

ESTTA Tracking number: **ESTTA456748**

Filing date: **02/15/2012**

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 | Ennis, Inc. | | |
| Entity | Corporation | Citizenship | Texas |
| Address | 2441 Presidential Parkway Midlothian, TX 76065 UNITED STATES | | |

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| Attorney information | Scott A. Meyer Chalker Flores, LLP 14951 N. Dallas Parkway Suite 400 Dallas, TX 75254 UNITED STATES smeyer@chalkerflores.com, docket@chalkerflores.com, cminchillo@chalkerflores.com Phone: 214-866-0001 |
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Applicant Information

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|--------------------------------|---|---------------------------------|------------|
| Application No | 85324443 | Publication date | 01/17/2012 |
| Opposition Filing Date | 02/15/2012 | Opposition Period Ends | 02/16/2012 |
| International Registration No. | NONE | International Registration Date | NONE |
| Applicant | Beling, Joel L 1 Mirboo Court Dallas, Victoria, 3047 AUSTRALIA | | |

Goods/Services Affected by Opposition

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| <p>Class 016. Opposed goods and services in the class: Art prints; Color prints; Graphic fine art prints; Graphic prints and representations; Organizational kits containing calendars, stationery, planning folders, templates and printed guidelines for planning social events; Packaged kits comprising printed instructional, educational, and teaching materials for educational activities in the field of superhero and cartoon characters; Paper stationery with inspirational messages imprinted thereon; Partially printed forms; Pictorial prints; Polyester film for use as a paper substitute for dry toner xerographic imaging, namely, laser printing, color copier printing, dry toner printing, screen printing, and offset printing; Print engravings; Print letters and blocks; Printed art reproductions; Printed calendars; Printed certificates; Printed certificates for sports and/or entertainment fans; Printed certificates in the field of sports and/or entertainment; Printed children's coloring pages; Printed collector cards made primarily of paper and also including metal; Printed collector cards made primarily of paper but also including metal; Printed emblems; Printed forms; Printed graphs; Printed greeting cards with electronic information stored therein; Printed holograms; Printed material in the nature of color samples; Printed materials, namely, curricula in the field of superhero and cartoon characters; Printed materials, namely, journals featuring superhero and cartoon characters; Printed materials, namely, novels and series of fiction books and short stories featuring scenes and characters based on video</p> |
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games; Printed materials, namely, press releases featuring superhero and cartoon characters; Printed materials, namely, written articles in the field of superhero and cartoon characters; Printed matter, namely, paper signs, books, manuals, curriculum, newsletters, informational cards and brochures in the field of superhero and cartoon characters; Printed music books; Printed news releases in the field of superhero and cartoon characters; Printed pamphlets, brochures, manuals, books, booklets, leaflets, flyers, informational sheets and newsletters, adhesive backed stickers, and kits comprising one or more of the foregoing materials in the field of superhero and cartoon characters; Printed paper labels; Printed paper signs; Printed patterns; Printed periodicals in the field of movies; Printed periodicals in the field of music; Printed periodicals in the field of plays; Printed periodicals in the field of tourism; Printed wine and beer bottle labels incorporating a feature that changes color in response to fluctuation in temperature of the contents of the bottle to which the label is affixed; Prints; Prints in the nature of superhero and cartoon characters;

Class 041.

Opposed goods and services in the class: Film and video production; Film and video production consulting services; Film production; Media production services, namely, video and film production; Motion picture film production; Multimedia entertainment services in the nature of development, production and post-production services in the fields of video and films; Multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films; Production of DVDs, videotapes and television programs featuring superhero and cartoon characters; Production of films; Special effects animation services for film and video;

Grounds for Opposition

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|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Mark Cited by Opposer as Basis for Opposition

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3372884 | Application Date | 08/23/2005 |
| Registration Date | 01/22/2008 | Foreign Priority Date | NONE |
| Word Mark | COLORWORX | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 040. First use: First Use: 2002/08/00 First Use In Commerce: 2002/08/00 Printing Services | | |

