

ESTTA Tracking number: **ESTTA429255**

Filing date: **09/07/2011**

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 party opposes registration of the indicated application.

Opposer Information

Name	Excelled Sheepskin & Leather Coat Corp.
Granted to Date of previous extension	09/07/2011
Address	1400 Broadway New York, NY 10018 UNITED STATES
Attorney information	Michael A. Grow Arent Fox LLP 1050 Connecticut Avenue, NW Washington, DC 20036 UNITED STATES grow.michael@arentfox.com, henrye@arentfox.com, TMDocket@arentfox.com Phone:202 857 6389

Applicant Information

Application No	85058446	Publication date	05/10/2011
Opposition Filing Date	09/07/2011	Opposition Period Ends	09/07/2011
Applicant	Rogue Design, LLC P. O. Box 4956 Laguna Beach, CA 926524956 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 025. All goods and services in the class are opposed, namely: Clothing and wearing apparel excluding footwear, namely, athletic apparel, namely, shirts, pants, jackets, hats and caps, athletic uniforms; Baseball caps and hats; Belts; Body shirts; Caps; Dress shirts; Gloves as clothing; Hats; Headbands for clothing; Hooded sweat shirts; Jackets; Jerseys; Long-sleeved shirts; Pants; Shirts; Shirts and short-sleeved shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Skirts and dresses; Sport shirts; Sweat shirts; Sweaters; T-shirts; Tee shirts; Tops; Wearable garments and clothing, namely, shirts</p>
<p>Class 042. All goods and services in the class are opposed, namely: Industrial design services for others</p>

Applicant Information

Application No	85058472	Publication date	05/10/2011
Opposition Filing Date	09/07/2011	Opposition Period Ends	

Applicant	Rogue Design, LLC P. O. Box 4956 Laguna Beach, CA 926524956 UNITED STATES
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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)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3346559	Application Date	11/15/2004
Registration Date	12/04/2007	Foreign Priority Date	NONE
Word Mark	ROGUE		
Design Mark	ROGUE		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1999/12/01 First Use In Commerce: 1999/12/01 men's, ladies' and children's clothing, namely, coats, jackets, vests, shirts and pants		

U.S. Registration No.	2790074	Application Date	04/19/2000
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	ROGUE LEATHER BY REILLY OLMES		

Design Mark	ROGUE LEATHER BY REILLY OLMES
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2000/01/10 First Use In Commerce: 2000/01/10 Men's, women's and children's clothing made in whole or in substantial part of leather, namely, coats, vests, shirts and pants

U.S. Registration No.	2815985	Application Date	04/19/2000
Registration Date	02/24/2004	Foreign Priority Date	NONE
Word Mark	REILLY OLMES ROGUE LEATHER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/02/18 First Use In Commerce: 2000/02/18 Men's, women's and children's clothing made in whole or in substantial part of leather, namely, coats, vests, shirts and pants		

Attachments	76620735#TMSN.gif (1 page)(bytes) 76030034#TMSN.gif (1 page)(bytes) Rogue Design opp.pdf (5 pages)(252377 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	/Michael A. Grow/
Name	Michael A. Grow
Date	09/07/2011

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

In re Application 85/058446, ROGUEDESIGN, and Application No. No. 85/058472,
ROGUEDZN

EXCELLED SHEEPSKIN & LEATHER COAT CORP.	:	
	:	
Opposer	:	
	:	
v.	:	Opp. No. _____
	:	
ROGUE DESIGN, LLC	:	
	:	
Applicant	:	

NOTICE OF OPPOSITION

Opposer Excelled Sheepskin & Leather Coat Corp. (“Opposer”) believes that it will be damaged by the registration of the above-identified marks and hereby opposes the same in Classes 25 and 42 under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer is the owner of all rights, title and interest in and to a family of marks containing the word ROGUE for clothing (“Opposer’s Marks”).
2. Opposer’s Marks have become well known through extensive use and advertising, and they have become highly valuable symbols of Opposer’s goodwill.
3. Since long prior to any use or filing date that Applicant may allege, Opposer has been using the mark ROGUE and other marks containing the word ROGUE in connection with the advertising and sale of clothing and related services.
4. The Patent and Trademark Office has recognized Opposer’s exclusive right to use its marks by issuing the following registrations:

Reg. No. 3346559, ROGUE, issued December 4, 2007

Registration No. 2790074, ROGUE LEATHER BY REILLY OLMES, issued December 9, 2003

Reg. No. 2815985, REILLY OLMES ROGUE LEATHER, issued February 24, 2004

5. Opposer's registrations are valid and provide *prima facie* evidence of Opposer's ownership of, and exclusive right to use, Opposer's Marks in commerce. Registration No. 2790074 is incontestable and provides conclusive evidence of Opposer's ownership of the marks, and of its exclusive right to use the marks in commerce in connection with the goods listed therein.

