

ESTTA Tracking number: **ESTTA525162**

Filing date: **03/06/2013**

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	Genesco Brands, Inc.
Granted to Date of previous extension	03/06/2013
Address	300 Delaware Avenue 9th Floor Wilmington, DE 19801 UNITED STATES
Attorney information	Jaclyn T. Shanks Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street, Ste 2800 Atlanta, GA 30309-4528 UNITED STATES tlord@kilpatricktownsend.com, tadmin@ktslaw.com, lcrumbley@ktslaw.com, jshanks@ktslaw.com Phone:404-815-6500

Applicant Information

Application No	85637087	Publication date	11/06/2012
Opposition Filing Date	03/06/2013	Opposition Period Ends	03/06/2013
Applicant	Sellmark Corporation 2201 Heritage Parkway 2201 Heritage Parkway Mansfield, TX 76063 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 018. All goods and services in the class are opposed, namely: Backpacks; Canes and walking sticks; Hiking bags; Hiking poles; Hiking rucksacks; Hiking sticks; Hunting bags; Mountaineering sticks; Sportsman's hunting bags; Walking sticks</p>
<p>Class 025. All goods and services in the class are opposed, namely: Bandanas; Boots; Camouflage jackets; Climbing boots; Fishermen's jackets; Fishing shirts; Fishing vests; Fishing waders; Gloves; Hats; Hiking boots; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests; Jackets; Leg shielding device, attachable to and detachable from a person's pants, comprised of padding to shield the legs from flying debris when mowing with a string trimmer; Light-reflecting jackets; Long-sleeved shirts; Men's and women's jackets, coats, trousers, vests; Moisture-wicking sports shirts; Mountaineering boots; Mountaineering shoes; Padded jackets; Rain jackets; Rainproof jackets; Reversible jackets; Sandals; Sandals and beach shoes; Scarfs; Shirts; Snow boots; T-shirts; Tee shirts; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Trekking boots; Water proof boots; Water repelling boots; Water repelling leather boots; Water repelling leather shoes and boots; Waterproof jackets and pants; Waterproof leather boots; Waterproof leather shoes and boots</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. Registration No.	3232063	Application Date	04/10/2001
Registration Date	04/24/2007	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 retail store services in the fields of footwear, apparel, backpacks, sports bags, jewelry and fashion accessories		

U.S. Registration No.	2054259	Application Date	10/24/1995
Registration Date	04/22/1997	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 shoes and clothing, namely, shirts, T-shirts, sweatshirts, jackets, [pants, shorts,] socks and hats		

Attachments	76238378#TMSN.gif (1 page)(bytes) 75009503#TMSN.gif (1 page)(bytes) Notice of Opposition_ 12 SURVIVORS Design (Handprint Design).pdf (6 pages) (39166 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	/Jaclyn T. Shanks/
Name	Jaclyn T. Shanks
Date	03/06/2013

owned by Genesco Brands Inc. By virtue of its use of the Handprint Design Mark, Genesco owns common law rights in the design.



3. Genesco's Handprint Design Mark is used in connection with JOURNEYS stores and on point of purchase materials in connection with clothing, footwear, accessories, bags, novelties, and other products sold in those stores.

4. Genesco also owns federal Registration No. 3,232,063 of its Handprint Design mark for "*retail store services in the fields of footwear, apparel, backpacks, sports bags, jewelry and fashion accessories*" in International Class 35. In addition, Genesco owns federal Registration No. 2,054,259 of its Handprint Design Mark for "*shoes and clothing, namely, shirts, T-shirts, sweatshirts, jackets, socks, and hats*" in International Class 25.

5. Genesco has used its Handprint Design Mark in commerce in connection with the advertising, promotion, distribution, and sale of footwear and clothing and other goods, as well as retail store services, since at least as early as December 31, 1987.

6. By virtue of continuous and extensive advertising of the Handprint Design Mark in connection with Journeys stores and the products sold therein, and of the extensive sales under the mark for over 20 years, Genesco's Handprint Design Mark is widely and favorably known by the public throughout the United States.

