

ESTTA Tracking number: **ESTTA587573**

Filing date: **02/17/2014**

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                                  | Aeropostale Procurement Company, Inc.                                 |
| Granted to Date of previous extension | 02/26/2014  |
| Address                               | 112 W. 34th Street, 22nd Floor<br>New York, NY 10120<br>UNITED STATES |

|                      |   |
|----------------------|---|
| Attorney information | Bret J. Danow<br>Katten Muchin Rosenman LLP<br>575 Madison Avenue<br>New York, NY 10022<br>UNITED STATES<br>bret.danow@kattenlaw.com Phone:212-940-8800 |
|----------------------|---|

### Applicant Information

|                        |  |                        |            |
|------------------------|--|------------------------|------------|
| Application No         | 85786202   | Publication date       | 10/29/2013 |
| Opposition Filing Date | 02/17/2014   | Opposition Period Ends | 02/26/2014 |
| Applicant              | Bars, Mehmet Gokhan<br>Tepeustu Mahallesi, Erdem Sokak, No.9<br>Umraniye, Istanbul, TRX<br>TRX |                        |            |

### Goods/Services Affected by Opposition

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| <p>Class 025. First Use: 2010/10/01 First Use In Commerce: 2010/10/01<br/>All goods and services in the class are opposed, namely: A-shirts; Adult novelty gag clothing item, namely, socks; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shirts; Babies' pants; Babylayettes for clothing; Baseball caps; Baseball caps and hats; Belts; Belts for clothing; Belts made out of cloth; Body shirts; Bottoms; Button down shirts; Button-front aloha shirts; Camouflage shirts; Camp shirts; Cap peaks; Cap visors; Caps; Caps with visors; Children's and infants' cloth bibs; 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 athletic use, namely, padded shorts; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; Clothing items, namely, adhesive pockets that may be affixed directly to the inside of clothing for storage and safekeeping of personal items; Clothing items, namely, blindfolds worn over the eyes; Clothing, namely, arm warmers; Clothing, namely, athletic sleeves; Clothing, namely, base layers; Clothing, namely, cowls and smoke ring scarves; Clothing, namely, crops; Clothing, namely, khakis; Clothing, namely, neck tubes; Collared shirts; Combinations; Dress shirts; Dusters; Eyeshades; Fishing shirts; Gloves as clothing; Golf caps; Golf pants, shirts and</p> |
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skirts; Golf shirts; Hat bands; Hats; Hats for infants, babies, toddlers and children; Headbands for clothing; Headgear, namely, hats, caps, berets, helmets; Hooded sweat shirts; Hoods; Hunting shirts; Infant and toddler one piece clothing; Jackets; Jerseys; Knit shirts; Knitted caps; Knot caps; Leather belts; Leather hats; Long-sleeved shirts; Maternity clothing, namely, dresses, pants, shirts, blouses; Moisture-wicking sports shirts; Mufflers; Night shirts; Non-disposable cloth training pants; Open-necked shirts; Over shirts; Perspiration absorbent strap to be used in the bill of a hat; Perspiration absorbent underwear clothing; Pique shirts; Polo shirts; Rain hats; Rugby shirts; Scientific and technological apparel, namely, shirts, pants, jackets, footwear, hats and caps, uniforms; Shirts; Shirts and short-sleeved shirts; Shirts and slippers; Shirts for infants, babies, toddlers and children; Shirts for suits; Short sets; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sleep shirts; Sport shirts; Sports caps and hats; Sports shirts; Sports shirts with short sleeves; Sun protective clothing, namely, shirts, pants, dresses, hats; Sweat shirts; Swim caps; Swimming caps; Swimming caps; T-shirts; T-shirts for babies, men and women; Ties; Toboggan hats, pants and caps; Toe caps; Tops; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Turtle neck shirts; Wearable garments and clothing, namely, shirts; Wind shirts; Women's clothing, namely, shirts, dresses, skirts, blouses; Women's hats and hoods; Woolly hats; Wrist bands; Wristbands; Yoga shirts