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| Attachments | 78698743#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (9 pages)(39324 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 | /s/ Scott A. Meyer |
| Name | Scott A. Meyer |
| Date | 02/15/2012 |

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

In Re: Application Serial No. 85/324,443
For the Mark: COLOR WARS
Filed: May 18, 2011
Published in the Official Gazette: January 17, 2012

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| Ennis, Inc. |) | |
| |) | |
| Opposer |) | |
| |) | |
| v. |) | Opp. No. _____ |
| |) | |
| Joel L. Beling d/b/a Supa Characters Pty Ltd |) | |
| |) | |
| Applicant |) | |
| |) | |
| |) | |

NOTICE OF OPPOSITION

Opposer, ENNIS, INC., a Texas corporation, having offices at 2441 Presidential Parkway, Midlothian, Texas 76065 (“Ennis” and/or “Opposer”), believes that it will be damaged by registration of the mark shown in Application Serial No. 85/324,443 by Joel L. Beling d/b/a Supa Characters Pty Ltd, having a listed business address of 1 Mirboo Court, Dallas, Victoria 3047, Australia (“Beling” and/or “Applicant”), and hereby opposes the same and requests that the registration to the Application be refused.

As grounds for opposition, Opposer alleges as follows:

1. On May 18, 2011, Applicant filed an application to register the mark COLOR WARS in International Classes 016, 028 and 041 for the following as shown in Application Serial No. 85/324,443 (the “Applicant’s Mark”):

International Class: 016

Adhesive bands for stationery or household purposes; Adhesive foils stationery; Adhesive tape dispensers for household or stationery use; Adhesive tapes for stationery or household purposes; Adhesive tapes for stationery purposes; Adhesives for stationery and household use; Adhesives for stationery or household purposes; Adhesives for stationery purposes; Adhesives in the form of tape for stationery; Art prints; Automatic paper clip dispensing machines for office or stationery use; Books in the field of superhero and cartoon characters; Brochures about superhero and cartoon characters; Cartoon prints; Cartoon strips; Color pencils; Color prints; Colorboard; Colored craft and art sand; Coloring books; Comic books; Comic magazines; Comic strips; Comic strips appearing in newspapers and other media; Comic strips' comic features; Comics; Desk mounted stationery cabinets; Desktop stationery cabinets; Dispensers for adhesive tapes for stationery or household purposes; Educational publications, namely, educational learning cards, flash cards, activity cards, workbooks, textbooks, activity books, story books, puzzle books, printed puzzles, teacher guides, manuals, posters and educational booklets in the field of superhero and cartoon characters; Envelopes for stationery use; File pockets; Glitter glue for stationery purposes; Glitter pens for stationery purposes; Glue for stationery or household purposes; Glue for stationery or household use; Glue pens for stationery purposes; Glue sticks for stationery or household use; Graphic fine art prints; Graphic prints and representations; Gummed tape for stationery or household use; Liquid paint felt tip marking and coloring applicators; Magazine columns about superhero and cartoon characters; Magazine sections in the field of superhero and cartoon characters; Magazine supplements to newspapers in the field of superhero and cartoon characters; Magazines in the field of superhero and cartoon characters; Newsletters in the field of superhero and cartoon characters; Newspaper cartoons; Newspaper comic strips; Office paper stationery; Office stationery; Organizational kit used in planning the design and apparel for special events containing color selection sample sheets, planning folders and fabric swatches; Organizational kits containing calendars, stationery, planning folders, templates and printed guidelines for planning social events; Organizers for stationery use; Packaged kits comprising printed instructional, educational, and teaching materials for educational activities in the field of superhero and cartoon characters; Paper stationery; Paper stationery with inspirational messages imprinted thereon; Partially printed forms; Paste for handicraft, for stationery or household purposes (banjaku-nori); Paste for stationery or household purposes; Pastes and other adhesives for stationery or household purposes; Pencil ornaments; Personalized coloring books for children; Photographic prints; Pictorial prints; Polyester film for use as a paper substitute for dry toner xerographic imaging, namely, laser printing, color copier printing, dry toner printing, screen printing, and offset printing; Print engravings; Print letters and blocks; Printed art reproductions; Printed calendars; Printed certificates; Printed certificates for sports and/or entertainment fans; Printed certificates in the field of sports and/or entertainment; Printed children's coloring pages; Printed collector cards made primarily of paper and also including metal; Printed collector cards

