

ESTTA Tracking number: **ESTTA485502**

Filing date: **07/25/2012**

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	Lauer Enterprises, Inc.
Granted to Date of previous extension	07/25/2012
Address	P.O. Box 436 Excelsior, MN 55331 UNITED STATES

Attorney information	BRENT ROUTMAN MERCHANT & GOULD PC PO BOX 2910 MINNEAPOLIS, MN 55402-0910 UNITED STATES broutman@merchantgould.com Phone:612.336.4619
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### Applicant Information

Application No	79098590	Publication date	03/27/2012
Opposition Filing Date	07/25/2012	Opposition Period Ends	07/25/2012
International Registration No.	1080474	International Registration Date	05/17/2011
Applicant	OHbaby Limited 15 Taupiko Place, Green Bay; Auckland 0604 NEW ZEALAND		

### Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Electronic publications, namely, magazines downloaded over the Internet featuring information and advice relating to pregnancy, birth, infants, children, mothers and families
Class 016. All goods and services in the class are opposed, namely: Children's magazines; covers for birth, pregnancy, children, mothers and family general interest magazines; magazines as general interest periodicals for women and families; periodical magazines featuring information and advice relating to birth, pregnancy, children, mothers and families

### 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.	3722896	Application Date	09/18/2007
Registration Date	12/08/2009	Foreign Priority Date	NONE
Word Mark	OH BABY!		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 020. First use: First Use: 1996/11/17 First Use In Commerce: 1996/11/17 Furnishings and accessories for babies and children, namely, cribs, beds, bunk beds, baby changing tables, dressers, end tables, night stands, bookshelves, armoires, desks, tables, chairs, stools, vanities for children, upholstered chairs, ottomans, bed frames, bassinets, woven baby baskets with handles, namely, "Moses baskets", window treatments, namely, shades; coat racks, peg racks for clothing and hats, mirrors, picture frames, plastic tissue box covers; decorative mobiles; decorative hangers for clothes; cushions for changing tables</p> <p>Class 024. First use: First Use: 1996/11/17 First Use In Commerce: 1996/11/17 Bedding and accessories for children and adults, namely, bed sheets, bed blankets, throws, quilts, duvet covers, pillow cases and covers, crib bumpers and bed skirts, bed skirts, bed canopies, cushion covers for changing tables; slipcovers, namely, unfitted fabric furniture covers for various kinds of chairs, ottomans, mattresses, daybeds, bassinets and "Moses beds"; fabric diaper stackers; fabric window valances; fabric window treatments, namely, curtains; textile wall hangings</p> <p>Class 025. First use: First Use: 1996/11/17 First Use In Commerce: 1996/11/17 Children's clothing, namely, pants, shirts, dresses, skirts, overalls, shortalls, jackets, one piece rompers, layettes, socks, shoes, sandals, hats, scarves, mittens; special occasions items, namely, Christening gowns and bodysuits; tutus, tights, leotards, robes, cloth bibs; Women's clothing and accessories, namely, jeans and pants, overalls, jackets, sweatshirts, t-shirts, tank tops, and scarves; hair accessories, namely, headbands; Additional clothing items, namely, coats, snowsuits, boots</p>		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OH BABY!		
Goods/Services	Retail store services and on-line retail store services featuring furnishings and accessories for babies and children, namely, cribs, beds, bunk beds, baby changing tables, dressers, end tables, night stands, bookshelves, armoires, desks, tables, chairs, stools, vanities for children, upholstered chairs, ottomans, bed frames, bassinets, woven baby baskets with handles, namely, "Moses baskets", window treatments, namely, shades, coat racks, peg racks for clothing and		

	<p>hats, mirrors, picture frames, plastic tissue box covers, decorative mobiles, decorative hangers for clothes, cushions for changing tables, Bedding and accessories for children and adults, namely, bed sheets, bed blankets, throws, quilts, duvet covers, pillow cases and covers, crib bumpers and bed skirts, bed skirts, bed canopies, cushion covers for changing tables, slipcovers, namely, unfitted fabric furniture covers not of paper for various kinds of chairs, ottomans, mattresses, daybeds, bassinets and "Moses beds," fabric diaper stackers, fabric window valances, fabric window treatments, namely, curtains, textile wall hangings, children's clothing, namely, pants, shirts, dresses, skirts, overalls, shortalls, jackets, one piece rompers, layettes, socks, shoes, sandals, hats, scarves, mittens, special occasions items, namely, Christening gowns and bodysuits, tutus, tights, leotards, robes, cloth bibs, Women's clothing and accessories, namely, jeans and pants, overalls, jackets, sweatshirts, t-shirts, tank tops, and scarves, hair accessories, namely, headbands, Additional clothing items, namely, coats, snowsuits, boots</p>
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Attachments	<p>77281995#TMSN.jpeg ( 1 page )( bytes )          Notice of opposition in OH BABY from Australia.pdf ( 5 pages )(119560 bytes )</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	/ber/
Name	BRENT ROUTMAN
Date	07/25/2012

