

ESTTA Tracking number: **ESTTA702342**

Filing date: **10/14/2015**

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	BCBG Max Azria Group, LLC c/o Kane Kessler, PC
Granted to Date of previous extension	10/14/2015
Address	1350 Avenue of the Americas attn: Trademarks New York, NY 10019 UNITED STATES
Party who filed Extension of time to oppose	BCBG Max Azria Group, LLC
Relationship to party who filed Extension of time to oppose	The wording "c/o Kane Kessler, PC" was properly in another portion of the address fields provided in the online forms, and has been moved to the appropriate location.

Correspondence information	BCBG Max Azria Group, LLC c/o Kane Kessler, PC 1350 Avenue of the Americas attn: Trademarks New York, NY 10019 UNITED STATES bmcfeely@kanekessler.com, trademark@kanekessler.com Phone:2125416222
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Applicant Information

Application No	86520524	Publication date	06/16/2015
Opposition Filing Date	10/14/2015	Opposition Period Ends	10/14/2015
Applicants	Chloe Crespi 213 W. 21st Street, Apt 3A New York, NY 10011 UNITED STATES Betty Kay Kendrick 200 Alhambra Street, Apt. 15 San Francisco, CA 94123 UNITED STATES		

Goods/Services Affected by Opposition

Class 014. First Use: 2012/01/01 First Use In Commerce: 2012/09/27

All goods and services in the class are opposed, namely: Brooches; Charms; Charms for collar jewelry and bracelet; Children's jewelry; Costume jewelry; Gemstone jewelry; Identification bracelets; Jewelry; Jewelry and imitation jewelry; Jewelry boxes of metal; Jewelry brooches; Jewelry chains; Jewelry in the nature of armbands; Jewelry made in whole or significant part of various metals; Jew-

elry stickpins; Jewelry, namely, amulets; Jewelry, namely, arm cuffs; Jewelry, namely, bracelets, wristbands and necklaces that also provides notification to the wearer of a pending medical related task; Rings; Stainless steel jewelry bracelets; Watches and jewelry; Watches, clocks, jewelry and imitation jewelry; Women's jewelry

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	The mark as presented in the filed specimens of use is merely ornamental and does not function as a trademark. Trademark Act section 2.

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	IN PURSUIT OF MAGIC		
Goods/Services	Jewelry		

Attachments	Notice of Opposition - IN PURSUIT OF MAGIC.pdf(26950 bytes) in pursuit of magic exhibit A.pdf(122856 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	/brendan p mcfely/
Name	BCBG Max Azria Group, LLC
Date	10/14/2015

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

BCBG Max Azria Group, LLC)	In the Matter of Trademark Application
)	No. 86520524
Opposer,)	Filed: January 31, 2015
)	Published in the Official Gazette
v.)	on June 16, 2015
)	
)	Opposition No. _____
)	
)	
Chloe Crespi, Betty Kay Kendrick)	Mark: IN PURSUIT OF MAGIC
)	
Applicants.)	

NOTICE OF OPPOSITION

Opposer BCBG Max Azria Group, LLC (“Opposer”) believes that it is or will be damaged by registration of the mark IN PURSUIT OF MAGIC (the “Opposed Mark”) as shown in Application Serial No. 86/123,633 (the “Application”), filed by Chloe Crespi and Betty Kay Kendrick (“Applicants”), and hereby opposes the same pursuant to Section 13 of the Trademark Act of 1946, as amended, 15 U.S.C. Section 101 et seq. (the “Trademark Act”) on the following grounds:

ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF

The Parties

1. Opposer is a limited liability company registered under the laws of Delaware with a place of business located at 2761 Fruitland Avenue, Vernon, CA 90058

2. Opposer is an internationally famous retailer and provider of apparel and related goods under the BCBG and related brands.

3. Opposer has been offering jewelry in the United States and throughout Europe under the mark IN PURSUIT OF MAGIC since at least as early as 2014.

4. Opposer has been manufacturing and distributing jewelry in the United States under the mark IN PURSUIT OF MAGIC (the “BCBG Mark”) since well before any priority date Applicant has asserted or may assert.

5. Upon information and belief, Applicant Betty Kay Kendrick is an individual residing in the state of California, having an address at 200 Alhambra Street, Apt. 15 San Francisco, California 94123.

6. Upon information and belief, Applicant Chloe Crespi is an individual residing in the state of New York, having an address 213 W. 21st Street, Apt. 3A, New York, New York 10011.

Opposer’s Marks

7. Opposer is the owner of common law trademark rights in the mark IN PURSUIT OF MAGIC for jewelry.

8. Opposer has been using the BCBG Mark in commerce and in interstate commerce at least in connection with goods in Class 14 since at least as early as a date that precedes any priority date that Applicant has asserted or could assert.

