

ESTTA Tracking number: **ESTTA638431**

Filing date: **11/12/2014**

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	DREW MASSEY		
Entity	Individual	Citizenship	United States
Address	3387 XANTHIA STREET DENVER, CO 80238 UNITED STATES		

Correspondence information	DREW MASSEY 3387 XANTHIA STREET DENVER, CO 80238 UNITED STATES massey@MYUNDIES.org
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**Applicant Information**

Application No	85776657	Publication date	11/04/2014
Opposition Filing Date	11/12/2014	Opposition Period Ends	12/04/2014
Applicant	MEUNDIES, INC. 5909 BLACKWELDER STREET CULVER CITY, CA 90232 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 2011/08/31 First Use In Commerce: 2011/12/21 All goods and services in the class are opposed, namely: Lingerie; Socks; Socks and stockings; Undergarments
Class 035. First Use: 2011/08/31 First Use In Commerce: 2011/12/21 All goods and services in the class are opposed, namely: Computerized on-line retail store services in the field of clothing and wearing apparel; On-line retail store services featuring clothing and wearing apparel; Retail apparel stores; Retail clothing boutiques; Retail outlets featuring clothing and wearing apparel; Retail store services featuring clothing and wearing apparel; Retail store services featuring clothing and wearing apparel accessible on-line and by telephone, facsimile and mail order; Vending machine services

**Grounds for Opposition**

Immoral or scandalous matter	Trademark Act section 2(a)
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)

Other	
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### Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86369587	Application Date	08/18/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MYUNDIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2009/05/20 First Use In Commerce: 2009/08/01 Underwear		

U.S. Registration No.	3688473	Application Date	10/22/2008
Registration Date	09/29/2009	Foreign Priority Date	NONE
Word Mark	MYUNDIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1999/07/31 First Use In Commerce: 2000/01/01 Clothing, namely, underwear; boxers, briefs, panties, thongs, bras, sleepwear, loungewear, shirts, shorts, jeans, pants, socks, and hats		

Related Proceedings	PROCEEDING 92055585 CANCELLATION OF MYUNDIES DUE TO A TECHNICALITY. ALSO, APPLICATION FOR MYUNDIES BASED ON PRIORITY AND COMMON LAW USAGE SERIAL #86369587
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Attachments	86369587#TMSN.png( bytes ) 77597995#TMSN.png( bytes )
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	meundies Opposition.pdf(567237 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	/Drew Massey/
Name	DREW MASSEY
Date	11/12/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
OPPOSITION TO TRADEMARK APPLICATION**

In the matter of Serial #: 85776657  
Application Filing Date: November 12, 2012  
APPLICANT: MEUNDIES, INC.  
Mark: MEUNDIES.COM

Opposition Filer: DREW MASSEY DBA MYUNDIES INC.  
Applicant for MYUNDIES trademark, Serial # 86369587  
Registrant of prior MYUNDIES approved trademark, US Registration #: 3688473

**OPPOSITION FILER'S STATEMENT OF CLAIM UPON WHICH OPPOSITION IS BASED**

The Opposition Filer requests the denial of Applicants trademark registration for MEUNDIES.COM.

Applicant has spent 3 years illegally and purposely infringing on Opposer's legal MYUNDIES trademark (US Registration # 3688473) while having two infringing applications denied and while using significant legal resources to make multiple meritless claims to cancel Opposer's legal trademark. Applicant finally succeeded in getting the Opposer's registration cancelled based on a technicality in August 2014, but Opposer still has priority and common law usage rights dating back to 2009.

Applicant has had two applications refused based on similarity and causing confusion with Opposer's legally approved and prior live trademark. While attempting to cancel Opposer's live trademark, Applicant purposely and fraudulently ignored federal copyright and trademark laws and caused harm to Opposer by diluting and causing confusion by marketing a nearly identical name for an identical product, as well immorally tarnishing the Opposer's mark by purposely advertising infringing mark on pornographic websites (see below). Further to the point, Applicant's founder and CEO has a history of fraud, deceptiveness and immoral behavior as he has been Federally prosecuted and convicted of purposely breaking federal laws (see below).

