

ESTTA Tracking number: **ESTTA434015**

Filing date: **10/05/2011**

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	Lyric Jeans, Inc.
Granted to Date of previous extension	11/09/2011
Address	1000 Corey Avenue West Hollywood, CA 90069 UNITED STATES
Attorney information	Lile H. Deinard Dorsey & Whitney LLP 51 West 52nd Street New York, NY 10019 UNITED STATES ny.trademark@dorsey.com, deinard.lile@dorsey.com, sunderji.fara@dorsey.com Phone:212.415.9200

Applicant Information

Application No	85244011	Publication date	07/12/2011
Opposition Filing Date	10/05/2011	Opposition Period Ends	11/09/2011
Applicants	Peter Futris 224 Appaloosa Trail Waco, TX 76712 UNITED STATES Marcey Futris 224 Appaloosa Trail Waco, TX 76712 UNITED STATES		

Goods/Services Affected by Opposition

Class 014. All goods and services in the class are opposed, namely: Ankle bracelets; Bracelets; Bracelets; Bracelets made of leather; Charms; Charms for collar jewelry and bracelet; Chokers; Necklaces; Necklaces made of leather; Straps for wristwatches; Watch bands; Watch bands and straps; Watch bracelets; Watchstraps made of leather
Class 025. All goods and services in the class are opposed, namely: Belts; Belts made of leather; Blouses; Bomber jackets; Boots; Brassieres; Caps; Coats; Collars; Footwear; Footwear for men and women; Gloves; Hats; Headbands; Jackets; Jeans; Knit shirts; Knit skirts; Knit tops; Ladies' boots; Leather belts; Leather boots; Leather coats; Leather hats; Leather headwear; Leather jackets; Leather pants; Leather shirts; Leather shoes; Leather skirts; Leather slippers; Leather vests; Lingerie; Pants; Shirts; Shoes; T-shirts; Tank tops; Women's clothing, namely, shirts, dresses, skirts, blouses; Wristbands

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.	3674644	Application Date	08/30/2006
Registration Date	08/25/2009	Foreign Priority Date	NONE
Word Mark	LYRIC CULTURE		
Design Mark			
Description of Mark	The mark consists of the wording "LYRIC CULTURE" and a musical clef design with two dots to the right of the clef mark.		
Goods/Services	Class 018. First use: First Use: 2007/01/31 First Use In Commerce: 2007/01/31 handbags, backpacks, wallets, duffle bags, gym bags, and luggage Class 025. First use: First Use: 2007/01/31 First Use In Commerce: 2007/01/31 clothing, namely, jeans, shirts, skirts, dresses, pants and shorts		

U.S. Application No.	85029948	Application Date	05/04/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LYRIC LOVER		
Design Mark			
Description of Mark	The mark consists of the word "Lyric" with the letter "I" in "Lyric" depicted as a treble clef design combined with a heart shape, and the word "Lover" under the word "Lyric" to the right of the stylized "I".		
Goods/Services	Class 025. First use: First Use: 2011/06/25 First Use In Commerce: 2011/06/25 Clothing, namely, sleepwear; intimate apparel in the nature of boy shorts; T-shirts; tank tops; pajama pants; and hooded jackets		

Attachments	78963755#TMSN.jpeg (1 page)(bytes) LEATHER LYRICS NOTICE OF OPPOSITION.pdf (6 pages)(577129 bytes) 85029948#TMSN.jpeg (1 page)(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	/fss/
Name	Fara S. Sunderji
Date	10/05/2011

Leather pants; Leather shirts; Leather shoes; Leather skirts; Leather slippers; Leather vests; Lingerie; Pants; Shirts; Shoes; T-shirts; Tank tops; Women's clothing, namely, shirts, dresses, skirts, blouses; Wristbands” in International Class 25, sought by U.S. Application Serial No. 85/244,011 and oppose that application for registration.