made primarily of paper but also including metal; Printed emblems; Printed forms; Printed graphs; Printed greeting cards with electronic information stored therein; Printed holograms; Printed material in the nature of color samples; Printed materials, namely, curricula in the field of superhero and cartoon characters; Printed materials, namely, journals featuring superhero and cartoon characters; Printed materials, namely, novels and series of fiction books and short stories featuring scenes and characters based on video games; Printed materials, namely, press releases featuring superhero and cartoon characters; Printed materials, namely, written articles in the field of superhero and cartoon characters; Printed matter, namely, paper signs, books, manuals, curriculum, newsletters, informational cards and brochures in the field of superhero and cartoon characters; Printed music books; Printed news releases in the field of superhero and cartoon characters; Printed pamphlets, brochures, manuals, books, booklets, leaflets, flyers, informational sheets and newsletters, adhesive backed stickers, and kits comprising one or more of the foregoing materials in the field of superhero and cartoon characters; Printed paper labels; Printed paper signs; Printed patterns; Printed periodicals in the field of movies; Printed periodicals in the field of music; Printed periodicals in the field of plays; Printed periodicals in the field of tourism; Printed wine and beer bottle labels incorporating a feature that changes color in response to fluctuation in temperature of the contents of the bottle to which the label is affixed; Prints; Prints in the nature of superhero and cartoon characters; Protractors; Publications, namely, brochures, booklets, and teaching materials in the field of superhero and cartoon characters; Publications, namely, books, journals, magazines and comic books in the fields of superhero and cartoon characters; Red algae gelatine glue, for stationery or household purposes (funori); Reinforced stationery tabs; Seals; Self-adhesive tapes for stationery and household purposes; Souvenir programs concerning superhero and cartoon characters; Stationery; Stationery boxes; Stationery cases; Stationery folders; Stationery writing paper and envelopes; Stationery-type portfolios; Stickers; Syndicated columns dealing with superhero and cartoon characters; Syndicated magazine sections dealing with superhero and cartoon characters; Syndicated newspaper columns dealing with superhero and cartoon characters; Workbooks directed to superhero and cartoon characters

International Class: 028

Action figure toys; Action figures; Action figures and accessories therefor; Action skill games; Action target games; Action-type target games; Aero-dynamic disk for use in playing catching games; Amusement game machines; Amusement park rides; Apparatus for electronic games other than those adapted for use with an external display screen or monitor; Arcade game machines; Arcade game machines activated by medals or tokens; Arcade game machines for team play; Arcade games; Arcade racing game machines; Arcade redemption game machines which dispense tickets or the like to successful players; Arcade virtual shooting game machines; Arcade-type electronic education video games; Arcade-type electronic video games; Articles of clothing for toys; Athletic equipment, namely, striking shields; Balloons; Bath toys; Bathtub toys; Battery operated action toys;

