

ESTTA Tracking number: **ESTTA454168**

Filing date: **02/01/2012**

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	Actervis GmbH		
Entity	limited liability company	Citizenship	Switzerland
Address	c/o PRV Provides Treuhandgesellschaft AG Dorfstrasse 38 Baar Zug, 6341 SWITZERLAND		

Attorney information	Thomas J. Oppold Larkin Hoffman Daly & Lindgren Ltd. 1500 Wells Fargo Plaza 7900 Xerxes Avenue South Minneapolis, MN 55431 UNITED STATES ipgroup@larkinhoffman.com Phone:952-896-3397
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Applicant Information

Application No	85325727	Publication date	01/03/2012
Opposition Filing Date	02/01/2012	Opposition Period Ends	02/02/2012
Applicant	Gracie Girl, LLC 3977 Bob Street San Diego, CA 92110 UNITED STATES		

Goods/Services Affected by Opposition


Class 020. All goods and services in the class are opposed, namely: Non-metal fabric hanging organizer


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.	85448575	Application Date	10/17/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HANGAWAY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 2002/06/00 First Use In Commerce: 2002/06/00 Clothing racks

U.S. Application No.	85448579	Application Date	10/17/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HANGAWAY		
Design Mark			
Description of Mark	The mark consists of the term "HANGAWAY" in a stylized form. The "Y" in the term "HANGAWAY" is above a depiction of a clothes hanger.		
Goods/Services	Class 020. First use: First Use: 2009/07/06 First Use In Commerce: 2009/07/06 Clothing racks		

Attachments	85448575#TMSN.jpeg (1 page)(bytes) 85448579#TMSN.jpeg (1 page)(bytes) NoticeofOpposition.pdf (4 pages)(113150 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	/Thomas J. Oppold/
Name	Thomas J. Oppold
Date	02/01/2012

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

In the Matter of
Trademark Application Serial No. 85/325727

For the Mark: HANG AWAY LINGERIE

Applicant: Gracie Girl, LLC
Date Filed: May 20, 2011
Published: January 3, 2012

Actervis GmbH

Opposer,

vs.

Opposition No. _____

Gracie Girl, LLC

Applicant.

NOTICE OF OPPOSITION

Actervis GmbH ("Opposer") hereby opposes registration of the above-referenced mark filed by applicant Gracie Girl, LLC ("Applicant") which was published for opposition on January 3, 2012. As grounds for its opposition, Opposer states and alleges as follows:

1. Opposer is a limited liability company organized under the laws of Switzerland, having an office at c/o PRV Provides, Treuhandgesellschaft AG, Dorfstrasse 38, Baar Zug Switzerland 6341.


2. On information and belief, Applicant is a limited liability company organized under the laws of the State of Texas, with its principal place of business at 3977 Bob Street, San Diego, California 92110.



3. On May 20, 2011, Applicant filed an intent-to-use application to register the mark HANG AWAY LINGERIE on the Principal Register for use in connection with a non-metal fabric hanging organizer, U.S. Application Serial No. 85/325727 (the "Opposed Mark").

4. Opposer designs and distributes various types of household and consumer products.

5. On October 17, 2011, Opposer filed an application to register the mark HANGAWAY on the Principal Register for use in connection with clothing racks, U.S. Application Serial No. 85/448575.

6. Opposer, through its predecessor in interest, has been using the mark HANGAWAY on and in connection with clothing racks since at least as early as June 2002.

7. On October 17, 2011, Opposer filed an application to register the mark  on the Principal Register for use in connection with clothing racks, U.S. Application Serial No. 85/448579.

8. Opposer has been using the mark  on and in connection with clothing racks since at least as early as July 6, 2009. (Opposer's foregoing HANGAWAY and  marks collectively, hereinafter, the "Hangaway Marks").

9. The USPTO provisionally refused registration of the Hangaway Marks alleging that they present a likelihood of confusion with the Opposed Mark.

10. Opposer's use of the Hangaway Marks pre-dates any date of use or constructive date of use by Applicant of the Opposed Mark.

11. Any use by Applicant of the Opposed Mark for which it seeks registration is without Opposer's consent or permission.

12. Opposer has developed goodwill through its use of its Hangaway Marks. By reason of Opposer's marketing and promotion activities, purchasers recognize the Hangaway Marks and associate them exclusively with Opposer and its goods.

13. If Applicant is granted the registration herein opposed, purchasers are likely to be confused, mistaken, or deceived into believing that Applicant's goods originate with or are sponsored or approved by Opposer, all to Opposer's irreparable damage. Use by Applicant of the Opposed Mark will lessen the capacity of the Hangaway Marks to identify and distinguish Opposer's goods.

14. Opposer would be damaged by the use and registration of the Opposed Mark by Applicant.

15. Please address all communications regarding this Opposition to Thomas J. Oppold, Larkin Hoffman Daly & Lindgren Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, Minnesota 55431-1194.

WHEREFORE, Opposer respectfully requests that Application Serial No. 85/325727 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Date: February 1, 2012

Opposer, Actervis GmbH
By its Attorneys:

/s/Thomas J. Oppold
Thomas J. Oppold
Molly T. Eichten
Larkin Hoffman Daly & Lindgren Ltd.
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194
(952) 835-3800

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition filed in the above-captioned proceeding has been served on Applicant's correspondence address of record in the USPTO, via U.S. Mail, postage prepaid:

Catherine G. Clishem
3977 Bob Street
San Diego, CA 92110-5756

Date: February 1, 2012

/s/Thomas J. Oppold

Thomas J. Oppold, Esq.
Attorney for Opposer
Actervis GmbH

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