

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

ACTION CONCEPTS FAST FORWARD,
LTD., D/B/A FAST FORWARD

OPPOSER,

OPPOSITION NO. _____

VS.

CAPITAL MERCURY APPAREL, LTD,

APPLICATION SERIAL NO.
76/471,658

APPLICANT.

NOTICE OF OPPOSITION

Commissioner for Trademarks
BOX TTAB FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

This matter relates to an application for trademark registration, Serial No. 76/471,658 filed November 21, 2002 by Capital Mercury Apparel, Ltd. ("Applicant") for registration of the mark "FFWD and Design" in connection with services in classes 22 and 39 ("Opposed Mark"), which application was published on page TM 324 of the *Official Gazette* of the United States Patent and Trademark Office on February 10, 2004. For the reasons set forth below, Opposer believes that it would be damaged by the grant of registration of the Opposed Mark, and hereby opposes the registration of such mark.

As grounds for such opposition, it is alleged that:

1. Commencing long prior to any date upon which Applicant may rely, and continuing without interruption to the present time, Opposer has used and promoted the mark

03/11/2004 JBR00K51 00000002 76471658

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600.00 OP

Fast Forward and FFWD (the "Marks") in connection with a wide variety of goods and services including, inter alia, men's and women's clothing, junior's clothing, footwear, and sunglasses.

2. Opposer's Marks have been so extensively used and promoted by Opposer in the United States in connection with such goods that it has come to indicate to the relevant trade and consumers these goods and services having their source of origin in, or connected with, the Opposer.

3. Opposer is the owner of United States Registration Nos. 2,508,289 and 2,774,813; and pending trademark application nos. 76/414,452 and 76/491,577; copies of which are attached hereto (Exhibit A).

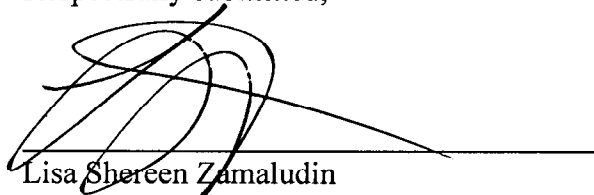
4. Upon information and belief, and according to the records of the United States Patent and Trademark Office, Applicant is the owner of Application Serial No. 76/471,658 and of the Opposed Mark.

5. Upon information and belief, the Opposed Mark has not been used by Applicant in connection with the services listed in Classes 22 and 39.

6. The mark sought to be registered by Applicant in Application Serial No. 76/471,658 consists of a mark which so resembles Opposer's Marks, identified above and previously used and registered by Opposer as to be likely, when applied to the services of Applicant, to cause confusion, to cause mistake or to deceive, thereby to Opposer's damage.