Battery-powered computer game with LCD screen; Bean bag dolls; Bendable toys; Electric action toys; Electric toy train transformers; Electronic action toys; Electronic learning toys; Electronic novelty toys, namely, toys that electronically record, play back, and distort or manipulate voices and sounds; Electronic toy building blocks that light up as a night light; Electronic toy vehicles; Electronically operated toy motor vehicles; Fantasy character toys; Infant toys; Inflatable bath toys; Inflatable toys; Mechanical toys; Miniature toy helmets; Model toy vehicles; Modeled plastic toy figurines; Non-electronic toy vehicles; Non-riding transportation toys; Plastic character toys; Plush toys; Positionable printed toy figures for use in games; Positionable printed toy figures for use in puzzles; Positionable toy figures; Printing toys; Pull toys; Push toys; Radio controlled toy vehicles; Ride-on toys; Rideable toy vehicles; Role playing toys in the nature of play sets for children to imitate real life occupations; Sand toys; Sandbox toys; Soft sculpture plush toys; Soft sculpture toys; Squeezable squeaking toys; Stuffed and plush toys; Stuffed toys; Toy action figures; Toy action figures and accessories therefor; Toy airplanes; Toy and novelty face masks; Toy armor; Toy balloons; Toy boats; Toy cars; Toy figures; Toy guns; Toy masks; Toy model cars; Toy robots; Toy swords; Toy tools; Toy trains and parts and accessories therefor; Toy vehicles; Toy vehicles and accessories therefor; Toy vehicles with transforming parts; Toy vehicles, namely, caster boards; Toy watches; Toy water globes; Toy weapons; Toy zip guns; Toys, namely, children's dress-up accessories; Toys, namely, puppets and accessories therefor; Transforming robotic toy vehicles; Transforming robotic toys; Water squirting toys; Water toys; Wind-up toys; Wind-up walking toys

International Class: 041

Educational and entertainment services, namely, a continuing program about superhero and cartoon characters accessible by radio, television, satellite, audio, video and computer networks; Educational and entertainment services, namely, providing motivational and educational speakers; Entertainment and education services in the nature of a series of short shows featuring superhero and cartoon characters distributed to mobile handsets, which may include video, text, photos, illustrations or hypertext; Entertainment and education services in the nature of live dance and musical performances; Entertainment and education services, namely, providing recognition and incentives by way of celebrations and awards to girls from underserved communities who have completed their high school careers successfully and who are going on to college; Entertainment and educational services in the nature of on-line competitions in the field of entertainment, education, culture, sports, and other non-business and non-commercial fields; Entertainment and educational services, namely, providing a website that displays various requests, reviews, recommendations, rankings, trackings, votes, and information relating to uncreated, unreleased, new, special, popular, and rare products, services, and events in the fields of pop culture, entertainment, education, and sports, all exclusively for non-business and non-commercial transactions and purposes; Entertainment and educational services, namely, providing advice and information for music, video and film concept and

script development; Entertainment and educational services, namely, the presentation of seminars, lectures, workshops and panel discussions, and ongoing television and radio talk shows all in the field of public interest concerning superhero and cartoon characters; Entertainment and educational services, namely, the presentation of seminars, workshops and panel discussions, and ongoing television and radio shows all in the field of superhero and cartoon characters; Entertainment in the nature of on-going television programs in the field of superhero and cartoon characters; Entertainment in the nature of visual and audio performances by superhero and cartoon characters; Entertainment in the nature of visual and audio performances, and musical, variety, news and comedy shows; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of visual and audio performances by an actor; Entertainment information; Entertainment information services, namely, providing information and news releases about a musical artist; Entertainment media production services for motion pictures, television and Internet; Entertainment services in the nature of a non-fiction television programming series on topics relating to family stories told by family members to preserve their heritage; Entertainment services in the nature of on-going television programs in the field of children's entertainment; Entertainment services, namely, displaying a series of films; Entertainment services, namely, planning and conducting a series of film festivals; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring superhero and cartoon characters; Entertainment, namely, a continuing superhero and cartoon characters; show broadcast over television, satellite, audio, and video media; Film and video film production; Film and video production; Film and video production consulting services; Film production; Film studios; Media production services, namely, video and film production; Motion picture film production; Multimedia entertainment services in the nature of development, production and post-production services in the fields of video and films; Multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films; Operating of film studios; Production of DVDs, videotapes and television programs featuring superhero and cartoon characters; Production of films; Production of television and radio programmes; Production of television programs; Providing information and articles in the field of film, filmmaking, and entertainment via a global computer network; Providing online non-downloadable comic books and graphic novels; Provision of information relating to distribution of television shows, motion picture film and radio shows; Provision of information relating to television, motion picture film, audio and radio production; Provision of non-downloadable films and movies via a video-on-demand service; Provision of non-downloadable films and television programmes via a video-on-demand service; Special effects animation services for film and video; Television, video and movie filming services

