

ESTTA Tracking number: **ESTTA517724**

Filing date: **01/23/2013**

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	Arthur Gross III
Granted to Date of previous extension	01/23/2013
Address	12 Medici Aisle Irvine, CA 92606 UNITED STATES

Correspondence information	Arthur Gross III 12 Medici Aisle Irvine, CA 92606 UNITED STATES art@magnumcellars.com
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**Applicant Information**

Application No	85637842	Publication date	09/25/2012
Opposition Filing Date	01/23/2013	Opposition Period Ends	01/23/2013
Applicant	MBG Apparel, Inc. 18520 NW 67th Ave #131 Miami Lakes, FL 33015 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. All goods and services in the class are opposed, namely: Hats for infants, babies, toddlers and children; Shirts for infants, babies, toddlers and children
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**Grounds for Opposition**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3951127	Application Date	07/30/2007
Registration Date	04/26/2011	Foreign Priority	NONE

		Date	
Word Mark	MADE BY GOD		
Design Mark	<h1>Made By God</h1>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2007/01/10 First Use In Commerce: 2007/07/23 Temporary tattoos Class 024. First use: First Use: 2006/10/15 First Use In Commerce: 2007/05/01 Textile labels Class 025. First use: First Use: 2006/10/15 First Use In Commerce: 2007/05/01 Bras; Sports bra; Panties; Panties, shorts and briefs; Shorts; Shirts; Sport shirts; Sports shirts; T-shirts; Cloth bibs; Infant wear; Straps for bras; Sweat shorts; Pants; Textile diapers		

U.S. Registration No.	3507191	Application Date	07/14/2007
Registration Date	09/30/2008	Foreign Priority Date	NONE
Word Mark	MADE BY GOD		
Design Mark	<h1>Made By God</h1>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2007/01/10 First Use In Commerce: 2007/05/01 Promoting public awareness of God		

U.S. Registration No.	4238478	Application Date	04/09/2011
Registration Date	11/06/2012	Foreign Priority Date	NONE
Word Mark	MADE BY GOD		

Design Mark	<h1>Made by God</h1>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2011/04/08 First Use In Commerce: 2012/09/07 Magnetic coded gift cards; Magnetic identifying cards; Magnetically encoded credit cards; Magnetically encoded debit cards; Magnetically encoded identity cards; Magnetically encoded key cards

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MBG Kids		
Goods/Services	Newborn, toddler, children and adult Clothing.		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MBGKIDS, MBG Kids-ware		
Goods/Services	Goods and Services:Newborn, toddler, children and adult Clothing.		

Related Proceedings	11 CV 23028 for MBG and Made by God marks
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Attachments	77241911#TMSN.jpeg ( 1 page )( bytes ) 77229888#TMSN.jpeg ( 1 page )( bytes ) 85290918#TMSN.jpeg ( 1 page )( bytes ) Opposition MBGKIDS.pdf ( 16 pages )(346904 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	/ArthurGrossIII/
Name	Arthur Gross III
Date	01/23/2013

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

Arthur Gross III,

Opposer,

v.

MBG Apparel, Inc.

Applicant,

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**PETITIONER' OPPOSITION TO THE REGISTRATION OF THE TRADEMARK  
"1(B) INTENT TO USE" APPLICATION SERIAL NO. 85637842**

Petitioner, Arthur Gross III, an individual, ("Gross") located at 12 Medici Aisle Irvine, CA 92606, hereby petitions to Oppose Serial No. 85637842, allegedly owned by Respondent, MBG Apparel, Inc., CORPORATION FLORIDA #131 18520 NW 67Th Ave Miami FLORIDA 33015, (hereafter "MBGA").

