

ESTTA Tracking number: **ESTTA169335**

Filing date: **10/17/2007**

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	Color Image Apparel, Inc.
Granted to Date of previous extension	10/17/2007
Address	6670 Flotilla Street Commerce, CA 90040 UNITED STATES

Attorney information	Maha Sarah Gordon & Rees LLP 101 West Broadway Suite 1600 San Diego, CA 92101 UNITED STATES ipdocket@gordonrees.com, rsybert@gordonrees.com, msarah@gordonrees.com, llloyd@gordonrees.com, sgill@gordonrees.com Phone:619-696-6700
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Applicant Information

Application No	77023281	Publication date	06/19/2007
Opposition Filing Date	10/17/2007	Opposition Period Ends	10/17/2007
Applicant	Epicurean Fusion 1336 16th Ave., #4 San Francisco, CA 94122 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. Opposed goods and services in the class: apparel
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2668441	Application Date	09/04/2001
Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	BELLA		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 Garments, namely cotton T-shirts and Tops

U.S. Registration No.	2895709	Application Date	09/28/2003
Registration Date	10/19/2004	Foreign Priority Date	NONE

Word Mark	BELLA
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 025. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY JEANS, DRESSES, SKIRTS, MINISKIRTS, SHORTS, PANTS, SLACKS, TROUSERS, SUITS, PANTSUITS, JACKETS, SWEATERS, CARDIGANS, PULLOVERS, COATS, SPORT COATS, BLOUSES, VESTS, BLAZERS, OVERALLS, SWEATSHIRTS, SWEATPANTS, SWEATSHORTS, SWEATSUITS, SHIRTS, POLO SHIRTS, KNIT SHIRTS, SPORT SHIRTS, TEE-SHIRTS, COTTON SHIRTS, TOPS, TANK-TOPS, HALTER TOPS, KNIT TOPS, WOVEN TOPS, BODYSUITS, CAMISOLES, PAJAMAS, JUMPSUITS, SWIM SUITS, SWIMWEAR, SOCKS, GLOVES; CLOTHING ACCESSORIES NAMELY BELTS, SCARVES, HATS, CAPS AND VISORS; FOOTWEAR, NAMELY LOAFERS, ESPADRILLES, SANDALS, THONGS, MULES, PUMPS, ATHLETIC SHOES, SLIPPERS, BOOTS, BEACH FOOTWEAR
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Attachments	76308113#TMSN.gif (1 page)(bytes) BELLA CABOSSE Notice of Opposition.pdf (10 pages)(636682 bytes)
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Signature	/Maha Sarah/
Name	Maha Sarah
Date	10/17/2007

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

In the Matter of Trademark Application)	
Serial No. 77/023,281)	
Filed: October 17, 2006)	
Published: June 19, 2007)	
By EPICUREAN FUSION)	
For the Trademark BELLA CABOSSE)	
<hr style="border: 1px solid black;"/>)	Opposition No.
)	
COLOR IMAGE APPAREL, INC.,)	<hr style="border: 1px solid black;"/>
a California Corporation)	
Opposer,)	
v.)	
)	
EPICUREAN FUSION,)	
a California Corporation)	
)	
Applicant.)	
<hr style="border: 1px solid black;"/>)	

NOTICE OF OPPOSITION

Opposer, Color Image Apparel, Inc., a California corporation having a place of business at 6670 Flotilla Street, Commerce, California 90040 (hereinafter "Opposer") believes that it will be damaged by registration of the mark BELLA CABOSSE shown in Application Serial No. 77/023,281, as published in the Official Gazette on June 19, 2007 and hereby opposes the same.

As grounds for the Opposition, it is alleged that:

1. Opposer is the owner of U.S. Trademark Registration No. 2,668,441, for the mark BELLA and Design for "garments, namely cotton T-shirts and tops" in class 25, with a date of first use since at least January 1, 2000. Said registration is valid and subsisting. A copy of the trademark registration with Title and Status is attached hereto as Exhibit A.

