

ESTTA Tracking number: **ESTTA419307**

Filing date: **07/12/2011**

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	Macy's, Inc.
Granted to Date of previous extension	07/13/2011
Address	7 West Seventh Street Cincinnati, OH 45202 UNITED STATES

Attorney information	Holly Pekowsky, Esq. Amster, Rothstein & Ebenstein LLP 90 Park Avenue New York, NY 10016 UNITED STATES ptodocket@arelaw.com Phone:212-336-8000
----------------------	---

Applicant Information

Application No	85136164	Publication date	03/15/2011
Opposition Filing Date	07/12/2011	Opposition Period Ends	07/13/2011
Applicant	Strategic Marks, LLC 25 Ridgeview Irvine, CA 92603 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Retail department store and on-line retail department store services; retail and on-line retail clothing boutiques; retail and on-line retail clothing stores; retail and on-line retail apparel stores; retail and on-line retail store services featuring clothing and fashion accessories

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	lack of bona fide intent to use mark

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	BULLOCK'S
Goods/Services	retail department store services

Attachments	BULLOCKS DEPARTMENT STORE Opposition.pdf (9 pages)(385748 bytes)
-------------	---

Certificate of Service

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

Signature	/Holly Pekowsky/
Name	Holly Pekowsky, Esq.
Date	07/12/2011

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of

*Application Serial No. 85/136,164
of Strategic Marks, LLC
for the mark BULLOCK'S DEPARTMENT STORE
Filed on September 23, 2010*

Published for Opposition on March 15, 2011

----- x

MACY'S, INC.,	:	Opposition No.
	:	
Opposer,	:	NOTICE OF OPPOSITION
	:	
v.	:	
	:	
STRATEGIC MARKS, LLC,	:	
	:	
Applicant.	:	

----- x

In the matter of U.S. Trademark Application Serial No. 85/136,164, filed on September 23, 2010 by Strategic Marks, LLC (“Applicant”) and published for opposition in the March 15, 2011 issue of the Official Gazette of the United States Patent and Trademark Office, for the service mark BULLOCK’S DEPARTMENT STORE as applied to retail department store and on-line retail department store services; retail and on-line retail clothing boutiques; retail and on-line retail clothing stores; retail and on-line retail apparel stores; retail and on-line retail store services featuring clothing and fashion accessories (the “Infringing Application”).

Macy’s Inc., a Delaware corporation maintaining its principal place of business at 7 West Seventh Street, Cincinnati, Ohio 45202 (“Opposer”), believes that it will be

damaged by the registration of the BULLOCK'S DEPARTMENT STORE mark (the "Infringing Mark") and hereby opposes the same.

As grounds for the opposition, Opposer, by and through its attorneys, alleges as follows:

FIRST CLAIM
LIKELIHOOD OF CONFUSION

1. Opposer owns the trademark and service mark BULLOCK'S in connection with retail department store services and clothing and related goods and services (the "BULLOCK'S Mark").

2. Goods and services provided under the BULLOCK'S Mark have been widely advertised to the purchasing public and the trade in the United States of America.

3. The BULLOCK'S Mark, by reason of the high quality retail and other services provided under the Mark and by reason of the style and design excellence and quality of workmanship of the wearing apparel and related goods sold under the Mark, has come to be known to the purchasing public throughout the United States of America as representing products and services of the highest quality, which are provided under the best merchandising and customer service conditions. As a result thereof, the BULLOCK'S Mark and the goodwill associated therewith are of inestimable value to Opposer.

4. By virtue of the wide renown and high esteem acquired by the BULLOCK'S Mark, the BULLOCK'S Mark has developed a secondary meaning, fame and a significance in the minds of the purchasing public, and products and services offered under the Mark

are immediately identified by the purchasing public with a single, albeit anonymous source, namely, Opposer.

5. Although Opposer is not currently offering goods or services under the BULLOCK'S Mark, the BULLOCK'S Mark has not been abandoned, Opposer maintains a bona fide intention to resume use, and Opposer continues to enjoy secondary meaning and residual goodwill such that the Mark is still associated with a single, albeit anonymous source, namely, Opposer.

6. Upon information and belief, long after Opposer's predecessor-in-interest to the BULLOCK'S Mark commenced use of the Mark in conjunction with wearing apparel and retail store services and related goods and services, and long after the BULLOCK'S Mark acquired secondary meaning, Applicant applied to register, on an intent-to-use basis, the Infringing Mark in connection with services identical to those for which the BULLOCK'S Mark has been used, namely, retail department store services, as well as closely related services such as online retail store services.

7. Upon information and belief, no one associated with Applicant has BULLOCK as a first or last name.

8. The Infringing Mark is confusingly similar to Opposer's BULLOCK'S Mark. The only difference between the parties' marks are the descriptive words "department store" in the Infringing Mark, which Applicant has disclaimed.

9. Applicant's application and/or use of the Infringing Mark, in view of Opposer's rights in the BULLOCK'S Mark, is likely to cause confusion, to cause mistake or to deceive.

10. Upon information and belief, Applicant was well aware of the BULLOCK'S Mark prior to filing the Infringing Application, and selected the Infringing Mark with the specific intent to create confusion.

11. Accordingly, it is Opposer's belief that if Applicant is granted the registration opposed herein, Opposer will suffer irreparable harm and damage.

SECOND CLAIM
FALSELY SUGGEST A CONNECTION

12. Opposer repeats and realleges the allegations of the preceding Paragraphs as if fully set forth herein.

13. Registration of the Infringing Mark should be refused since the Mark falsely suggests a connection with "persons, living or dead," pursuant to Section 2(a) of the Lanham Act.