As grounds for opposition, it is alleged that:

1. Opposer is now, and for a number of years has been, engaged in the marketing, sale, promotion and/or distribution of jewelry, clothing, and accessories.
2. Since prior to February 16, 2011, the filing date of the ITU application herein opposed, Opposer has marketed and sold products under the trademarks LYRIC CULTURE and LYRIC LOVER (collectively, the “Lyric Jeans Marks”), including necklaces, earrings, cuff links, bracelets, charms, pins, jeans, shirts, skirts, dresses, pants, shorts, sleepwear, boy shorts, t-shirts, tank tops, pants, pajama pants, leggings, jackets, belts, scarves, handbags, backpacks, wallets, duffle bags, gym bags, and luggage.
3. Opposer Lyric Jeans, Inc. is the owner of U.S. Registration No. 3,674,644, issued August 25, 2009, in the United States Patent and Trademark Office based on first use of the trademark LYRIC CULTURE & Design of January 31, 2007 for “handbags, backpacks, wallets, duffle bags, gym bags, and luggage” in International Class 18 and “clothing, namely, jeans, shirts, skirts, dresses, pants and shorts” in Class 25.
4. Since at least as early as August 31, 2005, Opposer has used the trademark LYRIC CULTURE on or in connection with clothing.

5. Since at least as early as October 31, 2009, Opposer has used the trademark LYRIC CULTURE on or in connection with jewelry.

6. In addition, Opposer Lyric Jeans, Inc. is the owner of U.S. Application Serial No. 85/029,948, filed May 4, 2010, in the United States Patent and Trademark Office for the trademark LYRIC LOVER & Design for “clothing, namely, sleepwear; intimate apparel in the nature of boy shorts; t-shirts; tank tops; pajama pants; and hooded jackets” in International Class 25. A Notice of Allowance for this unopposed application was issued on July 26, 2011.

7. By virtue of its continuous and substantial use of the Lyric Jeans Marks, the expenditure of substantial sums on promotion and advertising activities, the quality of Opposer’s goods provided under the marks and unsolicited media attention in connection with Opposer’s marks, Opposer has acquired substantial, valuable goodwill with respect to the Lyric Jeans Marks

8. Opposer benefits from the substantial and valuable goodwill in the Lyric Jeans Marks.

9. Opposer’s promotion and use of Opposer’s Lyric Jeans Marks has caused the public to associate the Lyric Jeans Marks with Opposer and to believe that the goods provided in connection with the Lyric Jeans Marks have an association with or are sponsored by Opposer.

10. By the application herein opposed, Applicant seeks to register the mark LEATHER LYRICS for “Ankle bracelets; Bracelets; Bracelets made of leather; Charms; Charms for collar jewelry and bracelet; Chokers; Necklaces; Necklaces made of leather;

Straps for wristwatches; Watch bands; Watch bands and straps; Watch bracelets; Watchstraps made of leather” in International Class 14, and “Belts; Belts made of leather; Blouses; Bomber jackets; Boots; Brassieres; Caps; Coats; Collars; Footwear; Footwear for men and women; Gloves; Hats; Headbands; Jackets; Jeans; Knit shirts; Knit skirts; Knit tops; Ladies' boots; Leather belts; Leather boots; Leather coats; Leather hats; Leather headwear; Leather jackets; Leather pants; Leather shirts; Leather shoes; Leather skirts; Leather slippers; Leather vests; Lingerie; Pants; Shirts; Shoes; T-shirts; Tank tops; Women's clothing, namely, shirts, dresses, skirts, blouses; Wristbands” in International Class 25 (collectively, the “Applicant’s Goods”). The application was filed on February 16, 2011 on the basis of an intent to use the mark in commerce on the Applicant’s Goods.

11. Opposer’s first use of and/or application filing date to register the Lyric Jeans Marks occurred long prior to Applicant’s filing date.

12. Applicant’s mark is confusingly similar in sight sound, appearance and meaning to the Lyric Jeans Marks.

13. The goods covered by Applicant’s application overlap or are closely related to the goods on which Opposer uses the Lyric Jeans Marks.

14. Applicant’s LEATHER LYRICS mark, when applied to the Applicant’s Goods, so resembles the Lyric Jeans Marks for Opposer’s goods, as to be likely to cause confusion and mistake, and to deceive the consuming public and the trade, with consequent injury to Opposer.

15. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer in its marks.

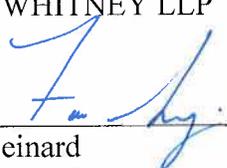
WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark and prays that this opposition be sustained and that Application Serial No. 85/244,011 be denied.

Please recognize as attorneys for Opposer in this proceeding Lile H. Deinard, Susan Progoff, Bruce Ewing, Sarah Robertson, and Fara S. Sunderji, members of the Bar of the State of New York, whose address is Dorsey & Whitney LLP, 51 West 52nd Street, New York, New York 10019, telephone number (212) 415-9200.

Dated: October 5, 2011

DORSEY & WHITNEY LLP

By: _____


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