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

LAUER ENTERPRISES, INC.	)	
	)	
Opposer,	)	Opposition No. _____
	)	
vs.	)	Mark: OHBABY!
	)	
) OHBABY LIMITED	)	
	)	Serial No. 79/098,590
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Lauer Enterprises, Inc. ("Opposer") believes that it will be damaged by registration of the mark shown in Application Serial No. 79/098,590, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer, LAUER ENTERPRISES, INC., is a corporation duly organized and existing under the laws of the State of Minnesota, having its principal place of business Excelsior, Minnesota 55331.
2. Upon information and belief, Applicant, OhBaby Limited, is a company organized and existing under the laws of New Zealand, and doing business at 15 Taupiko Place, Green Bay; Auckland, New Zealand 0604.
3. On May 17, 2011, Applicant filed Serial No. 79/098,590 (the "Opposed Application") to register the mark **OHBABY!** for "Electronic publications, namely, magazines downloaded over the Internet featuring information and advice relating to pregnancy, birth, infants, children, mothers and families" in Class 9 and "Children's magazines; covers for birth, pregnancy, children, mothers and family general interest magazines; magazines as general interest periodicals for women and families; periodical magazines featuring information and advice

relating to birth, pregnancy, children, mothers and families” in Class 16 on the basis of a prior filed Madrid Protocol application designating the United States.

4. From a time long prior to the filing date of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, Opposer has used the trademark "OH BABY!" or marks in incorporating the mark OH BABY in connection with the sale of a wide variety of children’s clothing, furnishing, bedding, jewelry, children’s bibs, books, gifts, journals, keepsake books, and other children’s products. Further, Applicant has used the mark OH BABY! for retail store services for the sale of goods of this type since at least 1996.

5. Opposer is the owner of the following federal registrations for the mark OH BABY!, or marks incorporating the mark OH BABY!: OH BABY!, Registration No. 3722896 for “furnishings and accessories for babies and children, namely, cribs, beds, bunk beds, baby changing tables, dressers, end tables, night stands, bookshelves, armoires, desks, tables, chairs, stools, vanities for children, upholstered chairs, ottomans, bed frames, bassinets, woven baby baskets with handles, namely, "Moses baskets", window treatments, namely, shades; coat racks, peg racks for clothing and hats, mirrors, picture frames, plastic tissue box covers; decorative mobiles; decorative hangers for clothes; cushions for changing tables” in Class 20; “bedding and accessories for children and adults, namely, bed sheets, bed blankets, throws, quilts, duvet covers, pillow cases and covers, crib bumpers and bed skirts, bed skirts, bed canopies, cushion covers for changing tables; slipcovers, namely, unfitted fabric furniture covers for various kinds of chairs, ottomans, mattresses, daybeds, bassinets and "Moses beds"; fabric diaper stackers; fabric window valances; fabric window treatments, namely, curtains; textile wall hangings” in

Class 24; and “children's clothing, namely, pants, shirts, dresses, skirts, overalls, shortalls, jackets, one piece rompers, layettes, socks, shoes, sandals, hats, scarves, mittens; special occasions items, namely, Christening gowns and bodysuits; tutus, tights, leotards, robes, cloth bibs; Women's clothing and accessories, namely, jeans and pants, overalls, jackets, sweatshirts, t-shirts, tank tops, and scarves; hair accessories, namely, headbands; Additional clothing items, namely, coats, snowsuits, boots” in Class 25 (marked Exhibit A).

6. The mark shown in the registration and the date of first use of the mark in the marketplace or application has a first use date, constructive use date, or filing date prior to the filing date of the Opposed Application or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely. Each of the Exhibits is an exact image of the records of the USPTO TARR database showing the status and title of the applications and registrations.

**FIRST CLAIM FOR RELIEF  
(Likelihood of Causing Confusion, Mistake, or Deceiving With A Mark Previously Used in  
the United States by Another and Not Abandoned)**

7. Opposer repeats and realleges the allegations contained in preceding paragraphs 1-6, inclusive, as if fully set forth herein.

8. The mark shown in the Opposed Application so resembles the "OH BABY!" mark previously used in the United States by the Opposer, when used or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

9. Opposer will be damaged by the registration of the mark shown in the Opposed Application because registration will give Applicant prima facie evidence of the validity of its confusingly similar mark and the exclusive nationwide right to use its confusingly similar mark in commerce in connection with the goods identified in the Opposed Application, in derogation of Opposer's rights in its "OH BABY!" marks.

**SECOND CLAIM FOR RELIEF  
(Likelihood of Causing Confusion, Mistake, or Deceiving With Registered Trademarks)**

10. Opposer repeats and realleges the allegations contained in preceding paragraphs 1-9, inclusive, as if fully set forth herein.

11. The mark shown in the Opposed Application so resembles the mark shown in Reg. Nos. . 3722896 as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

12. Opposer will be damaged by the registration of the mark shown in the Opposed Application because registration will give Applicant prima facie evidence of the validity of its confusingly similar mark and the exclusive nationwide right to use its confusingly similar mark in commerce in connection with the goods identified in the Opposed Application, in derogation of Opposer's rights in its registered marks.

WHEREFORE, Opposer Lauer Enterprises, Inc., asks that its opposition to this application be sustained and that the application for the mark shown in the Opposed Application be refused registration.

Please charge the filing fees for this application to Deposit Account No. 13-2725 and direct all correspondence and communications to the undersigned.

