief, the registration of the mark FIGHT LIKE A CAROLINA GIRL works to OPPOSERS' disadvantage in that the goodwill attached to OPPOSERS' federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER and FIGHT LIKE A GIRL CLUB marks will likely be extended to APPLICANT without OPPOSERS' knowledge or consent, thereby benefiting APPLICANT rather than OPPOSERS.

31. Upon information and belief, APPLICANT's registration of the mark FIGHT LIKE A CAROLINA GIRL will interfere with, or is likely to interfere with, or embarrass OPPOSERS, in its business reputation and the reputation of the goods and services for which they use the federally applied for FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER and FIGHT LIKE A GIRL CLUB marks.

WHEREFORE, OPPOSERS believe that registration of application Trademark Application Serial No. 77/900,545 for the mark FIGHT LIKE A CAROLINA GIRL will damage OPPOSERS, and pray that registration of Trademark Application Serial No. 77/900,545 in International Class 025 be refused.

TIME FOR FILING

37 CFR §2.196 provides "When the day, or the last day fixed by statute or regulation by or under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday or a Federal holiday." The Trademark Trial and Appeal Board set a deadline of November 14, 2010 within which to submit a Notice of Opposition against the above-identified mark in this matter. November 14, 2010 was a Sunday. Today, November 15, 2010, is the next succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia. Accordingly, this Notice of Opposition is timely.

CORRESPONDENCE ADDRESS

Please direct all correspondence in connection with this Opposition to:

D. Ari Sherwin, Esq.
Curatolo Sidoti Co., LPA
24500 Center Ridge Road, Suite 280
Cleveland, Ohio 44145

Opposers have appointed Joseph G. Curatolo, Salvatore A. Sidoti, Peter R. Detorre, D. Ari Sherwin, and Vince A. Cortese of Curatolo Sidoti Co., LPA, all members of the bar of the State of Ohio, to transact all business in the United States Patent & Trademark Office in connection with the present Opposition.

Respectfully submitted,

Date: November 15, 2010

/D. Ari Sherwin/
D. Ari Sherwin, Esq.
Curatolo Sidoti Co., LPA
24500 Center Ridge Road, Suite 280
Cleveland, Ohio 44145
T: 440.808.0011
F: 440.808.0657
Attorney for Opposers

EXHIBIT 1

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Sat Nov 13 04:05:46 EST 2010

FIGHT LIKE A GIRL CLUB - CLAIM YOUR POWER

Word Mark	**FIGHT LIKE A GIRL CLUB** - CLAIM YOUR POWER
Goods and Services	IC 045. US 100 101. G & S: Organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases. FIRST USE: 20100512. FIRST USE IN COMMERCE: 20100512
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85022163
Filing Date	April 23, 2010
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) TSDC, LLC LIMITED LIABILITY COMPANY OHIO P.O. Box 45034 Cleveland OHIO 44145
Attorney of Record	D. Ari Sherwin
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

NEXT LIST FIRST DOC PREV DOC NEXT DOC LAST DOC

|.HOME | SITE INDEX| SEARCH | eBUSINESS | HELP | PRIVACY POLICY

EXHIBIT 2

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Sat Nov 13 04:05:46 EST 2010

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 1 out of 2**

FIGHT LIKE A GIRL CLUB

Word Mark	**FIGHT LIKE A GIRL CLUB**
Goods and Services	IC 014. US 002 027 028 050. G & S: Jewelry. FIRST USE: 20100709. FIRST USE IN COMMERCE: 20100709 IC 025. US 022 039. G & S: Clothing. FIRST USE: 20100709. FIRST USE IN COMMERCE: 20100709 IC 045. US 100 101. G & S: Organizing and providing a forum for the interaction between those who suffer or are affected by ailments and life-threatening diseases. FIRST USE: 20100512. FIRST USE IN COMMERCE: 20100512
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85082681
Filing Date	July 12, 2010
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) TSDC, LLC LIMITED LIABILITY COMPANY OHIO P.O. Box 45034 Cleveland OHIO 44145
Attorney of Record	D. Ari Sherwin
Type of Mark	TRADEMARK. SERVICE MARK
Register	PRINCIPAL

Live/Dead Indicator LIVE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NOTICE OF OPPOSITION** has been served upon the Applicant on this 15th day of November, 2010 by depositing the same in the United States First Class Mail, postage pre-paid, in an envelope addressed as follows:

Beyond The Box, Inc.
c/o Michael Todd Tucker, Manager of Beyond The Box, Inc.
116 Lowes Food Drive, #132
Lewisville, NC 27023

D. Ari Sherwin