7. Genesco's Handprint Design Mark is symbolic of the substantial goodwill and consumer recognition established by Genesco as a result of the outstanding quality and extensive sales of products through its retail stores throughout the United States for many years. Genesco

has expended large amounts of money, time, and effort in advertising and promoting such goods and services under the Handprint Design Mark. By reason of Genesco's extensive use and advertising of the Handprint Design Mark and resulting favorable public recognition, the Handprint Design Mark uniquely identifies Genesco and its retail stores and related products and services to the public. As such, Genesco has acquired extensive common law rights in the Handprint Design Mark in connection with its retail store services and with footwear, clothing and other goods.

8. Applicant Sellmark Corporation ("Applicant") filed intent-to-use application Serial No. 85/637,087 on May 29, 2012 to register the mark 12 SURVIVORS & Design ("Applicant's Design Mark"), which is reproduced below:



Applicant's Design Mark, which was published for opposition in the Official Gazette on November 6, 2012, is for use in connection with "*backpacks; canes and walking sticks; hiking bags; hiking poles; hiking rucksacks; hiking sticks; hunting bags; mountaineering sticks; sportsman's hunting bags; walking sticks*" in International Class 18 and "*bandanas; boots; camouflage jackets; climbing boots; fishermen's jackets; fishing shirts; fishing vests; fishing waders; gloves; hats; hiking boots; hunting jackets; hunting pants; hunting shirts; hunting vests; jackets; leg shielding device, attachable to and detachable from a person's pants, comprised of padding to shield the legs from flying debris when mowing with a string trimmer; light-reflecting jackets; long-sleeved shirts; men's and women's jackets, coats, trousers, vests; moisture-wicking*

sports shirts; mountaineering boots; mountaineering shoes; padded jackets; rain jackets; rainproof jackets; reversible jackets; sandals; sandals and beach shoes; scarfs; shirts; snow boots; t-shirts; tee shirts; travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; trekking boots; water proof boots; water repelling boots; water repelling leather boots; water repelling leather shoes and boots; waterproof jackets and pants; waterproof leather boots; waterproof leather shoes and boots” in International Class 25.

9. Upon information and belief, Applicant has not yet used Applicant’s Design Mark in connection with any of the goods identified in the Application. Genesco continuously has used its Handprint Design Mark since long prior to the Applicant’s actual or constructive first use date.

10. Applicant’s Design Mark prominently incorporates a handprint design that is virtually identical in appearance and commercial impression to Genesco’s Handprint Design Mark.

11. Applicant’s Design Mark is proposed to be used with goods in International Class 18 that are identical to the goods Genesco offers for sale in its Journeys stores.

12. Applicant’s Design Mark is proposed to be used with goods in International Class 25 that are identical to the goods Genesco offers under its Handprint Design Mark.

13. Genesco will be damaged by the registration of Applicant’s Design Mark in International Classes 18 and 25 because the mark so resembles Genesco’s previously used Handprint Design Mark as to be likely to cause consumer confusion, mistake and deception. Consumers familiar with Genesco’s Handprint Design Mark would be likely, erroneously, to believe that Applicant’s goods are those of Genesco or are endorsed, sponsored, or licensed by Genesco. Thus, registration of Applicant’s mark with respect to International Classes 18 and 25

on the Principal Register would be inconsistent with Genesco's rights in its Handprint Design Mark.

14. The required opposition fee is being electronically processed in connection with this Notice of Opposition. The Director is authorized to debit KILPATRICK TOWNSEND & STOCKTON LLP's Trademark Deposit Account No. 20-1430 for any deficiency in the required fee.

Opposer Genesco Brands, Inc. therefore requests that application Serial No. 85/637,087 be refused registration.

Respectfully Submitted,

/Jaclyn T. Shanks/
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being filed electronically through the U.S. Patent and Trademark Office's ESTTA system on March 6, 2013.

BY: /Jaclyn T. Shanks/