Opposer's previously live mark was cancelled in August 2014 due to the fact that the original registration for its mark in 2008 was selected as "first use in commerce" versus "intend to use" in spite of the fact that the mark

had previously been in use by an affiliated company. Opposer filed mark pro se in 2008 and selected “in use” based on this information and the fact that the Opposer had already been using said mark with designers and manufacturers. The Opposer then had the mark approved and in use in commerce for over two years prior to the infringing Applicant’s company even being in existence. Nevertheless, the trademark office cancelled the Opposer’s live mark based on the technicality and informed the Opposer that THE OPPOSER STILL HAS PRIORITY AND COMMON LAW RIGHTS. Therefore, the Opposer immediately applied for a new trademark based on actual use in commerce for the past 5 years (May 20, 2009, see serial #86369587).

Again, the Opposer has proven priority and common law trademark usage for several years prior to Applicant even being in business. Opposer therefore asks for the denial of the Applicants mark Serial #85776657 as well as the Applicants recent application Serial #86386073 filed September 5, 2014 as well as any future filings for attempted infringing marks. Opposer additionally asks for the expedited approval of its own application Serial #86369587 filed August 28, 2014 based on priority and common law first usage rights and the fact that Opposer had a prior live registered mark that was merely and inadvertently filed incorrectly—but, again, has been rectified and proven to be in use in commerce long before Applicant’s company even existed.

#### **ADDITIONAL BACKGROUND INFORMATION**

Applicant has spent the last 3 years illegally and purposely infringing on Opposer’s legal trademark—during which time its founder and CEO was Federally prosecuted and convicted of purposely breaking federal laws and is now currently in prison (see below). Applicant attempted to register an infringing mark, with just a single letter difference in names (MEUNDIES vs. Opposer’s legal registration MYUNDIES), just 2 years after the registration of Opposer’s mark (2011 versus approval of MYUNDIES mark in 2009). Applicant’s original counsel clearly failed to complete a basic trademark search prior to attempting to register infringing mark. USPTO then rightfully denied Applicant’s attempt at duplicating a valid mark. Applicant then used significant financial resources to attempt to intimidate and overwhelm rightful Opposer’s ownership and use of said mark, while at the same time ignoring intellectual property rights by selling goods with an infringing label causing confusion, dilution and irreparable harm to Opposers’ mark and brand (and then further harming Opposer’s mark by advertising on pornographic websites—see below).

Using significant legal resources, Applicant attempted any and every meritless attempt to cancel and steal Opposer's legal mark. Applicant began with a fraud claim that proved to be without merit. So Applicant fired its counsel (who also had an employee of the Applicant contact the Opposer under false pretenses after the USPTO denied Applicant's first application), and hired new counsel who amended their petition to claim abandonment, which then proved to be without merit. And then, even though Applicant had no claim or standing or use of infringing mark during questioned period, Applicant again attempted to steal Opposer's legal mark by claiming a filing technicality to cancel Opposer's legal mark by filing a new motion based on Opposer's original application choice of filing as "first use in commerce" versus "intend to use". That effort finally proved successful for the Applicant, but still does not negate Opposer's priority and common law trademark usage and rights that precede existence of Applicant's company.

Opposer therefore requests that the USPTO not allow Applicant to continue to unduly burden Opposer with another 3 years of continued litigation and business interruption for continued abuse, fraud, deceptiveness, confusion and dilution of Opposer's common law trademark MYUNDIES. **Applicant is a convicted felon who has a history of ignoring and purposely breaking Federal Laws.** Opposer therefore requests that the USPTO deny Applicant's trademark applications and to quickly approve Opposer's application.