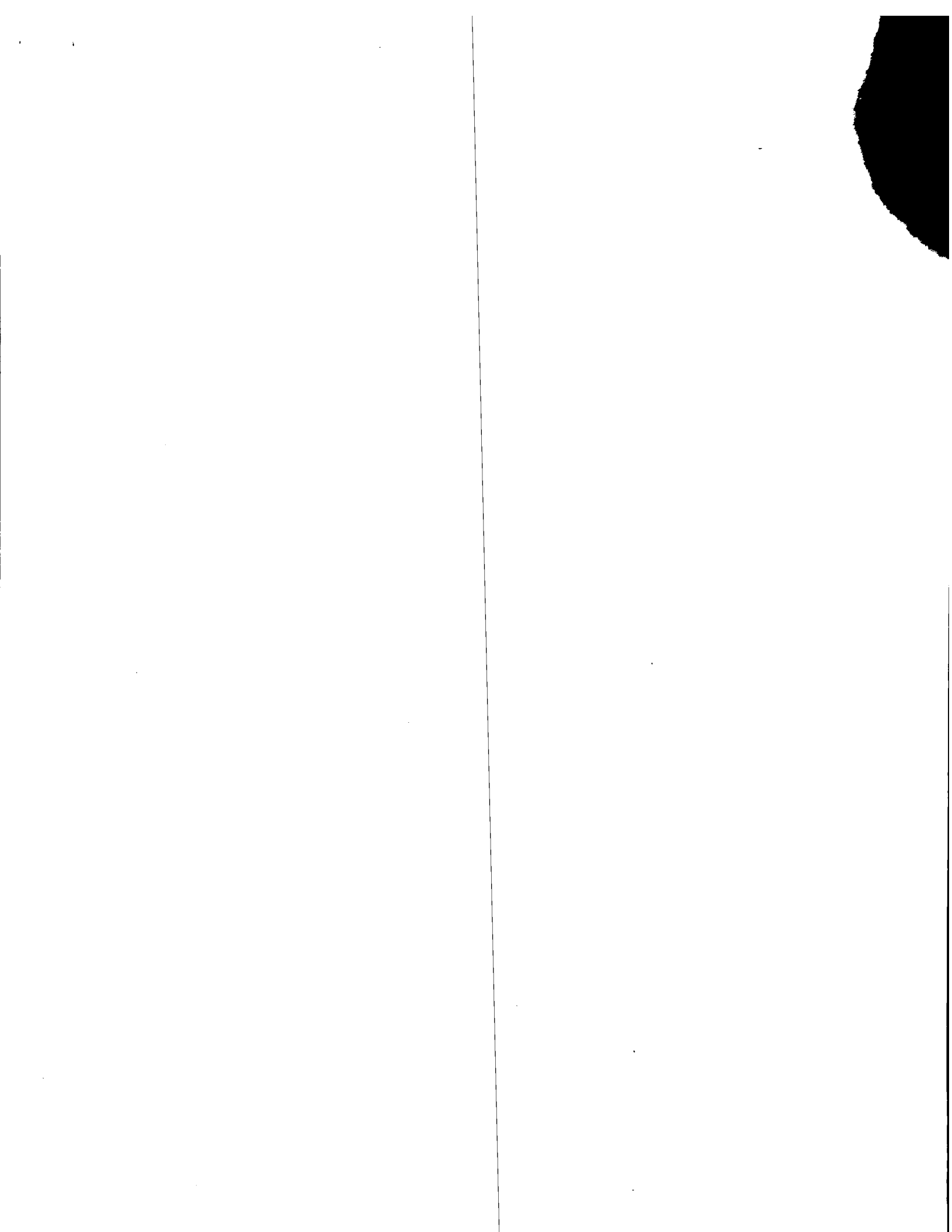
WHEREFORE, Opposer prays that Applicant be required to answer this Notice of Opposition, that the mark made the subject of Application Serial No. 76/471,658 be refused registration, and that Opposer be awarded such other and further relief as may be deemed to be just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Shereen Zamaludin", is written over a horizontal line.

Lisa Shereen Zamaludin
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Tel: 214-999-4554
Fax: 214-999-3554

ATTORNEYS FOR OPPOSER



CLASS 25—(Continued).

SN 76-467,391. COTTETA, JOSEPH, PLYMOUTH MEETING, PA. FILED 11-15-2002.



FOR HEADBANDS CONTAINING A COOLING SUBSTANCE TO COOL THE WEARER DURING RECREATIONAL ACTIVITIES AT THEME PARKS (U.S. CLS. 22 AND 39).

SN 76-467,856. INNOVATIVE CUSTOM BRANDS, INCORPORATED, NEW YORK, NY. FILED 11-8-2002.

WORLD OF TROOP

OWNER OF U.S. REG. NOS. 1,534,395 AND 2,022,078. FOR CLOTHING, NAMELY, JACKETS, SHIRTS, PANTS, SHORTS, HATS, AND FOOTWEAR (U.S. CLS. 22 AND 39).

SN 76-468,552. AT&T WIRELESS SERVICES, INC., REDMOND, WA. FILED 10-18-2002.

MLIFE

FOR CLOTHING, NAMELY HATS; CAPS; SUNVISORS; SWEATERS; T-SHIRTS; SHIRTS; JOGGING SUITS; SWEATSHIRTS; FLEECE VESTS; JACKETS; HEADBANDS; BANDANAS; SHORTS; PANTS; COATS; SOCKS; NECKTIES; NECKWEAR; BOOTS; SKI WEAR; SKIRTS; SWIMWEAR; WRISTBANDS (U.S. CLS. 22 AND 39).

SN 76-471,658. CAPITAL MERCURY APPAREL, LTD., NEW YORK, NY. FILED 11-21-2002.



THE STIPLING IN THE DRAWING IS MERELY TO DENOTE SHADING AND IS NOT A FEATURE OF THE MARK.

FOR SHIRTS, SWEATERS, SLACKS, SHORTS, COATS AND JACKETS (U.S. CLS. 22 AND 39).

CLASS 25—(Continued).

SN 76-472,246. WHITE, NANCY VAUGHN, DBA SHAG BUMZ, LAURINBURG, NC. FILED 12-5-2002.

SHAG BUMZ

FOR CLOTHING, NAMELY, T-SHIRTS, SHORTS, PANTS, SHIRTS, HATS AND SUN VISORS (U.S. CLS. 22 AND 39).

SN 76-477,263. DEPA INTERNATIONAL INC., LODI, NJ. FILED 12-20-2002.

DEPA CLOTHING COMPANY

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CLOTHING COMPANY", APART FROM THE MARK AS SHOWN.

