

ESTTA Tracking number: **ESTTA670849**

Filing date: **05/06/2015**

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	Haggar Clothing Co.
Granted to Date of previous extension	05/06/2015
Address	11511 Luna Road Two Colinas Crossing Dallas, TX 75234 UNITED STATES

Attorney information	Paul J. Reilly Baker Botts L.L.P. 2001 Ross Avenue Suite 600 Dallas, TX 75201-2980 UNITED STATES paul.reilly@bakerbotts.com, tyler.beas@bakerbotts.com, cecily.porterfield@bakerbotts.com, daltmdept@bakerbotts.com Phone:214.953.6500
----------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Applicant Information

Application No	79104357	Publication date	01/06/2015
Opposition Filing Date	05/06/2015	Opposition Period Ends	05/06/2015
International Registration No.	0508054	International Registration Date	12/01/1986
Applicant	MERVE OPTIK SANAYI VE TICARET ANONIM SIRKETI Senlikkâfıy Mahallesi, Akasya Sokak No:4/1 Istanbul, TURKEY		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Spectacle frames; optical goods, namely, eye glasses, eyeglass lenses, sunglasses, lenses for sunglasses, eyeglass cases, eyeglass chains and cords

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	The Opposed Mark is barred on the basis of Claim Preclusion (res judicata)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	802773	Application Date	04/27/1965
Registration Date	01/25/1966	Foreign Priority Date	NONE
Word Mark	MUSTANG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U039 (International Class 010, 025, 026). First use: First Use: 1938/04/05 First Use In Commerce: 1938/04/05 MEN'S [AND BOYS'] CLOTHING-NAMELY, SLACKS		

U.S. Registration No.	1871947	Application Date	08/07/1992
Registration Date	01/03/1995	Foreign Priority Date	NONE
Word Mark	MUSTANG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1993/10/00 First Use In Commerce: 1993/10/00 men's [and boys'] wear [;] *, * namely, slacks [, and shorts]		

U.S. Registration No.	4605689	Application Date	05/10/2010
Registration Date	09/16/2014	Foreign Priority Date	NONE
Word Mark	MUSTANG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2014/06/29 First Use In Commerce: 2014/06/29 Clothing, namely, jeans and shirts		

Attachments	85034382#TMSN.png(bytes) Opposition - MUSTANG (Stylized) 79104357 - Merve Optik.pdf(150510 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 Overnight Courier on this date.

Signature	/Paul J. Reilly/
Name	Paul J. Reilly
Date	05/06/2015

2. In addition to its prior common law rights, Opposer owns several U.S. trademark registrations for its MUSTANG mark, namely: (1) Reg. No. 802,773, issued January 25, 1966, for "*men's clothing-namely, slacks.*"; (2) Reg. No. 1,871,947, issued January 3, 1995 for "*men's and boys' wear; namely, slacks, and shorts.*"; and (3) Reg. No. 4,605,689, issued September 16, 2014, for "*clothing, namely, jeans and shirts.*" Copies of Haggar's Certificates of Registration from the online records of the U.S. Patent & Trademark Office are attached as Exhibit A.

3. Opposer's registrations are valid, subsisting, in full force and effect, uncanceled and unrevoked and serve as evidence of Opposer's exclusive right to use the MUSTANG mark in commerce on or in connection with the goods identified in the registrations, as provided by § 33(a) of the U.S. Trademark (Lanham Act), 15 U.S.C. § 1115(a). Further, Registration Nos. 802,773 and 1,871,947 are statutorily incontestible under Section 15 of the Lanham Act, 15 U.S.C. § 1115(a). Hereinafter, Opposer's foregoing MUSTANG marks, including those registered, and/or used in commerce, are referred to individually and/or collectively as the "**MUSTANG Mark.**"

4. As a result of Opposer's long use and registration of the MUSTANG Mark in U.S. commerce in connection with apparel, Opposer has developed valuable goodwill in its MUSTANG Mark in the United States.

