

ESTTA Tracking number: **ESTTA736305**

Filing date: **03/29/2016**

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	Gap (Apparel), LLC
Granted to Date of previous extension	03/30/2016
Address	2 Folsom Street San Francisco, CA 94105 UNITED STATES
Attorney information	James D. Weinberger Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza 6th Floor New York, NY 10017 UNITED STATES jweinberger@fzlj.com, fkohn@fzlj.com Phone:(212) 813-5900

Applicant Information

Application No	86262657	Publication date	12/01/2015
Opposition Filing Date	03/29/2016	Opposition Period Ends	03/30/2016
Applicant	Fitcrate, LLC 11700 W. Charleston Blvd. Las Vegas, NV 89135 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: Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Denims
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution by blurring	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1097038	Application Date	11/07/1977
Registration Date	07/18/1978	Foreign Priority	NONE

		Date	
Word Mark	THE GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1969/08/23 First Use In Commerce: 1969/10/17 RETAIL CLOTHING STORE SERVICES		

U.S. Registration No.	1129294	Application Date	05/13/1977
Registration Date	01/15/1980	Foreign Priority Date	NONE
Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1974/06/25 First Use In Commerce: 1974/06/25 CLOTHING-NAMELY, PANTS, JEANS, [GAUCHOS,] SKIRTS, VESTS, JACKETS, OVERALLS, JUMPERS, DRESSES, [JUMPSUITS,] SWEATERS, T-SHIRTS, BELTS, HATS, [VISORS,] [SUSPENDERS,] SHORTS, [PONCHOS] AND HALTER TOPS		

U.S. Registration No.	1406870	Application Date	01/31/1986
Registration Date	08/26/1986	Foreign Priority Date	NONE
Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1974/06/25 First Use In Commerce: 1974/06/25 CLOTHING NAMELY SHIRTS, BLOUSES, GLOVES, SCARVES, SOCKS, AND SHOES		

U.S. Registration	1912355	Application Date	12/22/1993
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No.			
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	GAP KIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1994/04/01 First Use In Commerce: 1994/04/01 sunglasses [and eye glass cases]		

U.S. Registration No.	1912356	Application Date	12/22/1993
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1994/02/27 First Use In Commerce: 1994/02/27 sunglasses and eye glass cases		

U.S. Registration No.	2020312	Application Date	05/31/1995
Registration Date	12/03/1996	Foreign Priority Date	NONE
Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1988/07/23 First Use In Commerce: 1988/07/23 retail store services in the field of clothing and clothing accessories		

U.S. Registration No.	2020323	Application Date	06/07/1995
Registration Date	12/03/1996	Foreign Priority Date	NONE
Word Mark	GAP OUTLET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1995/04/03 First Use In Commerce: 1995/04/03 retail store services in the field of clothing and clothing accessories		

U.S. Registration No.	2498434	Application Date	02/06/2001
Registration Date	10/16/2001	Foreign Priority Date	NONE
Word Mark	GAP BODY		

Design Mark	<h1>GAP BODY</h1>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1998/08/06 First Use In Commerce: 1998/08/06 Retail store services in the fields of personal care products, intimates and lingerie, home, [bed] and bath products and accessories, and holiday gift sets		

U.S. Registration No.	2481933	Application Date	03/31/2000
Registration Date	08/28/2001	Foreign Priority Date	NONE

Word Mark	GAP KIDS
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Design Mark			
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Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1991/08/00 First Use In Commerce: 1991/08/00 Retail store and computerized online retail store services in the fields of clothing, clothing accessories, shoes and slippers, hair accessories, jewelry, leathers goods, [luggage and] bags, [electronic products, calculators,] watches [and sport timers,] toys, stationery, souvenir items and holiday gift sets Class 042. First use: First Use: 1998/11/02 First Use In Commerce: 1998/11/02		

