

ESTTA Tracking number: **ESTTA632206**

Filing date: **10/10/2014**

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	Mo Industries, LLC
Granted to Date of previous extension	10/15/2014
Address	777 South Alameda Street Los Angeles, CA 90021 UNITED STATES

Attorney information	Brooks R. Bruneau Porzio, Bromberg & Newman 29 Thanet Road Suite 201 Princeton, NJ 08540 UNITED STATES brbruneau@pbnlaw.com, dmcculloch@pbnlaw.com Phone:609 924-8555
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Applicant Information

Application No	85764110	Publication date	06/17/2014
Opposition Filing Date	10/10/2014	Opposition Period Ends	10/15/2014
Applicant	Ella Rose LLC 2600 Pennsylvania Ave., NW Washington, DC 20037 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. First Use: 2007/03/00 First Use In Commerce: 2007/03/00 All goods and services in the class are opposed, namely: handbags
Class 025. First Use: 2007/03/00 First Use In Commerce: 2007/03/00 All goods and services in the class are opposed, namely: Clothing and clothing accessories, namely, shirts, scarves, ties, belts and socks

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.	2755665	Application Date	08/26/2002
Registration Date	08/26/2003	Foreign Priority Date	NONE

Word Mark	ELLA MOSS
Design Mark	ELLA MOSS
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2001/03/30 First Use In Commerce: 2001/03/30 Clothing, namely, T-shirts, tank tops, sweatshirts, shorts, [jeans,] jackets,skirts, blouses, [shoes, hats,] swimwear, dresses

U.S. Registration No.	3617459	Application Date	01/08/2008
Registration Date	05/05/2009	Foreign Priority Date	NONE

Word Mark	ELLA MOSS
Design Mark	ELLA MOSS
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2008/11/00 First Use In Commerce: 2008/11/00 On-line retail store services featuringApparel

U.S. Application No.	85394029	Application Date	08/10/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ELLA MOSS		

Design Mark	ELLA MOSS
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 retail store and on-line retail store services featuring apparel, apparel accessories, shoes, handbags

U.S. Registration No.	4321395	Application Date	09/10/2010
Registration Date	04/16/2013	Foreign Priority Date	NONE

Word Mark	ELLA MOSS
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Design Mark	
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Description of Mark	The mark consists of an image of a stylized butterfly with antennas that spell the words "ella" and "moss".
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Goods/Services	Class 035. First use: First Use: 2011/01/02 First Use In Commerce: 2011/01/02 retail store services featuring clothing and footwear; on-line retail store services featuring apparel
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U.S. Application No.	86176927	Application Date	01/28/2014
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	LITTLE ELLA BY ELLA MOSS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 0 First Use In Commerce: 0 Clothing, namely, tops, bottoms, pants,shorts, skirts, jackets, coats, sweaters, cardigans, sweatshirts, dresses, vests, jumpsuits, ties, sleepwear, lingerie,undergarments, bras, panties, robes, body shapers, camisoles, chemises, hosiery, socks, slippers, loungewear, swimwear,rompers, baby bodysuits, layettes, gloves, belts, footwear, and headwear

Attachments	76443884#TMSN.png(bytes) 77976778#TMSN.png(bytes) 85394029#TMSN.png(bytes) 85126860#TMSN.png(bytes) 86176927#TMSN.png(bytes) ELLA_ROSE_N_OF_OPP.PDF(159066 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	/brooks r. bruneau/
Name	Brooks R. Bruneau
Date	10/10/2014

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

MO INDUSTRIES, LLC, : **Opposition No.:** _____
 : **Application No.: 85/764,110**
 Opposer, :
v. : **Mark: ELLA ROSE**
 : **Published: June 17, 2014**
ELLA ROSE, LLC, : **Classes Being Opposed: 18 & 25**
 :
 Applicant. :
_____ :

NOTICE OF OPPOSITION

Mo Industries, LLC, a Delaware Limited Liability Company, with a business address of 777 South Alameda Street, Los Angeles, California 90021 (hereinafter "Opposer"), believes that it will be damaged by the registration of the above identified trademark and herein opposes the registration and alleges as follows:

1. Applicant's ELLA ROSE application seeks registration in connection with the following goods listed in Classes 18 and 25:

Handbags. (Class 18)

Clothing and clothing accessories, namely, shirts, scarves, ties, belts and socks. (Class 25)

The above listed goods are hereinafter collectively referred to as "Applicant's Goods."