5. Opposer has also expended considerable time, effort and money in marketing its products under the MUSTANG Mark such that consumers have come to know, rely upon, and recognize the goods of Opposer by the MUSTANG Mark.

Haggar's Prior Opposition and Judgment Against Applicant's U.S. App. Serial No. 77/201,372 for MUSTANG (stylized)

6. On June 8, 2007, Applicant filed application Serial No. 77,201,372 for the mark

Mustang (stylized), depicted as  for "*spectacles, spectacle cases, sunglasses, frames for spectacles and sunglasses, contact lens and contact lens cases, eyewear accessories,*

namely, straps, neck cords and head straps which restrain eyewear from movement on a wearer and spectacle chains” in International Class 9.

7. On July 30, 2008, Opposer commenced an opposition against application Serial No. 77,201,372, which was assigned Opposition No. 91185522 (“**Prior Opposition**”), on Trademark Act § 2(d) grounds that Applicant’s mark was likely to cause confusion, or to cause mistake, or to deceive, with regards to Opposer’s MUSTANG Mark.

8. On October 19, 2009, Opposer filed a motion for summary judgment on the issue of likelihood of confusion. *See* Prior Opposition, Bd. Docket No. 11.

9. On January 11, 2010, the Trademark Trial and Appeal Board (“**Board**”) granted Opposer’s summary judgment motion as conceded under Trademark Rule 2.127(a) and Fed. R. Civ. P. 56, and entered judgment and refused registration of Applicant’s prior application for MUSTANG (stylized). A copy of the Board’s Order is attached hereto as Exhibit B.

The Opposed Mark

10. Notwithstanding the judgment against Applicant, on August 8, 2011, about one and half years after the Board’s ruling in the Prior Opposition, Applicant willfully filed the application-at-issue which is the subject of the present Opposition.

11. Specifically, Applicant now seeks registration of the Opposed Mark for use on and in connection with the following goods: “*spectacle frames; optical goods, namely, eye glasses, eyeglass lenses, sunglasses, lenses for sunglasses, eyeglass cases, eyeglass chains and cords*” in International Class 9. Applicant filed this application, alleging that it has a bona fide intention to use the Opposed Mark in commerce as an extension of protection of its International Registration No. 0508054 to the United States under § 66(a) of the Trademark Act, 15 U.S.C. § 1141(a).

12. Applicant, in blatant disregard for the Board’s order and having express notice of Opposer’s prior trademark rights in the MUSTANG Mark, willfully filed a second and virtually identical application which Haggar now vigorously opposes.

The Opposed Mark Is Likely To Cause Confusion With the MUSTANG Mark

13. Registration of the Opposed Mark, which is the subject of the application-in-opposition, is barred by the provisions of § 2(d) of the United States Trademark (Lanham) Act of 1946, 15 U.S.C. § 1052(d), because said mark consists of or comprises a mark which so resembles Opposer's MUSTANG Mark, including, but not limited to, MUSTANG and variants, which has been in use and the subject of prior registrations or previously filed applications to register marks in the United States Patent and Trademark Office, as to be likely, when used in connection with the alleged goods of the Applicant, to cause confusion, mistake or deception.

14. Opposer has priority over Applicant because Opposer's use, application filing date, and/or registration dates precede the filing date for the Opposed Mark and/or any alleged priority date or date of first use in commerce of Applicant's purported mark MUSTANG (Stylized).

15. The Opposed Mark, which is the subject of the application-at-issue, and Hagggar's MUSTANG Mark are highly similar. Indeed, the Opposed Mark includes Opposer's MUSTANG Mark in its entirety and the terms themselves are identical.

