

ESTTA Tracking number: **ESTTA455416**

Filing date: **02/08/2012**

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	Genesco Brands Inc.
Granted to Date of previous extension	02/08/2012
Address	300 Delaware Avenue, 9th Floor DE5403 Wilmington, DE 19801 UNITED STATES
Attorney information	TYWANDA H. LORD KILPATRICK TOWNSEND & STOCKTON LLP 1100 Peachtree Street, NE Suite 2800 Atlanta, GA 30309 UNITED STATES tlord@ktslaw.com,jshanks@ktslaw.com,rgordon@ktslaw.com,tmadmin@ktslaw.com Phone:404-815-6500

**Applicant Information**

Application No	85321192	Publication date	10/11/2011
Opposition Filing Date	02/08/2012	Opposition Period Ends	02/08/2012
Applicants	Zerlan, Dalton Taras 2440 West Prospect Fort Collins, CO 80526 UNITED STATES  Zerlan, Dennis Paul 2440 West Prospect Fort Collins, CO 80526 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 2011/04/02 First Use In Commerce: 2011/05/05 All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Baby layettes for clothing; Belts; Children's and infants' cloth bibs; Children's cloth eating bibs; Cloth bibs for adult diners; Cloth bibs for use by senior citizens or physically- or mentally-challenged persons; Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; Clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; Clothing, namely, arm warmers; Clothing, namely, athletic sleeves; Clothing, namely, base layers; Clothing,
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namely, cowls and smoke ring scarves; Clothing, namely, crops; Clothing, namely, folk costumes; Clothing, namely, hand-warmers; Clothing, namely, khakis; Clothing, namely, neck tubes; Clothing, namely, thobes; Clothing, namely, wrap-arounds; Coats for men and women; Collared shirts; Corsets; Dress shirts; Dusters; Eyeshades; Footwear for men and women; Footwear for women; Foulards; Gloves as clothing; Headbands for clothing; Hooded sweat shirts; Hooded sweatshirts for men, women, children; Hoods; Hunting shirts; Infant and toddler one piece clothing; Infant cloth diapers; Jackets; Jerseys; Knit shirts; Leather belts; Long-sleeved shirts; Men's and women's jackets, coats, trousers, vests; Men's socks; Men's suits; Men's suits, women's suits; Men's underwear; Mufflers; Non-disposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Parts of clothing, namely, underarm gussets; Party hats; Perspiration absorbent underwear clothing; Pocket squares; Polo shirts; Scientific and technological apparel, namely, shirts, pants, jackets, footwear, hats and caps, uniforms; Shirts; Shirts and short-sleeved shirts; Shirts for suits; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Shoulder wraps; Sport shirts; Suspender belts for men; Swaddling clothes; Sweat shirts; Sweatshirts for men, women, children; T-shirts; T-shirts for men, women, children, pets; Tee shirts; Ties; Tops; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Turtle neck shirts; Underarm clothing shields; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses

## 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.	3232063	Application Date	04/10/2001
Registration Date	04/24/2007	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 retail store services in the fields of footwear, apparel, backpacks, sports bags, jewelry and fashion accessories		

U.S. Registration No.	2054259	Application Date	10/24/1995
Registration Date	04/22/1997	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 shoes and clothing, namely, shirts, T-shirts, sweatshirts, jackets, [ pants, shorts, ] socks and hats

Attachments	76238378#TMSN.gif ( 1 page )( bytes ) 75009503#TMSN.gif ( 1 page )( bytes ) Notice of Opposition THE ONLY Q.pdf ( 7 pages )(31926 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	/Jaclyn T. Shanks/
Name	Jaclyn T. Shanks
Date	02/08/2012

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

GENESCO BRANDS INC.	)	
	)	
	)	
Opposer,	)	
	)	Serial No.: 85/321,192
v.	)	Opposition No. _____
	)	
DENNIS PAUL ZERLAN, and	)	
DALTON TARAS ZERLAN d/b/a	)	
THE ONLY QUESTIONS	)	
	)	
Applicants.	)	