## BRIEF STATEMENT OF FACTS

1. Gross over the past six years has been building the brand “MADE BY GOD®”, MBG™ and MBG Kids-Ware™ at a great expense to the Gross. Gross also owns the Made by God Corporation, incorporated in California in 2007. At all times from its inception throughout today and continuing, Gross has been manufacturing, licensing, selling, advertising the Made By God®, MBG™ and MBG Kids-Ware™ products and services’, growing it into what is quickly becoming a famous brand. There have been over 100 news articles and web blogs throughout the country, especially through the southern states including the Atlanta Business News on April 22, 2010 about Made by God® and trademark infringement lawsuits.
2. On or around February 2006, Gross develops the concept of “Made by God” goods and services in Irvine, California. Gross originally developed “Made by God” labeled T-Shirts, sweat shirts and pants and sold them locally to local shops and swap meets.
3. After a very successful year Gross further develops “Made by God” “MBG™” and “MBG Kids-Ware™” labeled items including baby clothes, women’s ware, men’s golf shirts, glassware, key chains, bracelets, necklace’s, earrings, temporary tattoos and other merchandise.
4. On or about July 5th of 2007, Gross files “Made by God” as a word mark in the United States Patent and Trademark Office (“USPTO”) as a service mark for “Promoting public awareness of God”. The “Made by God” word mark matured into Registration Number 3507191, International Class 035, Registration Date September 30, 2008.

5. On or about July 30th of 2007, Gross files “Made by God” as a word mark in the United States Patent and Trademark Office (“USPTO”) as a Trademark for numerous goods and products. The “Made by God” word mark matured into Registration Number 3951127, International Classes 016, 024 and 25.

6. On or about August 08, 2007, Gross registers Made By God as a California Corporation. Made By God Corporation is not a party to this case.

7. On or about September of 2007, Gross registers MadeByGod.info and offers his goods and services nationally and internationally on the internet at that address. Prior to the MadeByGod.info site the goods and services were available on other websites.

8. On or about April 9, 2011, Gross files “Made by God” as a word mark in the United States Patent and Trademark Office (“USPTO”) as a Trademark serial No. 85290918 for IC 009. US 021 023 026 036 038. The “Made by God” word mark matured into Registration Number 4238478. G & S: Magnetic coded gift cards; Magnetic identifying cards; Magnetically encoded credit cards; Magnetically encoded debit cards; Magnetically encoded identity cards; Magnetically encoded key cards. The “Made by God” word mark received a Notice of allowance on March 13, 2012.

9. At all times from its inception throughout today and continuing, Gross has been manufacturing, licensing, selling, advertising the “Made by God” “MBG™” and “MBG Kids-Ware™” products and services, growing it into what is quickly becoming a famous brand. There have been over 100 news articles and web blogs throughout the country and especially through the southern states including the Atlanta Business News on April 22, 2010 about Made by God and trademark infringement lawsuits. GROSS filed a Trademark infringement lawsuit against MBGA in October 2011. January 2012 GROSS receives a default judgment against MBGA. It was found that the address for MBGA was not a legal address for an agent of service but it was an un-servable PO Box. The same PO Box as on MBGA’s application. MBGA’s counsel was able to set aside default judgment and this litigation is currently ongoing. After being sued for trademark management for “Made by God” and MBG marks, MBGA actually attempts to file with the US patent office the identical marks. The trademark office rejected the Made by God marks and deemed MBGA infringed on GROSS’S marks and suspended the MBG marks until a determination is made by the court. On May 29, 2012, nine months after being sued for trademark infringement MBGA files this trademark application as MBGKIDS as a means to intentionally infringe on GROSS’s marks. The trademark office automatically separated the words as Pseudo Mark ... “MBG Kids” two words. On MBGA website and numerous advertisements on the web MBGA represents the world that the MBG means Made by God, clearly falsely representing a connection with GROSS’ marks.

Please see Exhibit 1 and Exhibit 2.

10. All Trademarks are registered and owned by Arthur Gross III, individually and exclusively. Gross has standing to make this opposition. Arthur Gross has actively policed these trademarks; over the last 5 years, Gross has written 56 Cease and Desist letters and engaged in several litigations all over the country, including the USPTO (TTAB). Gross has prevailed on all litigations as the rightful owner of the Made by God trademarks and original owner of the Made by God Corporation.

