

ESTTA Tracking number: **ESTTA180584**

Filing date: **12/13/2007**

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	UPCOMING TM S.A.		
Entity	Corporation	Citizenship	LUXEMBOURG
Address	29, AVENUE MONTEREY LUXEMBOURG, L-2163 LUXEMBOURG		

Attorney information	Daniel T. Earle Shlesinger, Arkwright & Garvey, LLP 1420 King Street, Suite 600 Alexandria, VA 22314 UNITED STATES jim@sagllp.com, danearle@sagllp.com, nitasantiago@sagllp.com Phone:703-684-5600
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Applicant Information

Application No	77009727	Publication date	11/13/2007
Opposition Filing Date	12/13/2007	Opposition Period Ends	12/13/2007
Applicant	A & N Enterprises L.L.C. 350 Fifth Avenue, Suite 2204 New York, NY 10118 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2003/09/00 First Use In Commerce: 2003/09/00 All goods and services in the class are opposed, namely: Clothing, namely, shirts, pants, dresses, skirts, sweaters, vests, shorts, hosiery, jackets, shoes, swimsuits, overalls, gloves, hats, scarves and pajamas

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.	2574094	Application Date	12/08/1998
Registration Date	05/28/2002	Foreign Priority Date	NONE
Word Mark	KILLAH		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 025. First use: First Use: 1999/08/23 First Use In Commerce: 1999/08/23 Dress coats, Trousers, Mantles, Jeans, Blouses, Jumpers, Cardigans, Sport shirts, Polo shirts, Suits, Skirts, Overcoats, Jackets, Blazers, Shorts, Sweaters, Shirts, T-shirts, Socks, Belts, Hats and Caps, Shoes, Boots, Slippers and Sandals

U.S. Registration No.	2500928	Application Date	12/01/1999
Registration Date	10/23/2001	Foreign Priority Date	NONE
Word Mark	KILLAH BABE		
Design Mark			
Description of Mark	The design in the mark is a spade as used on playing cards.		
Goods/Services	Class 025. First use: First Use: 1999/09/00 First Use In Commerce: 1999/09/00 Shoes, boots, slippers and sandals		

U.S. Registration No.	2440528	Application Date	12/01/1999
Registration Date	04/03/2001	Foreign Priority Date	NONE
Word Mark	KILLAH BABE		
Design Mark			
Description of Mark	The design in the mark is a spade as used on playing cards.		
Goods/Services	Class 025. First use: First Use: 1999/01/30 First Use In Commerce: 1999/01/30 Jackets, trousers, jeans, sport shirts, T- shirts, polo shirts, suits, skirts, pullovers, blouses, sweaters, cardigans, overcoats, raincoats, tracksuits, belts, gloves, socks, hats and caps		

U.S. Registration No.	2589662	Application Date	09/05/2000
Registration Date	07/02/2002	Foreign Priority Date	NONE
Word Mark	KILLAH BABE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2000/03/17 First Use In Commerce: 2000/03/17 Leather straps for shoulder bags; folding briefcases, shoulder bags, gladstone bags, briefcase-type portfolios, suitcases, carry-on bags, tote bags, trunks, handbags, purses, key cases, wallets and billfolds for keeping credit cards, passes and name cards, umbrellas		

U.S. Registration No.	2584309	Application Date	11/02/1999
Registration Date	06/25/2002	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1999/01/30 First Use In Commerce: 1999/01/30 Clothing, namely Dress coats, Trousers, Mantles, Jeans, Blouses, Jumpers, Cardigans, Sport shirts, Polo shirts, Suits, Skirts, Overcoats, Jackets, Blazers, Shorts, Sweaters, Shirts, T-shirt, Socks, Belts for clothing, hats

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dte/
Name	Daniel T. Earle
Date	12/13/2007

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

In the matter of trademark application Serial No. 77/009,727 published in the Official Gazette on November 13, 2007.