	[Computerized online gift wish list and gift selection services]
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U.S. Registration No.	2481935	Application Date	03/31/2000
Registration Date	08/28/2001	Foreign Priority Date	NONE
Word Mark	BABY GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1990/01/29 First Use In Commerce: 1990/01/29 Retail store and computerized online retail store services in the fields of clothing, clothing accessories, shoes, sunglasses, leather goods, bags, toys, baby linen, blankets, bedding, souvenir items, and holiday gift sets Class 042. First use: First Use: 1998/11/02 First Use In Commerce: 1998/11/02 [Computerized online gift wish list and gift selection services]		

U.S. Registration No.	2501641	Application Date	03/31/2000
Registration Date	10/30/2001	Foreign Priority Date	NONE
Word Mark	GAP KIDS		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 035. First use: First Use: 1991/08/00 First Use In Commerce: 1991/08/00 Retail store and computerized online retail store services in the fields of clothing, clothing accessories, shoes and slippers, hair accessories, jewelry, leather goods, luggage and bags, [electronic products, calculators, watches and sport timers, toys, stationery, souvenir items] and holiday gift sets Class 042. First use: First Use: 1998/11/02 First Use In Commerce: 1998/11/02 [Computerized online gift wish list and gift selection services]		
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U.S. Registration No.	2512889	Application Date	03/28/2001
Registration Date	11/27/2001	Foreign Priority Date	NONE
Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1997/11/04 First Use In Commerce: 1997/11/04 Computerized online retail store services in the fields of clothing, clothing accessories, shoes and slippers, leather goods, luggage and bags, [souvenir items and gift sets,] providing gift, product, personal care products and information to customers		

U.S. Registration No.	2540610	Application Date	04/19/2001
Registration Date	02/19/2002	Foreign Priority Date	NONE
Word Mark	GAP.COM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1997/11/04 First Use In Commerce: 1997/11/04 Computerized online retail services in the field of clothing, clothing accessories, personal care products, luggage andbags, souvenir items and gift sets; providing gift product and service information to customers		

U.S. Registration No.	2589834	Application Date	02/06/2001
Registration Date	07/02/2002	Foreign Priority Date	NONE
Word Mark	GAP		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2001/11/26 First Use In Commerce: 2001/11/26 Catalogs in the fields of clothing, clothing accessories		

U.S. Registration No.	2667661	Application Date	03/31/2000
Registration Date	12/31/2002	Foreign Priority Date	NONE

Word Mark	GAP KIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1986/03/24 First Use In Commerce: 1986/03/24 Retail store services in the fields of clothing, clothing accessories, shoes and slippers, hair accessories, jewelry, leather goods, luggage and bags, electronic products, calculators, watches and [sport timers,] toys, stationery, [souvenir items and holiday gift sets] ; computerized online retail store services in the field of clothing, clothing accessories, shoes and slippers, hair accessories, leather goods, luggage and bags, electronic products, calculators, watches and sport timers, toys, souvenir items, and holiday gift sets</p> <p>Class 042. First use: First Use: 1998/11/02 First Use In Commerce: 1998/11/02 [Computerized online gift wish list and gift selection services]</p>		

U.S. Registration No.	2668050	Application Date	02/06/2001
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Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	GAP BODY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/07/04 First Use In Commerce: 2000/07/04 Lingerie, robes, brassieres, underwear;[shapewear, namely, control panties, control slips and control garments, namely, control full and half slips, biker shorts and lingerie;] undergarments, boxersshorts, sport bras,[gym shorts,] cam-isoles, [slips, bodysuits,] tank tops, [sweatshirts, sweat pants,] tankinis, bathing suits, swim trunks; sleepwear, pajamas and nightgowns;[hosiery,] leggings, slippers, [socks]		

U.S. Registration No.	2772966	Application Date	02/06/2001
Registration Date	10/14/2003	Foreign Priority Date	NONE
Word Mark	GAP		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1997/11/04 First Use In Commerce: 1997/11/04 Computerized online retail services in the field of clothing, clothing accessories, personal care products, jewelry, [household products for bed and bath, housewares,] paper goods, leather goods, luggage and bags, [souvenir items] and holiday gift sets and providing gift, product and service information to customers in connection therewith

