

ESTTA Tracking number: **ESTTA278064**

Filing date: **04/14/2009**

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	04/15/2009
Address	6670 Flotilla Street Commerce, CA 90040 UNITED STATES

Attorney information	Richard Sybert/Maha Sarah GORDON & REES LLP 101 West Broadway, Suite 1600 San Diego, CA 92101 UNITED STATES ipdocket@gordonrees.com, msarah@gordonrees.com, sgill@gordonrees.com Phone:619-696-6700
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Applicant Information

Application No	77533334	Publication date	12/16/2008
Opposition Filing Date	04/14/2009	Opposition Period Ends	04/15/2009
Applicant	Abinko Digital Studio Inc. 4641 N. Dixie Highway Boca Raton, FL 33431 UNITED STATES		

Goods/Services Affected by Opposition


Class 035. First Use: 2007/06/15 First Use In Commerce: 2007/06/15 All goods and services in the class are opposed, namely: Operating an on-line shopping site in the field of Women's Apparel, Maternity, infant and toddler clothing and accessories

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		
Design Mark			
Description of Mark	NONE		
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		

Attachments	76308113#TMSN.gif (1 page)(bytes) BELLACROFT Notice of Opposition.pdf (10 pages)(682784 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	/Maha Sarah/
Name	Richard Sybert/Maha Sarah
Date	04/14/2009

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

In the Matter of Trademark Application)	
Serial No. 77/533,334)	
Filed: July 29, 2008)	
Published: December 16, 2008)	
By: Abinko Digital Studio, Inc.)	
For the Trademark: BELLACROFT)	
_____)	Opposition No.
)	
COLOR IMAGE APPAREL, INC.,)	_____
a California Corporation,)	
)	
Opposer,)	
)	
v.)	
)	
ABINKO DIGITAL STUDIO, INC.,)	
a Florida Corporation,)	
)	
Applicant.)	
_____)	

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 BELLACROFT shown in Application Serial No. 77/533,334, as published in the Official Gazette on December 16, 2008 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 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 registrations. Applicant’s mark BELLACROFT, Serial No. 77/533,334, 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 the goods and/or services provided by the respective parties are virtually identical 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.

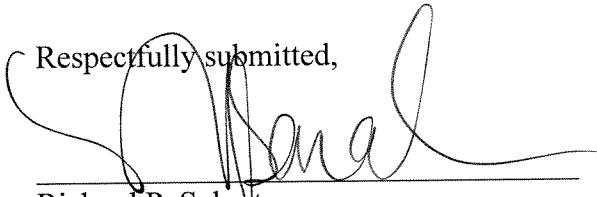
5. The services purported to be provided by the Applicant includes services which third parties may assume emanated from Opposer, specifically, “operating an on-line shopping site in the field of women's apparel, maternity, infant and toddler clothing and accessories,” and

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 offered for sale therewith, and those 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. 77/533,334 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. 77/533,334 filed July 29, 2008, 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: April 14, 2009

Respectfully submitted,


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

Certificate of Mailing by "First Class U.S. Mail"

I hereby certify that a copy of this NOTICE OF OPPOSITION is being served by First Class U.S. Mail service, and via email, to Addressee on April 14, 2009, as follows:

Abinko Digital Studio Inc.
c/o Correspondent:
ROBERT E. PERSHES
BUCKINGHAM, DOOLITTLE & BURROUGHS LLP
5355 TOWN CENTER RD, STE 900
BOCA RATON, FL 33486-1069
Tel.: 561.653.3318
jpheterson@bdblaw.com

Date of Mailing: April 14, 2009
Printed Name: Sharee Gill

Signature:

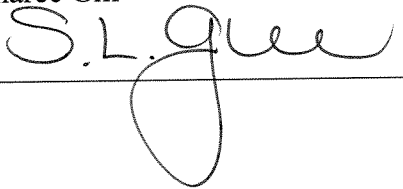
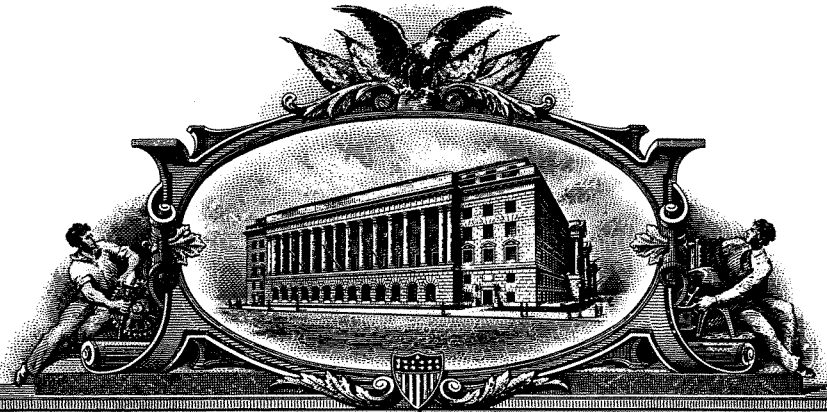
A handwritten signature in cursive script, appearing to read "S.L. Gill", is written above a horizontal line. The signature is written in black ink on a white background.

EXHIBIT A

7173260



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 13, 2009

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,668,441 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *December 31, 2002*
SECTION 8 & 15

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**

**P. SWAIN
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**

bella

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

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

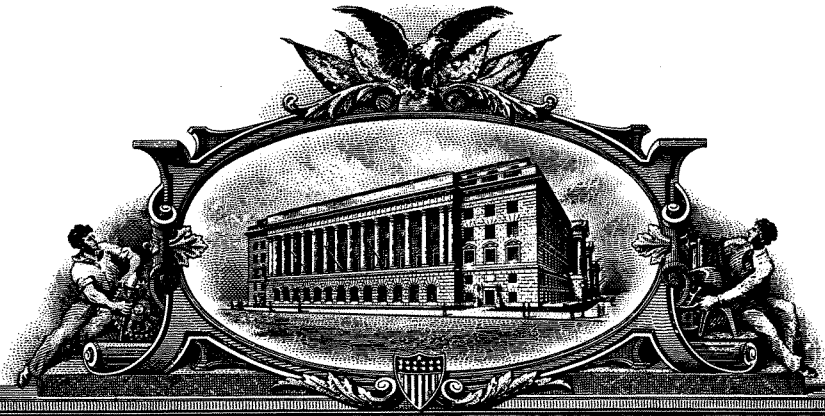
SER. NO. 76-308,113, FILED 9-4-2001.

**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

7173260



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

March 13, 2009

**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**

**P. SWAIN
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, TROU-
SERS, SUITS, PANTSUITS, JACKETS, SWEATERS,
CARDIGANS, PULLOVERS, COATS, SPORT COATS,
BLOUSES, VESTS, BLAZERS, OVERALLS, SWEAT-
SHIRTS, SWEATPANTS, SWEATSHORTS, SWEAT-
SUITS, SHIRTS, POLO SHIRTS, KNIT SHIRTS,
SPORT SHIRTS, TEE-SHIRTS, COTTON SHIRTS,
TOPS, TANK-TOPS, HALTER TOPS, KNIT TOPS,
WOVEN TOPS, BODYSUITS, CAMISOLES, PAJA-
MAS, JUMPSUITS, SWIM SUITS, SWIMWEAR,
SOCKS, GLOVES; CLOTHING ACCESSORIES**

**NAMELY BELTS, SCARVES, HATS, CAPS AND
VISORS; FOOTWEAR, NAMELY LOAFERS, ESPA-
DRILLES, 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