

ESTTA Tracking number: **ESTTA438992**

Filing date: **11/02/2011**

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	Tibi, LLC
Granted to Date of previous extension	11/02/2011
Address	666 Broadway, 10th Floor New York, NY 10012 UNITED STATES
Correspondence information	Gordon E. R. Troy, Esq. Gordon E. R. Troy, PC P.O.Box 368 Charlotte, VT 05445 UNITED STATES usptomail@webtm.com Phone:802-425-9060

Applicant Information

Application No	85082909	Publication date	07/05/2011
Opposition Filing Date	11/02/2011	Opposition Period Ends	11/02/2011
Applicant	Branigin, John P.O. Box 1396 1406 7th Avenue Tybee Island, GA 31328 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2010/07/31 First Use In Commerce: 2010/07/31 All goods and services in the class are opposed, namely: Bathing suits; Hats; Shorts; Sweat pants; Sweat shirts; T-shirts; Tank tops; Visors

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.	2399688	Application Date	07/19/1999
Registration Date	10/31/2000	Foreign Priority Date	NONE
Word Mark	TIBI		

Design Mark	TIBI
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1997/08/01 First Use In Commerce: 1997/08/01 Clothing for women, namely sweaters, tops, shirts, blouses, skirts, dresses, pants and shorts, bathing suits, shoes, underwear, and hats

U.S. Registration No.	2446419	Application Date	04/17/2000
Registration Date	04/24/2001	Foreign Priority Date	NONE
Word Mark	TIBI		
Design Mark	TIBI		
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 Jewelry, namely, necklaces, rings, chains, earrings, charms, cameos, pendants, watches, bracelets, ankle bracelets and cufflinks</p> <p>Class 018. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 Bags, namely, backpacks, hand bags, duffel bags, traveling bags, and waist pouches; ladies hand bags and evening bags; wallets; key cases; leather key holders; all purpose sports bags; tote bags</p> <p>Class 025. First use: First Use: 1997/08/01 First Use In Commerce: 1997/08/01 Clothing for men, women and children, namely sweaters, tops, shirts, t-shirts, jackets, jeans, vests, scarves, blouses, skirts, dresses, pants and shorts, bathing suits, shoes, underwear, hats, bathrobes, loungewear, sleepwear, brassieres, bustiers, camisoles, chemises, corselettes, corsets, foundation garments, dressing gowns, dusters, garter belts, girdles, housecoats, lingerie, negligees, night gowns, night shirts, pajamas, peignoirs, robes, underclothes, undergarments, underpants, undershirts, underwear, sweat shirts, sweat pants, socks, head bands</p>		

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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	/Gordon E. R. Troy/
Name	Gordon E. R. Troy, Esq.
Date	11/02/2011

**United States Patent and Trademark Office
Trademark Trial and Appeal Board**

In re Trademark Application

Trademark: TYBIDIOT
Serial No. 85082909
Published: July 5, 2011

Tibi, LLC, <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">- v -</p> John Branigin, <p style="text-align: center;">Applicant.</p>	
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Opposition No. _____

Notice of Opposition

Tibi, LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 666 Broadway, 10th Floor, New York, New York 10012 (“Opposer”), believes that it will be damaged by registration of the mark shown in application Serial No. 85082909, and pursuant to 37 C.F.R. § 2.101(b) and 15 U.S.C. § 1052(d), hereby opposes same.

The grounds for the opposition are as follows:

1. Opposer is the owner of incontestable U.S. Registration Nos. 2399688 and 2446419 for TIBI, covering “Clothing for women, namely sweaters, tops, shirts, blouses, skirts, dresses, pants and shorts, bathing suits, shoes, underwear, and hats” and “Clothing for men, women and children, namely sweaters, tops, shirts, t-shirts, jackets, jeans, vests, scarves, blouses, skirts, dresses, pants and shorts, bathing suits, shoes, underwear, hats, bathrobes, loungewear, sleepwear, brassieres, bustiers, camisoles, chemises, corselettes, corsets, foundation garments, dressing gowns, dusters, garter belts, girdles, housecoats, lingerie, negligees, night gowns, night shirts, pajamas, peignoirs, robes, underclothes,

undergarments, underpants, undershirts, underwear, sweat shirts, sweat pants, socks, head bands” in Class 25. Opposer has used its TIBI mark in commerce throughout the United States since at least as early as August 1, 1997 and has claimed a priority date of August 1, 1997 in its registrations. Opposer is the owner of additional trademark registrations.

2. Opposer maintains premises within the State of Georgia and conducts a substantial part of its operations through such offices.

3. Opposer has invested substantial sums over the years in creating good will for its TIBI mark and it operates a significant nationwide, as well as international, business with market channels that reach millions of potential customers for Opposer’s products. Opposer continues to expend substantial investments in developing and promoting its TIBI mark.

4. Notwithstanding Opposer’s rights to its TIBI mark discussed herein, on July 12, 2010, Applicant filed an application to register the mark TYBIDIOT as shown in application Serial No. 85082909, covering “Bathing suits; Hats; Shorts; Sweat pants; Sweat shirts; T-shirts; Tank tops; Visors” in Class 25.

5. Applicant’s address is indicated to be situated in the State of Georgia.

6. On August 9, 2010, an Amendment to Use was filed claiming dates of first use of July 31, 2010.

7. Clearly the goods recited in application Serial No. 85082909 are not only identical to the goods used by Opposer, they are the goods that are registered by Opposer, and are without question the same type of products and are necessarily by their very nature competitive with each other.

8. By virtue of Opposer's registration of its TIBI mark with a priority date of August 1, 1997, Opposer has priority over Applicant's constructive priority date of July 12, 2010 for the Application opposed herein. There is a strong likelihood of confusion in the present circumstances for the reasons set forth herein.

9. Opposer's mark is TIBI, while Applicant's mark is TYBIDIOT. The two marks would appear to consumers and potential consumers to be related, sponsored by, or otherwise authorized when in fact no such relationship exists.

10. Applicant is trading upon the sound, meaning, and appearance of Opposer's well-known mark TIBI.

11. The marks are confusingly similar to lead a consumer to believe that the source of the goods is the same entity, or if not the same entity, then such consumers would likely believe that Applicant is seeking to trade upon the good will established by Opposer by disparaging Opposer and its products through such false association.

12. The Application opposed herein was published for opposition on July 5, 2011. Opposer obtained an extension to file its Opposition through November 2, 2011. Accordingly, this Notice of Opposition is timely.

13. There is a strong likelihood of confusion between Opposer's mark and Applicant's mark.

14. Should Applicant be permitted to register its mark, it will interfere with Opposer's continuing use and registration of its mark, Opposer's present and future business in its products, as well as Opposer's planned natural business extensions of its product line. Opposer is and will be damaged by the use and registration of the mark opposed herein.

WHEREFORE, Opposer respectfully requests, pursuant to 37 C.F.R. § 2.101(b) and 15 U.S.C. § 1052(d), that the mark TYBIDIOT, application Serial No. 85082909, be denied registration on the ground of confusingly similarity with Opposer's TIBI mark as pleaded herein.

Dated: November 2, 2011

Respectfully submitted:
GORDON E. R. TROY, PC
/s/ Gordon E. R. Troy

By: _____
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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Notice of Opposition has been served on Applicant by depositing same with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

John Branigin
P.O. Box 1396
1406 7th Avenue
Tybee Island, GA 31328

on: November 2, 2011

Respectfully submitted:
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/s/ Gordon E. R. Troy

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