

ESTTA Tracking number: **ESTTA539225**

Filing date: **05/22/2013**

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	The University of Tennessee
Granted to Date of previous extension	05/22/2013
Address	719 Andy Holt Tower Knoxville, TN 37996 UNITED STATES

Attorney information	Wade R. Orr Luedeka Neely Group, P.C. P.O. Box 1871 Knoxville, TN 37919 UNITED STATES worr@luedeka.com Phone:865-546-4305
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**Applicant Information**

Application No	85645701	Publication date	01/22/2013
Opposition Filing Date	05/22/2013	Opposition Period Ends	05/22/2013
Applicant	ANNE SOPHIE, INC. 2050 E. 49TH STREET VERNON, CA 90058 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 018. First Use: 2012/02/15 First Use In Commerce: 2012/02/15 All goods and services in the class are opposed, namely: Backpacks, book bags, sports bags, bum bags, wallets and handbags; Fitted protective covers for handbags, briefcases, valises, suitcases, and briefcase-like portfolios; Handbags, purses and wallets
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	No bona fide use of mark - 15 U.S.C. 1051(a); Mark is merely decorative and is not used and/or become distinctive as an indication of source - 15 U.S.C. 1051, 1052, and 1127

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration	2445722	Application Date	07/22/1999
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No.			
Registration Date	04/24/2001	Foreign Priority Date	NONE
Word Mark	T		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: First Use: 1998/07/10 First Use In Commerce: 1998/07/10 watches, earrings, necklaces, and pins</p> <p>Class 016. First use: First Use: 1985/09/01 First Use In Commerce: 1985/09/01 posters, prints, envelopes, stationery, programs, stickers, decals, *magnets*, and sporting event schedules</p> <p>Class 020. First use: First Use: 1986/09/01 First Use In Commerce: 1986/09/01 Key chains, plastic license plates and flags</p> <p>Class 021. First use: First Use: 1985/09/01 First Use In Commerce: 1985/09/01 drinking cups, mugs, glasses * and lamps*</p> <p>Class 025. First use: First Use: 1985/09/01 First Use In Commerce: 1985/09/01 polo shirts, short-sleeve and long-sleeve T-shirts, sweatshirts, shorts, pants, shoes, hats, jackets, coats, vests, gloves, socks, sweaters and long-sleeve and short-sleeve shirts</p> <p>Class 028. First use: First Use: 1985/09/01 First Use In Commerce: 1985/09/01 Carrying bags, dolls, footballs, basketballs, golf balls, helmets, stuffed animals, miniaturized toy figures, and games</p> <p>Class 041. First use: First Use: 1912/00/00 First Use In Commerce: 1912/00/00 entertainment services in the nature of intercollegiate sports exhibitions</p>		

Attachments	6893200-tottab-20130522-NoticeOfOpposition.pdf(32622 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	/WadeROrr/
Name	Wade R. Orr
Date	05/22/2013

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

In re application of )  
 )  
Anne Sophie, Inc. d/b/a Emperia Corporation )  
 )  
Serial No. 85/645,701 )  
Date Filed: June 7, 2012 )  
Mark: T and Design )  
 )  
Published in the )  
OFFICIAL GAZETTE (Trademarks) on )  
January 22, 2013 )  
 )  
Attorney Docket No. 68932.00 )

NOTICE OF OPPOSITION

TRADEMARK TRIAL AND APPEAL BOARD  
U.S. Patent and Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-3513

Sir:

Opposer, the University of Tennessee, believes it will be damaged by registration of the mark of Application Serial No. 85/645,701 filed by the named applicant therein and hereby opposes the same. As grounds for this opposition, it is alleged as follows:

1. On information and belief, Applicant, Anne Sophie, Inc. d/b/a Emperia Corporation, is a California corporation having an address at 2050 E. 49<sup>th</sup> St., Vernon, California 90058.
2. Opposer is a public, non-profit, educational corporation of the State of Tennessee

having a business address at 719 Andy Holt Tower, Knoxville, Tennessee 37996.

3. On June 7, 2012, Applicant filed Application Serial No. 85/645,701 (hereinafter “701 Application”) in the USPTO under Section 1(a) of the Trademark Act for registration of the alleged trademark shown below (hereinafter “Applicant’s T Mark”).