U.S. Registration No.	2855822	Application Date	08/08/2001
Registration Date	06/22/2004	Foreign Priority Date	NONE
Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1974/06/25 First Use In Commerce: 1974/06/25 Clothing, namely, pants, shorts, sweatpants, overalls, shirts, tee-shirts, sweat-shirts, blouses, jackets, vests, coats,rainwear, shoes, lingerie, sleepwear, loungewear, swimwear, gloves, socks, hoisery, belts, scarves, hats, ties, slippers		

U.S. Registration No.	3114794	Application Date	10/04/2002
Registration Date	07/11/2006	Foreign Priority Date	NONE
Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/08/30 First Use In Commerce: 2003/08/30		

	binoculars, calculators, CD storage wallets, pre-recorded compact discs featuring music, , headphones, ,sunglasses, swim goggles		
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U.S. Registration No.	3225179	Application Date	06/20/2006
Registration Date	04/03/2007	Foreign Priority Date	NONE
Word Mark	BABY GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2004/01/30 First Use In Commerce: 2004/01/30 Sunglasses		

U.S. Registration No.	3631302	Application Date	11/14/2008
Registration Date	06/02/2009	Foreign Priority Date	NONE
Word Mark	BABYGAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2008/10/13 First Use In Commerce: 2008/10/13 Stationery		

U.S. Registration No.	3982732	Application Date	08/25/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE
Word Mark	GAP		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1969/08/21 First Use In Commerce: 1969/08/21 Entertainment services in the nature of arranging, organizing and hosting social entertainment events		

U.S. Registration No.	4183460	Application Date	02/22/2012
Registration Date	07/31/2012	Foreign Priority Date	NONE

Word Mark	GAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2008/11/30 First Use In Commerce: 2008/11/30 Computer application software for mobile phones that enables customers to search an online searchable database in the field of clothing, clothing accessories, bags, shoes, personal care products and home products to purchase consumer goods and view retail product information		

U.S. Registration No.	4234189	Application Date	04/27/2012
Registration Date	10/30/2012	Foreign Priority Date	NONE
Word Mark	GAPFIT		

Design Mark	<h1>GAPFIT</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2012/01/31 First Use In Commerce: 2012/01/31 Pants, leggings, shorts, jackets, shirts, sweatshirts, skirts, bras Class 035. First use: First Use: 2012/01/31 First Use In Commerce: 2012/01/31 Retail store services in the field of clothing and clothing accessories; onlinetail store services in the field of clothing and clothing accessories		

U.S. Registration No.	4312116	Application Date	06/13/2012
Registration Date	04/02/2013	Foreign Priority Date	NONE

Word Mark	BABY GAP		
Design Mark	<h1>BABY GAP</h1>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2012/01/16 First Use In Commerce: 2012/01/16 Baby books; children's books		

Attachments	73147472#TMSN.png(bytes) 76206161#TMSN.png(bytes) 76014965#TMSN.png(bytes) 76014968#TMSN.png(bytes) 76014966#TMSN.png(bytes) 76206166#TMSN.png(bytes) 76014928#TMSN.png(bytes) 76206159#TMSN.png(bytes) 76206157#TMSN.png(bytes) 78912211#TMSN.png(bytes) 77615143#TMSN.png(bytes) 85115434#TMSN.png(bytes) 85549866#TMSN.png(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	/s/ James D. Weinberger
Name	James D. Weinberger
Date	03/29/2016

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

In the Matter of Application Serial No. 86/262,657
Published in the *Official Gazette* on December 1, 2015
Mark: ANTI THIGH GAP

GAP (APPAREL), LLC,

Opposer,

-against-

FITCRATE, LLC,

Applicant.

NOTICE OF OPPOSITION

Opposer Gap (Apparel), LLC, a California limited liability company with a place of business at 2 Folsom Street, San Francisco, California 94105 (“Opposer”), believes that it will be damaged by the issuance of a registration for the trademark ANTI THIGH GAP applied for in Application Serial No. 86/262,657, filed on April 25, 2014 by Fitcrate, LLC (“Applicant”), and therefore opposes the same. As grounds for the opposition, Opposer alleges as follows:

1. Opposer is one of the world’s leading retailers of, among other things, clothing and accessories. Opposer has used the mark GAP and various GAP-formative marks (collectively, the “GAP Marks”) for many years in connection with a wide variety of goods and services.