## Grounds for Opposition

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

## Marks Cited by Opposer as Basis for Opposition

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 4299932  | Application Date      | 05/03/2011 |
| Registration Date     | 03/12/2013   | Foreign Priority Date | NONE       |
| Word Mark             | AERO   |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | <p>Class 014. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01<br/>Body jewelry; Bracelets; Charms; Chokers; Earrings; Jewelry and imitation jewelry; Necklaces; Rings</p> <p>Class 018. First use: First Use: 2001/10/28 First Use In Commerce: 2001/10/28<br/>All-purpose athletic bags; All-purpose carrying bags; Backpacks; Beach bags; Book bags; Cosmetic bags sold empty; Handbags; Messenger bags; Pocket wallets; Pocketbooks; Sport bags; Tote bags; Umbrellas; Wallets</p> <p>Class 025. First use: First Use: 2001/10/28 First Use In Commerce: 2001/10/28<br/>Beach cover-ups; Belts; Blouses; Board shorts; [ Boots; ] Boxer shorts; Button down shirts; Caps; Coats for men and women; Collared shirts; Fleece bottoms; Fleece tops; [ Flip flops; ] Hats; Hooded sweatshirts; Hosiery; Jackets; Jeans; Knit shirts; Long-sleeved shirts; Loungewear; Pajamas; Panties, shorts and briefs; Pants; Polo shirts; [ Sandals and beach shoes; ] Shirts; [ Shoes; ] Shorts;</p> |                       |            |

|  |  |
|--|--|
|  | Skirts and dresses; [ Sneakers; ] Socks; Sweat pants; Sweaters; Sweatshirts; Swimsuits; T-shirts; Tank tops; Tights; Underwear |
|--|--|

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3545732  | Application Date      | 01/02/2007 |
| Registration Date     | 12/16/2008   | Foreign Priority Date | NONE       |
| Word Mark             | AERO   |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | The mark consists of the word AERO with swirling lines on either side.   |                       |            |
| Goods/Services        | Class 018. First use: First Use: 2004/03/01 First Use In Commerce: 2004/03/01 wallets, tote bags, hand bags, shoulderbags, pocket books and messenger bags |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3529688  | Application Date      | 01/02/2007 |
| Registration Date     | 11/11/2008   | Foreign Priority Date | NONE       |
| Word Mark             | AERO   |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | The mark consists of the word "AERO" with two hearts in the upper left-hand corner.  |                       |            |
| Goods/Services        | Class 018. First use: First Use: 2004/03/01 First Use In Commerce: 2004/03/01 wallets, tote bags, hand bags, shoulderbags, pocket books and messenger bags |                       |            |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2911335    | Application Date      | 03/13/2000 |
| Registration Date     | 12/14/2004 | Foreign Priority Date | NONE       |
| Word Mark             | AERO       |                       |            |

|                     |  |  |  |
|---------------------|--|--|--|
| Design Mark         |   |  |  |
| Description of Mark | NONE   |  |  |
| Goods/Services      | Class 025. First use: First Use: 2004/01/12 First Use In Commerce: 2004/01/12 CHILDREN'S CLOTHING, NAMELY, SHIRTS, PANTS, JACKETS, VESTS, SOCKS, CAPS, HATS, JEANS, SWEATERS, SWEATSHIRTS, T-SHIRTS, TOPS, WARM-UP SUITS |  |  |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2937762  | Application Date      | 08/19/2003 |
| Registration Date     | 04/05/2005   | Foreign Priority Date | NONE       |
| Word Mark             | AERO   |                       |            |
| Design Mark           |                     |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 025. First use: First Use: 2003/01/14 First Use In Commerce: 2003/01/14 Clothing namely t-shirts |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2927817  | Application Date      | 07/09/2003 |
| Registration Date     | 02/22/2005   | Foreign Priority Date | NONE       |
| Word Mark             | AERO ATHLETICS   |                       |            |
| Design Mark           |  |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 025. First use: First Use: 2001/10/28 First Use In Commerce: 2001/10/28 Clothing, namely, shirts, sweatshirts, t-shirts, sweat pants, tank tops, jackets, caps, pants and shorts |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3321655  | Application Date      | 05/23/2006 |
| Registration Date     | 10/23/2007   | Foreign Priority Date | NONE       |
| Word Mark             | AERO SAND SPEAKERS   |                       |            |
| Design Mark           |      |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 025. First use: First Use: 2007/02/28 First Use In Commerce: 2007/02/28 Footwear |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3289070  | Application Date      | 05/23/2006 |
| Registration Date     | 09/04/2007   | Foreign Priority Date | NONE       |
| Word Mark             | AERO DUO CAP   |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 025. First use: First Use: 2006/06/12 First Use In Commerce: 2006/06/12 Headwear |                       |            |

