

ESTTA Tracking number: **ESTTA73166**

Filing date: **03/28/2006**

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	Swank, Inc.
Granted to Date of previous extension	03/29/2006
Address	90 Park Avenue New York, NY 10016 UNITED STATES

Attorney information	Karin Segall Darby & Darby PC P.O. Box 5257 New York, NY 10150-5257 UNITED STATES tmocket@darbylaw.com,ksegall@darbylaw.com Phone:212-527-7619
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Applicant Information

Application No	78510369	Publication date	11/29/2005
Opposition Filing Date	03/28/2006	Opposition Period Ends	03/29/2006
Applicant	Goodnight Family, LLC 740 W. Boston Post Rd., Ste. 318 Mamaroneck, NY 10543 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 025. All goods and services in the class are opposed, namely: Clothing accessories, namely, belts, cuffs, dickies, gloves, ski gloves, sleep masks, sweat bands, suspenders and visors; clothing, namely, aprons, bathing suits, beach coverups, blouses, bottoms, shorts, cardigans, chaps, Halloween and masquerade costumes, coverups, dresses, evening gowns, golf shirts, gowns, gym shorts, gym suits, halter tops, jeans, jerseys, jumpers, jump suits, knit shirts, lab coats, miniskirts, overalls, pants, polo shirts, pullovers, rompers, sarongs, shirts, short sets comprised of a top and a bottom, smocks, suits, suit coats, sweaters, sweat pants, sweat shirts, sweat suits, swim wear, t-shirts, tank tops, tap pants, tops, tunics, turtlenecks, tuxedos, uniforms and vests; footwear, namely, athletic footwear, clogs, inner soles, sandals, shoes, slippers, snow board boots and thongs; head wear, namely, baseball caps, bathing caps, ear muffs, hats, shower caps and turbans; hosiery, namely, leggings, leotards, leg warmers, pantyhose, stockings, thermal socks and tights; infant wear, namely, baby buntings, baby bibs not of paper and rompers; lounge wear, namely, caftans, lounge bottoms, lounge tops, lounge coats and lounge pants; outerwear, namely, coats, jackets, parkas, ponchos rainwear, shawls, sport coats, top coats and wraps; sleep wear, namely, bed jackets; housecoats, kimonos, lingerie, negligees, nightgowns, pajamas, robes and teddies; underwear, namely, bikinis, bikini sets comprised of a camisole top and a bottom, body suits, body shapers, boxer shorts, bras, brassieres, briefs, bustiers, camisoles, chemises, chemisettes, corselets, corsets, foundation garments, garter</p>
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belts, girdles, panties, slips, thermal underwear and undershirts

Related Proceedings	91168327
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Attachments	00699782.pdf (5 pages)
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Signature	/karin segall/
Name	Karin Segall
Date	03/28/2006

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

SWANK, INC.,

Opposer,

v.

GOODNIGHT FAMILY, LLC,

Applicant.

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Opposition No. _____

NOTICE OF OPPOSITION

In the matter of the application filed by Goodnight Family, LLC (“Applicant”), with an address of 740 W. Boston Post Rd., Ste. 318 Mamaroneck, New York 10543, in International Class 25 on November 3, 2004, under Serial No. 78/510,369 (the “Application”), seeking a registration of SWANKY LOUNGE WEAR, which Application was published on November 29, 2005 with extensions of time to oppose granted to Swank, Inc. (“Opposer”), a corporation organized and existing under the laws of Delaware, located and doing business at 90 Park Avenue, through March 29, 2006.

Opposer believes it will be damaged by the registration of SWANKY LOUNGE WEAR as shown in the Application and hereby opposes the same.

The grounds for opposition are as follows:

1. Continuously and long prior to Applicant’s filing date of November 3, 2004, Opposer
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has offered and continues to offer small leather goods and other accessories, including wallets, belt buckles, key rings, key cases and money clips bearing the mark SWANK. Substantial quantities of these goods have been and are being made, distributed and sold by Opposer under its trademarks throughout the United States.

2. Opposer has spent large sums of money and expended tremendous effort in promoting products bearing its SWANK trademarks, which marks have become extremely well known and famous and are associated exclusively with Opposer and its products. The goodwill of the business connected with the use of and symbolized by the SWANK marks is a valuable asset of Opposer.

3. Opposer is the sole owner, *inter alia*, of the following United States trademark registrations and of all the business and goodwill connected with said marks issued on the dates and under the numbers set out beside them. The following SWANK marks are now in full force and effect, have not been canceled and, with respect to Registration Nos. 735,683, 1,131,853, and 2,211,415, have become incontestible.

<u>Trademark</u>	<u>Registration Date</u>	<u>Registration No.</u>
SWANK	July 24, 1928 (Renewed July 24, 1988)	244,634
SWANK	July 30, 1929 (Renewed July 30, 1989)	259,457
SWANK	October 29, 1935 (Renewed October 29, 1995)	329,397
		(continued . . .)

<u>Trademark</u>	<u>Registration Date</u>	<u>Registration No.</u>
SWANK	October 27, 1936 (Renewed October 27, 1996)	339,920
SWANK	November 3, 1936 (Renewed November 3, 1996)	340,191
SWANK	December 8, 1936 (Renewed December 8, 1996)	341,515
SWANK	June 28, 1949 (Renewed June 28, 1989)	511,654
SWANK	March 24, 1959 (Renewed March 24, 1999)	675,988
SWANK	August 7, 1962 (Renewed August 7, 2002)	735,683
LADY SWANK	November 9, 1965 (Renewed January 13, 2006)	798,541
SWANK	March 11, 1980 (Renewed March 11, 2000)	1,131,853
SWANK	December 15, 1998	2,211,415

4. The Application was filed on November 3, 2004 and is based, pursuant to Section 1(b) of the Lanham Act, on intent to use the mark SWANKY LOUNGE WEAR in commerce in connection with a variety of clothing and accessories, including “belts and suspenders” (all goods listed in the Application are hereinafter referred to as “Applicant’s Goods”).

5. Upon information and belief, Applicant did not use the mark for which registration is sought in the Application prior to November 3, 2004.

6. At least some of Applicant’s Goods are accessory items and are therefore closely related to Opposer’s Goods sold by Opposer under the mark SWANK.

7. The designation SWANKY LOUNGE WEAR so resembles Opposer's trademark SWANK as to be likely, when applied to Applicant's Goods, to cause confusion or mistake or to deceive persons by creating the erroneous impression that Applicant's Goods originate with or come from the same source as Opposer's Goods, or are endorsed by, sponsored by or connected in some way with Opposer.

8. Registration of SWANKY LOUNGE WEAR as sought in the Application by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that SWANKY LOUNGE WEAR consists of or comprises a mark that so resembles Opposer's SWANK marks previously registered in the Patent and Trademark Office, previously used by Opposer and not abandoned, as to be likely, when applied to Applicant's Goods, to cause confusion, mistake or to deceive.

9. Applicant's use of SWANKY LOUNGE WEAR is likely to cause dilution of the distinctiveness and good will associated with Opposer's famous SWANK marks and therefore should be denied registration pursuant to 15 U.S.C. § 43(c).

WHEREFORE, Opposer prays that the registration sought by Applicant be refused and that this Opposition be sustained.

This Notice of Opposition being filed electronically and the required fee of \$300 is being simultaneously submitted. Please charge any additional costs to our Deposit Account No. 04-0100.

Respectfully submitted,

DARBY & DARBY P.C.

Dated: New York, New York
March 28, 2006

By: /Karin Segall/
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Swank, Inc.