4. The opposed ‘701 Application seeks to register Applicant’s T Mark for “Backpacks, book bags, sport bags, bum bags, wallets and handbags; Fitted protective covers for handbags, briefcases, valises, suitcases, and briefcase-like portfolios; Handbags, purses and wallets” in International Class 018 (hereinafter “Applicant’s Goods”). The application claims a date of first use anywhere and in commerce for Applicant’s T Mark of February 15, 2012. The application was published for opposition in the *Official Gazette* on January 22, 2013. On February 11, 2013, Opposer filed a Request for Extension of Time to file a Notice of Opposition requesting up to and including May 22, 2013, to file a Notice of Opposition. On February 11, 2013, the Trademark Trial and Appeal Board granted Opposer’s extension request.

5. For many years prior to the filing date of the opposed ‘701 Application and since long before any alleged earlier commencement of use of Applicant’s T Mark anywhere or in commerce, Opposer and/or its licensees and/or affiliates have offered, sold, and provided and continue to offer, sell and provide in interstate commerce a wide variety of goods and services

under a virtually identical T logo shown below (hereinafter “Opposer’s T Mark”).



6. Opposer’s T Mark has been prominently and extensively used and promoted in commerce nationwide for many decades, and since long before the filing date of the opposed ‘701 Application or any alleged earlier commencement of use by Applicant of Applicant’s T Mark anywhere or in commerce for any of Applicant’s Goods, for and in connection with goods sold, provided, and marketed nationwide, said goods including, but not limited to, carrying bags (i.e., backpacks, handbags, purses, coolers, etc.), gift and novelty items (i.e., wallets, billfolds, key chains, license plates, license plate frames, picture frames, cups, glasses, mugs, etc.), various clothing and apparel items, a wide range of printed publications and stationary, footwear, artwork, jewelry, and athletic equipment (hereinafter collectively the “Opposer’s Goods”). Opposer’s T Mark has also been used in commerce for decades, and since long before the filing date of the opposed ‘701 Application or any alleged earlier commencement of use by Applicant of Applicant’s T Mark anywhere or in commerce for any of Applicant’s Goods, for and in connection with higher education and intercollegiate sports (hereinafter “Opposer’s Services”). Opposer’s T Mark has further been used, shown, and displayed on and in regional, national and international television broadcasts in connection with Opposer’s Goods and Services and seen by many millions of people around the world in association with such goods and services since long

before the filing date of the opposed '701 Application or any alleged earlier commencement of use by Applicant of Applicant's T Mark anywhere or in commerce for any of Applicant's Goods. As a result of the extensive use and promotion of Opposer's T Mark by Opposer and its licensees and affiliates, Opposer is now and for some time has been the owner of strong and valuable common law exclusive rights and goodwill in Opposer's T Mark for Opposer's Goods and Services, which rights and good will arose and subsisted long before filing of the opposed '701 Application or any earlier use of Applicant's T Mark for any of Applicant's Goods.

7. In addition to its common-law rights, Opposer is the owner of all right, title, and interest in and to U.S. Trademark Registration No. 2,445,722 (hereinafter "Opposer's '722 Registration") issued on April 24, 2001, for Opposer's T Mark registered in connection with certain goods and services shown in the table below:

<b>Class</b>	<b>Goods/Services</b>	<b>Date of First Use ("At least as early as...")</b>
14	watches, earrings, necklaces, and pins	July 10, 1998
16	posters, prints, envelopes, stationary, programs, stickers, decals, magnets, and sporting event schedules	September 1, 1985
20	Key chains, plastic license plates and flags	September 1, 1986
21	drinking cups, mugs, glasses and lamps	September 1, 1985
25	polo shirts, short-sleeve and long-sleeve T-shirts, sweatshirts, shorts, pants, shoes, hats, jackets, coats, vests, gloves, socks, sweaters and long-sleeve and short-sleeve shirts	September 1, 1985
28	Carrying bags, dolls, footballs, basketballs, golf balls, helmets, stuffed animals, miniaturized toy figures, and games	September 1, 1985
41	entertainment services in the nature of intercollegiate sports	1912

Opposer's '722 Registration for each of the classes listed in the chart above is valid and subsisting. The '722 registration is incontestable pursuant to 15 U.S.C. § 1065.

8. Opposer and its licensees and affiliates have expended considerable time, effort, and expense in using, promoting, advertising, popularizing, and making known Opposer's T Mark for and in connection with Opposer's Goods and Services, with the result that Opposer has established extensive and valuable exclusive rights and goodwill in Opposer's T Mark as a symbol of a source or origin of Opposer's Goods and Services.

9. Opposer's T Mark is distinctive, well known, and famous in commerce in the United States, and is and has been widely known and famous in commerce in the United States since long before February 15, 2012 – the claimed date of first use anywhere of Applicant's '701 Application for Opposer's T mark – and since long before any alleged earlier use of Applicant's T Mark for any of Applicant's Goods.