|             |   |
|-------------|---|
| Attachments | 85310708#TMSN.jpeg( bytes )<br>77074477#TMSN.jpeg( bytes )<br>77074489#TMSN.jpeg( bytes )<br>75942762#TMSN.gif( bytes )<br>78289477#TMSN.gif( bytes )<br>78890648#TMSN.jpeg( bytes )<br>78890652#TMSN.jpeg( bytes )<br>AEROWINGS.pdf(201755 bytes ) |
|-------------|---|

## 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 | /Bret J. Danow/ |
| Name      | Bret J. Danow   |
| Date      | 02/17/2014      |

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

|  |   |                        |
|--|---|------------------------|
| Aeropostale Procurement Company, Inc., | ) |                        |
|  | ) |                        |
| Opposer,                               | ) |                        |
|  | ) |                        |
| v.                                     | ) | <b>Mark: AEROWINGS</b> |
|  | ) |                        |
| Mehmet Gokhan Bars,                    | ) | App. No.: 85/786,202   |
|  | ) |                        |
| Applicant.                             | ) |                        |

***FILED ELECTRONICALLY VIA ESTAA***

**NOTICE OF OPPOSITION**

In the matter of U.S. Trademark Application Serial No. 85/786,202 for the mark AEROWINGS, filed November 23, 2012 by Mehmet Gokhan Bars (“Applicant”) and published for opposition in the U.S. Patent and Trademark Office on October 29, 2013, Aeropostale Procurement Company, Inc. (“Opposer”), a corporation organized and existing under the laws of the State of Delaware, having an address at 112 W. 34<sup>th</sup> Street, 22<sup>nd</sup> Floor, New York, New York 10120, believes that it will be damaged by registration of this mark and hereby opposes the same.

The grounds for the opposition are as follows:

1. Opposer, by and through its parent and affiliates, is a leading designer, manufacturer and retailer of high-quality, active-oriented, fashion merchandise and accessories. For nearly thirty years, Opposer has advertised, promoted and sold a comprehensive range of apparel and accessories under its famous and federally registered AERO names and marks.

2. Opposer operates over one thousand AEROPOSTALE stores across the United States, Puerto Rico, and Canada, all featuring Opposer’s fashion merchandise and accessories bearing Opposer’s federally registered AERO names and marks.

3. In connection with its business, Opposer is the owner of multiple federal trademark registrations for its AERO names and marks covering a wide range of apparel and accessories products (collectively, the “AERO Marks”), including, among others, the following:

- U.S. Trademark Registration No. 4,299,932 for the mark AERO, issued March 12, 2013.
- U.S. Trademark Registration No. 3,545,732 for the stylized mark AERO, issued December 16, 2008.

- U.S. Trademark Registration No. 3,529,688 for the stylized mark AERO, issued November 11, 2008.
- U.S. Trademark Registration No. 2,911,335 for the mark AERO & Design, issued December 14, 2004;
- U.S. Trademark Registration No. U.S. Registration No. 2,937,762 for the mark AERO & Design, issued April 5, 2005.
- U.S. Registration No. 2,927,817 for the mark AERO ATHLETICS, issued February 22, 2005.
- U.S. Registration No. 3,321,655 for the mark AERO SAND SPEAKERS, issued October 23, 2007.
- U.S. Registration No. 3,289,070 for the mark AERO DUO CAP, issued September 4, 2007.