2. Opposer is the owner of U.S. Trademark Registration No. 2,895,709, for the mark BELLA for “men’s, women’s and children’s clothing, namely jeans, dresses, skirts, miniskirts, shorts, pants, slacks, trousers, suits, pantsuits, jackets, sweaters, cardigans, pullovers, coats, sport coats, blouses, vests, blazers, overalls, sweatshirts, sweatpants, sweatshorts, sweatsuits, shirts, polo shirts, knit shirts, sport shirts, tee-shirts, cotton shirts, tops, tank tops, halter tops, knit tops, woven tops, bodysuits, camisoles, pajamas, jumpsuits, swim suits, swimwear, socks, gloves; clothing accessories namely belts, scarves, hats, caps and visors; footwear, namely loafers, espadrilles, sandals, thongs, mules, pumps, athletic shoes, slippers, boots, and beach footwear” in class 25, with a date of first use since at least January 1, 2000. Said registration is valid and subsisting. A copy of the trademark registration with Title and Status is attached hereto as Exhibit B.

3. Opposer, since at least January 1, 2000, has also been, and is now, continuously using and advertising said marks in interstate commerce in connection with the promotion and sales of its aforesaid goods, and the aforesaid marks of Opposer are valid, subsisting and owned by Opposer and are recognized by a significant portion of the relevant public as identifying the products of Opposer. Therefore, the marks and goodwill associated therewith are valuable assets of the Opposer.

4. The registered marks of Opposer are evidence of Opposer’s exclusive right to use the marks in commerce on the goods specified in the registration. Applicant’s mark BELLA CABOSSE Serial No. 77/023,281, is confusingly similar to the marks owned by Opposer, therefore, denying to Opposer the benefits of its marks in excluding confusingly similar uses. In view of the fact that the respective marks are confusingly similar and that each party offers apparel in connection with the respective marks, it is alleged that Applicant’s mark so resembles Opposer’s registered mark as to be likely to cause confusion, or to cause mistake, or to deceive.

5. The services purported to be provided by the Applicant includes services which third parties may assume emanated from Opposer, specifically, online retail store services featuring chocolates and chocolate themed products in the nature of books, compact discs and apparel; wholesale distributorship of chocolates; shop at home parties featuring chocolates; providing

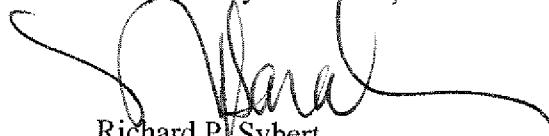
online information about chocolatiers and the chocolate products of others, and thus there is substantial likelihood of confusion of the relevant portion of the public who are exposed both to the Applicant's services and the goods and/or services of Opposer. The Applicant's mark, as the newcomer, will be seen as a deliberate variation of the Opposer's marks intended to indicate a product line extension or a spin off – all from the same source and thus is further likely to cause confusion, mistake, or deception.

WHEREFORE, Opposer prays that Application Serial No. 77/023,281 be refused in International Class 35 and denied registration as Opposer believes and avers that it will be damaged by the registration of Serial No. 77/023,281 filed October 17, 2006, as aforesaid and requests that Applicant be required to answer the allegations of this Notice of Opposition and that the opposition to the said application be sustained.

This Notice of Opposition is being submitted electronically. The required fee is authorized to be charged against the Deposit Account No. 501990 of the Attorney for Opposer.

DATE: October 17, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard P. Sybert', with a long horizontal flourish extending to the right.

Richard P. Sybert
Maha Sarah
Laura M. Lloyd
Attorneys for Opposer
COLOR IMAGE APPAREL, INC.