#### **APPLICANT DOES NOT HAVE PRIORITY OR FIRST USE RIGHTS**

At the time of the Opposer's first use in commerce, the Applicant's company did not exist. Opposer has priority with first "use of product" in commerce since 2009—well before Applicant's filing of its infringing trademark registration application. Again, based on this fact and the information provided below, Opposer requests that the USPTO deny Applicant's trademark applications and to quickly approve Opposer's application.

#### **APPLICANT FAILED TO DO DUE DILIGENCE AND PURPOSELY INFRINGED ON LIVE TRADEMARK**

Applicant's prior counsel (replaced December 2012), failed to do the most basic necessary trademark research prior to the Applicant using an identical infringing mark and attempting to trademark said infringing mark. Had counsel merely completed a simple "knock-out" search and typed in the word "undies" in the USPTO.gov TESS search engine, counsel would have found fewer than 100 trademarks and would have

found the live MYUNDIES mark. At that time counsel would have seen that the Opposer's mark was a LIVE trademark and should have advised Applicant to find another mark. Any qualified intellectual property attorney would do that basic trademark search and make that determination and advise client accordingly versus attempting to duplicate a live trademark. *Either the Applicant's original counsel failed to do the most basic necessary diligence required of an intellectual property attorney (ie., type in a few variations of a client's desired trademark name into the USPTO search engine and review the results), or Applicant's counsel unwisely and illegally advised client to purposely infringe on a LIVE registered trademark with just a single letter difference for identical goods.* Either way, the USPTO correctly denied the Applicant's trademark application. TWICE. USPTO should not reward obvious lack of diligence in filing a trademark application—especially when diligence is supposedly completed by a licensed intellectual property attorney—and should not allow well-financed dishonest parties to unduly burden and attempt to browbeat legal Trademark owners with priority and common law first usage rights.

**APPLICANT, WHO HAS BEEN FEDERALLY PROSECUTED AND CONVICTED FOR FRAUDULENT ACTIVITY, IS ABUSING FEDERAL TRADEMARK PROCESS AND UNDULY BURDENING OPPOSER**

Applicant, whose founder and CEO has recently been convicted and found guilty by federal prosecutors for purposefully and fraudulently breaking Federal law, has unduly burdened Opposer for 3 years with purposeful infringement of registered mark, denigration, dilution and devaluation of live mark by association with porn, and expensive trademark litigation.

*APPLICANT IS A CONVICTED FELON WHO HAS A HISTORY OF FRAUDULENTLY AND PURPOSELY BREAKING FEDERAL LAW (See US Department of Justice Notice on Next Page)*

In 2013, the Applicant's founder and CEO, Jonathan Shokrian, was convicted of a federal crime for *purposefully and knowingly* (NOT inadvertently) breaking the law. Jonathan Shokrian has pled guilty and agreed to pay \$500,000 in connection with his plea agreement for knowingly breaking the law and has been sentenced to a year in prison. Applicant has a proven history of making personal enrichment a priority over law. He has been convicted of purposefully disregarding Federal Law and has been doing so again for three years by purposefully infringing on Opposer's federally approved, and at the time, live trademark.



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NORTHERN DISTRICT *of* TEXAS

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NEWS



## Regional Director Of Califco, LLC, A Property Management Company, Admits Violating The EPA's Clean Air Act

FOR IMMEDIATE RELEASE

June 7, 2013

### *Califco, LLC Also Pleads Guilty and Agrees to Pay a \$500,000 Fine*

**DALLAS** — Jonathan Isaac Shokrian, 28, who served as a Regional Director at Califco, LLC, with oversight of the company's business operations in Texas, appeared in federal court in Dallas today, before Chief U.S. District Judge Sidney A. Fitzwater, and pleaded guilty to an Information charging one count of failure to notify under the Clean Air Act, related to an asbestos removal project. In addition, on behalf of the corporation, Califco's President and CEO, Elias Shokrian, who is Jonathan Shokrian's father, pleaded guilty to the same offense. Today's announcement was made by U.S. Attorney Sarah R. Saldaña of the Northern District of Texas.