FOR WOMEN'S SPORTSWEAR, NAMELY KNIT AND WOVEN TOPS AND BOTTOMS, INCLUDING SWEATERS, BLOUSES, SLACKS, SKIRTS AND DRESSES (U.S. CLS. 22 AND 39).

SN 76-479,838. MELANGE INTERNATIONAL INC., NEW YORK, NY. FILED 12-17-2002.

MICRO TWIST

FOR MEN'S SUIT AND MEN'S DRESS PANTS (U.S. CLS. 22 AND 39). FIRST USE 8-10-2001; IN COMMERCE 10-25-2001.

SN 76-482,286. VALDEZ, RANDY ANTHONY, SUNNYVALE, CA. FILED 1-13-2003.

GWANNA SPORTS

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORTS", APART FROM THE MARK AS SHOWN.

FOR ADULT AND CHILDREN'S CLOTHING, NAMELY SHIRTS, SHORTS, PANTS, JACKETS, AND CAPS (U.S. CLS. 22 AND 39).

SN 76-486,352. REAL, ROBERT, NEW YORK, NY. FILED 1-29-2003.

REALSPORT

FOR CLOTHING, NAMELY T-SHIRTS, SWEATERS, SWEATSHIRTS, UNDERWEAR FOR MEN AND WOMEN, AND SWEATERS FOR MEN AND WOMEN (U.S. CLS. 22 AND 39).

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-02-18 11:52:38 ET

Serial Number: 75165819 Assignment Information

Registration Number: 2508289 Assignment Information

Mark (words only): FAST FORWARD

Standard Character claim: No

Current Status: Registered.

Date of Status: 2001-11-20

Filing Date: 1996-09-13

Transformed into a National Application: No

Registration Date: 2001-11-20

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2002-01-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Action Concepts, Inc.

Address:

Action Concepts, Inc.

2029 Northeast Mall

Hurst, TX 76053

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Texas

GOODS AND/OR SERVICES

retail store services featuring men's, women's and junior's clothing and footwear, jewelry, sunglasses, skateboards and inline skates

International Class: 035

First Use Date: 1984-05-00

First Use in Commerce Date: 1984-05-00

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2001-11-20 - Registered - Principal Register
2001-08-28 - Published for opposition
2001-08-08 - Notice of publication
2001-04-17 - Approved for Pub - Principal Register (Initial exam)
2000-06-07 - Case file assigned to examining attorney
1999-01-27 - Letter of suspension mailed
1998-07-13 - Non-final action mailed
1998-06-30 - Examiner's amendment mailed
1998-06-08 - Communication received from applicant
1997-12-08 - Final refusal mailed
1997-12-08 - Case file assigned to examining attorney
1997-10-14 - Communication received from applicant
1997-04-25 - Non-final action mailed
1997-04-12 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Lawrence R. Youst (Attorney of record)

LAWRENCE R. YOUST
WARREN & PEREZ
8411 PRESTON RD STE 710
DALLAS TX 75225-5519

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-02-18 12:44:27 ET

Serial Number: 76414453 Assignment Information

Registration Number: 2774813 Assignment Information

Mark



(words only): FAST FORWARD

Standard Character claim: No

Current Status: Registered.

Date of Status: 2003-10-21

Filing Date: 2002-05-28

Transformed into a National Application: No

Registration Date: 2003-10-21

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2003-10-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Action Concepts, Inc.

Address:

Action Concepts, Inc.
7503 Flagstone #30
Fort Worth, TX 76118
United States
Legal Entity Type: Corporation

State or Country of Incorporation: Texas

GOODS AND/OR SERVICES

retail store services featuring men's, women's and junior's clothing and footwear, jewelry, sunglasses, skateboards and inline skates

International Class: 035

First Use Date: 1989-08-16

First Use in Commerce Date: 1989-08-16

Basis: 1(a)

ADDITIONAL INFORMATION

Prior Registration Number(s):

2508289

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-10-21 - Registered - Principal Register

2003-07-29 - Published for opposition

2003-07-09 - Notice of publication

2003-05-30 - Approved for Pub - Principal Register (Initial exam)

2003-04-23 - Communication received from applicant

2003-04-28 - Communication received from applicant

2003-04-28 - PAPER RECEIVED

2002-10-25 - Non-final action mailed

2002-10-09 - Case file assigned to examining attorney

2002-09-25 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Sanford E. Warren, Jr. (Attorney of record)

SANFORD E. WARREN, JR.

GARDERE WYNNE SEWELL LLP

1601 ELM STREET

SUITE 3000

DALLAS, TEXAS 75201

Phone Number: (214) 999-4339

Fax Number: 214.999.4667

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-02-18 12:42:26 ET

Serial Number: 76414452 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark



(words only): FF

Standard Character claim: No

Current Status: An office action making FINAL a refusal to register the mark has been mailed.

