

ESTTA Tracking number: **ESTTA507469**

Filing date: **11/26/2012**

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	Papillon International Inc
Granted to Date of previous extension	11/28/2012
Address	5595 Papineau Montreal, H2H 1W3 CANADA

Domestic Representative	Monica P. McCabe, Esq. Vandenberg & Feliu, LLP 60 East 42nd Street, 51st Floor New York, NY 10165 UNITED STATES trademarks@vanfeliu.com Phone:212.763.6818
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### Applicant Information

Application No	85568779	Publication date	07/31/2012
Opposition Filing Date	11/26/2012	Opposition Period Ends	11/28/2012
Applicant	Shamish Irving 1500 W Edghill Rd #10 San Bernardino, CA 92405 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Body shirts
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### 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.	3124310	Application Date	11/25/2003
Registration Date	08/01/2006	Foreign Priority Date	NONE
Word Mark	LA DIVA ITALIAN DESIGN		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/08/31 First Use In Commerce: 2004/08/31 Women's shoes[; women's pants, slacks, blouses, shirts, sweatshirts, sweat pants, sweaters, coats, jackets, underwear, socks, dresses and skirts]		

U.S. Registration No.	3429386	Application Date	02/06/2007
Registration Date	05/20/2008	Foreign Priority Date	NONE

Word Mark	LA DIVA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/12/27 First Use In Commerce: 2007/02/02 Footwear		

U.S. Registration No.	3549046	Application Date	10/24/2007
Registration Date	12/23/2008	Foreign Priority Date	NONE
Word Mark	LA DIVA ITALIAN DESIGN		

Design Mark	<b>LA DIVA ITALIAN DESIGN</b>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/08/31 First Use In Commerce: 2004/08/31 Footwear for women		

U.S. Registration No.	3566575	Application Date	10/24/2007
Registration Date	01/27/2009	Foreign Priority Date	NONE
Word Mark	LA DIVA ITALIAN DESIGN		
Design Mark	<b>LA DIVA ITALIAN DESIGN</b>		
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1998/12/04 First Use In Commerce: 1998/12/04 Handbags; Briefcases; Wallets; Backpacks		

U.S. Registration No.	2940580	Application Date	04/30/2003
Registration Date	04/12/2005	Foreign Priority Date	NONE
Word Mark	LA DIVA ITALIAN DESIGN		
Design Mark	<b>LA DIVA ITALIAN DESIGN</b>		
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1998/12/04 First Use In Commerce: 1998/12/04 handbags, briefcases, wallets, backpacks [, luggage and umbrellas ]		

Attachments	78332871#TMSN.jpeg ( 1 page )( bytes ) 77100304#TMSN.jpeg ( 1 page )( bytes ) 77312481#TMSN.jpeg ( 1 page )( bytes ) 77312463#TMSN.jpeg ( 1 page )( bytes ) 76510734#TMSN.gif ( 1 page )( bytes ) gd DIVA.pdf ( 6 pages )(4891136 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	/Monica P. McCabe/
Name	Monica P. McCabe, Esq.
Date	11/26/2012

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

<b>PAPILLON INTERNATIONAL, INC.,</b>	:	
Petitioner,	:	Opposition No.: _____
	:	
v.	:	Serial No.: 85/568779
	:	Filing: March 14, 2012
<b>MR. SHAMISH IRVING d/b/a VIRTUOUS</b>	:	Mark: GOD’S D.I.V.A.
<b>LAY-TEES,</b>	:	International Class: 25
Registrant.	:	

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**NOTICE OF OPPOSITION**

Papillon International, Inc. (“Papillon”), a Canadian corporation, having its principal place of business at 5595 Papineau, Montreal, Canada H2H 1W3, believes it will be damaged by the registration of the Application Serial No. 85/568779 for the trademark GOD’S D.I.V.A. (“GOD’S D.I.V.A. Mark”) filed by Shamish Irving. (“Registrant”), an individual with an address of 1500 W. Edghill Rd #10, San Bernardino, California 92405, and hereby opposes the same in accordance with Section 13(a) of the Trademark (Lanham) Act of 1946, 15 U.S.C. § 1063(a).

As grounds for opposition, Papillon alleges the following:

According to the U.S. Patent and Trademark Office (“USPTO”), Registrant, applied to register the GOD’S D.I.V.A. Mark for “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; and body shirts” in International Class 25 (“Application”). The Application is a 1(b) application and was published for opposition on July 31, 2012.

1. On or about August 28, 2012, Papillon filed a request for a 90-day extension of time to oppose. On the same day, the request was granted and the deadline for opposition was extended to November 28, 2012.

2. On or about September 28, 2012, Papillon sent a letter to registrant, requesting Applicant to cease and desist using the GOD’S D.I.V.A. Mark. Registrant never responded.