2. Opposer is the owner of all right, title and interest in and to the GAP Marks in connection with retail clothing based on first use in commerce as early as 1969. Opposer is also the owner of all right, title and interest in and to the GAP Marks in connection with a wide variety of other goods and services. Additionally, Opposer owns numerous U.S. trademark

registrations for the GAP Marks for a wide variety of goods and services, including but not limited to the following:

- THE GAP (and Design), U.S. Reg. No. 1,097,038, registered July 18, 1978, based on first use in August 1969, for “retail clothing store services” in International Class 42;
- GAP, U.S. Reg. No. 1,129,294, registered January 15, 1980, based on first use in June 1974, for “clothing-namely, pants, jeans, skirts, vests, jackets, overalls, jumpers, dresses, sweaters, t-shirts, belts, hats, shorts, and halter tops” in International Class 25;
- GAP, U.S. Reg. No. 1,406,870, registered August 26, 1986, based on first use in June 1974, for “clothing namely shirts, blouses, gloves, scarves, socks, and shoes” in International Class 25;
- GAP KIDS, U.S. Reg. No. 1,912,355, registered August 15, 1995, based on first use in April 1994, for “sunglasses” in International Class 9;
- GAP, U.S. Reg. No. 1,912,356*, registered August 15, 1995, based on first use in February 1994, for “sunglasses and eye glass cases” in International Class 9;
- GAP, U.S. Reg. No. 2,020,312, registered December 3, 1996, based on first use in July 1988, for “retail store services in the field of clothing and clothing accessories” in International Class 42;
- GAP OUTLET, U.S. Reg. No. 2,020,323, registered December 3, 1996, based on first use in April 1995 for “retail store services in the field of clothing and clothing accessories” in International Class 42;
- GAP BODY, U.S. Reg. No. 2,498,434, registered October 16, 2001, based on first use in August 1998 for “Retail store services in the fields of personal care products,

- intimates and lingerie, home, and bath products and accessories, and holiday gift sets” in International Class 35;
- GAP KIDS (and Design), U.S. Reg. No. 2,481,933, registered August 28, 2001, based on first use in August 1991, for “Retail store and computerized online retail store services in the fields of clothing, clothing accessories, shoes and slippers, hair accessories, jewelry, leathers goods, bags, watches, toys, stationery, souvenir items and holiday gift sets” in International Class 35;
 - BABY GAP, U.S. Reg. No. 2,481,935, registered August 28, 2001, based on first use in January 1990, for “Retail store and computerized online retail store services in the fields of clothing, clothing accessories, shoes, sunglasses, leather goods, bags, toys, baby linen, blankets, bedding, souvenir items, and holiday gift sets” in International Class 35;
 - GAP KIDS (and Design), U.S. Reg. No. 2,501,641, registered October 30, 2001, based on first use in August 1991, for “Retail store and computerized online retail store services in the fields of clothing, clothing accessories, shoes and slippers, hair accessories, jewelry, leather goods, luggage and bags, and holiday gift sets” in International Class 35;
 - GAP, U.S. Reg. No. 2,512,889, registered November 27, 2001, based on first use in November 1997, for “Computerized online retail store services in the fields of clothing, clothing accessories, shoes and slippers, leather goods, luggage and bags, providing gift, product, personal care products and information to customers” in International Class 35;