16. The goods in connection with which Applicant's Opposed Mark are applied for and the goods in connection with which Hagggar's MUSTANG Mark are registered and/or used are related or of a complementary nature. Apparel and clothing are commonly sold under marks that are also applied to eyeglass products, such as "*spectacle frames; optical goods, namely, eye glasses, eyeglass lenses, sunglasses, lenses for sunglasses, eyeglass cases, eyeglass chains and cords*", and in many cases through the same retail outlets or by the same manufacturers. By way of example only, Opposer owns registrations for its famous HAGGAR mark for both clothing (Reg. Nos. 2,284,986 and 728,590) and eyewear, namely "*eyewear, namely eyeglass frames and sunglasses, and eyeglass cases*" (Reg. No. 3,142,699), and both categories of goods are sold under the HAGGAR mark.

17. Further, on information and belief, Applicant's products are or will be advertised and sold to the same customers as those sold by Opposer under its MUSTANG Mark. On information and belief, the circumstances surrounding the marketing of products to be sold by

Applicant under the Opposed Mark are such that they are likely to be encountered by the same or a similar class of purchasers under circumstances that would give rise to the mistaken belief that they originate from or are in some way associated with the same producer as the MUSTANG Mark.

18. Opposer has not given Applicant permission or approval to use or register the Opposed Mark.

19. Accordingly, Applicant's Opposed Mark shown in the application-at-issue so resembles Hagggar's foregoing and previously used and/or registered MUSTANG Mark as to be likely to cause confusion, to cause mistake or to deceive with consequent injury to Opposer. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the Opposed Mark with Opposer's use and registration of its MUSTANG Mark is that (a) people are likely to believe that Applicant's goods have their source in Hagggar, or (b) that Applicant and its goods are a version of Opposer's marks or are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Hagggar when, in fact they are not.

20. Opposer will also lose control over the nature and quality of the products being offered by Applicant under a confusingly similar mark, i.e., the Opposed Mark, which will impact the value and goodwill of Hagggar's MUSTANG Mark. Hagggar will be damaged by the issuance of a registration to Applicant for the Opposed Mark within the meaning of 15 U.S.C. § 1063 because such registration would support and assist Applicant in the confusing, misleading, deceptive and/or dilutive use of the Opposed Mark, and would give the color or appearance of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

21. For the above reasons, registration of the Opposed Mark in connection with goods in Class 9 is barred by the provisions of § 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), because the Opposed Mark consists of or comprises a mark which, when used in connection with the goods alleged by Applicant in Class 9, is likely to cause confusion, mistake

or deception, and thus, registration of the Opposed Mark in connection with goods in Class 9 should be refused under 15 U.S.C. § 1052(d).

The Opposed Mark Is Barred On the Basis of Claim Preclusion

22. Additionally, registration of the Opposed Mark in connection with goods in Class 9 is barred by claim preclusion, also known as *res judicata*, because Applicant's previous application for a mark nearly identical to the Opposed Mark was refused registration for similar goods under the same set of operative facts.

23. The identities of the parties in the Prior Opposition are identical to the identities of the parties to the current Opposition - Haggar Clothing Co., and Merve Optik sanayi Ve Ticaret Anonim Sirketi.

24. In the Prior Opposition, the Board entered judgment on Opposer's likelihood of confusion claim because the Applicant conceded Opposer's contentions in Opposer's motion for summary judgment under Trademark Rule 2.127(a). Therefore, there was an earlier final judgment on the merits of the case.

25. The current Opposition is based on the same set of operational facts as the Prior Opposition. The mark involved in the first proceeding is virtually identical to the mark in the current Opposition, and is the same in terms of aural and commercial impression. Both marks are comprised of the identical word - MUSTANG - and only differ slightly in their stylization - block lettering vs. cursive. This difference is minor and insignificant, and does not create a new mark.

26. With respect to the goods set forth in each application, while the goods contained in each application are not identical - the previous application claimed "*spectacles*" while the current application claims "*eyeglasses*" - the goods are the equivalent of one another and are essentially the same. Additionally, the identification of goods in the previous application is broad and encompasses the narrower identification in the current application. Applicant's insignificant changes to its identification of goods do not avoid the estoppel effect of this Board's decision in the Prior Opposition.