Date of Status: 2003-06-24

Filing Date: 2002-05-28

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 103

Attorney Assigned:
GRIFFIN JAMES Employee Location

Current Location: L3D -TMEG Law Office 103 - Docket Clerk

Date In Location: 2004-01-26

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Action Concepts, Inc.

Address:
Action Concepts, Inc.
7503 Flagstone #30
Fort Worth, TX 76118
United States
Legal Entity Type: Corporation

State or Country of Incorporation: Texas

GOODS AND/OR SERVICES

retail store services featuring men's, women's and junior's clothing and footwear, jewelry, sunglasses, skateboards and inline skates

International Class: 035

First Use Date: 2001-03-14

First Use in Commerce Date: 2001-03-14

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-12-24 - Communication received from applicant

2004-01-12 - Case File in TICRS

2003-12-24 - PAPER RECEIVED

2003-06-24 - Final refusal mailed

2003-04-15 - Communication received from applicant

2003-04-18 - Communication received from applicant

2003-04-18 - PAPER RECEIVED

2002-10-15 - Non-final action mailed

2002-09-25 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Sanford E. Warren, Jr. (Attorney of record)

LISA SHEREEN ZAMALUDIN
GARDERE WYNNE SEWELL LLP
1601 ELM ST STE 3000
DALLAS, TEXAS 75201

Phone Number: (214) 999-4554

Fax Number: 214.999.4667

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-02-18 12:41:30 ET

Serial Number: 76491577 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark (words only): FAST FORWARD

Standard Character claim: No

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2003-08-05

Filing Date: 2003-02-20

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

Attorney Assigned:
WILLIAMS IRENE D Employee Location

Current Location: M30 -TMO Law Office 112

Date In Location: 2003-08-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Action Concepts Fast Forward, Ltd.

Address:

Action Concepts Fast Forward, Ltd.

7503 Flagstone #30

Fort Worth, TX 76118

United States

Legal Entity Type: Limited Partnership

State or Country Where Organized: Texas

GOODS AND/OR SERVICES

Clothing, namely, suits, dresses, gowns, jackets, blazers, vests, sweaters, cardigans, blouses, shirts, tank tops, T-shirts, skirts, pants, shorts, jeans, belts, caps, hats, headwear, sweatshirts, sweatpants, coats, rainwear, shawls, gloves, sashes, scarves, socks, leggings, sleepwear, footwear, sandals, swimwear, and undergarments

International Class: 025
First Use Date: 1984-05-12
First Use in Commerce Date: 1984-10-01

Basis: 1(a)

skateboards, skateboard wheels, hardware, parts, skateboard decks, skateboard trucks, bearings, mounting hardware, grip tape, riser pads, bolts, screws, nuts washers, shock pads, and bushings

International Class: 028
First Use Date: 1984-05-12
First Use in Commerce Date: 1984-10-01

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-08-05 - Non-final action mailed
2003-08-04 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)
Kenneth T. Emanuelson (Attorney of record)

KENNETH T. EMANUELSON
GARDERE WYNNE SEWELL LLP
1601 ELM STREET, SUITE 3000
DALLAS, TEXAS 75201

Phone Number: (214) 999-4266
Fax Number: 214-999-3266

TTAB

GARDERE

attorneys and counselors ■ www.gardere.com

Direct: 214-999-4554
Direct Fax: 214-999-3554
lzamaludin@gardere.com

February 18, 2004

Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202



02-24-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

Re: Applicant: Capital Mercury Apparel, Ltd.
Mark: FFWD and Design
Date Filed: November 21, 2002
Official Gazette, Published: February 10, 2004
Opposer: Action Concepts Fast Forward, Ltd. d/b/a Fast Forward
Our File No.: 120006-5012

Dear Sir:

Enclosed for filing with the Patent and Trademark Office, please find the following:

- 1. Notice of Opposition;
- 2. Check in the amount of \$600.00; and
- 3. Postcard.

It is believed that no additional fee is due. If this is incorrect, or if any other fee is necessary, the Commissioner is hereby authorized to charge any fees that may be required by this paper to Deposit Account No. 07-0153.

Respectfully submitted,

Gardere Wynne Sewell LLP

Lisa Shereen Zamaludin
LSZ:cmm
Enclosures

c: Brandon Batton (w/encl.)

DALLAS 1375149v1

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail postage prepaid in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 on

2/18/04

Cory M. Jordan
(Signature of the person signing the certificate)

Cory M. Jordan
(Printed or typed name of the person signing the certificate)

2/18/04
(Date of Signature)