**Papillon, Its Marks and Related Goodwill**

3. Papillon is the owner of record of several registered trademarks in the USPTO (collectively “DIVA Marks”), in International Classes 25 and 18. The prominent term in each of the DIVA Marks is “DIVA”. These marks include:

<u>MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS</u>
LA DIVA	3,429,386	May 20, 2008	footwear
LA DIVA ITALIAN DESIGN	3,549,046	December 23, 2008	footwear for women
LA DIVA ITALIAN DESIGN	3,566,575	January 27, 2009	handbags, briefcases, wallets, and backpacks
LA DIVA ITALIAN DESIGN	2,940,580	April 12, 2005	handbags, briefcases, wallets and backpacks
LA DIVA ITALIAN DESIGN	3,124,310	August 1, 2006	women’s shoes

4. Papillon distributes and sells a wide variety of shoes, boots, and sandals bearing the DIVA Marks in the United States and Canada. Papillon also designs, manufactures, distributes and sells handbags, purses, wallets, briefcases and backpacks under the DIVA Marks in the United States and Canada.

5. Papillon has continuously sold handbags, purses, briefcases, wallets and backpacks under the DIVA Marks since at least as early as December 4, 1998, and footwear since at least as early as August 31, 2004. Since 1998, Papillon has sold hundreds of thousands of women’s shoes, bags and other items labeled with its DIVA Marks throughout the United States and internationally.

6. Through its substantial use, Papillon also has common law rights to the DIVA Marks for footwear, bags, wallets, briefcases, purses and backpacks. Applicant’s GOD’S D.I.V.A.

Mark is in violation and derogation of Papillon's common law rights in its DIVA Marks and is likely to cause confusion, mistake and deception among people in the footwear industry and consumers as to the source or origin of the goods or their affiliation with, endorsement by, or sponsorship by Papillon and thereby will cause or has caused loss, damage and/or injury to Papillon.

7. Papillon has spent hundreds of thousands of dollars each year in advertising, promotion and protection of the DIVA Marks in the United States.

8. As a result of its extensive use and advertising, Papillon has built-up valuable and substantial goodwill in the DIVA Marks such that the DIVA Marks have come to identify Papillon's products and distinguish Papillon's products from the products of others.

#### **Applicant's Confusingly Similar Mark**

9. The GOD'S D.I.V.A. Mark is confusingly and deceptively similar to Papillon's DIVA Marks such that the use and registration of the Mark will likely cause confusion, mistake and deception of the trade and purchasing public.

10. Upon information and belief, the footwear identified in Application No. 85/568779 for the GOD'S D.I.V.A. Mark and the goods offered by Papillon are both in the same industry and are of the type which could be purchased by the same customers.

11. Applicant's GOD'S D.I.V.A. Mark wholly incorporates the most dominant feature of Papillon's DIVA Marks. The most dominant feature of Papillon's DIVA Marks is the term "DIVA", and allowing Applicant to use this dominant feature in its GOD'S D.I.V.A. Mark is likely to create confusion among consumers. Such confusion, mistake or deception regarding the origin of Applicant's goods or their affiliation with, endorsement by, or sponsorship by Papillon will cause loss, damage, and/or injury to Papillon and/or to the public.

### **Applicant's Infringement of Papillon's Marks**

12. If the GOD'S D.I.V.A. Mark is registered and Applicant uses the GOD'S D.I.V.A. Mark, consumers will likely believe that Applicant's goods are provided, sponsored, affiliated or endorsed by Papillon, all to the detriment of Papillon.

13. In view of the significant goodwill and reputation of the trademarks of Papillon, and the virtually identical nature of the goods, concurrent use of the GOD'S D.I.V.A. Mark by Applicant and the DIVA Marks by Papillon will confuse customers into believing that Applicant's use of the GOD'S D.I.V.A. Mark is somehow affiliated with, sponsored or supported by Papillon. Therefore, and in accordance with Section 2(d) of the Trademark (Lanham) Act of 1946, 15 U.S.C. § 1052(d), the GOD'S D.I.V.A. Mark should not be granted registration because its use as a source identifier is likely to cause confusion with Papillon's DIVA Marks as to the source, sponsorship or affiliation of Applicant's goods.

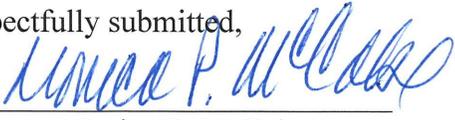
14. If Applicant is granted registration of the mark herein opposed, it would thereby obtain a prima facie exclusive right to the GOD'S D.I.V.A. Mark. Such registration would be gravely damaging to Papillon.

15. Papillon hereby appoints Monica P. McCabe, a member of the Bar of the State of New York, its attorney to prosecute the above Opposition with full power of substitution and revocation and to transact all business in the USPTO in connection therewith. The correspondence address for Papillon's counsel is listed on the following page.

WHEREFORE, Papillon believes that it has been, is, and/or will be damaged by said application and prays that the application is rejected, that no registration be issued thereon and that this Opposition be sustained in favor of Papillon.

Date: New York, New York  
November 26, 2012

Respectfully submitted,

By: 

Monica P. McCabe

Vandenberg & Feliu, LLP  
60 East 42<sup>nd</sup> Street, 51<sup>st</sup> Floor  
New York, New York 10165  
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*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I, Ilene Valentin, hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the Registrant, by depositing a true copy of the same with the United States Postal Service as first-class mail, postage prepaid, this 26<sup>th</sup> day of November, 2012 to the following address:

Dated: November 26<sup>th</sup>, 2012



Ilene Valentin