10. In addition to Applicant's constructive knowledge of Opposer's use and registration of Opposer's T Mark of Opposer's '722 Registration, on information and belief, Applicant had actual knowledge or reason to know of Opposer's prior use of its well-known and famous T Mark for and in connection with at least some of Opposer's Goods and Services prior to Applicant's claimed date of first use, the date of filing of the '701 Application in the USPTO, or any other date on which Applicant may seek to rely herein.

11. Opposer has and for some time has had both actual and constructive use priority anywhere and everywhere in the United States in commerce of Opposer's T Mark with respect to Applicant's T Mark of the opposed '701 Application as a result of Opposer's significantly earlier

filing date of Opposer's '722 Registration and Opposer's significantly earlier actual and continuous regional and nationwide prior use of Opposer's T Mark in commerce for and in connection with Opposer's Goods and Services since a date long before the filing date of the '701 Application and prior to any alleged earlier commencement of use of Applicant's T Mark by Applicant in U.S. commerce or any other alleged date of priority on which Applicant may seek to rely herein.

12. Applicant's Goods are the same as or are related to all or part of Opposer's Goods and Services offered under Opposer's T Mark. On information and belief, Applicant's Goods are or will be offered and/or provided under Applicant's T Mark through the same channels of trade and advertising media and are or will be directed to the same general class of purchasers as Opposer's Goods and Services offered and provided under Opposer's T Mark.

13. Applicant's T Mark sought to be registered in the '701 Application so resembles Opposer's T Mark as to be likely, when used on, for, or in connection with Applicant's Goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers as well as the public at large are all likely to mistakenly believe that Applicant's Goods offered or sold under Applicant's T Mark of the opposed '701 Application are produced, sponsored, endorsed, or approved by the source of Opposer's Goods and/or Services sold, marketed or provided under Opposer's T Mark, and/or that the source of Applicant's Goods is in some way affiliated, connected, or associated with the source of Opposer's Goods and/or Services sold, marketed or provided under Opposer's T Mark, all to the detriment of and damage to Opposer and its goodwill connected with Opposer's T Mark. Registration of Applicant's T Mark for the goods of the '701 Application should, therefore, be refused under at least 15 U.S.C. §§ 1052(d)



and 1063.

14. Registration of Applicant's T Mark of the '701 Application would be a further source of damage to Opposer inasmuch as use of Applicant's T Mark by Applicant for Applicant's Goods dilutes and/or is likely to dilute the distinctive quality of Opposer's famous T Mark to the detriment and damage of Opposer. Registration of Applicant's T Mark should, therefore, be refused at least under 15 U.S.C. §§ 1052, 1063, and 1125 in view of Opposer's prior use of and other priority rights in its T Mark for and in connection with Opposer's Goods and Services.

15. Registration of Applicant's T Mark would be a still further source of damage to Opposer because it would, among other things, confer upon Applicant various statutory presumptions to which it is not entitled in view of Opposer's long prior use, prior registration, and other priority rights in and with respect to Opposer's T Mark and its superior rights therein under the federal Trademark Act, Title 15 of the United States Code.

16. Upon information and belief, there was no bona fide use of Applicant's T Mark by Applicant prior to the filing of the '701 Application. Registration of Applicant's T Mark of the '701 Application should, therefore, be refused under at least 15 U.S.C. § 1051(a).

17. Upon information and belief, Applicant's T Mark is merely decorative and has not become distinctive as an indication of the source of Applicant's Goods. Registration of Applicant's T Mark of the '701 Application should, therefore, be refused because it is merely ornamentation that does not function as a trademark as required by at least 15 U.S.C. §§ 1051, 1052, and 1127.

WHEREFORE, Opposer, the University of Tennessee, prays that registration of

Applicant's T Mark of Application Serial No. 85/645,701 for the goods therein specified be refused.

A fee in the amount of \$300.00 as required by the Commissioner for Trademarks is filed herewith. The commissioner is authorized to draw on the Deposit Account of Luedeka Neely Group, Account No. 12-2355, if the filing fee is insufficient or if the payment is inadvertently omitted.

Respectfully submitted,

Date: May 22, 2013

s/Wade R. Orr/

Wade R. Orr, Esq., Reg. No. 59,390  
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(865) 546-4305

**CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing NOTICE OF OPPOSITION is being served on Applicant at its correspondence address of record by first class mail, postage prepaid:

Anne Sophie, Inc.  
2050 E 49<sup>th</sup> St.  
Vernon, CA 90058-2802

Date: May 22, 2013

s/Wade R. Orr/  
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Wade R. Orr