- GAP.COM, U.S. Reg. No. 2,540,610, registered February 19, 2002, based on first use in November 1997, for “Computerized online retail services in the field of clothing, clothing accessories, personal care products, luggage and bags, souvenir items and gift sets; providing gift product and service information to customers” in International Class 35;
- GAP, U.S. Reg. No. 2,589,834, registered July 2, 2002, based on first use in November 2001, for “Catalogs in the fields of clothing, clothing accessories” in International Class 16;
- GAP KIDS, U.S. Reg. No. 2,667,661, registered December 31, 2002, based on first use in March 1986, for “Retail store services in the fields of clothing, clothing accessories, shoes and slippers, hair accessories, jewelry, leather goods, luggage and bags, electronic products, calculators, watches and toys, stationery; computerized online retail store services in the field of clothing, clothing accessories, shoes and slippers, hair accessories, leather goods, luggage and bags, electronic products, calculators, watches and sport timers, toys, souvenir items, and holiday gift sets” in International Class 35;
- GAP BODY, U.S. Reg. No. 2,668,050, registered December 31, 2002, based on first use in July 2000 for “Lingerie, robes, brassieres, underwear; undergarments, boxer shorts, sport bras, camisoles, tank tops, tankinis, bathing suits, swim trunks; sleepwear, pajamas and nightgowns; leggings, slippers” in International Class 25;
- GAP (Stylized), U.S. Reg. No. 2,772,966, registered October 14, 2003, based on first use in November 1997, for “Computerized online retail services in the field of clothing, clothing accessories, personal care products, jewelry, paper goods, leather

- goods, luggage and bags, and holiday gift sets and providing gift, product and service information to customers in connection therewith” in International Class 35;
- GAP, U.S. Reg. No. 2,855,822, registered June 22, 2004, based on first use in June 1974, for “Clothing, namely, pants, shorts, sweatpants, overalls, shirts, tee-shirts, sweatshirts, blouses, jackets, vests, coats, rainwear, shoes, lingerie, sleepwear, loungewear, swimwear, gloves, socks, hoisery, belts, scarves, hats, ties, slippers” in International Class 25;
 - GAP, U.S. Reg. No. 3,114,794, registered July 11, 2006, based on first use in August 2003, for “binoculars, calculators, CD storage wallets, pre-recorded compact discs featuring music, headphones, sunglasses, swim goggles” in International Class 9;
 - BABY GAP, U.S. Reg. No. 3,225,179, registered April 3, 2007, based on first use in January 2004, for “Sunglasses” in International Class 9;
 - BABYGAP, U.S. Reg. No. 3,631,302, registered June 2, 2009, based on first use in October 2008, for “Stationery” in International Class 16;
 - GAP, U.S. Reg. No. 3,982,732*, registered June 21, 2011, based on first use in August 1969, for “Entertainment services in the nature of arranging, organizing and hosting social entertainment events” in International Class 41;
 - GAP, U.S. Reg. No. 4,183,460*, registered July 31, 2012, based on first use in November 2008, for “Computer application software for mobile phones that enables customers to search an online searchable database in the field of clothing, clothing accessories, bags, shoes, personal care products and home products to purchase consumer goods and view retail product information” in International Class 9;

- GAPFIT, U.S. Reg. No. 4,234,189*, registered October 30, 2012, based on first use in January 2012, for “Pants, leggings, shorts, jackets, shirts, sweatshirts, skirts, bras” in International Class 25 and “Retail store services in the field of clothing and clothing accessories; online retail store services in the field of clothing and clothing accessories” in International Class 35; and
- BABY GAP, U.S. Reg. No. 4,312,116*, registered April 2, 2013, based on first use in January 2012, for “Baby books; children's books” in International Class 16.

These registrations are valid, subsisting and in full effect and serve as prima facie evidence of the validity of the registered marks and of Opposer’s exclusive right to use these marks in connection with the goods and services identified therein, pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(a). Additionally, the above referenced registrations (other than any marked with an *) have become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065.

3. Upon information and belief, Applicant is a limited liability company located at 11700 W. Charleston Blvd. Suite 170-229, Las Vegas, Nevada 89135.

4. On April 25, 2014, Applicant filed Application Serial No. 86/262,657 to register the mark ANTI THIGH GAP (“Applicant’s Mark”) in connection with “Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Children’s and infant’s apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Denims” in International Class 25 based on an intent-to-use under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) (the “Application”).

