

ESTTA Tracking number: **ESTTA127305**

Filing date: **02/28/2007**

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	MARYELLENKANE
Granted to Date of previous extension	05/02/2007
Address	217 ROCK GLEN ROAD WYNNEWOOD, PA 19096 UNITED STATES
Attorney information	SAMUEL W. APICELLI/MAXIM A. VOLTCHENKO DUANE MORRIS LLP 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103 UNITED STATES Lfgould@duanemorris.com Phone:215-979-1000

### Applicant Information

Application No	79021309	Publication date	01/02/2007
Opposition Filing Date	02/28/2007	Opposition Period Ends	05/02/2007
International Registration No.	0878008	International Registration Date	11/17/2005
Applicant	OLIVE OIL WORLD TRADE, S.L. Pza. del Castillo, 2-1º; Pamplona, E31001 SPAIN		

### Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Garments, namely blazers, cardigans, jackets, waistcoats, coats, overcoats, gabardines, sashes, stoles, scarves, gloves, mittens, belts, blouses, overalls, shirts, nightshirts, polo shirts, T-shirts, tank tops, tops, pullovers, jerseys, sweaters, trousers, skirts, miniskirts, suits, dresses, afternoon dresses, evening dresses, wedding dresses, headscarves, hats; footwear, namely shoes, boots, clogs, moccasins, sandals, training shoes
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration	2846904	Application Date	04/14/2003
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No.			
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	OLIVE JUICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 2003/09/01 First Use In Commerce: 2003/09/01  Clothing, namely, sweaters, cardigans, turtleneck sweaters, mock turtleneck sweaters, zippered sweaters, shirts, blouses, turtleneck shirts, mock turtleneck shirts, bodysuit, bodysuit, dresses, skirts, jumpers, pants, jeans, casual pants, slacks, overalls, jumpsuit, scarves, vests, and coats</p> <p>Class 035. First use: First Use: 2003/09/01 First Use In Commerce: 2003/09/01  Mail order catalog service featuring children's apparel</p>		

U.S. Application No.	77035807	Application Date	11/02/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OLIVE JUICE		
Design Mark			
Description of Mark	The mark consists of The figure of a young woman or girl shown between the literal elements of the mark. .		
Goods/Services	<p>Class 016. First use:  Children's books</p> <p>Class 025. First use:  Clothing and clothing accessories, namely, shirts, sleep shirts, knitted shirts, polo shirts, sweat shirts, short sleeved and long sleeved shirts, short sleeved and long sleeved t-shirts, tank tops, blouses, camisoles, sweaters, turtlenecks, mock turtleneck sweaters, turtleneck sweaters, turtleneck shirts, mock turtleneck shirts, bodysuits, bodysuits, vests, cardigans, pullovers, tunics, jackets, coats, topcoats, blazers, capes, pants, casual pants, capri pants, sweat pants, jeans, slacks, trousers, infants' trousers, overalls, bib overalls, gauchos, frocks, jumpers, slacks, skirts and dresses, shorts, bermuda shorts, underwear, boxer briefs, boxer shorts, panties, bikinis, bathing suits, swim trunks, swimsuits, socks and stockings, tights, shoes, boots, moccasins, thongs, flip flops, ballet shoes, sandals, infants' shoes and boots, ties, caps, knitted caps, hats, berets, bonnets, belts, aprons, and scarves</p> <p>Class 035. First use:  Mail order catalog service featuring apparel and apparel accessories, and children's books</p>		

Attachments	77035807#TMSN.jpeg ( 1 page )( bytes ) OliveOil_notice_opposition.pdf ( 5 pages )(736768 bytes )
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Signature	/mav/
Name	SAMUEL W. APICELLI/MAXIM A. VOLTCHENKO
Date	02/28/2007

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

In the matter of Trademark Application Serial No. 79021309  
Filed: November 17, 2005  
For the mark: OLIVE OIL  
Published in the Official Gazette on: January 2, 2007

MARYELLEN KANE	:	
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Opposer,	:	
	:	
	:	
v.	:	<b>Opposition No.</b> _____
	:	
OLIVE OIL WORLD TRADE, S.L.	:	
	:	
Applicant.	:	

**FILED ELECTRONICALLY VIA ESTTA**

**NOTICE OF OPPOSITION**

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Opposer, Maryellen Kane, an individual residing at 217 Rock Glen Road, Wynnewood, Pennsylvania 19096, believes she will be damaged by registration of the OLIVE OIL mark in International Class 25, as shown in Application Serial No. 79021309, for the goods set forth therein, and hereby opposes the same.

As grounds for the opposition, Opposer, through her counsel, alleges that:

1. Upon information and belief, Applicant OLIVE OIL WORLD TRADE, S.L. ("Applicant") is a Spanish corporation with its principal place of business at Pza. del Castillo, 2-1º, Pamplona E31001 Spain.

2. On November 17, 2005, Applicant filed Application Serial No. 79021309 (the "Application") to register, on the Principal Register, the OLIVE OIL mark for "Garments,

namely blazers, cardigans, jackets, waistcoats, coats, overcoats, gabardines, sashes, stoles, scarves, gloves, mittens, belts, blouses, overalls, shirts, nightshirts, polo shirts, T-shirts, tank tops, tops, pullovers, jerseys, sweaters, trousers, skirts, miniskirts, suits, dresses, afternoon dresses, evening dresses, wedding dresses, headscarves, hats; footwear, namely shoes, boots, clogs, moccasins, sandals, training shoes” in IC 025 (“the Goods”).