4. Each and all of the AERO Marks are valid and subsisting and in full force and effect, and are conclusive evidence of Opposer's right to use said marks in commerce on and in connection with the goods listed therein.

5. By virtue of their many years of use and the wide renown acquired by the AERO Marks, these marks have developed a secondary meaning and significance to the public and the trade. Consumers have come to recognize goods identified by AERO names and marks (including, in particular, apparel) only with Opposer.

6. Since Opposer's initial use of the AERO Marks, Opposer has continually used, advertised, promoted and offered Opposer's apparel products bearing the AERO Marks to the public, with the result that members of the relevant consuming public have come to know and recognize the AERO Marks and associate them with Opposer and the apparel products offered by Opposer. Opposer has established goodwill in connection with the advertising, marketing, promotion, rendering, distribution and sale of products under each and all of the AERO Marks.

7. Prior to Applicant's filing date or any priority date that may be claimed by Applicant, Opposer has used, and is now using the AERO Marks in connection with apparel products offered by Opposer in commerce. Opposer's use of the AERO Marks has expanded over time to include a range of different apparel products and accessories.

8. Upon information and belief, on November 23, 2012, long after the adoption and use by Opposer of the AERO Marks, Applicant filed the instant Application seeking registration of the mark AEROWINGS for use on and in connection with a wide range of apparel products in International Class 25.

9. The filing dates for many of the AERO Marks pre-date Applicant's filing date or any priority date that may be claimed by Applicant.

10. The type of goods covered by the AEROWINGS Application are identical to or related to those covered by the Opposer's AERO Marks, namely, apparel.

11. Applicant's AEROWINGS mark is a simulation and colorable imitation of, and so resembles the AERO Marks as to be likely, when applied to the goods of Applicant, to cause confusion or mistake or to deceive the relevant consuming public resulting in damage and detriment to Opposer and its reputation, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Confusion is particularly likely because the Applicant's AEROWINGS mark contains Opposer's AERO mark in its entirety.

12. Upon information and belief, Applicant promotes and offers for sale its goods to the same and/or highly related general classes of consumers and through the same and/or highly related channels of trade to which Opposer promotes and sells its goods.

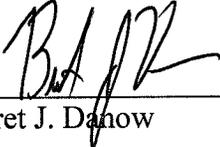
13. Members of the relevant consuming public are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's goods marketed under Applicant's alleged AEROWINGS mark and misled into believing that such goods and services are produced by, offered by, emanate from, or are in some way associated with Opposer, to the damage and detriment of Opposer and its reputation.

14. Opposer will be damaged by the confusion which will result in the marketplace if the Applicant is permitted to register the AEROWINGS mark for the specified goods and therefore, Opposer is likely to suffer damage and/or injury to its reputation and goodwill as a result thereof.

WHEREFORE, Opposer believes that it will be damaged by registration of the AEROWINGS mark, and respectfully requests that the mark shown in U.S. Trademark Application Serial No. 85/786,202 be refused and that this Opposition be sustained.

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP  
Attorneys for Opposer  
575 Madison Avenue  
New York, New York 10022-2585  
(212) 940-6365

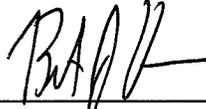
By:   
Bret J. Danow

February 17, 2014

**CERTIFICATE OF SERVICE**

I, Bret J. Danow, an attorney, hereby certify that on this 17<sup>th</sup> day of February, 2014, a copy of the foregoing Notice of Opposition against Application Serial No. 85/786,202 was served on Applicant's attorney of record via U.S. Mail at the following address:

Nusret A. Haker  
29 Broadway, Suite 1500  
New York, New York 10006-3240



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