27. Therefore, the same set of operative facts which gave rise to the conceded motion for summary judgment in the Prior Opposition form the basis of the current Opposition.

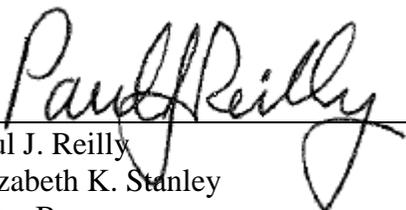
28. For the above reasons, registration of the Opposed Mark in connection with goods in Class 9 is barred by claim preclusion.

29. This Notice of Opposition is being submitted through the Electronic System for Trademark Trials and Appeals (ESTTA), along with the required filing fee. Please charge the requisite \$300.00 fee and any additional fees required to Deposit Account No. 50-2147 of Baker Botts if there is any problem with the processing of the electronically submitted fee.

30. WHEREFORE, Opposer prays that this Opposition be sustained in its favor, that registration be denied to Applicant's Opposed Mark, namely U.S. Application Serial No. 79/104,357, and that the Board grant all further relief to Opposer that is necessary and just in these circumstances.

Respectfully submitted this the 6th day of May, 2015.

By:


Paul J. Reilly
Elizabeth K. Stanley
Tyler Beas
BAKER BOTTS L.L.P.
2001 Ross Avenue, Suite 600
Dallas, Texas 75201-2980
Telephone: (214) 953-6500
E-mail: daltmdept@bakerbotts.com
paul.reilly@bakerbotts.com
elizabeth.stanley@bakerbotts.com

**ATTORNEYS FOR OPPOSER
HAGGAR CLOTHING CO.**

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2015, a true and correct copy of the foregoing *Notice of Opposition* was served, via email and Federal Express to:

Destek Patent Anonim Sirketi
Lefkose Cad. NM Ofis Park B Blok No. 36/5
Bursa, Turkey
trademarks@destekpatent.com.tr



Tyler M. Beas

EXHIBIT A

PRINCIPAL REGISTER
Trademark

Ser. No. 217,465, filed Apr. 27, 1965

MUSTANG

Haggar Company (Texas corporation)
6113 Lemmon Ave.
Dallas 9, Tex.

For: MEN'S AND BOYS' CLOTHING—NAMELY,
SLACKS—in CLASS 39.

First use on or about Apr. 5, 1938; in commerce on
or about Apr. 5, 1938.

Owner of Reg. No. 362,418.

B. DENNISON, *Examiner*.

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office

Reg. No. 1,871,947

Registered Jan. 3, 1995

**TRADEMARK
PRINCIPAL REGISTER**

MUSTANG

HAGGAR APPAREL COMPANY (NEVADA
CORPORATION)
6113 LEMMON AVENUE
DALLAS, TX 75209

FIRST USE 10-0-1993; IN COMMERCE
10-0-1993.

SN 74-303,059, FILED 8-7-1992.

FOR: MEN'S AND BOYS' WEAR; NAMELY,
SLACKS, AND SHORTS, IN CLASS 25 (U.S. CL.
39).

MARY ROSSMAN, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

MUSTANG

Reg. No. 4,605,689

Registered Sep. 16, 2014

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

HAGGAR CLOTHING CO. (NEVADA CORPORATION)
11511 LUNA ROAD
TWO COLINAS CROSSING
DALLAS, TX 75234

FOR: CLOTHING, NAMELY, JEANS AND SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 6-29-2014; IN COMMERCE 6-29-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 802,773 AND 1,871,947.

SN 85-034,382, FILED 5-10-2010.

CARYN GLASSER, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

jh

Mailed: January 11, 2010

Opposition No. 91185522

Haggar Clothing Co.

v.

Merve Optik Sanayi Ve
Ticaret Limited Sirketi

Opposer's motion for summary judgment (filed October 19, 2009) is hereby granted as conceded. See Trademark Rule 2.127(a) and Fed. R. Civ. P. 56.

Accordingly, judgment is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused.

*By the Trademark Trial
and Appeal Board*