

ESTTA Tracking number: **ESTTA744276**

Filing date: **05/04/2016**

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	MARYAN TRADEMARK GMBH
Granted to Date of previous extension	05/08/2016
Address	KELLERHOF 8 MURG, 79730 GERMANY

Attorney information	Stewart J. Bellus & Sara M. Dorchak Collard & Roe, P.C. 1077 Northern Blvd. Roslyn, NY 11576 UNITED STATES law@collardroe.com,sdorchak@collardroe.com Phone:5163659802
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Applicant Information

Application No	86674309	Publication date	11/10/2015
Opposition Filing Date	05/04/2016	Opposition Period Ends	05/08/2016
Applicant	Vix Swimwear, Inc. Suite 108 San Diego, CA 92123 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: beach bags
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: beach cover-ups; hats; swimwear

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3673208	Application Date	07/11/2008
Registration Date	08/25/2009	Foreign Priority Date	03/25/2008
Word Mark	MM		

Design Mark	
Description of Mark	The mark consists of the stylized letters "MM", one of which is superimposed over the other.
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 Soaps; perfumery, essential oils, cosmetics, hair lotions</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0 Leather and imitations of leather, and goods made of these materials, namely, shopping bags, all purpose [sports bags,] beach bags [, luggage; trunks and traveling bags; umbrellas, parasols and walking sticks]</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 Clothing, namely, swim wear, beachwear, blouses, [shorts, t-shirts, skirts,] shirts, scarves [, pants, jackets]; footwear [, headgear, namely, hats, caps and bathing caps]</p>

U.S. Registration No.	3673209	Application Date	07/11/2008
Registration Date	08/25/2009	Foreign Priority Date	03/25/2008
Word Mark	MM MARYAN MEHLHORN		
Design Mark			
Description of Mark	The mark consists of the stylized letters "MM", one of which is superimposed over the other above the wording "MARYAN MEHLHORN".		
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 Soaps; perfumery, essential oils, cosmetics, hair lotions</p>		

	<p>Class 018. First use: First Use: 0 First Use In Commerce: 0 Leather and imitations of leather, and goods made of these materials, namely, shopping bags, all purpose [sports bags,] beach bags [, luggage; trunks and traveling bags; umbrellas, parasols and walking sticks]</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 Clothing, namely, swim wear, beachwear, blouses, [shorts, t-shirts, skirts,] shirts, scarves [, pants, jackets]; footwear [, headgear, namely, hats, caps and bathing caps]</p>
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Attachments	<p>79058635#TMSN.png(bytes) 79058636#TMSN.png(bytes) Notice of Opposition.pdf(122552 bytes)</p>
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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	/smd/
Name	Sara M. Dorchak
Date	05/04/2016

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

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MARYAN TRADEMARK GMBH)	
)	
Opposer,)	
)	
)	Opposition No.
)	Serial No. 86674309
v.)	
)	
VIX SWIMWEAR, INC.)	
)	
)	
Applicant)	
)	
-----X	X	

NOTICE OF OPPOSITION

In the matter of an application for registration of the trademark M V + Design for goods in Class 18 and 25, filed on June 25, 2015 under Serial No. 86674309 by VIX SWIMWEAR, INC. (“Applicant”), MARYAN TRADEMARK GMBH (“Opposer”) believes it will be damaged by registration of said application and opposes same. The grounds for opposition are as follows:

(BACKGROUND)

1. Opposer is a GmbH organized under the laws of Germany and located at Kellerhof 8, Murg, Germany 79730.

2. Opposer’s mark MM + Design (U.S. Registration No. 3,673,208) issued on August 25, 2009, and Opposer’s mark MM MARYAN MEHLHORN + Design (U.S. Registration No. 3,673,209) issued on August 25, 2009 (collectively referred to as OPPOSER’S MARKS).

3. Application No. 86674309 was filed on June 25, 2015, based on an intent to use, so that filing date is the earliest date upon which Applicant can rely as its “first use date.”

4. Opposer’s rights in OPPOSER’S MARKS date back to March 25, 2008, the priority filing date of its application. This date is long before Applicant’s “first use date” of June 25, 2015, so Opposer has prior rights in the United States.

Count I (Likelihood of Confusion)

5. Opposer incorporates by reference all the allegations contained in paragraphs 1-4 of this Notice of Opposition.

6. The commercial impression of Applicant’s mark M V + Design is extremely similar to OPPOSER’S MARKS containing the term MM.

7. Applicant’s goods, as described in Application Serial Number 86674309, are identical or closely related to goods described in registrations for OPPOSER’S MARKS.

8. Due to similarities between Opposer’s and Applicant’s marks and the identical or closely related goods upon which those marks are used, there is a likelihood that consumers will be confused, mistaken and/or deceived into believing that Applicant’s goods emanate from, or in some way are associated or connected with, or sponsored, authorized or warranted by Opposer,

all to the detriment of Opposer, and Opposer will be damaged if a registration is granted to Applicant.

Count II (Dilution by Blurring)

9. Opposer incorporates by reference the allegations contained in paragraphs 1-8 of this Notice of Opposition.

10. OPPOSER'S MARKS are famous and distinctive throughout the United States, and were famous and distinctive before Applicant's first use of its MV + Design mark. OPPOSER'S MARKS have since been registered for several years, have been used and advertised extensively, and are widely recognized by consumers and those in the trade as a designation of source for the goods of Opposer, and is therefore a famous and distinctive mark.

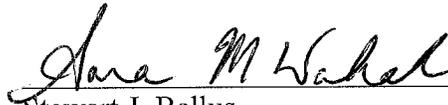
11. Applicant's use of its M V + Design mark is in violation of Section 43(c) of the Lanham Act in that Applicant is likely to cause dilution by blurring by creating a likelihood of association with OPPOSER'S MARKS.

12. Applicant's use of its M V + Design mark will cause an association arising from the similarity with OPPOSER'S MARKS that will cause dilution by blurring and impair the

distinctiveness of OPPOSER'S MARKS, all to the detriment of Opposer who will be damaged by Applicant's use of its M V + Design mark.

WHEREFORE, Opposer requests that this opposition be sustained and that the requested registration of Applicant's mark in Application Serial Number 86674309 be denied.

MARYAN TRADEMARK GMBH



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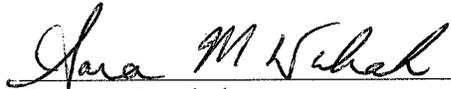
Attorneys for Opposer
MARYAN TRADEMARK GMBH

Date: May 4, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing NOTICE OF OPPOSITION has this 4th day of May 2016 been sent by prepaid First Class Mail to:

Ms. Jessie K. Reider
Buchalter Nemer
1000 Wilshire Blvd., Suite 1500
Los Angeles, California 90017


Sara M. Dorchak