

ESTTA Tracking number: **ESTTA199350**

Filing date: **03/19/2008**

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	John Varvatos Apparel Corp.
Granted to Date of previous extension	03/19/2008
Address	3411 Silverside Road Wilmington, DE 19810 UNITED STATES
Correspondence information	Christopher M. Turk Senior Counsel John Varvatos Apparel Corp. 3411 Silverside Road Wilmington, DE 19810 UNITED STATES chris_turk@vfc.com Phone:302-477-3930 ext 232

Applicant Information

Application No	77183576	Publication date	11/20/2007
Opposition Filing Date	03/19/2008	Opposition Period Ends	03/19/2008
Applicant	Franco, Joseph 323 Avenue I Brooklyn, NY 11230 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 018. First Use: 2007/01/01 First Use In Commerce: 2007/01/01 All goods and services in the class are opposed, namely: All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; Athletic bags; Backpacks; Bags for sports; Book bags; Carry-all bags; Duffel bags; Fanny packs; Gym bags; Messenger bags; Overnight bags; School bags; School book bags; Sports bags; Sports packs; Belt bags; Pocket wallets; Wallets; Purses; Umbrellas</p>
<p>Class 025. First Use: 2004/09/01 First Use In Commerce: 2004/09/01 All goods and services in the class are opposed, namely: Cargo pants; Denims; Jogging pants; Lounge pants; Pants; Sweat pants; Dress shirts; Golf shirts; Knit shirts; Night shirts; Shirts; Sleep shirts; Sport shirts; Sports shirts; Sweat shirts; T-shirts; Shorts; Sweat shorts; Sweat bands; Sweaters; Sleepwear; Hats; Children's headwear; Headwear; Pajama bottoms; Pajamas; Jackets; Coats; Bathrobes; Beachwear; Belts; Body suits; Blouses; Gloves; Baseball caps; Caps; Coveralls; Creepers; Dresses; Footwear; Jeans; Jogging suits; Jumpers; Loungewear; Overalls; Tights; Stockings; Hosiery; Socks; Sandals; Shoes; Swim wear; Swimsuits; Tank tops; Undershirts; Underwear</p>

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. Application No.	78569538	Application Date	02/17/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/08/00 First Use In Commerce: 2003/08/00 Clothing, headgear and footwear, namely, tailored suits, suits, tuxedos, jackets, leather jackets, shearling coats, shearling jackets, shearling vests, blouses, coats, overcoats, trousers, pants, shorts, sweaters, shirts, undershirts, ties, belts, suspenders, scarves, gloves, hosiery, footwear, head wear, boots shoes, moccasins, sneakers and slippers		

U.S. Application No.	78569651	Application Date	02/17/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	V		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: Clothing, headgear and footwear, namely, tailored suits, suits, tuxedos, jackets, leather jackets, shearling coats, shearling jackets, shearling vests, blouses, coats, overcoats, raincoats, trousers, pants, shorts, sweaters, shirts, bathing suits, bathrobes, undershirts, undershorts, ties, belts, suspenders, scarves, gloves, hosiery, footwear, head wear, boots shoes, moccasins, sneakers and slippers		

Attachments	78569538#TMSN.jpeg (1 page)(bytes) 78569651#TMSN.jpeg (1 page)(bytes) Notice of Opposition - 77183576.pdf (11 pages)(2207775 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	/cmt/
Name	Christopher M. Turk
Date	03/19/2008

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

In re Application of Franco, Joseph

Application Serial No. : 77/183,576
Filed : May 17, 2007
Mark : Miscellaneous Design



Publication Date : November 20, 2007
Opposition No. : _____

John Varvatos Apparel Corp. :
:
Opposer, :
:
v. :
:
Franco, Joseph :
:
Applicant :
:

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Sir/Madam:

John Varvatos Apparel Corp. (hereinafter "Opposer"), a Delaware corporation, having its principal place of business at 3411 Silverside Road, Wilmington, Delaware 19810,

believes that it will be damaged by the issuance of a registration to Joseph Franco ("Applicant") for the mark Miscellaneous Design (the "Proposed Mark"), consisting of a hand with two fingers extended in a "peace sign", as applied for in application Serial No. 77/183,576 (the "Application") and accordingly hereby opposes the Application.