11. MBGA is attempting to illegally use Gross's trademark "MBG Kids-Ware™" similar/identically to the demise of the Gross as better expressed throughout. MBGA have never developed any trademarks whatsoever, anywhere and has signed a declaration to that effect in their "1(b) intent to use" application Serial No. 85637842 and fraudulently attempts to circumvent Trademark law by filing the mark in a different category. IC 025. US 022 039. G & S: Clothing- Hats for infants, babies, toddlers and children; Shirts for infants, babies, toddlers and children. MBGA's use of this mark as proposed will damage Gross as the general public will be confused and deceived as to the origin of the goods and services costing Gross loss of sales and money. MBGA's similar/identical use of Gross's brand is common infringement, fraudulent infringement, falsely suggests a connection with opposer and dilutes opposers marks.

12. Gross has been manufacturing and selling "Made by God ®" "MBG™" and "MBG Kids-Ware™" brand clothing for newborns, toddlers, children and adults since 2008. The clothing has been available on Gross's website [www.madebygod.info](http://www.madebygod.info) or [www.Made-by-God.com](http://www.Made-by-God.com). Through the use and sales by interstate commerce that has been available in all the states in the U.S., at the very least Gross has a common law mark on MBG Kids-Ware throughout the U.S.

As grounds for rejection, Gross alleges:

13. Gross files application Serial No. 77229888 ("MADE By GOD Application,)", which matured into Registration No.3,507,191 ("MADE By GOD Registration,,"), was filed on July 14, 2007 pursuant to Section 1(a) of the Trademark Act (15 U.S.C. § 1051), seeking registration of the MADE BY GOD mark for "Promoting public awareness of God" ("MADE BY GOD Mark") first use date of January 10, 2007 and a first use in commerce date of May 1, 2007.

14. Gross files application Serial No. 77241911 ("MADE By GOD Application,)", which matured into Registration No.3,951,127 ("MADE By GOD Registration"), was filed on July 14, 2007 pursuant to Section 1(a) of the Trademark Act (15 U.S.C. § 1051), seeking registration of the MADE BY GOD mark for IC16, IC24 and IC25 for numerous goods and services ("MADE BY GOD Mark") first use date of 10/15/2006 and a first use in commerce date of May 1, 2007. GROSS has been sell clothing, as stated above, as "MBG™" and "MBG Kids-Ware™" all in connection with these marks.

15. MBG filed an application, Serial No. 85637842, to register the mark MBGKIDS on MAY 29, 2012 for IC 025...Hats for infants, babies, toddlers and children; Shirts for infants, babies, toddlers and children.

16. MBGA has never used the MBGKIDS marks in interstate commerce or locally on any products whatsoever.

17. Gross avers, for the purposes of this proceeding, that MBGA's use of the mark Serial No. 85637842 is likely to cause mistake or confusion, or to deceive.

18. Gross's use of the MBG Kids-Ware, mark for clothing predates MBGA's 1(b) "intent to use application" for use of the mark Serial No. 85637842 by over 5 years.

19. Gross is thus entitled to rejection of the MBGA application, Serial No. 85637842 due to Gross's priority of use.

20. Alternatively the MBGA's Mark is not presently in use in commerce in the United States with the goods/services identified in the MADE BY GOD application.

21. Alternatively MBGA's president Mayra Guzman falsified her declaration, which states in pertinent part:

"...he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause

confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true;...”

In August of 2011 Mayra Guzman was sued in the District Court in Southern Florida, CASE NO.11 CV 23028 UU, by Gross for infringement, identity theft and other allegations regarding her illegal use of the Made by God marks. On September 26, 2011, Mayra Guzman opens MBG Apparel, Inc. in an attempt to circumvent the lawsuit. At all times when filing application Serial No. 85637842 Mayra Guzman and MBG knew they were infringing despite the verified language in the statutory declaration.

22. Alternatively MBGA’s president Mayra Guzman falsified her application and declaration as she cannot read, write, understand or speak English; a declaration to this fact was submitted to the District court, CASE NO.11 CV 23028 UU; which places the application Serial No. 85637842 and the declaration in violation of 37 CFR 1.69 Foreign language oaths and declarations.

23. Alternatively, based on information and belief, MBGA’s president Mayra Guzman falsified her application as she is not a citizen of the United States and is not entitled to registration as filed.