5. Upon information and belief, the phrase “Anti Thigh Gap” is descriptive when used in connection with clothing.

6. Therefore, Applicant’s Mark, when applied to the goods recited in Application Serial No. 86/601,819, is merely descriptive of those goods, in violation of Section 2(e) of the Lanham Act, 15 U.S.C. § 1052(e).

7. Furthermore, upon information and belief, prior to any date on which Applicant can rely, Applicant was on actual notice of Opposer’s prior rights in and to the GAP Marks.

8. The filing date of Applicant’s Application is decades after the acquisition of rights in the GAP Marks by Opposer or its predecessors in interest. As such, Opposer’s rights in the GAP Marks are prior and superior to any rights Applicant may claim in Applicant’s Mark. The registration of Applicant’s Mark is inconsistent with Opposer’s prior rights and statutory grant of exclusivity of use.

9. Opposer’s GAP Marks are exclusively associated with Opposer and have been used continuously by Opposer since a date prior to any date on which Applicant can rely.

10. Applicant’s Mark is confusingly similar to Opposer’s prior used and registered GAP Marks. The marks of the parties are confusingly similar in sight, sound, and commercial impressions; notably, Applicant’s Mark incorporates Opposer’s GAP mark in its entirety.

Applicant’s addition of the words “ANTI THIGH” to Opposer’s GAP mark does not result in a mark that is substantially different from the GAP-formative marks owned by Opposer, as the words are merely descriptive of clothing, one of Opposer’s primary products. In addition, Applicant’s goods are identical and/or closely related to the goods and services of Opposer.

11. Applicant’s use and registration of Applicant’s Mark in connection with the services identified in its Application is therefore likely to cause confusion, cause mistake or to

deceive consumers to falsely believe that Applicant's services emanate from or otherwise are authorized, sponsored by, or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

12. In addition, Opposer's GAP Marks are famous mark for clothing and retail store goods and services, as the Trademark Trial and Appeal Board and a federal district court have determined, *see Gap, Inc. v. G.A.P. Adventures Inc.*, No. 1:07-cv-09614, 2011 WL 2946384, at *1, 16 (S.D.N.Y. June 24, 2011) (identifying Gap as "one of the most famous and recognizable brands in the United States" and the GAP Marks as "famous and widely recognized by the general consuming public" for purposes of dilution), *Gap (Apparel), LLC v. Gap One Enterprises, LLC*, Opposition No. 91172505, at 14 (T.T.A.B. 2008) ("opposer has established that its GAP trademarks are famous and thus entitled to a broad scope of protection"), and became famous long before any priority date upon which Applicant can rely.

13. Applicant's use and registration of the Applicant's Mark will damage Opposer by trading on the enormous goodwill associated with the mark and diluting its distinctiveness. Thus, Applicant's use and registration of Applicant's Mark in connection with the services identified in its application is likely to cause dilution by blurring of Opposer's famous GAP Marks, in violation of Sections 13(a) and 43(c) of the Lanham Act, 15 U.S.C. §§ 1063(a), 1125(c).

14. By reason of the foregoing, Opposer will be harmed by registration of Applicant's Mark.

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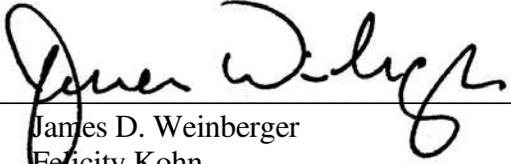
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WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 86/262,657 be denied.

Dated: March 29, 2016
New York, New York

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

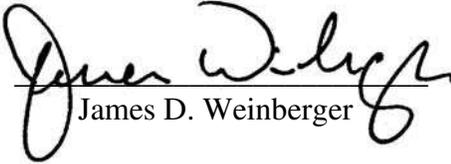
James D. Weinberger
Felicity Kohn
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

Attorneys for Opposer Gap (Apparel), LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2016, a copy of the foregoing **NOTICE OF OPPOSITION** was sent by first-class mail postage pre-paid to Applicant's Correspondent of Record:

Fitcrate, LLC
11700 W Charleston Blvd.
Ste 170-229
Las Vegas, Nevada 89135


James D. Weinberger