9. Opposer’s priority dates for the BCBG Mark precede any priority date Applicant has asserted or may assert.

Applicant's Mark

10. The Application was filed on January 31, 2015, for “Brooches; Charms; Charms for collar jewelry and bracelet; Children's jewelry; Costume jewelry; Gemstone jewelry; Identification bracelets; Jewelry; Jewelry and imitation jewelry; Jewelry boxes of metal; Jewelry brooches; Jewelry chains; Jewelry in the nature of armbands; Jewelry made in whole or significant part of various metals; Jewelry stickpins; Jewelry, namely, amulets; Jewelry, namely, arm cuffs; Jewelry, namely, bracelets, wristbands and necklaces that also provides notification to the wearer of a pending medical related task; Rings; Stainless steel jewelry bracelets; Watches and jewelry; Watches, clocks, jewelry and imitation jewelry; Women's jewelry” in Class 14. The Application was filed under Section 1(A) based on actual use of the Opposed Mark in commerce in the United States, with an alleged first use date of September 27, 2012. The Application was published for opposition on June 16, 2015. Opposer timely requested, and the TTAB granted, a 90-day extension of time to oppose the Application through and including October 14, 2015.

11. Opposer believes that it would be damaged by registration of the Opposed Mark, and therefore has standing to interpose this Notice of Opposition, for the reasons asserted below. Opposer has rights in the BCBG Mark that predate Applicant's filing date of the Application and any alleged date of first use of the Opposed Mark. Therefore, Opposer has standing to interpose this Notice of Opposition.

COUNT I: LIKELIHOOD OF CONFUSION

12. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 11 of this Notice of Opposition as if fully set forth here.

13. Applicant's use and/or intended use of the Opposed Mark is likely to cause confusion among an appreciable number of reasonably prudent purchasers, who may

mistakenly assume that Applicant's goods and services emanate from, or are licensed, sponsored or otherwise authorized by, Opposer, whereas in fact they are not.

14. The Opposed Mark so closely resembles the BCBG Mark as to be likely, when applied to Applicant's goods and services, to cause confusion or mistake or to deceive members of the trade and public, who are likely to believe that Applicant's goods and services originated with Opposer or are somehow connected to Opposer.

15. The Opposed Mark and the BCBG Mark are confusingly similar in appearance, pronunciation, connotation and commercial impression, and the goods and services of Opposer and Applicant are identical as both include apparel and online retail store services and retail store services in the field of clothing.

16. In light of the foregoing, the use and registration of the Opposed Mark by Applicant is likely to damage and destroy the distinctiveness, goodwill and reputation built by Opposer in the BCBG Mark by virtue of the confusion, mistake and deception likely to occur between the Opposed Mark and the BCBG Mark.

17. The Opposed Mark is confusingly and deceptively similar to Opposer's BCBG Mark as applied to its goods and/or related goods and services, such that the use and registration of Applicant's mark is likely to cause confusion and mistake and will deceive the public into believing that Applicant's goods and services originate or are in some way sponsored, licensed, associated or otherwise authorized by Opposer.

18. Pursuant to Section 2(d) of the Trademark Act, Applicant is not entitled to registration of the Opposed Mark because the current use in commerce and registration of the Opposed Mark and the BCBG Mark is likely to cause confusion or to cause mistake and/or to deceive.

COUNT II: FAILURE TO FUNCTION AS A TRADEMARK

19. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 18 of this Notice of Opposition as if fully set forth here.

20. It would be inappropriate for the Opposed Mark to be permitted to register because the Opposed Mark, as displayed in the specimens of use submitted with the application (copies attached hereto as Exhibit “A”), fails to function as a trademark on the basis that the displayed use is merely ornamental.

21. Opposer will be damaged if a registration is granted for the Application because Applicant will obtain statutory rights in the Opposed Mark in violation and derogation of the established prior rights of Opposer.

WHEREFORE, Opposer respectfully requests that the Notice of Opposition be sustained, that the registration of the Opposed Mark, Application Serial No. 86/123,633, to Applicant be refused and that the Board grant such other and further relief as the Board deems proper.

Dated: New York, New York
October 14, 2015

Respectfully submitted,

KANE KESSLER, P.C.

/bpmcfeely/

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Attorneys for Opposer BCBG Max Azria Group, LLC

CERTIFICATE OF SERVICE

This is to certify that on the 14th day of October 2015, the undersigned served the foregoing NOTICE OF OPPOSITION via e-mail and First Class Mail, postage prepaid, on Applicants as follows:

Betty Kay Kendrick
200 Alhambra Street, Apt. 15
San Francisco CALIFORNIA 94123
bk@pursuitofmagic.com

and

Chloe Crespi
213 W. 21st Street, Apt 3A
New York NEW YORK 10011
chloe@chloecrespi.com

/bpmcfeely/
Brendan P. McFeely