24. Accordingly, because the MBGA application and use of the MBGKIDS mark, the registration should also be refused pursuant to Trademark Act Section 14, 15 U.S.C. §1064(3).

25. Alternatively MBGA application and use of the Mark MBGKIDS Serial No. 85637842, falsely suggests a connection with opposer.

26. The MBGA application and use of the Mark MBGKIDS Serial No. 85637842 is an infringement on Gross's Marks.

WHEREFORE, Petitioner prays that this Petition for Opposition be GRANTED, for application Serial No. 85637842, MBGKIDS and its Pseudo Mark MBG Kids be rejected from Registration with the USPTO.

Respectfully submitted,

Dated: January 23, 2013

A handwritten signature in cursive script that reads "Arthur Gross III". The signature is written in dark ink and is positioned above the typed name of the signatory.

Arthur Gross III, ProSe

12 Medici Aisle  
Irvine, CA 92606  
949-679-4858

PROOF OF SERVICE

I, Arthur Gross III, hereby declare under the penalty of perjury that I served  
“ PETITIONER’ OPPOSITION TO THE REGISTRATION OF THE TRADEMARK “1(B)  
INTENT TO USE” APPLICATION SERIAL NO. 85637842 ” in a sealed envelope, postage  
paid, by U.S. First Class Mail, at the US Post Office in the City of Irvine, CA 92606 on January  
13, 2013, at 3:30 pm. To the following recipient and address:

MBG Apparel, Inc.,  
#131 18520 NW 67Th Ave  
Miami FLORIDA 33015

Date: January, 23 2013

A handwritten signature in cursive script that reads "Arthur Gross III". The signature is written in dark ink and is positioned above the printed name.

Arthur Gross III

# EXHIBIT 1



August 20, 2012 05:39 PM Eastern Time

## MBGKids Street Wear Offers Clothing Children Will Love to Wear While Delivering a Message that Will Never Wear Out

MIAMI--(BUSINESS WIRE)--Finally flawless, MBGKids is eager to announce the launch of their kids streetwear line. It's been over a year in the making, but founder Andrew Guzman and his team firmly believe they've created something special. With eye-catching graphics, high-quality fabrics and inspirational messages, MBGKids' t-shirts are fit to knock the fashion industry's socks off.

"Believe me, MBG didn't happen overnight," says Guzman. "We put together talented individuals who have worked with reputable streetwear brands to get this project launched. Our mission is to have kids connect with the MBG motto [Be Brilliant. Be Better. Be MADE.]"

"We put together talented individuals who have worked with reputable streetwear brands to get this project launched. Our mission is to have kids connect with the MBG motto [Be Brilliant. Be Better. Be MADE.]"

Going for as low as \$22 on their website [www.mbgkids.com](http://www.mbgkids.com), MBGKids' apparel will turn heads and break necks without breaking the bank. Displaying the right blend of street and style, this edgy brand's goal is to help children realize that there are no obstacles too great to overcome. In addition to the line's message, each shirt's fabric rivals the material found in high-end department stores – a combination distinguishing MBGKids as not only a well-rounded brand, but also a parent's dream.

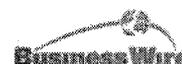
Kids' streetwear is the primary focus for Guzman and his team at the moment. However, girl's attire will be released this fall. In addition to clothing, MBG will also offer a selection of accessories to complement the line.

### About MBGKids:

Based out of Miami, MBGKids is the first ever exclusive kids street wear line for children. The acronym stands for "Made By God" – a name chosen as the ultimate reminder that all kids are special. The brand, which is 100% "Made" in the USA, strives to remind kids that they are part of something big, huge! Aside from having the highest quality fabrics, the blend of street, style and sophistication is what sets MBG apart! With the motto – Be brilliant. Be better. Be MADE – founder Andrew Guzman anticipates any kid wearing MBG will feel inspired to be great while being dressed exceptionally. Currently, MBG offers boys' t-shirts but, the line is quickly expanding to include girls' apparel (plus posters, hats, sweaters and more). Looking to change children's lives one shirt at a time, MBG intends on having not only an elite clothing brand, but a creation that kids will connect with.