Califco is a property management company headquartered in Beverly Hills, California; it has a regional office located on North Story Road in Irving, Texas. Califco owns and operates several commercial properties in the Dallas area, including Plymouth Park Shopping Center on North Story Road in Irving and Crest Plaza Shopping Center on South Lancaster Road in Dallas.

Jonathan Shokrian faces a maximum statutory penalty of two years in federal prison, a \$250,000 fine and restitution. If the Court accepts the term of the government's plea agreement with the corporation, Califco will pay a \$500,000 fine and will be placed on a five-year term of probation. Sentencing is set for September 27, 2013, before U.S. District Judge Sidney A. Fitzwater.

The Clean Air Act authorizes the U.S. Environmental Protection Agency (EPA) to establish standards to prevent or limit the emission of hazardous air pollutants into the atmosphere. The EPA has enacted regulations under the Clean Air Act that control the removal, handling and disposal of asbestos.

According to documents filed in the case, Elias Shokrian hired another individual, "B.M.," to be Califco's Director of Development and supervise construction and renovation and provide oversight of asbestos abatement work. In 2008, Califco, Jonathan Shokrian and B.M. contracted with a specialized asbestos abatement contractor to remove asbestos from an old movie theater in the Crest Plaza Shopping Center. That abatement was conducted in compliance with all federal, state and local regulations and was completed in October 2008.

Approximately one month later, Jonathan Shokrian decided to conduct a renovation of the abandoned former Fazio's department store in the Plymouth Park Shopping Center. Rather than hiring a professional asbestos abatement contractor, as Califco had done on its Crest Plaza Project, Shokrian attempted to save money by employing two day laborers to remove ceiling tile and floor tile and mastic from the Fazio's building, even though he knew these materials contained asbestos.

While Califco provided the day laborers with masks, respirators and other tools to facilitate the removal of the asbestos-containing material, the masks and respirators were not adequate to protect the workers from the asbestos fiber. Neither Shokrian nor B.M. informed the day laborers on the site, or the Califco-employed maintenance worker, that there was asbestos in the tile and mastic being removed. Neither Shokrian nor B.M. notified any of the other commercial tenants of the Plymouth Park Shopping Center that asbestos-containing materials were being removed from the Fazio's building.

In mid to late February 2009, day laborers, under Shokrian's supervision, began using large amounts of gasoline to remove the remaining asbestos-containing floor tile mastic in the Fazio's building. On February 27, 2009, after responding to a call regarding the overwhelming smell of gasoline in the area around the Plymouth Park Shopping Center, the Irving Fire Department ordered the evacuation of the shopping center and a portion of a nearby residential neighborhood because of the concentration of gasoline fumes in the Fazio's building.

The investigation was conducted by the EPA and the Texas Department of State Health Services. Assistant U.S. Attorney Errin Martin is in charge of the prosecution.

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*APPLICANT'S ADDITIONAL QUESTIONABLE ACTIVITIES AND LACK OF DILIGENCE*

Additionally, the USPTO should not reward Applicant's other questionable tactics. Upon correctly being denied registration of its first infringing mark by the USPTO, Applicant's prior counsel had one of its employees (Noah Taubman) call the Opposer (who had the Live Registration at that time) and fraudulently pretend to be a college student in order to attempt to gather more information. Besides the fact that having the Applicant's employee contact Opposer under false pretenses is possible grounds for counsel's disbarment (non-disclosed agent of counsel and breach of ethics), it proves that Opposer (Registrant at that time) could be contacted and that Applicant's counsel could and should have easily done the same had he done a basic trademark search prior to attempting to register an infringing trademark. The fact that counsel never contacted Opposer, except under false pretenses AFTER Applicant's first trademark application was denied, further proves lack of diligence.