As grounds for this Opposition, it is alleged that:

1. Opposer is the owner of U.S. Trademark Application Serial No. 78/569,538 for a Miscellaneous Design consisting of a hand with two fingers extended in a "peace sign" (the "Peace Design Mark"). Serial No. 78/569,538 was filed on February 17, 2005 for "Clothing, headgear and footwear, namely, tailored suits, suits, tuxedos, jackets, leather jackets, shearling coats, shearling jackets, shearling vests, blouses, coats, overcoats, trousers, pants, shorts, sweaters, shirts, undershirts, ties, belts, suspenders, scarves, gloves, hosiery, footwear, head wear, boots, shoes, moccasins, sneakers and slippers."

2. Opposer subsequently filed an Allegation of Use on February 24, 2006, claiming a date of first use of August, 2003.

3. Opposer is also the owner of U.S. Trademark Application Serial No. 78/569,651 for "V" and Design consisting of a hand with two fingers extended in a "peace sign" placed above the letter "V" (the "V Peace Design Mark"). Serial No. 78/569,651 was filed on February 17, 2005 for "Clothing, headgear and footwear, namely, tailored suits, suits, tuxedos, jackets, leather jackets, shearling coats, shearling jackets, shearling vests, blouses, coats, overcoats, raincoats, trousers, pants, shorts, sweaters, shirts, bathing suits, bathrobes, undershirts, undershorts, ties, belts, suspenders, scarves, gloves, hosiery, footwear, head wear, boots, shoes, moccasins, sneakers and slippers."

4. Opposer is the owner of all rights, title and interest in and to the Peace Design Mark and the V Peace Design Mark (collectively, "Opposer's Marks") as set forth in Serial No. 78/569,538 and Serial No. 78/569,651 respectively.

5. Through extensive and continuous use of the Peace Design Mark from at least as early as August 2003, Opposer has established substantial goodwill in the Peace Design Mark in connection with apparel.

6. Applicant is not now and never was entitled to registration on the Principal Register of the Proposed Mark, either on May 17, 2007, the filing date of the Application, or on November 20, 2007, the Applications's date of publication in the Official Gazette.

7. The Application claims a date of first use of January 1, 2007 for the goods identified in Class 18 and claims a date of first use of September 1, 2004 for the goods identified in Class 25.

8. Opposer's applications (Serial No. 78/569,538 and Serial No. 78/569,651) both predate the filing of Applicant's Application.

9. Opposer's use of the Peace Design Mark predates Applicant's use of its Proposed Mark.

10. The Proposed Mark is confusingly similar to Opposer's Marks.

11. The goods with which Applicant uses the Proposed Mark are identical or closely related to the goods with which Opposer's Marks are used.

12. Applicant is attempting to trade off of Opposer's goodwill, and unfairly deceive the consuming public into believing its goods originate with Opposer.

13. Applicant's Proposed Mark is likely to cause confusion, mistake, or deception amongst the general and consuming public as to whether Applicant's goods are being offered by, or in affiliation with, Opposer, causing damage to Opposer.

WHEREFORE, Opposer prays that registration of the Proposed Mark, Application Serial No. 77/056,429, be denied to Applicant and this opposition be sustained.

Respectfully submitted,

JOHN VARVATOS APPAREL CORP..