### Contacts

SpinHouse PR  
Michelle Fonticiella, 786-220-0606  
[Michelle@spinhouse-pr.com](mailto:Michelle@spinhouse-pr.com)



# EXHIBIT 2

Examiner.com

## Back-to-school fashion: Children's streetwear with a positive message for kids (Photos)

BACK-TO-SCHOOL FASHION | SEPTEMBER 21, 2012 | BY: DEIRDRE HAGGERTY |

6 photos

[View the full slideshow »](#)



### RELATED TOPICS

- **Back-To-School Fashion streetwear**  
(<http://www.examiner.com/topic/backtoschool-fashion/articles>)
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- **Urban Fashion**  
(<http://www.examiner.com/topic/urban-fashion>)
- **Children's clothes**  
(<http://www.examiner.com>)

MBG Kids, the children's streetwear (<http://www.examiner.com/topic/streetwear>) line for boys, with girls fashion coming soon, provides a positive message for American kids, just in time for back-to-school (<http://www.examiner.com/article/back-to-school-managing-curly-hair-with-the-right-products>). The affordable and fashionable graphic t-shirts are a must-have clothing item for school aged boys.

Andrew Guzman, owner and creator of MBG Kids (<http://www.mbgkids.com/aboutus>), the children's streetwear line with a positive message for the youth of the country, enlightened the Examiner

[/topic/childrens-clothes](#)  
[/articles](#)

<http://www.examiner.com/womens-style-in-long-island/deirdre-haggerty> on his vision during an exclusive interview.

**View slideshow: MBG Kids** (<http://www.examiner.com/slideshow/mbg-kids-1>)

**“** *What was your inspiration behind MBG Kids? “My mother inspired me to be the best I could and not take no for an answer. Growing up poor throughout the USA and in the Dominican Republic pushed me to overcome and I want to tell kids they can do the same.*

- **What do you hope to accomplish with the message you have for kids?** *“We live in a country full of opposition, where “No” holds kids back. The message of “Leaders Never Follow” motivates against that. It is a powerful saying for children.”*

MBG Kids is a line of streetwear clothing for children with “eye-catching graphics, high-quality fabrics and inspirational messages” recently launched and just in time for **back-to-school** (<http://www.examiner.com/article/why-a-catholic-education-on-long-island-is-the-right-choice>) fashion. Guzman is hoping the motto of “Be Brilliant. Be Better. Be MADE” catches on with kids and they can connect to its inspirational message while displaying them proudly upon their t-shirts.

As a mother of boys and writer of **fashion** (<http://www.examiner.com/article/new-york-fashion-week-betsey-johnson-celebrates-70-style>) and women's style, having sampled a toddler t-shirt with the message “Leaders of Tomorrow Never Follow,” this Examiner can attest that the quality of fabric is everything MBG Kids claims it is; durable, soft and affordable. See the **slideshow** (<http://www.examiner.com/slideshow/mbg-kids-1>) for real kids modeling the urban line of boys' **fashion** (<http://www.examiner.com/article/fashion-week-and-charlotte-ronson-wow-new-york-with-spring-2013-collections>).

Based out of Miami, **MBG Kids** (<http://www.mbgkids.com/>) is an acronym meaning Made by God and the first ever-exclusive streetwear line for kids. Boys clothing may be the primary focus of Guzman and his style team at the moment, however, an urban line for girls along with MBG accessories is coming this fall and will be available for parent's to purchase.

The children's streetwear line that sends a positive message is available on the **MBG** (<http://www.mbgkids.com/shop.html>) website just in time for **back-to-school** (<http://www.examiner.com/article/back-to-school-tips-for-managing-curly-hair>) fashion.

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**“** *The author receives no compensation from any PR Firm for the above recommendation and is not responsible for any effects, positive or negative, that*

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#### **Deirdre Haggerty, Women's Style Examiner**

A NY State licensed cosmetologist, Deirdre has been actively involved in the hair and beauty industry on Long Island for the past 25 years. Having worked as a stylist in salons, as an independent contractor for weddings and been a business owner, compiled with her passion for writing, her...