

ESTTA Tracking number: **ESTTA393577**

Filing date: **02/16/2011**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	TraciMacaro
Granted to Date of previous extension	02/16/2011
Address	11201 Thistle Road Fairhope, AL 36532 UNITED STATES

Name	Ooh La La! Ladies Consignment Boutique, Inc.
Granted to Date of previous extension	02/16/2011
Address	16908 Timberlakes Drive Ft. Myers, FL 33908 UNITED STATES

Attorney information	Edward M. Livingston The Livingston Firm 963 Trail Terrace Dr. Naples, FL 34103 UNITED STATES tlf@thelivingstonfirm.com Phone:239-262-8502
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**Applicant Information**

Application No	77931467	Publication date	10/19/2010
Opposition Filing Date	02/16/2011	Opposition Period Ends	02/16/2011
Applicant	Ooh La La! Jewelry and Accessories, Inc. 900 Neapolitan Way Naples, FL 34103 UNITED STATES		

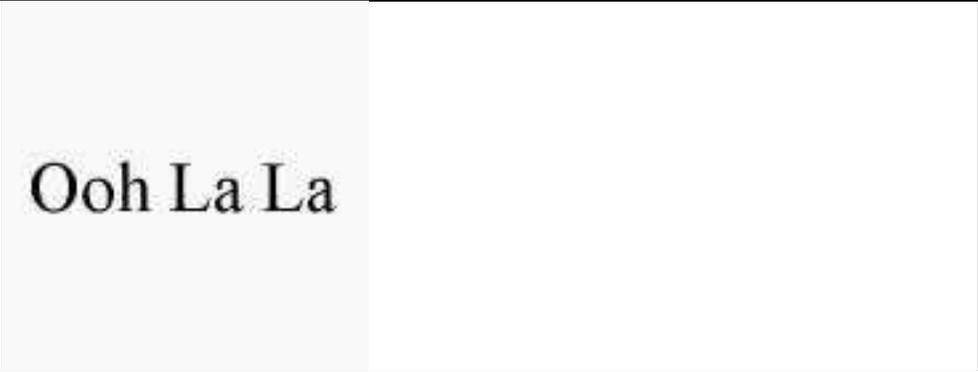
**Goods/Services Affected by Opposition**

Class 035. First Use: 2009/12/07 First Use In Commerce: 2009/12/07  
All goods and services in the class are opposed, namely: Retail jewelry store services featuring, jewelry, belts, scarves and hair accessories; providing consumer information in the field of jewelry, belts scarves and hair accessories; providing consumer information in the field of jewelry, belts, scarves and hair accessories via a global computer information network

**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.	3040209	Application Date	03/26/2004
Registration Date	01/10/2006	Foreign Priority Date	NONE
Word Mark	OOH LA LA		
Design Mark	 <p>Ooh La La</p>		
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2002/09/13 First Use In Commerce: 2002/09/13 purse and handbags		

U.S. Registration No.	3162391	Application Date	11/18/2005
Registration Date	10/24/2006	Foreign Priority Date	NONE
Word Mark	OOH LA LA		
Design Mark	 <p>Ooh La La</p>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 Retail stores featuring women's accessories		

Attachments	78391440#TMSN.jpeg ( 1 page )( bytes ) 78757302#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition 77931467.pdf ( 6 pages )(146583 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	/Edward M. Livingston/
Name	Edward M. Livingston
Date	02/16/2011

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

In the matter of: Trademark Application Serial No. 77/931467  
For the mark: OOH LA LA! JEWELS DU JOUR  
Published in the Official Gazette: October 19, 2010

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OOH LA LA! LADIES CONSIGNMENT BOUTIQUE, INC.,  
a Florida corporation and TRACI MACARO, an individual

Opposers

v. Opposition No.:

OOH LA LA! JEWELRY AND ACCESSORIES, INC.,  
a Florida corporation

Applicant.

