

ESTTA Tracking number: **ESTTA707700**

Filing date: **11/10/2015**

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	Vanity Fair, Inc.
Granted to Date of previous extension	11/18/2015
Address	One Fruit of the Loom Drive Bowling Green, KY 42103 UNITED STATES

Attorney information	Carrie A. Shufflebarger Thompson Hine LLP 312 Walnut Street Fourteenth Floor Cincinnati, OH 45202 UNITED STATES carrie.shufflebarger@thompsonhine.com, docket@thompsonhine.com, sharon.bella@thompsonhine.com, lou.ebling@thompsonhine.com Phone:513.352.6678
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Applicant Information

Application No	86536129	Publication date	07/21/2015
Opposition Filing Date	11/10/2015	Opposition Period Ends	11/18/2015
Applicant	Carmela Montgomery 13000 Vista Del Norte Apt. 1415 San Antonio, TX 78216 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, coats, dresses, shirts, skirts, shorts and hooded sweatshirts; footwear
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	642681	Application Date	07/18/1956
Registration Date	03/12/1957	Foreign Priority Date	NONE

Word Mark	EXQUISITE
Design Mark	
Description of Mark	NONE
Goods/Services	Class U039 (International Class 010, 025, 026). First use: First Use: 1945/08/23 First Use In Commerce: 1945/08/23 BRASSIERES [, GARTER BELTS,] AND GIRDLES

U.S. Registration No.	1491241	Application Date	10/15/1987
Registration Date	06/07/1988	Foreign Priority Date	NONE

Word Mark	EXQUISITE FORM
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1987/08/31 First Use In Commerce: 1987/08/31 CLOTHING, NAMELY, BRASSIERES

U.S. Registration No.	2286196	Application Date	07/25/1997
Registration Date	10/12/1999	Foreign Priority Date	NONE

Word Mark	EXQUISITE FORM
Design Mark	<p style="text-align: center;">EXQUISITE FORM</p>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1996/06/30 First Use In Commerce: 1996/06/30 bras, [briefs, garter belts, panties, slips, half-slips, camisoles, swimwear, lounge wear, active wear, namely, sport bras, pants, skirts, tops, teddies, pettipants, bra slips, sleep wear, nightgowns, pajamas, baby dolls and peignoir sets]

Attachments	73689812#TMSN.png(bytes) 75330755#TMSN.png(bytes) 1 Notice of Opposition.pdf(13430 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	/cas/
Name	Carrie A. Shufflebarger
Date	11/10/2015

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

In the Matter of

Application No. : 86,536,129
Applicant : Carmela Montgomery d/b/a Xkwizit Design Company
Mark : XKWIZIT DESIGN COMPANY
Filing Date : February 16, 2015
Publication Date : July 21, 2015
Opposed Class: : 25

VANITY FAIR, INC., :
:
Opposer, :
:
v. : Opposition No. _____
:
CARMELA MONTGOMERY d/b/a :
XKWIZIT DESIGN COMPANY :
:
Applicant. :
:
_____ :

NOTICE OF OPPOSITION

Opposer, Vanity Fair, Inc., a corporation duly organized and existing under the laws of the State of Delaware, having a mailing address at One Fruit of the Loom Drive, Bowling Green, Kentucky 42103, believes it will be damaged by registration of the mark XKWIZIT DESIGN COMPANY shown in Application Serial No. 86,536,129, and hereby opposes registration of said mark.

As grounds of opposition, it is alleged that:

1. Opposer is Vanity Fair, Inc. Opposer is the owner of, is currently using, and has itself and through its predecessors-in-interest continuously used in U.S. commerce since 1945 marks consisting of or incorporating “EXQUISITE” in connection with, inter alia, foundation garments (Opposer’s “EXQUISITE Marks”).

2. Opposer owns three federal registrations on the Principal Register for its EXQUISITE Marks, including without limitation the following, all of which have become incontestable within the meaning of the Lanham Act:

Trademark	Reg. No.	First Use	Goods
EXQUISITE	642,681	1945	Brassieres and girdles
	1,491,241	1987	Clothing, namely, brassieres
EXQUISITE FORM	2,286,196	1996	Bras

3. Opposer has expended substantial amounts of money, time, and effort in advertising, promoting, and popularizing its EXQUISITE Marks over many years and in preserving the good will associated therewith.
4. Opposer's EXQUISITE Marks have become distinctive of and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of its goods.
5. The public has come to know Opposer's EXQUISITE Marks and recognize that any goods so marked originate with Opposer. By virtue of these efforts and by virtue of the excellence of its goods, Opposer has gained a valuable reputation for its EXQUISITE Marks.
6. Applicant Carmela Montgomery d/b/a Xkwizit Design Company, an individual believed to reside in San Antonio, Texas, filed Application Serial No. 86,536,129 under Section 1(b) of the Lanham Act on February 16, 2015 ("Application"), seeking registration of the trademark XKWIZIT DESIGN COMPANY ("Applicant's Mark") in International Class

25 for “Clothing, namely, coats, dresses, shirts, skirts, shorts and hooded sweatshirts; footwear.”

7. Priority is not an issue: Opposer’s longstanding use of its EXQUISITE Marks described above is well prior to the filing date of the Application.
8. The goods identified in the Application are highly related to Opposer’s goods sold under the EXQUISITE Marks, and are likely to be sold to the same class of purchasers as Opposer’s goods sold under its EXQUISITE Marks.
9. Applicant’s Mark so resembles the marks previously used by Opposer in commerce as to be likely, when used in connection with Applicant’s goods, to cause confusion, deception or mistake as to the affiliation, connection or association of Applicant with Opposer, and/or the origin, sponsorship, or approval of Applicant’s goods or commercial activities by Opposer under 15 U.S.C. § 1052(d). The aforesaid likelihood of confusion will damage Opposer within the meaning of 15 U.S.C. § 1063.
10. Opposer would be damaged by registration of Applicant’s Mark because registration would grant Applicant statutory rights under the Trademark Act of 1946, and would tend to restrict, interfere with, and damage Opposer in the unhampered conduct of its business and protection of its legitimate interests.

WHEREFORE, Opposer prays this Opposition be sustained, and registration of the Application cited above be refused.

Please charge the appropriate filing fee to the credit card account of Opposer’s counsel, as provided through the ESTTA filing system.

Please direct all correspondence to Carrie A. Shufflebarger, Esq., at Thompson Hine, LLP, 312 Walnut Street, Fourteenth Floor, Cincinnati, Ohio 45202, and all calls to the same at (513) 352-6678.

Respectfully submitted,

/s/ Carrie A. Shufflebarger

Carrie A. Shufflebarger, Esq.
Louis K. Ebling, Esq.
THOMPSON HINE, LLP
312 Walnut Street
Fourteenth Floor
Cincinnati, Ohio 45202
(513) 352-6678
carrie.shufflebarger@thompsonhine.com
lou.ebling@thompsonhine.com

Date: November 10, 2015

CERTIFICATE OF FILING

I certify that this NOTICE OF OPPOSITION is being submitted electronically to the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on this 10th day of November, 2015.

/s/ Carrie A. Shufflebarger
Carrie A. Shufflebarger

CERTIFICATE OF SERVICE

I certify that a copy of this NOTICE OF OPPOSITION is being served via United States mail, postage prepaid, on the following, on this 10th day of November, 2015.

Omar Landery
Landery Law Office
155 Fiddlers Rdg
Fayetteville, GEORGIA 30214-2684

/s/ Carrie A. Shufflebarger
Carrie A. Shufflebarger