3. Applicant filed its Application for the OLIVE OIL mark under Section 66(a) of the Trademark Act, without claiming use of the mark in commerce.

4. Opposer Maryellen Kane (“Opposer”) owns the following U.S. trademark registration:

MARK	REGISTRATION NO./REGISTRATION DATE	GOODS/SERVICES
OLIVE JUICE	2846904 May 25, 2004	“Clothing, namely, sweaters, cardigans, turtleneck sweaters, mock turtleneck sweaters, zippered sweaters, shirts, blouses, turtleneck shirts, mock turtleneck shirts, bodyshirt, bodysuit, dresses, skirts, jumpers, pants, jeans, casual pants, slacks, overalls, jumpsuit, scarves, vests, and coats,” in IC 025;  “Mail order catalog service featuring children’s apparel,” in IC 035.

5. Opposer owns the following pending U.S. trademark application:

MARK	SERIAL NO./FILING DATE/	GOODS/SERVICES
OLIVE JUICE & Design	77/035,807  Filing date: November 2, 2007	“Clothing and clothing accessories, namely, shirts, sleep shirts, knitted shirts, polo shirts, sweat shirts, short sleeved and long sleeved shirts, short sleeved and long sleeved t-shirts, tank tops, blouses, camisoles, sweaters, turtlenecks, mock

		<p>turtleneck sweaters, turtleneck sweaters, turtleneck shirts, mock turtleneck shirts, bodysuits, bodyshirts, vests, cardigans, pullovers, tunics, jackets, coats, topcoats, blazers, capes, pants, casual pants, capri pants, sweat pants, jeans, slacks, trousers, infants' trousers, overalls, bib overalls, gauchos, frocks, jumpers, slacks, skirts and dresses, shorts, bermuda shorts, underwear, boxer briefs, boxer shorts, panties, bikinis, bathing suits, swim trunks, swimsuits, socks and stockings, tights, shoes, boots, moccasins, thongs, flip flops, ballet shoes, sandals, infants' shoes and boots, ties, caps, knitted caps, hats, berets, bonnets, belts, aprons, and scarves," in IC 025;</p> <p>"Mail order catalog service featuring apparel and apparel accessories, and children's books," in IC 035</p>
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6. Opposer is a clothing company conducting business throughout the United States and the World.

7. Opposer has engaged in extensive advertising and promotion of its OLIVE JUICE marks, and as a result of such use, the OLIVE JUICE marks have become identified with and are recognized as representing the goods and services of Opposer among the relevant trade and consumers.

8. Opposer has prior rights to its OLIVE JUICE marks in connection with the goods and services identified by its marks.

9. If Applicant is permitted to use and register the OLIVE OIL mark for the Goods specified in the Application herein opposed, confusion in the trade resulting in damage and

injury to Opposer would be caused and would result by reason of the similarity of the respective marks and the similarity and/or relatedness of the goods and services protected thereby.

10. Applicant's OLIVE OIL mark and Opposer's OLIVE JUICE mark share the common term "OLIVE."

11. Applicant's OLIVE OIL mark and Opposer's OLIVE JUICE mark are similar in sight, sound, meaning and overall commercial impression.

12. Applicant's OLIVE OIL mark and Opposer's OLIVE JUICE mark both identify garments (clothing) in IC 025.

13. Applicant's OLIVE OIL mark and Opposer's OLIVE JUICE mark identify similar goods.

14. Persons familiar with Opposer and/or its OLIVE JUICE marks would likely believe that Applicant's Goods under its OLIVE OIL mark emanate from the same source as those of Opposer.

15. Persons familiar with Opposer and/or its OLIVE JUICE marks would likely believe that Applicant's Goods are provided, endorsed, sponsored by, or otherwise connected with Opposer.

16. If Applicant is permitted to use and register the Mark for the Goods specified in the Application herein opposed, any defect, objection, or fault found with Applicant's Goods marketed under the OLIVE OIL mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for its goods and services currently marketed and sold under its OLIVE JUICE marks.

17. Opposer's OLIVE JUICE marks are inherently distinctive and have acquired strong commercial distinctiveness based upon their widespread use and recognition by the public.

18. Opposer's OLIVE JUICE marks are famous and distinctive in that they are uniquely associated with Opposer.

19. Applicant's OLIVE OIL mark will dilute the distinctive quality of Opposer's OLIVE JUICE marks by lessening the capacity of Opposer's OLIVE JUICE marks to identify and distinguish Opposer's goods and services.

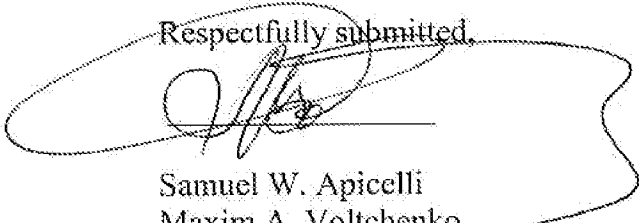
20. If Applicant is granted the registration herein opposed, it would therefore obtain at least a *prima facie* exclusive right to the use of its proposed OLIVE OIL mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that the registration sought by Applicant be denied.

Concurrently with the filing of this opposition, Opposer paid the required filing fee via its Deposit Account No. 04-1679. If any additional fee is required, please charge any such additional fees or credit any overpayment concerning the filing of the Notice of Opposition to Deposit Account No. 04-1679.

Date: February 28, 2007

Respectfully submitted,



Samuel W. Apicelli  
Maxim A. Voltchenko  
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