

ESTTA Tracking number: **ESTTA429658**

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

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	Xtreme Couture, Inc.
Granted to Date of previous extension	09/10/2011
Address	1799 Apollo Court Seal Beach, CA 90740 UNITED STATES

Attorney information	Michael Bassiri 1799 Apollo Court Seal Beach, CA 90740 UNITED STATES sharonmhotchkiss@yahoo.com, bassiri@afflictionclothing.com, lmix@afflictionclothing.com Phone:562-598-0299
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Applicant Information

Application No	85122748	Publication date	07/12/2011
Opposition Filing Date	09/09/2011	Opposition Period Ends	09/10/2011
Applicant	Able Planet, Incorporated 9500 West 49th Avenue, Building B-102 Wheat Ridge, CO 80033 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Articles of clothing and athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; headgear, namely, baseball type hats or beanies; hooded sweat shirts; jerseys; long-sleeved shirts; moisture-wicking sports shirts; short-sleeved or long-sleeved t-shirts; sports jerseys, sweaters
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Applicant Information

Application No	85110811	Publication date	07/19/2011
Opposition Filing Date	09/09/2011	Opposition Period Ends	
Applicant	Able Planet, Incorporated 9500 West 49th Avenue, Building B-102 Wheat Ridge, CO 80033 UNITED STATES		

Goods/Services Affected by Opposition

Class 018.

All goods and services in the class are opposed, namely: All purpose bags, namely, sports, athletic, carry-all, duffle, gym, hiking, mesh shopping and tote bags; backpacks; Pouches and bags sold empty for attachment to backpacks; sack packs, namely, drawstring bags used as backpacks; souvenir bags; travel bags

Class 025.

All goods and services in the class are opposed, namely: Articles of clothing and athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; headgear, namely, baseball type hats or beanies; hooded sweat shirts; jerseys; long-sleeved shirts; moisture-wicking sports shirts; short-sleeved or long-sleeved t-shirts; sports jerseys, sweaters

Applicant Information

Application No	85114059	Publication date	07/19/2011
Opposition Filing Date	09/09/2011	Opposition Period Ends	
Applicant	Able Planet, Incorporated 9500 West 49th Avenue, Building B-102 Wheat Ridge, CO 80033 UNITED STATES		

Goods/Services Affected by Opposition

Class 018.

All goods and services in the class are opposed, namely: All purpose bags, namely, sports, athletic, carry-all, duffle, gym, hiking, mesh shopping and tote bags; backpacks; Pouches and bags sold empty for attachment to backpacks; sack packs, namely, drawstring bags used as backpacks; souvenir bags; travel bags

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.	3489504	Application Date	03/16/2007
Registration Date	08/19/2008	Foreign Priority Date	NONE
Word Mark	XTREME COUTURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/06/15 First Use In Commerce: 2007/06/15 Clothing, namely, sweatshirts, t-shirts, tank tops, sweatpants, pants, shorts,		

	trunks, caps, fighter's robes, jackets, jogging suits, sweat suits, track suits, kick boxing trousers, boxing shorts, polo shirts, belts
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U.S. Application No.	85153365	Application Date	10/15/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	XTREME COUTURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: jewelry, namely, dog tags, necklaces, chains, pendants, charms, bracelets and rings</p> <p>Class 018. First use: Backpacks, sports bags, duffle bags, leather bags, handbags, small leather goods, namely, bags, backpacks, duffle bags, and handbags; wallets</p> <p>Class 025. First use: headwear, namely, beanies, caps, hats, and visors; gloves, knitted gloves, belts, leather belts, shoes, namely, flip flops, sandals, and thongs; bandanas, wristbands, and hosiery</p> <p>Class 026. First use: belt buckles</p>		

U.S. Application No.	77464760	Application Date	05/02/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	XTREME COUTURE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 025. First use: Vests; Sweat bands; Wrist bands; Sports bra; Headbands; Rash guards; Denim jackets; Denims; Athletic footwear; Footwear; Moisture-wicking sports pants; Moisture-wicking sports shirts; Underarm clothing shields; Socks
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Attachments	77133542#TMSN.jpeg (1 page)(bytes) 85153365#TMSN.jpeg (1 page)(bytes) 77464760#TMSN.jpeg (1 page)(bytes) Opposition to EXTREME (3).pdf (6 pages)(90250 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 Bassiri/
Name	Michael Bassiri
Date	09/09/2011

Serial No. 85/112748, and to September 17, 2011 to oppose the other two EXTREME Applications described above.

As grounds for opposition, Opposer alleges as follows:

1. Opposer is the owner of U.S. Trademark Registration No. 3,489,504 for the mark XTREME COUTURE (standard characters) for “Clothing, namely, sweatshirts, t-shirts, tank tops, sweatpants, pants, shorts, trunks, caps, fighter’s robes, jackets, jogging suits, sweat suits, track suits kick boxing trousers, boxing shorts, polo shirts, belts”, in Class 25. Opposer (or its predecessor-in-interest) has been using the XTREME COUTURE mark in commerce in connection with these goods since as early as June 15, 2007.