2. Prior to the October 25, 2012 filing date of the ELLA ROSE Application Serial No. 85/764,110 and the 2007 claimed dates of first use, Opposer had established rights in its ELLA MOSS trademark and owns the following United States trademark registrations and approved applications:

Mark/Name	Status/Status Date	Goods/Services	Ser./Reg. No.
ELLA MOSS	Renewed August 26, 2013	(Int'l Class: 25) Clothing, namely, t-shirts, tank tops, sweatshirts, shorts, jackets, skirts, blouses, swimwear, dresses	SN:76-443884 RN:2,755,665
ELLA MOSS	Registered May 5, 2009	(Int'l Class: 35) On-line retail store services featuring apparel	SN:77-976778 RN:3,617,459
ELLA MOSS ELLA MOSS	Allowed - Intent to Use Statement of Use - Registration Review Complete September 15, 2014	(Int'l Class: 35) Retail store and on-line retail store services featuring apparel, apparel accessories, shoes, handbags	SN:85-394029
ELLA MOSS and Design 	Registered April 16, 2013	(Int'l Class: 35) Retail store services featuring clothing and footwear; on-line retail store services featuring apparel	SN:85-126860 RN:4,321,395
LITTLE ELLA BY ELLA MOSS LITTLE ELLA BY ELLA MOSS	Allowed - Intent to Use Notice of Allowance Issued August 26, 2014	(Int'l Class: 25) Clothing, namely, tops, bottoms, pants, shorts, skirts, jackets, coats, sweaters, cardigans, sweatshirts, dresses, vests, jumpsuits, ties, sleepwear, lingerie, undergarments, bras, panties, robes, body shapers, camisoles, chemises, hosiery, socks,	SN:86-176927

Mark/Name	Status/Status Date	Goods/Services	Ser./Reg. No.
		slippers, loungewear, swimwear, rompers, baby bodysuits, layettes, gloves, belts, footwear, and headwear	

The above U.S. Trademark registrations and approved applications are hereinafter referred to as "ELLA MOSS Marks."

3. Opposer's rights in its ELLA MOSS Marks were first registered in 2003 with dates of first use dating back to 2001 in connection with clothing and dating back to 2008 in connection with retail store services.

4. Applicant seeks to register ELLA ROSE in connection with handbags in Class 18 and clothing in Class 25.

5. The Applicant has taken the ELLA MOSS trademark and revised the second word from "MOSS" to "ROSE" to maintain the second word as four letters, as well as using the common letters "O" and "S" in the same position.

6. As a result the term "ELLA ROSE" has nearly the same look, pronunciation and connotation as Opposer's "ELLA MOSS" Marks.

7. Consumers are likely to mistake the ELLA ROSE trademark for that of ELLA MOSS and/or believe that the ELLA ROSE trademark represents a related product line or related brand to that represented by the ELLA MOSS Marks.

8. There is no doubt as to seniority in this case. The Opposer's earliest date of first use is six years before the claimed dates of first use of the Applicant.

9. Because of the strongly similar nature of Applicant's ELLA ROSE mark to Opposer's ELLA MOSS Marks, and the relatedness of the goods offered by Applicant under its

ELLA ROSE mark to the goods and services offered or to be offered by Opposer in connection with its ELLA MOSS Marks, such use by Applicant of its ELLA ROSE mark is likely to cause a belief by consumers that Applicant's goods are those of Opposer or are otherwise endorsed by, sponsored by, or approved by Opposer, causing damage to Opposer. Moreover, any faults, disappointments, complaints or other dissatisfactions that a consumer might experience upon purchasing Applicant's goods will inure to the detriment of Opposer.

10. Applicant's registration of ELLA ROSE will cause confusion and mistake, or deceive consumers in the industry as to the source of the Class 18 and 25 goods bearing the ELLA ROSE trademark, as well as the source of the goods offered by Opposer under its ELLA MOSS Marks. Such registration will handicap and damage the legitimate present and future activities of Opposer by placing Applicant in a position to raise doubts as to the right of Opposer to use its ELLA MOSS Marks in connection with the goods and services identified in its U.S. registrations and approved applications as set forth above. Should the application herein opposed be granted registration, Applicant would have a presumptive right to use that trademark for the opposed goods in its application, and such use of the ELLA ROSE trademark would blur the identification of Opposer as the source of its products bearing its ELLA MOSS Marks, and tarnish the association with which said marks have come to convey. As a result, Opposer will eventually be deprived of all distinctiveness in its ELLA MOSS Marks.

WHEREFORE, Mo Industries, LLC requests that registration of Application Serial No. 85/764,110 in Classes 18 and 25 be denied, and this Opposition be sustained.

WHEREFORE, Opposer prays that the Board sustain the Opposition and refuse the registration of Applicant's Mark.

Respectfully submitted:

MO INDUSTRIES, LLC

Dated: October 10, 2014

By: /Brooks R. Bruneau/
Brooks R. Bruneau, Esq.
Attorney for Opposer
PORZIO, BROMBERG & NEWMAN, PC
29 Thanet Road, Suite 201
Princeton, NJ 08540
Tel: 609-924-8555

CERTIFICATE OF ELECTRONIC FILING

I hereby certify this Notice of Opposition was electronically filed with the Trademark Trial and Appeal Board this 10th day of October, 2014.

/Brooks R. Bruneau/
(Signature)

October 10, 2014
(Date of Signature)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Opposition was served upon Applicant's counsel of record, via First Class Mail, Postage Prepaid, on this 10th day of October, 2014 addressed to:

KIMBERLY REDDICK
RED IP LAW PLLC
1701 PENNSYLVANIA AVE NW
SUITE 300
WASHINGTON, DISTRICT OF COLUMBIA 20006-5805

Dated: October 10, 2014

By: /Brooks R. Bruneau/
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