NOTICE OF OPPOSITION

Opposer Genesco Brands Inc. will be damaged by registration in International Class 25 of the mark shown in application Serial No. 85/321,192 and state the following grounds under 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101 and 2.104 for its opposition to that application:

1. Opposer Genesco Brands Inc. is the owner of the trademark JOURNEYS which is used in connection with the well-known chain of over eight hundred JOURNEYS retail stores located primarily in major shopping malls throughout the United States, which are owned and operated by Opposer Genesco Brands Inc.'s predecessor and exclusive licensee, Genesco Inc. (Opposer Genesco Brand Inc. and Genesco Inc. are collectively referred to as "Genesco"). The JOURNEYS stores sell a wide range of footwear, clothing, fashion accessories, novelties, bags, backpacks, and other goods.

2. The JOURNEYS stores and virtually all advertising for JOURNEYS stores prominently feature the design mark depicted below (the “Handprint Design Mark”), which is owned by Genesco Brands Inc. By virtue of its use of the Handprint Design Mark, Genesco owns common law rights in the design.



3. Genesco’s Handprint Design Mark is used in connection with JOURNEYS retail stores and on point of purchase materials in connection with clothing, footwear, accessories, bags, novelties, and other products sold in those stores.

4. Genesco also owns federal Registration No. 3,232,063 of its Handprint Design mark for “retail store services in the fields of footwear, apparel, backpacks, sports bags, jewelry and fashion accessories” in International Class 35. In addition, Genesco owns federal Registration No. 2,054,259 of its Handprint Design Mark for “shoes and clothing, namely, shirts, T-shirts, sweatshirts, jackets, socks, and hats” in International Class 25.

5. Genesco has used its Handprint Design Mark in commerce in connection with the advertising, promotion, distribution, and sale of clothing, footwear and other goods, as well as retail store services, since at least as early as December 31, 1987.

6. By virtue of continuous and extensive advertising of the Handprint Design Mark in connection with Genesco’s retail stores and the products sold therein, and of the extensive sales under the mark for over 20 years, Genesco’s Handprint Design Mark is widely and favorably known by the public throughout the United States.

7. Genesco's Handprint Design Mark is symbolic of the substantial goodwill and consumer recognition established by Genesco as a result of the outstanding quality and extensive sales of products through its retail stores throughout the United States for many years. Genesco has expended large amounts of money, time, and effort in advertising and promoting such goods and services under the Handprint Design Mark. By reason of Genesco's extensive use and advertising of the Handprint Design Mark and resulting favorable public recognition, the Handprint Design Mark uniquely identifies Genesco and its clothing, retail stores, and related goods and services to the public. As such, Genesco has acquired extensive common law rights in the Handprint Design Mark in connection with its retail store services and with footwear, clothing and other goods.

8. Applicants Dennis Paul Zerlan and Dalton Taras Zerlan ("Applicants") filed application Serial No. 85/108,995 on May 14, 2011 to register the mark THE ONLY Q & Design ("Applicants' Design Mark"), which is reproduced below:



Applicants' Design Mark, which was published for opposition in the Official Gazette on October 11, 2011, is for use in connection with "*Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Baby layettes for clothing; Belts; Children's and infants' cloth bibs; Children's cloth eating bibs; Cloth bibs for adult diners; Cloth bibs for use by senior citizens or physically- or mentally-challenged persons; Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely,*