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**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

Sir:

Opposers, OOH LA LA! LADIES CONSIGNMENT BOUTIQUE, INC., and TRACI MACARO (jointly "OPPOSERS") believe they will be damaged by the registration of the mark shown in the above-identified application, and hereby oppose same.

As grounds for opposition, Opposers allege:

1. Applicant, OOH LA LA! JEWELRY AND ACCESSORIES, INC. ("Applicant") filed a trademark/servicemark application assigned Application Serial No. 77/931467 ("the Application") in the United States Patent and Trademark Office ("USPTO") on February 9, 2010 to register the mark "OOH LA LA! JEWELS DU

JOUR” (the “Mark”) for use in connection with “jewelry” in International Class 14; “handbags, purses, belts, scarves & hair accessories” in International Class 25; and “retail jewelry store services featuring, jewelry, handbags, purses, belts, scarves & hair accessories; providing information on all of the foregoing; providing information on all the foregoing via a global computer information network” in International Class 35.

2. The Application filed by Applicant on February 9, 2010 was based on Applicant’s alleged use of the Mark in the above-referenced classes on December 7, 2009. Applicant has a physical location for its “OOH LA LA! JEWELS DU JOUR” retail store in Collier County, Florida.

3. The Application for the Mark filed by Applicant was published for opposition in the Official Gazette on October 19, 2010. Opposers timely filed and were granted an Extension of time to Oppose through February 16, 2011. Opposers have timely filed this Notice of Opposition.

4. Opposer TRACI MACARO is the owner of U.S. Registration No. 3,040,209 for “OOH LA LA” for “purse and handbags” in International Class 18, registered on January 10, 2006. Opposer, TRACI MACARO, has been using the mark in connection with purses and handbags since at least as early as September 13, 2002 and the Opposer’s Mark is currently in use in commerce with these goods.

5. Opposer TRACI MACARO is also the owner of U.S. Registration No. 3,162,391 for “OOH LA LA” for “retail stores featuring women’s accessories” in International Class 35, registered on October 24, 2006. Opposer, TRACI MARARO, has been using the mark in connection with retail stores featuring women’s accessories since at least as early as September 1, 2002 and the Opposer’s Mark is currently in use in commerce with these services.

6. Opposer OOH LA LA! LADIES CONSIGNMENT BOUTIQUE, INC. is the exclusive Licensor of Registration Nos. 3,040,209 and 3,162,391 for Lee County, Florida and Collier County, Florida. The License was recorded with the United States Patent and Trademark Office on November 23, 2011 at REEL/FRAME: 004420/0815.

7. Opposer OOH LA LA! LADIES CONSIGNMENT BOUTIQUE, INC., has been using the OOH LA LA! mark in connection with retail consignment stores

featuring women's fashions and accessories since at least as early as January 16, 2009 and Opposer's Mark is currently in use in commerce with these services.

8. Opposer OOH LA LA! LADIES CONSIGNMENT BOUTIQUE, INC., prior to negotiating its exclusive license with Opposer TRACI MACARO applied for registration of OOH LA LA! Mark (Serial No. 77/930709) for use in connection with retail consignment stores featuring women's fashions and accessories and was refused registration based on a likelihood of confusion with Opposer TRACI MACARO's Registration No. 3,162,391 for OOH LA LA for "retail store services featuring women's accessories."

9. On May 14, 2010, the USPTO issued an Office Action against Applicant's Mark refusing registration under Trademark Act Section 2(d), based on a likelihood of confusion with Opposer TRACI MACARO's Registration No. 3,040,209, "with respect to applicant's goods identified as 'handbags, purses' and applicant's services identified as 'retail jewelry store services featuring, handbags, purses, providing information on all of the foregoing; providing information on all the foregoing via a global computer information network.'"

10. The USPTO failed to cite Opposer TRACI MACARO's Registration No. 3,162,391 for OOH LA LA for "retail stores featuring women's accessories" in International Class 35 against Applicant's Mark.

11. In order to overcome this initial likelihood of confusion refusal, Applicant amended its Application to delete all references to "handbags" and "purses" from its Application. Asserting thereafter that "[t]he refusal based on likelihood of confusion with Registration No. 3040209 is made moot by this amendment."