Certificate of Mailing by "Federal Express"

I hereby certify that a copy of this NOTICE OF OPPOSITION is being served by Federal Express mail service, to Addressee on October 17, 2007, as follows:

CYRUS P. WADIA
COOPER, WHITE AND COOPER LLP
201 CALIFORNIA ST STE 1700
SAN FRANCISCO, CA 94111-5019

Date of Mailing: October 17, 2007

Federal Express No. 7908-5383 -3750

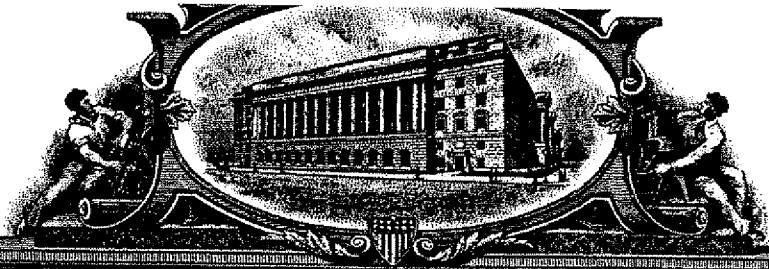
Printed Name: Sharee Gill

Signature:

A handwritten signature in black ink, appearing to read "S. Gill", written over the printed name "Sharee Gill". The signature is cursive and somewhat stylized.

EXHIBIT A

7068786



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

May 21, 2007

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,668,441 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *December 31, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

L. Edelen

L. EDELEN
Certifying Officer



Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,668,441

Registered Dec. 31, 2002

**TRADEMARK
PRINCIPAL REGISTER**

kella

COLOR IMAGE APPAREL, INC. (CALIFORNIA
CORPORATION)
601 WALSH AVENUE
SANTA CLARA, CA 95050

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

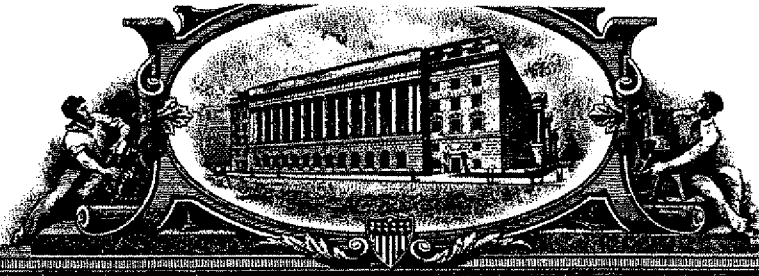
SER. NO. 76-308,113, FILED 9-4-2001.

FOR: GARMENTS, NAMELY COTTON T-SHIRTS
AND TOPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

AMOS T. MATTHEWS, JR., EXAMINING ATTOR-
NEY

EXHIBIT B

70 68 786



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

**UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office**

May 21, 2007

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,895,709 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *October 19, 2004*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office



L. Edelen

L. EDELEN
Certifying Officer

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,895,709

Registered Oct. 19, 2004

**TRADEMARK
PRINCIPAL REGISTER**

BELLA

COLOR IMAGE APPAREL, INC. (CALIFORNIA CORPORATION)
6670 FLOTILLA STREET
COMMERCE, CA 90040

FOR: MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY JEANS, DRESSES, SKIRTS, MINISKIRTS, SHORTS, PANTS, SLACKS, TROUSERS, SUITS, PANTSUITS, JACKETS, SWEATERS, CARDIGANS, PULLOVERS, COATS, SPORT COATS, BLOUSES, VESTS, BLAZERS, OVERALLS, SWEATSHIRTS, SWEATPANTS, SWEATSHORTS, SWEATSUITS, SHIRTS, POLO SHIRTS, KNIT SHIRTS, SPORT SHIRTS, TEE-SHIRTS, COTTON SHIRTS, TOPS, TANK-TOPS, HALTER TOPS, KNIT TOPS, WOVEN TOPS, BODYSUITS, CAMISOLES, PAJAMAS, JUMPSUITS, SWIM SUITS, SWIMWEAR, SOCKS, GLOVES; CLOTHING ACCESSORIES

NAMELY BELTS, SCARVES, HATS, CAPS AND VISORS; FOOTWEAR, NAMELY LOAFERS, ESPADRILLES, SANDALS, THONGS, MULES, PUMPS, ATHLETIC SHOES, SLIPPERS, BOOTS, BEACH FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

OWNER OF U.S. REG. NO. 2,668,441.

THE ENGLISH TRANSLATION OF "BELLA" IS "BEAUTIFUL".

SER. NO. 78-306,447, FILED 9-28-2003.

MATTHEW PAPPAS, EXAMINING ATTORNEY