*padded pants; Clothing for athletic use, namely, padded shirts; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; Clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; Clothing, namely, arm warmers; Clothing, namely, athletic sleeves; Clothing, namely, base layers; Clothing, namely, cowls and smoke ring scarves; Clothing, namely, crops; Clothing, namely, folk costumes; Clothing, namely, hand-warmers; Clothing, namely, khakis; Clothing, namely, neck tubes; Clothing, namely, thobes; Clothing, namely, wrap-arounds; Coats for men and women; Collared shirts; Corsets; Dress shirts; Dusters; Eyeshades; Footwear for men and women; Footwear for women; Foulards; Gloves as clothing; Headbands for clothing; Hooded sweat shirts; Hooded sweatshirts for men, women, children; Hoods; Hunting shirts; Infant and toddler one piece clothing; Infant cloth diapers; Jackets; Jerseys; Knit shirts; Leather belts; Long-sleeved shirts; Men's and women's jackets, coats, trousers, vests; Men's socks; Men's suits. Men's suits, women's suits; Men's underwear; Mufflers; Non-disposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Parts of clothing, namely, underarm gussets; Party hats; Perspiration absorbent underwear clothing; Pocket squares; Polo shirts; Scientific and technological apparel, namely, shirts, pants, jackets, footwear, hats and caps, uniforms; Shirts; Shirts and short-sleeved shirts; Shirts for suits; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Shoulder wraps; Sport shirts; Suspender belts for men; Swaddling clothes; Sweat shirts; Sweatshirts for men, women, children; T-shirts; T-shirts for men, women, children, pets; Tee shirts; Ties; Tops;*

*Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Turtle neck shirts; Underarm clothing shields; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses*” in International Class 25. Genesco was granted extensions of time through and including February 8, 2012, to oppose this application.

9. Genesco continuously has used its Handprint Design Mark since long prior to the Applicants’ actual or constructive first use date.

10. As of May 14, 2011, Applicants had only used applicants mark in interstate commerce in connection with t-shirts.

11. Applicants’ Design Mark prominently incorporates a handprint design that is virtually identical in appearance and commercial impression to Genesco’s Handprint Design Mark.

12. Applicants’ Design Mark is proposed to be used with goods that are identical to the goods Genesco offers under its Handprint Design Mark.

13. Genesco will be damaged by the registration of Applicants’ Design Mark because the mark so resembles Genesco’s previously used Handprint Design Mark as to be likely to cause consumer confusion, mistake and deception. Consumers familiar with Genesco’s Handprint Design Mark would be likely, erroneously, to believe that Applicants’ goods are those of Genesco or are endorsed, sponsored, or licensed by Genesco. Thus, registration of Applicants’ mark on the Principal Register would be inconsistent with Genesco’s rights in its Handprint Design Mark.

14. The required opposition fee is being electronically processed in connection with this Notice of Opposition. The Director is authorized to debit KILPATRICK TOWNSEND & STOCKTON LLP's Trademark Deposit Account No. 11-0860 for any deficiency in the required fee.

Opposer Genesco therefore requests that application Serial No. 85/321,192 be refused registration.

Respectfully Submitted:

/s/ Jaclyn T. Shanks  
Tywanda H. Lord  
Jaclyn T. Shanks

KILPATRICK TOWNSEND &  
STOCKTON LLP  
1100 Peachtree Street  
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(404) 815-6500

Attorneys for Opposer  
Genesco Brands Inc.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being filed electronically through the U.S. Patent and Trademark Office's ESTTA system on February 8, 2012.

BY: /s/ Jaclyn T. Shanks

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DENNIS PAUL ZERLAN, and	)	
DALTON TARAS ZERLAN d/b/a	)	
THE ONLY QUESTIONS	)	
	)	
Applicants.	)	

CERTIFICATE OF SERVICE

This is to certify that the foregoing NOTICE OF OPPOSITION was served on Applicants by depositing true and correct copy in regular U.S. Mail, postage pre-paid, addressed as follows:

Dennis Paul Zerlan  
Dalton Taras Zerlan  
d/b/a The Only Questions  
2440 West Prospect  
Fort Collins, CO 80526

This 8<sup>th</sup> day of February 2012.

/s/ Jaclyn T. Shanks  
Tywanda H. Lord  
Jaclyn T. Shanks  
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(404) 815-6500

Attorney for Genesco Brands Inc.