

ESTTA Tracking number: **ESTTA627940**

Filing date: **09/18/2014**

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	10/15/2014
Address	112 W. 34th Street, 22nd Floor New York, NY 10120 UNITED STATES

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

Application No	86185148	Publication date	06/17/2014
Opposition Filing Date	09/18/2014	Opposition Period Ends	10/15/2014
Applicant	NEXIN Inc. Ste #210G El Monte, CA 91731 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Adult sexual stimulation aids, namely, vaginal vibrators and massagers

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
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	<h1>AERO</h1>
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Description of Mark	NONE
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Goods/Services	<p>Class 014. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01 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 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 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; Skirts and dresses; [Sneakers;] Socks; Sweat pants; Sweaters; Sweatshirts; Swimsuits; T-shirts; Tank tops; Tights; Underwear</p>
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U.S. Registration No.	2911335	Application Date	03/13/2000
Registration Date	12/14/2004	Foreign Priority Date	NONE

Word Mark	AERO
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Design Mark	
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Description of Mark	NONE
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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,
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	SOCKS, CAPS, HATS, JEANS, SWEATERS, SWEATSHIRTS, T-SHIRTS, TOPS, WARM-UP SUITS
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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.	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		
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U.S. Registration No.	3529688	Application Date	01/02/2007
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Registration Date	11/11/2008	Foreign Priority Date	NONE
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Word Mark	AERO		
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Design Mark			
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Description of Mark	The mark consists of the word "AERO" with two hearts in the upper left-hand corner.		
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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		
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U.S. Registration No.	4460949	Application Date	08/22/2012
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Registration Date	01/07/2014	Foreign Priority Date	NONE
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Word Mark	LIVE LOVE DREAM AERO		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 025. First use: First Use: 2011/07/14 First Use In Commerce: 2011/12/28 Clothing, namely, shirts, t-shirts, tank tops, knit shirts, yoga shirts, sweatshirts, hooded sweatshirts, sweatpants, pants, yoga pants, tracksuits, shorts, socks, sleepwear, loungewear and underwear		
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Attachments	85310708#TMSN.png(bytes) 75942762#TMSN.png(bytes) 78289477#TMSN.png(bytes) 77074477#TMSN.png(bytes) 77074489#TMSN.png(bytes) 85710464#TMSN.png(bytes) AERO Opposition.pdf(196961 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	/Bret J. Danow/
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Name	Bret J. Danow
Date	09/18/2014

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

Aéropostale Procurement Company, Inc.,)	
)	
Opposer,)	Opposition No. _____
)	
v.)	Mark: AERO
)	
NEXIN Inc.)	App. No.: 86/185,148
)	
Applicant.)	
)	

FILED ELECTRONICALLY VIA ESTAA

NOTICE OF OPPOSITION

In the matter of U.S. Trademark Application Serial No. 86/185,148 for the mark AERO, filed February 5, 2014 by NEXIN Inc. (“Applicant”) for use in connection with “Adult sexual stimulation aids, namely, vaginal vibrators and massagers, in International Class 010” and published for opposition in the U.S. Patent and Trademark Office on June 17, 2014 (the “148 Application”), Aéropostale Procurement Company, Inc. (“Opposer”), a corporation organized and existing under the laws of the State of Delaware, having an address at 112 West 34th Street, 22nd 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 over twenty five years, Opposer has advertised, promoted and sold a comprehensive range of apparel and accessories under its federally registered AERO names and marks, principally targeting 14 to 17 year-old young women and men.

2. Opposer operates 924 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 which target 14 to 17 year-old young women and men.

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 and retail store services (collectively, Opposer’s “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. 2,911,335 for the mark AERO, issued December 14, 2004;
- U.S. Trademark Registration No. U.S. Registration No. 2,937,762 for the mark AERO and 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. 3,545,732 for the mark AERO, issued December 16, 2008.
- U.S. Registration No. 3,529,688 for the mark AERO, issued November 11, 2008;
- U.S. Registration No. 4,460,949 for the mark LIVE LOVE DREAM AERO, issued January 7, 2014.

4. Each and all of Opposer's 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 and services listed therein.

5. By virtue of their many years of use and the wide renown acquired by each of Opposer's AERO Marks, these marks have developed a secondary meaning and significance to the public and the trade. Consumers have come to recognize goods and services identified by the AERO names and marks with Opposer.

6. Since its initial use of Opposer's AERO Marks, Opposer has continually used, advertised, promoted and offered Opposer's range of products bearing Opposer's AERO Marks to the public, with the result that members of the relevant consuming public have come to know and recognize Opposer's AERO Marks and associate them with Opposer and the 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 Opposer's 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 Opposer's AERO Marks in connection with a range of products offered by Opposer in commerce which has continued to expand over time.

8. Upon information and belief, on February 5, 2014, long after the adoption and use of Opposer's AERO Marks, Applicant filed the '148 Application seeking registration of the mark AERO for use on and in connection with "Adult sexual stimulation aids, namely, vaginal vibrators and massagers, in International Class 10."

9. The mark depicted in the '148 Application is identical to Opposer's AERO mark.

10. Applicant's AERO mark is a simulation and colorable imitation of, and so resembles Opposer's AERO Marks as to be likely 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).

11. Upon information and belief, 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 AERO mark and misled into believing that such goods are produced by, emanate from, or are in some way associated with Opposer, to the damage and detriment of Opposer and its reputation. Confusion is particularly concerning because of the potential negative association between the proposed use of the AERO mark by the Applicant in connection with sexual stimulation aids and a range of Opposer's AERO branded apparel and accessories which are designed for and promoted towards minors.

12. In view of the facts that: (1) the mark depicted in the '148 Application is identical to the Opposer's AERO Marks; and (2) the potential negative association between the products intended to be sold under Applicant's mark and the products targeted towards minors which are sold by Opposer, Opposer will be damaged by registration of the '148 Application under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because Applicant's use of mark depicted in the '148 Application falsely suggests a connection between Applicant and Opposer, to the damage of Opposer under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

13. Opposer will be damaged by the confusion which will result in the marketplace if the Applicant is permitted to register the AERO mark for the goods specified in the '148 Application 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 '148 Application, and respectfully requests that the '148 Application be refused registration and that this Opposition be sustained.

Respectfully submitted,
KATTEN MUCHIN ROSENMAN LLP
Attorneys for Opposer
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By: 
Bret J. Danow

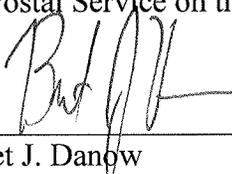
September 18, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the Notice of Opposition against Application Serial No. 86/185,148 to be served upon:

NEXIN Inc.
3360 Flair Drive, Suite #210G
El Monte, California 91731-2833

by placing same in an envelope, properly sealed and addressed, with postage prepaid and depositing same with the United States Postal Service on this 18th day of September, 2014



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