

ESTTA Tracking number: **ESTTA674650**

Filing date: **05/28/2015**

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	Victoria Foster		
Entity	Individual	Citizenship	UNITED STATES
Address	6028 Capri Drive Cincinnati, OH 45224 UNITED STATES		

Attorney information	Michael A. Marrero Ulmer & Berne LLP 600 Vine Street Suite 2800 Cincinnati, OH 45202-2409 UNITED STATES mmarrero@ulmer.com Phone:513-698-5078		
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Applicant Information

Application No	86362042	Publication date	04/28/2015
Opposition Filing Date	05/28/2015	Opposition Period Ends	05/28/2015
Applicant	Sain, Shasta M mizsain@gmail.com Dayton, OH 45415 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2014/01/02 First Use In Commerce: 2014/05/10 All goods and services in the class are opposed, namely: Wearable garments and clothing, namely, shirts

Grounds for Opposition

Other	Non-use
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Attachments	HUSTLE BEAUTIFULLY OPPOSITION.pdf(1383604 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	/Michael A. Marrero/
Name	Michael A. Marrero

Date	05/28/2015
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application No. 86/362,042)
Filed: August 9, 2014)
Published: April 28, 2015, in the *Official*)
Gazette)
For: HUSTLE BEAUTIFULLY) Opposition No. _____)

Victoria Foster,)
Opposer,) **NOTICE OF OPPOSITION**

vs.)

Shasta M. Sain,)
Applicant.)

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

Opposer, Victoria Foster (“Opposer”), believes that she will be damaged by the registration of the HUSTLE BEAUTIFULLY trademark that is the subject of Application Serial No. 86/362,042, published in the *Official Gazette* of April 28, 2015, and hereby opposes registration thereof.

As grounds for opposition, Opposer alleges:

PARTIES

1. Opposer is a United States citizen with an address of 6028 Capri Drive, Cincinnati, Ohio 45224. Opposer makes and sells athletic apparel, namely, shirts, pants, hats and caps, and athletic uniforms. Opposer offers these products under the trademark HUSTLE

BEAUTIFULLY, which is the subject of U.S.P.T.O. trademark application Serial Number 86/364,717.

2. Upon information and belief, Applicant, Shasta M. Sain (“Applicant”), is a United States citizen with an address of 4509 Lansmore Drive, Dayton, Ohio 45415.

FACTUAL BACKGROUND

3. Opposer has sold its HUSTLE BEAUTIFULLY apparel in the United States since at least as early as June 21, 2014.

4. On August 12, 2014, Opposer filed a use-based trademark application at the Office to register HUSTLE BEAUTIFULLY as a trademark on the Principal Register, Ser. 86/364,717.

5. On August 9, 2014, Applicant filed the use-based trademark application at issue in this proceeding, namely, Ser. 86/362,042, seeking to register HUSTLE BEAUTIFULLY as a trademark on the Principal Register for use on “wearable garments and clothing, namely, shirts”.

6. On November 25, 2014, the Office issued an office action against Opposer’s HUSTLE BEAUTIFULLY mark. The Examining Attorney cited the grounds of “ornamental refusal” and Applicant’s prior pending application, Ser. 86/362,042.

7. The Office published Applicant’s trademark application (Ser. 86/362,042) for opposition on April 28, 2015.

GROUND

NON-USE

8. Applicant had not made trademark use of the HUSTLE BEAUTIFULLY trademark as of the filing date of her application, namely August 9, 2014.

9. As a result, the application is void *ab initio* and the HUSTLE BEAUTIFULLY trademark is unregistrable by Applicant under 15 U.S.C. §§ 1051, 1052, and 1127.

10. Applicant is still not making trademark use of the HUSTLE BEAUTIFULLY trademark.

STANDING

11. Opposer will be damaged by Applicant's registration of the HUSTLE BEAUTIFULLY trademark pursuant to this application because registration will entitle Applicant to a presumption of ownership and the exclusive right to use the HUSTLE BEAUTIFULLY trademark and will result in the Office's refusal to register the HUSTLE BEAUTIFULLY trademark for Opposer pursuant to its application, Ser. 86/364,717. As a result, Applicant could seek an injunction against Opposer's use of the HUSTLE BEAUTIFULLY mark as contemplated by Opposer's application. Opposer would be forced to defend against this potential litigation.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of Ser. 86/364,717 be denied.

Dated: May 28, 2015

Respectfully submitted,

ULMER & BERNE LLP

By: Michael A. Marrero

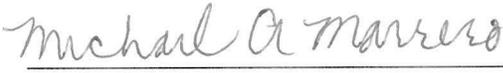
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Attorneys for Opposers

CERTIFICATE OF SERVICE

On May 28, 2015, I served the foregoing **NOTICE OF OPPOSITION** on the parties in said action by depositing a true copy thereof with the United States Postal Service as first class mail, postage prepaid, at Cincinnati, Ohio, enclosed in a sealed envelope addressed as follows:

Francis John Ciaramella
Rick Ruz, PLLC
300 Sevilla Avenue Suite 309
Coral Gables, Florida 33134

Dated: May 28, 2015



Michael A. Marrero