12. In a subsequent Office Action dated September 7, 2010, upon consideration of the Applicant's amendment, the Examining Attorney withdrew the refusal under Section 2(d).<sup>†</sup>

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<sup>\*</sup> The Examining attorney also issued a refusal for registration because of procedural informalities concerning the identification and classification of goods and services, description of the mark, specimen of use, and disclaimer.

<sup>†</sup> Applicant's Application was original assigned to trademark Examining Attorney Paul C. Crowley, Law Office 110. The Application was subsequently reassigned to trademark Examining Attorney Darryl M. Spruill, Law Office 112.

13. Opposer TRACI MACARO's first use date for the OOH LA LA mark in connection with handbags and purses and for retail stores featuring women's accessories is earlier than Applicant's alleged first use date for Applicant's Mark.

14. Opposer OOH LA LA! LADIES CONSIGNMENT BOUTIQUE, INC.'s first use date for the OOH LA LA mark in connection with retail consignment stores featuring women's fashions and accessories is earlier than Applicant's alleged first use date for Applicant's Mark.

15. Applicant's Mark OOH LA LA! JEWELS DU JOUR is virtual identical to the Opposers' Marks OOH LA LA as the essence of the mark is "OOH LA LA."<sup>‡</sup> Applicant's use registration and use of the OOH LA LA mark would and in fact has already created confusion, mistake, and deception in the minds of prospective purchasers as to the origin and source of the Opposers goods and services associated with the OOH LA LA Mark.

16. Applicant's "retail jewelry store services featuring, jewelry, belts, scarves and hair accessories" is virtually identical to Opposers' "retail store services featuring women's accessories." Moreover, it is well settled that consumers are likely to be confused by the use of a similar mark on or in connection with goods and with services featuring or related to those goods. Therefore, there is a likelihood of confusion with Applicant's use of its Mark in connection with jewelry and clothing, namely, belts and scarves in International Class 14 and 25, respectively.

17. The Opposers' services are offered throughout the United States and are also advertised and sold on-line on Opposer's website.

18. The Opposers' services and the Applicant's services travel in the same channels of trade and are viewed by the same customers, namely, those who purchase women's accessories and apparel. Applicant's products and services are therefore substantially similar to Opposers' products and services with which the Opposers OOH LA LA mark is used.

19. Opposers have incurred significant expenses in the advertisement of their products and services bearing the OOH LA LA! Mark and as a result have developed

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<sup>‡</sup> Applicant was required to disclaim "JEWELS."

valuable goodwill in the OOH LA LA Mark and the products and services associated therewith.

20. Purchasers familiar with the Opposers' services are likely to mistakenly believe that the Applicant's products and services are sponsored by, authorized, endorsed, affiliated with or otherwise approved by the Opposers because the OOH LA LA! JEWELS DU JOUR Mark sought to be registered by the Applicant is virtually identical to the Opposers' OOH LA LA! Marks, thereby resulting in Opposers' irreparable damage and injury.

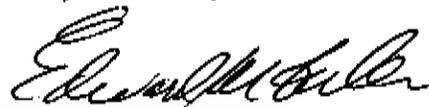
21. Opposers will be injured if registration is granted to the Applicants because Applicant's OOH LA LA! JEWELS DU JOUR Mark falsely suggests a connection with Opposers' goods and services bearing the OOH LA LA! mark. Opposers have no control over the nature and quality of the goods and services offered by Applicant under Applicant's OOH LA LA! JEWELS DU JOUR Mark, and thus, will be damaged and irreparably harmed by reason of the loss of control over its reputation and the erosion of its goodwill in the OOH LA LA! Mark.

22. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposers believe that they would be damaged thereby.

WHEREFORE, Opposers respectfully request that registration of the mark shown in Application Serial No 77/931467 be refused and that this Opposition be sustained in favor of Opposers.

Dated: February 16, 2011

Respectfully submitted,

By: 

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