

ESTTA Tracking number: **ESTTA352801**

Filing date: **06/14/2010**

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	06/20/2010
Address	6670 Flotilla Street Commerce, CA 90040 UNITED STATES
Attorney information	Richard Sybert /Lindsay J. Hulley GORDON & REES LLP 101 West Broadway, Suite 1600 San Diego, CA 92101 UNITED STATES rsybert@gordonrees.com, lhulley@gordonrees.com, bamato@gordonrees.com, mmims@gordonrees.com Phone:619-696-6700

Applicant Information

Application No	76693193	Publication date	12/22/2009
Opposition Filing Date	06/14/2010	Opposition Period Ends	06/20/2010
Applicant	Direct Resourcing Inc. 463 Seventh Avenue, #1518 New York, NY 10018 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. All goods and services in the class are opposed, namely: Ladies' sleepwear, loungewear and robes
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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.	3519794	Application Date	03/17/2008
Registration Date	10/21/2008	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 Women's clothing, namely, tee shirts, short sleeve shirts, long sleeve shirts, tank tops, fleece tops, fleece pants, shirts, pants, yoga pants, capri pants, shorts, bras, underwear, camisoles, sweatshirts, polo shirts, and jackets		

Attachments	76308113#TMSN.gif (1 page)(bytes) 77423400#TMSN.jpeg (1 page)(bytes) Notice of Opposition AVA and BELLA.pdf (4 pages)(37617 bytes) A and B Exhibits to Notice of Opposition CLRI.pdf (6 pages)(508865 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	/Lindsay J. Hulley/
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Name	Richard Sybert /Lindsay J. Hulley
Date	06/14/2010

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

In the Matter of Trademark Application
Serial No. 76/693,193
Filed: September 29, 2008
Published: December 2, 2009
For the Trademark: AVA & BELLA

COLOR IMAGE APPAREL, INC.,
a California corporation,

Opposer,

v.

Direct Resourcing Inc., a New York corporation,
Applicant.

Opposition No.

NOTICE OF OPPOSITION

Opposer, Color Image Apparel, Inc., a California corporation having a place of business at 6670 Flotilla Street, Commerce, California 90040 (“Opposer”) believes that it will be damaged by registration of the mark AVA & BELLA shown in Application Serial No. 76/693,193, as published in the Official Gazette on December 2, 2009, 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 attached hereto as Exhibit A.

2. Opposer is the owner of U.S. Trademark Registration No. 3,519,794, for the mark BELLA for “women's clothing, namely, tee shirts, short sleeve shirts, long sleeve shirts, tank tops, fleece tops, fleece pants, shirts, pants, yoga pants, capri pants, shorts, bras, underwear, camisoles,

sweatshirts, polo shirts, and jackets” 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 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 Opposer.

4. Applicant Direct Resourcing, Inc. (“Applicant”) applied to register the mark AVA & BELLA, Serial No. 76/693,193 on September 29, 2008 as an intent to use mark in International Class 25 for ladies’ sleepwear, loungewear and robes.

5. 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 AVA & BELLA, Serial No. 76/693,193, 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 marks as to be likely to cause confusion, or to cause mistake, or to deceive.

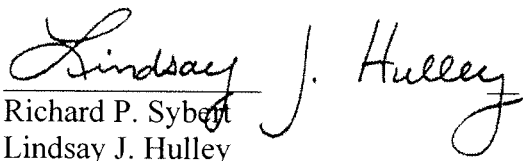
6. The goods purported to be provided by Applicant include goods which third parties may assume emanated from Opposer, specifically, “ladies’ sleepwear, loungewear and robes” and thus there is a substantial likelihood of confusion for the relevant portion of the public who are exposed both to Applicant’s goods offered for sale, and those of Opposer. Applicant’s mark, as the newcomer, will be seen as a deliberate variation of 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. 76/693,193 be refused in International Class 25 and denied registration as Opposer believes and avers that it will be damaged by the registration of Serial No. 76/693,193, 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.

Dated: June 14, 2010

Respectfully submitted,


Richard P. Sybert
Lindsay J. Hulley
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 email service to the below addressee on June 14, 2010, as follows:

Gail E. Nickols
Graham, Campaign, P.C.
36 W 44th Street, Suite 1207
New York, New York 10036-8104
gail@thenickols.fsnet.co.uk

Date of Mailing: June 14, 2010

Printed Name: Monica L. Mims

Signature:

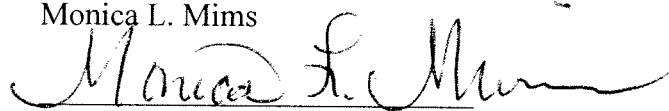
A handwritten signature in black ink that reads "Monica L. Mims". The signature is written in a cursive style with a horizontal line underneath the name.

EXHIBIT “A”

7197794



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 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.

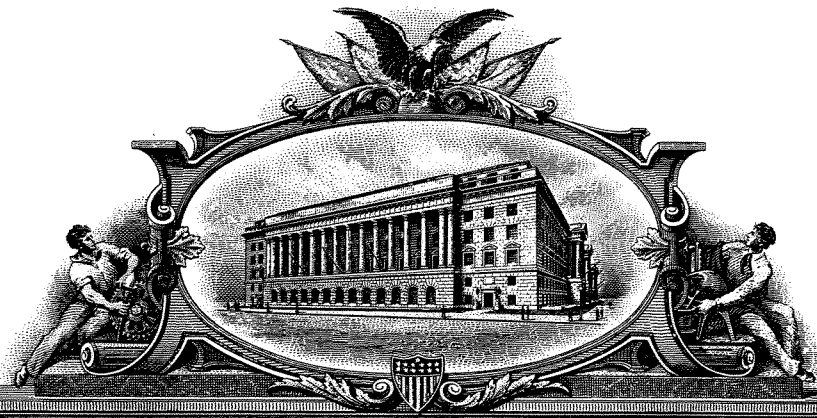
SER. NO. 76-308,113, FILED 9-4-2001.

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”

7197794



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 13, 2009

THE ATTACHED U.S. TRADEMARK REGISTRATION 3,519,794 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 21, 2008*
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. 3,519,794

Registered Oct. 21, 2008

**TRADEMARK
PRINCIPAL REGISTER**

BELLA

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

FOR: WOMEN'S CLOTHING, NAMELY, TEE SHIRTS, SHORT SLEEVE SHIRTS, LONG SLEEVE SHIRTS, TANK TOPS, FLEECE TOPS, FLEECE PANTS, SHIRTS, PANTS, YOGA PANTS, CAPRI PANTS, SHORTS, BRAS, UNDERWEAR, CAMISOLES, SWEATSHIRTS, POLO SHIRTS, AND JACKETS, IN CLASS 25 (U.S. CLS. 22 AND 39).

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

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,158,111, 3,293,659 AND OTHERS.

THE ENGLISH TRANSLATION OF THE WORD "BELLA" IN THE MARK IS "BEAUTIFUL".

SER. NO. 77-423,400, FILED 3-17-2008.

LYDIA BELZER, EXAMINING ATTORNEY