The Applicant failed to register an identical mark via USPTO as Opposer's LIVE legal trademark. The well-financed Applicant has therefore spent 3 years attempting any and all other methods to steal Opposer's mark—purposely and knowingly producing and selling products with an infringing mark, diluting a live federal mark, having counsel burden Opposer with multiple attempts to cancel a live trademark, having employees and counsel misleadingly contact Opposer, devaluing mark by associating infringing mark with pornography—rather than focus on the basic fact that Applicant is infringing on a live trademark and that Applicant has TWICE had its trademark application correctly denied by the USPTO.

*APPLICANT DENIGRATING, DILUTING AND DEVALUING MARK WITH PORN ASSOCIATION*

The Applicant is causing significant associated harm to the Opposer's common law trademark and brand by purposely and immorally advertising on pornographic websites:



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## Why One Advertiser is Betting on Porn

Jack Marshall 06.03.2013 [Follow @JackMarshall](#)

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For most mainstream advertisers, adult online content is to be avoided at all costs. But to others, it represents an opportunity to reach vast, relatively untapped audiences, often for a fraction of the cost of their regular media buys.

Startup underwear brand and retailer MeUndies, for example, has no problem aligning itself with risqué online content. This week, it's launching a display ad campaign with pornographic publisher PaintBottle.com to promote its sock ranges. Customized MeUndies ads will run alongside video content on the PaintBottle site, all of which is adult in its nature.

### CONCLUSION

The Opposer again requests an immediate denial of Applicant's trademark applications and the approval of Opposer's application post haste. Applicant failed to do the most basic due diligence prior to adopting an infringing mark and was rightfully rejected by the USPTO. Therefore all subsequent efforts by Applicant to obtain said mark should also be rejected. Furthermore, Opposer has priority and first-usage common law rights.

Again, Applicant's founder and CEO has a history of putting himself above the law and has been convicted in federal court for fraudulently and purposely breaking Federal law. Applicant has attempted all efforts to fraudulently obtain Opposer's rightful and legally owned mark. Applicant has used significant financial resources to attempt to intimidate and overwhelm rightful Opposer's ownership and use of said mark, while at the same time ignoring intellectual property rights by selling goods with an infringing label. Applicant's original counsel failed to complete a basic trademark search prior to attempting to register infringing mark. Rather than simply changing its brand name, Applicant has purposely created confusion, dilution and harm to legally owned Opposer by the continued use of a nearly identical mark. For 3 years Applicant has caused significant

harm and financial duress to Opposer. Opposer urgently requests the denial of Applicant's trademark applications and Opposer requests approval of its trademark application.

In closing, the USPTO originally denied the Applicant's attempted infringing trademark applications based on unmistakable likelihood of confusion (just ONE letter difference in the name while selling identical goods). This is still the case as Opposer has priority and common law rights to its trademark. Please do not now allow the Applicant, with a proven convicted history of thwarting Federal Law, to continue to abuse the trademark process. **As the USPTO attorney who denied the Applicant's first attempted infringing application succinctly said best to us/Opposer:**

**"It appears that you are being bullied by a party whose TM rights are junior to yours.  
I sincerely hope you prevail."**

Based on these facts, and the facts previously submitted, the Opposer urgently requests the denial of Applicant's trademark filing Serial #85776657 as well as the Applicants recent application Serial #86386073 filed September 5, 2014 as well as any future filings for attempted infringing marks. Opposer additionally asks for the expedited approval of its own application Serial #86369587 filed August 28, 2014 based on priority and common law first usage rights and the fact that Opposer had a prior live registered mark that was merely and inadvertently filed incorrectly—but, again, had been rectified and proven to have priority and be in use in commerce long before Applicant's company even existed.

Respectfully submitted,

By: /Drew Massey/

Drew Massey  
dba myUNDIES Inc.  
MYUNDIES Trademark Owner  
3387 Xanthia Street  
Denver, CO 80238

Date: November 12, 2014

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this paper has been served upon applicant's legal counsel via  
USPS at address below provided on this date.

John Crittenden  
Cooley LLP  
1299 Pennsylvania Avenue NW, Suite 700  
Washington, DC 20004

Signature: /Drew Massey/

Name: Drew Massey

Date: 11/12/14