UPCOMING TM S.A.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
A & N Enterprises L.L.C.	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, UPCOMING TM S.A., (hereinafter "Opposer"), a corporation organized under the laws of Luxembourg, located and doing business at 29, Avenue Monterey, Luxembourg, Luxembourg, L-2163, believes that it will be damaged by the registration of the mark shown in application Serial No. 77/009,727, and hereby opposes the same.

The grounds for opposition are as follows:

1. Since long prior to the filing date of the application for registration, and any use date claimed therein, Opposer has marketed and sold clothing, foot wear, leather goods, and other products, both domestic and abroad. Opposer has marketed said products under the marks, KILLAH and KILLAH BABE, and with various designs.

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2. Opposer is the owner of the following U.S.

trademarks:

<u>REG. NO.</u>	<u>MARK</u>	<u>GOODS/SERVICES</u>
2,574,094	KILLAH & Design	dress coats, trousers, mantles, jeans, blouses, jumpers, cardigans, sport shirts, polo shirts, suits, skirts, overcoats, jackets, blazers, shorts, sweaters, shirts, T-shirts, socks, belts, hats and caps, shoes, boots, slippers and sandals in International Class 25;
2,500,928	KILLAH BABE & Design	shoes, boots, slippers and sandals, in International Class 25;
2,440,528	KILLAH BABE & Design	jackets, trousers, jeans, sport shirts, T-shirts, polo shirts, suits, skirts, pullovers, blouses, sweaters, cardigans, overcoats, raincoats, tracksuits, belts, gloves, socks, hats and caps, in International Class 25;
2,589,662	KILLAH BABE & Design	leather straps for shoulder bags; folding brief cases, shoulder bags, gladstone bags, briefcase-type portfolios, suitcases, carry-on bags, tote bags, trunks, handbags, purses, key cases, wallets and billfolds for keeping credit cards, passes and name cards, umbrellas, in International Class 18; and
2,584,309	DESIGN	clothing, namely, dress coats, trousers, mantles, jeans, blouses, jumpers, cardigans, sport shirts, polo shirts, suits, skirts, overcoats, jackets, blazers, shorts, sweaters, shirts, T-shirts, socks, belts for clothing, hats, in International Class 25.

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Each of the above registrations is in full force and effect on the Principal Register at the United States Patent and Trademark Office, and operates as *prima facie* evidence of Opposer's ownership of said marks and its exclusive right to use the same in commerce throughout the United States.

3. Notwithstanding Opposer's prior rights to the marks, Applicant filed on September 28, 2006, an application to register the mark, PRINCESS KYLA, for clothing, namely, shirts, pants, dresses, skirts, sweaters, vests, shorts, hosiery, jackets, shoes, swimsuits, overalls, gloves, hats, scarves and pajamas, in International Class 25, based on an alleged date of first use of September, 2003. Upon information and belief, Applicant did use its mark in commerce prior to September, 2003.

4. In view of the similarity between the respective marks, and the related nature of the goods and/or services of the respective parties, Applicant's mark so resembles Opposer's trademarks, previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive, to the irreparable damage of Opposer.

5. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would

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be a source of damage and injury to Opposer and Opposer's business.

WHEREFORE, Opposer prays that application Serial No. 77/009,727 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

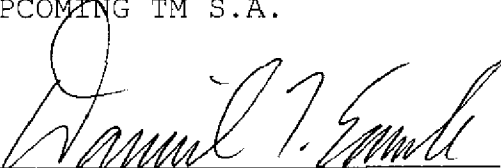
Respectfully submitted,

UPCOMING TM S.A.

Date:

Dec 13, 2007

By:



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James E. Shlesinger
Attorneys for Opposer
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CERTIFICATE OF SERVICE

I, Daniel T. Earle, Attorney for Opposer, do hereby certify that this NOTICE OF OPPOSITION has been served upon Applicant by mailing a copy thereof by prepaid first class mail to William C. Wright, Epstein, Drangel, Bazerman & James, LLP, 60 E. 42nd Street, Room 820, New York, New York 10165-0820, this 13th day of December, 2007.

By: 
Daniel T. Earle

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