2. Opposer is the owner of U.S. Trademark Registration No. 3,372,884 for the mark COLORWORX[®] (“Opposer’s Mark”). Opposer’s Mark is valid, subsisting, and in full force and effect. Since as early as August, 2002, Opposer, its predecessors, or its related companies have continuously used the COLORWORX Mark in interstate commerce as a trademark for a variety of printing goods and printing services including, but not limited to, business cards, letterhead, sell sheets, rack cards, postcards, brochures and posters (“Opposer’s Goods”). Opposer’s Mark has also continuously appeared in substantial advertising and promotion of Opposer’s printing goods and printing services, such that the mark is closely identified with Opposer’s Goods and has gained very valuable public recognition. Opposer has established an outstanding reputation as to the quality of its products sold under the COLORWORX Mark.

3. Opposer has continuously used its Mark in interstate commerce since long prior to any date upon which Applicant can rely. By virtue of its sales of high-quality products bearing Opposer’s Mark in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Mark and a valuable reputation.

4. Opposer’s trademark rights for the COLORWORX Mark has priority over Applicant’s Mark, inasmuch as Opposer has continuously used its Mark since it commenced use of its Mark, and Applicant’s application lists a filing date of May 18, 2011, and is listed as an intent-to-use application claiming priority pursuant to Section 44(d) of the Trademark Act, 15 U.S.C. § 1126.

5. Applicant’s Mark so resembles Opposer’s Mark that has been and is currently used, as to be likely to cause confusion, or cause mistake, or to deceive, in violation of Section

2(d) of The Trademark Act, 15 U.S.C. §1052(d), when used on or in connection with Applicant's Goods.

6. Under the circumstances, registration of Applicant's Mark will injure Opposer by causing the trade and/or purchasing public to be confused and/or deceived into believing that Applicant's Goods are those of Opposer or are sponsored by Opposer, to Opposer's damage and detriment, and will place a cloud over Opposer's title to its COLORWORX Mark in violation of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

7. Opposer's COLORWORX Mark was well established long before the filing date of Applicant's subject application, and at the time that Applicant filed the subject Application. Registration of Applicant's Mark would diminish and dilute the distinctive quality of Opposer's rights in its COLORWORX Mark in violation of 15 U.S.C. §1125(c). Moreover, registration of Applicant's Mark would diminish the advertising value of Opposer's Mark, and such registration would, in the event of any quality problems involving the goods offered by Applicant, tarnish the distinctiveness of Opposer's Mark.

8. Applicant's Mark is the same as, or substantially the same as, Opposer's Mark, including in visual appearance and in pronunciation.

9. Applicant's Mark is likely to and/or has diluted and lessened the capacity of Opposer's Mark to identify and distinguish Opposer's Goods.

10. Applicant's Mark so resembles Opposer's continuously used and well-known Mark as to be likely, when used in connection with the goods as set forth in Applicant's application, to lessen the capacity of Opposer's Mark to identify and distinguish Opposer's Goods.

11. The subject application should be refused because Opposer's rights of continuing its present use of its Mark in commerce are, or would be, threatened by Applicant's registration of Applicant's Mark for Applicant's Goods, and because Opposer's business would otherwise be damaged by Applicant's registration of Applicant's Mark for Applicant's Goods.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's COLOR WARS mark and prays that the Trademark Trial and Appeal Board sustain this opposition and refuse to register Application Serial No. 85/324,443 with prejudice.

Dated: February 15, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: /s/ Scott A. Meyer

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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on all parties, this the 15th day of February, 2012, by sending the same electronically through the Electronic System for Trademark Trials and Appeals (“ESTTA”) and first class mail, postage prepaid, to the following:

Joel L. Beling
1 Mirboo Court
Dallas, Victoria 3047
Australia

To our knowledge, Applicant is not domiciled in the United States and is not represented by an attorney or other authorized representative in the United States. Pursuant to 37 C.F.R. § 2.119(d), Opposer hereby requests that the USPTO TTAB send a copy of the foregoing NOTICE OF OPPOSITION directly to the Applicant.

/s/ Scott A. Meyer

Scott A. Meyer