2. Opposer is the applicant of the mark XTREME COUTURE (Serial No. 85/153365) for: jewelry, namely, dog tags, necklaces, chains, pendants, charms, bracelets and rings in Class 14; Backpacks, sports bags, duffle bags, leather bags, handbags, small leather goods, namely, bags, backpacks, duffle bags, and handbags; wallets in Class 18; headwear, namely, beanies, caps, hats, and visors; gloves, knitted gloves, belts leather belts, shoes, namely, flip flops, sandals, and thongs; bandanas, wristbands, and hosiery in Class 25; belt buckles in Class 26

3. On January 26, 2011, an Office Action was issued against Opposer’s application for the mark XTREME COUTURE (Serial No. 85/153365) listing Applicant’s EXTREME Applications as prior pending applications, which if and when they register, may bar registration of Opposer’s XTREME COUTURE mark under Section 2(d). On July 25, 2011, Opposer filed its response to the Office Action. On August 12, 2011, the examining attorney issued a Suspension Letter sustaining his prior

decision that if the EXTREME Applications proceed to registration, they may be cited against Opposer's application in a refusal to register under Section 2(d) of the Trademark Act.

4. Applicant filed its Application, Serial No. 85/122748, for EXTREME (stylized) on September 3, 2010, on an intent-to-use basis under Section 1B, for "Articles of clothing and athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; headgear, namely, baseball type hats or beanies; hooded sweat shirts; jerseys; long-sleeved shirts; moisture-wicking sports shirts; short-sleeved or long-sleeved t-shirts; sports jerseys, sweaters" in Class 25.

5. Applicant filed its Application, Serial No. 85/110811, for EXTREME (stylized/design) on August 18, 2010, on an intent-to-use basis under Section 1B, for goods including "All purpose bags, namely, sports, athletic, carry-all, duffle, gym, hiking, mesh shopping and tote bags; backpacks; Pouches and gags sold empty for attachment to backpacks; sack packs, namely, drawstring bags used as backpacks; souvenir bags; travel bags in Class 18; and "Articles of clothing and athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; headgear, namely, baseball type hats or beanies; hooded sweat shirts; jerseys; long-sleeved shirts; moisture-wicking sports shirts; short-sleeved or long-sleeved t-shirts; sports jerseys, sweaters" in Class 25. Applicant also lists goods in Classes 9 and 10, to which Opposer does not oppose registration.

6. Applicant filed its Application, Serial No. 85/114059 on August 23, 2010, on an intent-to-use basis under Section 1B for "All purpose bags, namely, sports, athletic, carry-all, duffle, gym, hiking, mesh shopping and tote bags; backpacks; Pouches and gags

sold empty for attachment to backpacks; sack packs, namely, drawstring bags used as backpacks; souvenir bags; travel bags” in Class 18.

7. As set forth above, according to the examining attorney assigned to Opposer’s Application No. 85/153365, there may be a likelihood of confusion under Trademark Act Section 2(d) between Opposer’s Mark, XTREME COUTURE, and Applicant’s EXTREME Marks. As a result, Opposer will be damaged if Applicant’s EXTREME Applications are allowed to proceed to registration.

8. Opposer (or its predecessor-in-interest) has been using the XTREME COUTURE mark in connection with clothing since as early as June, 15, 2007, as set forth in its Registration No. 3,489,504. The goods listed in Applicant’s EXTREME Applications are very similar to those in Opposer’s Registration, and/or are in the Opposer’s normal fields of expansion. Applicant has not used the mark EXTREME in connection with the goods listed in its EXTREME Applications prior to June 15, 2007.

9. Opposer also has a pending Application for the mark XTREME COUTURE (Serial No. 77/464760) filed on May 2, 2008, on an intent-to-use basis, for Vests; Sweat bands; Wrist bands; Sports bra; Headbands; Rash guards; Denim jackets; Denims; Athletic footwear; Footwear; Moisture-wicking sports pants; Moisture-wicking sports shirts; Underarm clothing shields; Socks in Class 25. These goods are closely related to those in Applicant’s EXTREME Applications. Since Opposer’s application pre-dates Applicant’s EXTREME Applications, registration of Applicant’s marks would be unfairly detrimental to Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that the Board refuse Applicant's applications to register the EXTREME Marks, Application Serial Nos. 85/122748, 85/110811, and 85/114059.

Respectfully submitted,

Dated: September 9, 2011

/Michael Bassiri/

MICHAEL BASSIRI

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Attorney for Opposer

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing NOTICE OF OPPOSITION has been served upon the attorney of record for Applicant on September 9, 2011, by depositing same in the United States Mail, first class postage prepaid, in an envelope addressed as follows:

Glenn H. Lenzen
HUSCH BLACKWELL LLP
1700 Lincoln Street, Suite 4700
Denver, Colorado 80203

/Michael Bassiri/
MICHAEL BASSIRI