

ESTTA Tracking number: **ESTTA82124**

Filing date: **05/24/2006**

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	JohnSpiegelberg		
Entity	Individual	Citizenship	UNITED STATES
Address	2416 Broadway Street Lubbock, TX 79401 UNITED STATES		

Attorney information	Erik J. Osterrieder Schubert Osterrieder & Nickelson PLLC 6013 Cannon Mtn. Dr., S14 Austin, TX 78749 UNITED STATES ejo@sonlaw.com Phone:7135330494		
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Applicant Information

Application No	78687171	Publication date	05/02/2006
Opposition Filing Date	05/24/2006	Opposition Period Ends	06/01/2006
Applicant	Chrome Clothing Company 1732 S Boston Ave Tulsa, OK 74119 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2005/01/01 First Use In Commerce: 2005/01/01
All goods and services in the class are opposed, namely: Electronic retailing services via computer featuring Mens and womens Clothing and accessories; Retail apparel stores

Attachments	Notice of Opposition.pdf (5 pages)(21754 bytes)
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Signature	/Erik J. Osterrieder/
Name	Erik J. Osterrieder
Date	05/24/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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JOHN SPIEGELBERG,	§	
d/b/a CHROME	§	
Plaintiff,	§	
	§	
v.	§	OPPOSITION No. _____
	§	
CHROME CLOTHING COMPANY,	§	Serial No. 78/687,171
Applicant/Defendant.	§	Design Mark: CHROME CLOTHING
	§	COMPANY
	§	Pub. For Opp. Date: 5/2/06

NOTICE OF OPPOSITION

Plaintiff John Spiegelberg, d/b/a Chrome (collectively, “Chrome”) files this Notice of Opposition to oppose an application for the CHROME CLOTHING COMPANY design mark (“the purported mark”) allegedly owned by Chrome Clothing Company (“CCC”). The purported mark was filed on August 6, 2005, and has a publication for opposition date of May 2, 2006. For the following reasons, Plaintiff Chrome respectfully requests that the USPTO disallow a registration to CCC for its purported mark because Plaintiff Chrome will be damaged by its registration.

I.

Parties and Facts

1. This Notice of Opposition is brought by Plaintiff John Spiegelberg, d/b/a Chrome, *i.e.*, Plaintiff Chrome, having a principal business address of 2416 Broadway, Lubbock, TX 79401.

2. Based on information and belief, and according to searchable online USPTO records, Chrome Clothing Company (“CCC”) is the owner of the application for the purported mark under opposition by Plaintiff Chrome. According to these same records, and based on information and belief, CCC is an Oklahoma partnership comprised of the following US citizens: Kevin Otis, Kristin Jacobs, and Brian Kidd. Further, CCC has a principal business and correspondence address of Chrome Clothing Company, 1732 South Boston Avenue, Tulsa, Oklahoma 74119.
3. CCC has an alleged first usage date of January 1, 2005 for the purported mark in association with class 35 services of record associated with the purported mark in its application pending with the USPTO. The class 35 services of record are: “electronic retailing services via computer featuring men’s and women’s clothing and accessories; retail apparel stores.”
4. As *inter partes* grounds in support of this Notice of Opposition, Plaintiff Chrome asserts that the purported mark is likely to be confused, under Section 2(d), with Plaintiff Chrome’s mark, *i.e.*, USPTO Serial No. 78/818418 for CHROME, a mark Plaintiff Chrome has used in commerce prior to January 1, 2005 with, at least, class 35 services, which, in the referenced application are: “retail store services featuring apparel, trending clothing, contemporary clothing, hats, gloves, scarves, wallets, luggage, eyewear, shoes, belts, and jewelry; on-line retail store services apparel, trending clothing, contemporary clothing, hats, gloves, scarves, wallets, luggage, eyewear, shoes, belts, and jewelry.” As a result, Plaintiff Chrome is the senior user as between the purported mark and Plaintiff Chrome’s mark, *i.e.*, CHROME.
5. Additionally and alternatively as *inter partes* and *ex parte* grounds, and based on information and belief, Plaintiff Chrome asserts that Applicant CCC knowingly committed fraud on the USPTO through its assertion of facts in the application underlying the registration for the

purported mark in regards to Applicant CCC's alleged right to use the purported mark. Further, with intent to deceive, Applicant CCC fraudulently represented in its referenced application that Applicant CCC possessed the right to use the purported mark in commerce, when used on or in connection with its alleged services, so as to not cause confusion, or to cause mistake, or to deceive when compared to another marks, *e.g.*, Plaintiff Chrome's CHROME mark. Further still, Applicant CCC did fraudulently misrepresent, with intent to deceive, that another "person, firm, corporation, or association," did not already use the same or similar mark that is likely to cause confusion with the purported mark.

II.

Inter Partes Count

Count One – Likelihood of Confusion Under Section 2(d)

6. Re-alleging and incorporating by this reference the preceding paragraphs, the purported mark is likely to be confused, under Section 2(d), with Plaintiff Chrome's CHROME mark, having USPTO Serial No. 78/818418. Both the purported mark and Plaintiff Chrome's mark are associated with class 35 services.

III.

Inter Partes and Ex Parte Count

Count Two –Fraudulent Assertion of False Facts in the Application Underlying the Registration Regarding Its Alleged Right to Seek Registration for And to Use The Purported Mark

7. Re-alleging and incorporating by this reference the preceding paragraphs, Applicant CCC knowingly committed fraud on the USPTO through its assertion of facts in the application underlying its application through its alleged right to seek the registration for and to use the purported mark.
8. With intent to deceive, Applicant CCC fraudulently misrepresented in its referenced application that Applicant CCC possessed the right to use the purported mark in commerce, when used on or in connection with its alleged services, so as to not cause confusion, or to cause mistake, or to deceive when compared to another marks, *e.g.*, Plaintiff Chrome’s CHROME mark..
9. Applicant CCC did fraudulently misrepresent, without intent to deceive, that another “person, firm, corporation, or association,” *e.g.*, Plaintiff Chrome, did not already use a mark likely to cause confusion with the purported mark.

IV.

Prayer

Because Plaintiff Chrome will be damaged by the registration of the purported mark, Plaintiff Chrome respectfully requests that the USPTO disallow registration for the purported mark.

Respectfully submitted,

Dated: May 24, 2006

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