6. Opposer has developed a well known business reputation throughout the United States and Opposer's Marks have been and continue to be widely used and publicized.

7. Notwithstanding Opposer's prior established rights in its Marks, Applicant filed the above referenced applications for registration of Opposer's ROGUE mark in combination with generic terms, i.e., ROGUEDESIGN and ROGUEDZN, for clothing and related services.

8. Opposer's Marks have been used continuously on or in connection with its goods in interstate commerce since long prior to the filing date of Applicant's applications or any date of first use which Applicant may allege.

LIKELIHOOD OF CONFUSION - §2(d)

9. The marks that Applicant seeks to register are identical to or so closely resemble Opposer's Marks that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's goods and services, and will thereby injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Marks.

10. Likelihood of confusion is further enhanced by the fact that Applicant has deliberately copied Opposer's Mark ROGUE and has made this the salient feature of its marks.

11. The goods and services of Applicant are so closely related to the goods and services of Opposer that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods and services are those of Opposer or that Applicant is in some way connected with or sponsored by or affiliated with Opposer, all to Opposer's irreparable damage.

12. Likelihood of confusion is further enhanced by the fact that Applicant apparently intends to offer products that are the same as or similar to those that Opposer sells.

13. Likelihood of confusion is further enhanced by the fact that Applicant apparently intends to offer its clothing products to the same prospective customers who purchase Opposer's clothing products and through the same trade channels in which Opposer's products are sold.

14. On information and belief, Applicant adopted its alleged mark with an intent to cause confusion by trading on the goodwill associated with Opposer's Marks, and therefore it may be presumed that customers will in fact be confused.

15. Applicant is not affiliated or connected with, nor is it approved, endorsed or sponsored by, Opposer.

16. Similarly, Opposer has not approved any goods or services sold or intended for sale by Applicant under its alleged marks, nor has Opposer granted Applicant permission to use said marks.

DECEPTION/FALSE SUGGESTION OF CONNECTION - §2(a)

17. Applicant's marks so closely resemble Opposer's Marks that they are likely to cause deception in violation of Section 2(a) of the Trademark Act because the marks misdescribe the nature or origin of the goods and services. Purchasers are likely to believe that the

misdescription actually describes the nature or origin of the goods and services, which is likely to materially alter purchasers' decisions to acquire Applicant's goods and services.

18. Applicant's alleged marks so closely resemble Opposer's Marks that they falsely suggest a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged marks point uniquely to Opposer, and purchasers will thus assume that goods and services sold under Applicant's alleged marks are connected with Opposer.

19. If Applicant's alleged marks are used on goods and services of the type described in its applications, Applicant's alleged marks will cause purchasers to refrain from purchasing Opposer's authorized goods based on the mistaken assumption that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's goods and services by permitting Applicant to use said marks.

20. Applicant's marks are deceptive in that they falsely suggests a connection with, or approval by, Opposer.

21. Use and registration by Applicant of its alleged marks will deprive Opposer of the ability to protect its reputation, persona and goodwill.

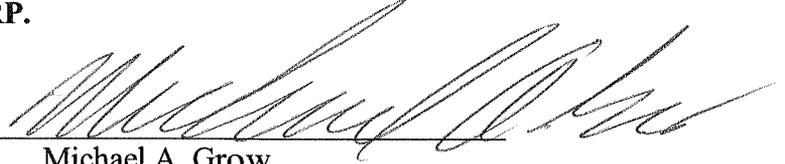
22. Likelihood of damage to Opposer's goodwill is enhanced by the fact that prospective customers who encounter defects in the quality of Applicant's goods and services will attribute those defects to Opposer and this will injure Opposer's reputation and goodwill.

23. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's alleged marks and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

**EXCELLED SHEEPSKIN & LEATHER COAT
CORP.**

By



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Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing is being served upon Applicant's counsel of record Victor K. Sapphire of Connolly Bove Lodge & Hutz LLP, Suite 2300, 333 South Grand Avenue, Los Angeles, California 90071 by first class mail, postage prepaid, on September 7, 2011.