14. In particular, the Infringing Mark falsely suggests a connection with John G. Bullock ("Mr. Bullock"), whose last name comprises the BULLOCK'S Mark.

15. Mr. Bullock possessed a property right to commercially exploit his last name and did so commercially exploit such right throughout the United States during his lifetime by, *inter alia*, using the BULLOCK'S Mark in connection with his well known retail stores and related clothing.

16. Opposer owns an exclusive property right to commercially exploit Mr. Bullock's name in connection with the BULLOCK'S Mark.

17. By the efforts of Mr. Bullock, during his lifetime to commercially exploit the BULLOCK'S Mark, and the subsequent efforts of his successors-in-interest, and the

tremendous success of retail store services and clothing offered under the BULLOCK'S Mark, such mark/name now occupies a permanent place in American history.

18. The Infringing Mark is identical to Mr. Bullock's name, save for the addition of the descriptive, disclaimed words "department store" in the Infringing Mark, and would be recognized as such, in that it points uniquely and unmistakably to Mr. Bullock. Neither Mr. Bullock, nor Opposer, who has the right to commercially exploit the BULLOCK'S Mark, is connected with the activities performed by Applicant under the Infringing Mark. The fame and reputation of the BULLOCK'S Mark is such that, when the Infringing Mark is used with Applicant's services, a connection with Mr. Bullock and/or Opposer would be presumed.

19. The Infringing Mark falsely suggests a connection with Opposer and/or Mr. Bullock.

20. The Infringing Mark is confusingly similar to Mr. Bullock's name and would be taken by the public as an endorsement by Mr. Bullock's successors-in-interest and Opposer of Applicant's services used in connection with the Infringing Mark. Further, any defect, objection or fault found with Applicant's services provided under the Infringing Mark would necessarily reflect upon and seriously injure Mr. Bullock's and/or Opposer's reputation.

21. Upon information and belief, Applicant was well aware of the BULLOCK'S Mark prior to filing the Infringing Application, and selected the Infringing Mark with the specific intent to falsely suggest a connection with Mr. Bullock and/or Opposer.

22. Accordingly, it is Opposer's belief that if Applicant is granted registration of the Application opposed herein, Opposer will suffer irreparable harm and damage.

THIRD CLAIM
LACK OF BONA FIDE INTENTION TO USE MARK

23. Opposer repeats and realleges the allegations of the preceding Paragraphs as if fully set forth herein.

24. Registration of the Infringing Mark should be refused since Applicant lacks a bona fide intention to use the Infringing Mark.

25. Applicant's lack of a bona fide intent to use the Infringing Mark is demonstrated, by way of example only, by the fact that Applicant filed an excessive number of other intent-to-use Applications for the identical services covered by the Infringing Application.

26. In particular, on the day after Applicant filed the Infringing Application (i.e., September 24, 2010), Applicant filed **nine** other Applications for different marks for the exact same services covered by the Infringing Application - i.e., retail department store and on-line retail department store services; retail and on-line retail clothing boutiques; retail and on-line retail clothing stores; retail and on-line retail apparel stores; retail and on-line retail store services featuring clothing and fashion accessories:

JORDAN MARSH	Serial No. 85/137,183
MAY COMPANY	Serial No. 85/137,181
ROBINSON'S	Serial No. 85/137,185
JOSEPH MAGNIN	Serial No. 85/137,187
THE BROADWAY	Serial No. 85/137,191
THE BON MARCHE	Serial No. 85/137,193
ABRAHAM AND STRAUS	Serial No. 85/137,194

FILENE'S

Serial No. 85/137,196

GOTTSCHALKS

Serial No. 85/137,197

27. All of the marks for which Applicant applied on September 23 and 24, 2010 (including the Infringing Mark) are well known if not famous department store brands.

28. Applicant's lack of a bona fide intent to use the Infringing Mark is further illustrated by the fact, upon information and belief, Applicant is not currently providing, and has never provided the services covered by the Infringing Application and the nine other intent-to-use Applications - i.e., retail department store and on-line retail department store services; retail and on-line retail clothing boutiques; retail and on-line retail clothing stores; retail and on-line retail apparel stores; retail and on-line retail store services featuring clothing and fashion accessories.

29. Upon information and belief, Applicant is trafficking in trademarks - i.e., reserving what Applicant perceives to be desirable names (including, without limitation, the Infringing Mark) with the intent to sell or license them to others, and therefore, does not have a bona fide intent to use the Infringing Mark.

30. Accordingly, it is Opposer's belief that if Applicant is granted registration of the Application opposed herein, Opposer will suffer irreparable harm and damage.

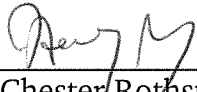
* * *

WHEREFORE, Opposer respectfully requests that the mark shown in U.S. Trademark Application Serial No. 85/136,164 be refused registration and that this Opposition be sustained.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Opposer
90 Park Avenue
New York, New York 10016
(212) 336-8000

Dated: New York, New York
July 12, 2011

By: 

Chester Rothstein
Holly Pekowsky

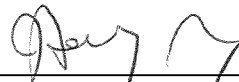
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Opposer in the above-captioned Opposition proceeding and that on the date which appears below, caused a copy of the foregoing NOTICE OF OPPOSITION to be served on Applicant by Federal Express addressed as follows:

Ellia Kassoff
Strategic Marks, LLC
25 Ridgeview
Irvine CA 92603

with a courtesy copy, via Federal Express to:

Chris Ditico, Esq.
Raj Abhyanker, P.C.
1580 W. El Camino Real, Suite 8
Mountain View, CA 94040



Holly Pekowsky

Dated: New York, New York
July 2, 2011