

ESTTA Tracking number: **ESTTA181280**

Filing date: **12/17/2007**

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	Zazzle.com, Inc.
Granted to Date of previous extension	12/19/2007
Address	1900 Seaport Boulevard Fourth Floor Redwood City, CA 94063 UNITED STATES
Attorney information	George C. Limbach DLA PIPER US LLP 2000 University Avenue East Palo Alto, CA 94303-2248 UNITED STATES carolanne.bashir@dlapiper.com Phone:650.833.2434

Applicant Information

Application No	77115364	Publication date	08/21/2007
Opposition Filing Date	12/17/2007	Opposition Period Ends	12/19/2007
Applicant	Zazz Inc. 1307 Church Street San Francisco, CA 94114 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 003. All goods and services in the class are opposed, namely: Aromatherapy oils; Bath beads; Bath crystals; Bath gels; Bath oils; Bath powder; Bath salts; Beauty masks; Blush; Body cream; Body glitter; Body lotions; Body oil; Body powder; Body scrub; Body sprays; Body washes; Bubble bath; Cosmetics; Deodorants for body care; Exfoliants for skin; Eye cream; Eye liner; Eye make-up; Eye make-up remover; Eye pencils; Eye shadow; Eyebrow pencils; Face creams; Face glitter; Face milk and lotions; Facial scrubs; Hair care preparations; Hair cleaning preparations; Hair color; Hair conditioners; Hair creams; Hair gels; Hair lotions; Hair mousses; Hair nourishers; Hair oils; Hair pomades; Hair rinses; Hair shampoo; Hair spray; Hair straightening preparations; Hair styling preparations; Lipstick; Liquid soaps for hands, face and body; Make-up; Make-up foundations; Make-up pencils; Make-up powder; Make-up remover; Mascara; Nail care preparations; Nail glitter; Nail polish; Nail polish removers; Nail varnish for cosmetic purposes; Perfumes; Rouge; Shower gels; Skin clarifiers; Skin cleansers; Skin creams; Skin lotions; Skin masks; Skin moisturizer; Soaps; Sun care lotions; Suntan creams; Suntanning preparations</p>
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
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False suggestion of a connection	Trademark Act section 2(a)
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 No.	2780619	Application Date	04/19/2001
Registration Date	11/04/2003	Foreign Priority Date	NONE
Word Mark	ZAZZLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2001/01/31 First Use In Commerce: 2001/01/31 COMPUTERIZED ON-LINE RETAIL STORE SERVICES IN THE FIELD OF PERSONALIZED DECORATED APPAREL AND PRINT ART; ADVERTISING SERVICES, NAMELY, PROMOTING THE SERVICES OF ARTISTS THROUGH THE DISPLAY AND DISTRIBUTION OF ART WORKS OVER A GLOBAL COMPUTER NETWORK</p> <p>Class 036. First use: First Use: 2001/01/31 First Use In Commerce: 2001/01/31 Brokerage in the field of graphic art reproductions</p> <p>Class 040. First use: First Use: 2001/01/31 First Use In Commerce: 2001/01/31 Custom printing of art work on clothing</p> <p>Class 042. First use: First Use: 2001/01/31 First Use In Commerce: 2001/01/31 Design services namely graphic art design</p>		

U.S. Registration No.	2744908	Application Date	04/19/2001
Registration Date	07/29/2003	Foreign Priority Date	NONE
Word Mark	ZAZZLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 2002/01/31 First Use In Commerce: 2002/09/27 ART PRINTS, PRINTED ART REPRODUCTIONS, PRINTED PATTERNS AND POSTERS ALL OF WHICH ARE PERSONALLY SELECTED BY PURCHASERS OVER THE INTERNET</p>		

Attachments	NOTICE OF OPPOSITION - ZAZZLE v ZAZZ INC.pdf (4 pages)(99259 bytes)
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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	/George C. Limbach/
Name	George C. Limbach

Date	12/17/2007
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make-up pencils; make-up powder; make-up remover; mascara; nail care preparations; nail glitter; nail polish; nail polish removers; nail varnish for cosmetic purposes; perfumes; rouge; shower gels; skin clarifiers; skin cleansers; skin creams; skin lotions; skin masks; skin moisturizer; soaps; sun care lotions; suntan creams; suntanning preparations". The application was published on page TM 510 of the August 21, 2007 edition of the Official Gazette.

2. On August 21, 2007, Opposer obtained a ninety-day extension of time to file a Notice of Opposition to the registration of Applicant's mark, which extension was granted until December 19, 2007, by the TTAB.

3. Opposer is the owner of the following trademarks registered with the U.S. Patent and Trademark office for various kinds of goods and services.

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>CLASSES</u>	<u>REGISTRATION DATE</u>
ZAZZLE	2780619	35, 36, 40 & 42	November 4, 2003
ZAZZLE	2744908	16	July 29, 2003

These registrations are valid, in full force and effect and are conclusive evidence of Opposer's exclusive right to use the **ZAZZLE** trademark for its goods and services.

4. In addition to any rights from the registration of Opposer's mark, Opposer has valid common law rights in the **ZAZZLE** trademark, which common law rights date back to at least as early as January 31, 2001.

5. Opposer has extensively advertised and sold its goods and services, and has created widespread goodwill under its **ZAZZLE** mark. The **ZAZZLE** mark has become a valuable asset of Opposer and is the principal symbol of its extensive goodwill. By reason of the widespread advertising and distribution of Opposer's goods and services bearing its mark, the trade and purchasing public have come to recognize Opposer's marks as signifying Opposer and as identifying Opposer as the source of goods bearing the **ZAZZLE** mark.

6. Opposer has used the trade name and trademark **ZAZZLE** since at least as early as January 31, 2001, to identify its goods and services, prior to Applicant's February 23, 2007 filing date of Application Serial No. 77115364.

7. If Application Serial No. 77115364 is registered, the public might reasonably believe that Applicant's products are provided by or related to Opposer, all to the detriment of the consumers and Opposer.

8. Applicant's proposed mark, ZAZZLE, is confusingly identical to Opposer's ZAZZLE mark and is likely to be confused therewith. Applicant's proposed mark is deceptively identical to Opposer's trademark so as to cause confusion, mistake or deception as to the origin of Applicant's goods, and it is likely to cause irreparable harm to Opposer and to consumers.

9. Through the widespread use of the ZAZZLE mark, Opposer's mark has become well known and has acquired extensive goodwill in connection with its extensive inventory of goods. Opposer stands to have the value of its trademark diluted by Applicant's use of a confusingly identical trademark in connection with similar or related products that will undoubtedly confuse consumers as to the source of Applicant's goods. Thus, Applicant should not be entitled to registration of its mark.

10. Opposer has, with respect to its products, valid common law rights in the ZAZZLE trademark set forth above. Applicant's proposed mark, ZAZZLE, is in violation and derogation of Opposer's common law rights and is likely to cause confusion, mistake and deception among purchasers and users as to the source or origin of its goods, thereby causing loss, damage and injury to Opposer and the public.

11. If Applicant was granted the registration herein opposed, it would thereby obtain a prima facie exclusive right to the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 77115364 is rejected and no registration be issued thereon, and that this Opposition be sustained in favor of Opposer.

In Re Notice of Opposition
USSN 77115364

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION is being served by first class mail, postage prepaid, this 17th day of December 2007, on Applicant at the correspondence address of record:

ZAZZ INC.
1307 Church Street
San Francisco, CA 94114

Executed this 17th day of December 2007, at East Palo Alto, California.



Allison Burn