By: 

Christopher M. Turk
Assistant Secretary and
Senior Counsel

DATED: March 19, 2008



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Goods and Services IC 018. US 001 002 003 022 041. G & S: All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; Athletic bags; Backpacks; Bags for sports; Book bags; Carry-all bags; Duffel bags; Fanny packs; Gym bags; Messenger bags; Overnight bags; School bags; School book bags; Sports bags; Sports packs; Belt bags; Pocket wallets; Wallets; Purses; Umbrellas. FIRST USE: 20070101. FIRST USE IN COMMERCE: 20070101

IC 025. US 022 039. G & S: Cargo pants; Denims; Jogging pants; Lounge pants; Pants; Sweat pants; Dress shirts; Golf shirts; Knit shirts; Night shirts; Shirts; Sleep shirts; Sport shirts; Sports shirts; Sweat shirts; T-shirts; Shorts; Sweat shorts; Sweat bands; Sweaters; Sleepwear; Hats; Children's headwear; Headwear; Pajama bottoms; Pajamas; Jackets; Coats; Bathrobes; Beachwear; Belts; Body suits; Blouses; Gloves; Baseball caps; Caps; Coveralls; Creepers; Dresses; Footwear; Jeans; Jogging suits; Jumpers; Loungewear; Overalls; Tights; Stockings; Hosiery; Socks; Sandals; Shoes; Swim wear; Swimsuits; Tank tops; Undershirts; Underwear. FIRST USE: 20040901. FIRST USE IN COMMERCE: 20040901

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 02.11.07 - Arms; Fingers; Hands; Human hands, fingers, arms
02.11.14 - Finger pointing (gesture); Fingers walking (gesture) ; Gestures (OK, thumbs up, thumbs down, fingers walking, handshake, finger pointing); Hands and fingers forming the following: handshake, finger pointing, fingers walking, OK sign, and thumbs up or thumbs down; Handshake (gesture); OK gesture; Thumbs up or thumbs down (gesture)

Serial Number 77183576
Filing Date May 17, 2007
Current Filing Basis 1A
Original

Filing Basis 1A
Published for Opposition November 20, 2007
Owner (APPLICANT) Franco, Joseph INDIVIDUAL UNITED STATES 323 Avenue I Brooklyn NEW YORK 11230
Attorney of Record Jeffrey Dweck, Esq.
Description of Mark Color is not claimed as a feature of the mark. The mark consists of a closed hand-fist with 2 fingers raised and the thumb crossing over the fist, all with a geometric design and configuration.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Goods and Services IC 025. US 022 039. G & S: Clothing, headgear and footwear, namely, tailored suits, suits, tuxedos, jackets, leather jackets, shearling coats, shearling jackets, shearling vests, blouses, coats, overcoats, trousers, pants, shorts, sweaters, shirts, undershirts, ties, belts, suspenders, scarves, gloves, hosiery, footwear, head wear, boots shoes, moccasins, sneakers and slippers. FIRST USE: 20030800. FIRST USE IN COMMERCE: 20030800

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 02.11.07 - Arms; Fingers; Hands; Human hands, fingers, arms

Serial Number 78569538

Filing Date February 17, 2005

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition March 4, 2008

Owner (APPLICANT) John Varvatos Apparel Corp. CORPORATION DELAWARE 3411 Silverside Rd Wilmington DELAWARE 19810

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Word Mark V

Goods and Services IC 025. US 022 039. G & S: Clothing, headgear and footwear, namely, tailored suits, suits, tuxedos, jackets, leather jackets, shearling coats, shearling jackets, shearling vests, blouses, coats, overcoats, raincoats, trousers, pants, shorts, sweaters, shirts, bathing suits, bathrobes, undershirts, undershorts, ties, belts, suspenders, scarves, gloves, hosiery, footwear, head wear, boots shoes, moccasins, sneakers and slippers

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 02.11.07 - Arms; Fingers; Hands; Human hands, fingers, arms
26.17.12 - Angles (geometric); Chevrons

Serial Number 78569651

Filing Date February 17, 2005

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition November 13, 2007

Owner (APPLICANT) John Varvatos Apparel Corp. CORPORATION DELAWARE 3411 Silverside Rd
Wilmington DELAWARE 19810

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Joseph Franco by mailing said copy on March 19, 2008, via First Class Mail, postage prepaid to: Jeffrey Dweck, Esq., The Law Firm of Jeffrey S. Dweck, P.C., 100 W 33rd St Ste 1017, New York, NY 10001-2914.



Michael D. Villec

John Varvatos Apparel Corp.
3411 Silverside Road
Wilmington, DE 19810