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Filing date: **08/30/2013**

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	Miss Elaine, Inc.
Granted to Date of previous extension	09/01/2013
Address	8430 Valcour Avenue St. Louis, MO 63123 UNITED STATES

Applicant Information

Application No	85733774	Publication date	03/05/2013
Opposition Filing Date	08/30/2013	Opposition Period Ends	09/01/2013
Applicant	Empire Resorts, Inc. 204 Rt.17B Monticello, NY 12701 UNITED STATES		

Goods/Services Affected by Opposition

Class 025.
All goods and services in the class are opposed, namely: Clothing for men, women, and children in the nature of shirts, pants, skirts, dresses, shorts, jackets, footwear, sweat pants, sweat shirts, sweat shorts, warm up suits, jogging suits, swim wear, T-shirts, tank tops, nightshirts and night gowns, pajamas, robes, dresses, rainwear, hats, caps and visors, vests, scarves, neckties, head bands and wrist bands

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1929944	Application Date	11/14/1994
Registration Date	10/24/1995	Foreign Priority Date	NONE
Word Mark	ME		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1968/05/08 First Use In Commerce: 1968/05/08 women's night shirts, lounge wear, sleep wear and robes

U.S. Registration No.	1826406	Application Date	01/10/1992
Registration Date	03/15/1994	Foreign Priority Date	NONE
Word Mark	ME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1968/05/08 First Use In Commerce: 1968/05/08 women's shirts, pants, lounge wear, sleep wear, robes, dusters and shifts		

U.S. Registration No.	3210461	Application Date	08/29/2005
Registration Date	02/20/2007	Foreign Priority Date	NONE
Word Mark	ME 2		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1989/08/09 First Use In Commerce: 1989/08/09 Women's shirts, pants, loungewear, sleepwear, robes, dusters, shifts, sleep shirts, gowns, peignoirs, pajamas, bed jackets, caftans, nightshirts, dresses, jogging suits, cover-ups and sportswear, namely, pullover tops, sweaters and jackets		

U.S. Registration No.	3277771	Application Date	01/23/2006
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	ME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/01/09 First Use In Commerce: 2006/08/25 Women's shirts, pants, loungewear, sleepwear, robes, dusters, shifts, sleepshirts, gowns, peignoirs, pajamas, bedjackets, jackets, caftans, nightshirts, dresses, jog suits, cover-ups and sportswear, namely, pullover tops, sweaters and jackets		

U.S. Registration No.	3277772	Application Date	01/23/2006
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	ME		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2006/01/09 First Use In Commerce: 2006/08/25 Women's shirts, pants, loungewear, sleepwear, robes, dusters, shifts, sleepshirts, gowns, peignoirs, pajamas, bedjackets, jackets, caftans, nightshirts, dresses, jog suits, cover-ups and sportswear, namely, pullover tops, sweaters and jackets

Attachments	Notice.pdf(638664 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 First Class Mail on this date.

Signature	/Cathy J. Futrowsky/
Name	Cathy J. Futrowsky
Date	08/30/2013

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

Miss Elaine, Inc., Opposer,	)	Opposition No. _____
	)	Serial No. 85/733,774
v.	)	Mark: ME. (Stylized)
Empire Resorts, Inc., Applicant.	)	

BOX TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Miss Elaine, Inc., a Missouri Corporation, located and doing business at 8430 Valcour Avenue, St. Louis, Missouri 63123 (hereinafter "***Opposer***") believes it would be damaged and injured by registration of the mark ME. (Stylized) for "clothing for men, women, and children in the nature of shirts, jackets, footwear, sweat pants, sweat shirts, sweat shorts, warm up suits, jogging suits, swim wear, t-shirts, tank tops, nightshirts and night gowns, pajamas, robes, dresses, rainwear, hats, caps and visors, vests, scarves, neckties, head visors, vests, scarves, neckties, head visors, vests, scarves, neckties, head bands and wrist bands" in International Class 25, as shown in Application Serial No. 85/733,774, filed on September 20, 2012 by Empire Resorts, Inc. (hereinafter "***Applicant***"), and published on March 5, 2013 in the *Official Gazette for Trademarks*.

Opposer alleges, solely for the purpose of this proceeding, as grounds for opposition, the following:

1. Applicant filed Application Serial No. 85/733,774 for ME. (Stylized) for "clothing for men, women, and children in the nature of shirts, jackets, footwear, sweat pants, sweat shirts, sweat shorts, warm up suits, jogging suits, swim wear, t-shirts, tank

tops, nightshirts and night gowns, pajamas, robes, dresses, rainwear, hats, caps and visors, vests, scarves, neckties, head visors, vests, scarves, neckties, head visors, vests, scarves, neckties, head bands and wrist bands" in International Class 25, on September 20, 2012, based on intent to use the mark under Section 1(b) of the Lanham Act, as evidenced by publication of said mark on March 5, 2013 in the *Official Gazette for Trademarks*.

2. Opposer is the owner of the following United States trademark registrations, among others:

Registration No.	Mark	Goods/Services
1,929,944	ME	women's night shirts, lounge wear, sleep wear and robes
1,826,406	ME	women's shirts, pants, lounge wear, sleep wear, robes, dusters and shifts
3,210,461	ME 2	women's shirts, pants, loungewear, sleepwear, robes, dusters, shifts, sleepshirts, gowns, peignoirs, pajamas, bedjackets, caftans, nightshirts, sportswear, dresses, jog suits and cover-ups
3,277,771	ME & Design	women's shirts, pants, loungewear, sleepwear, robes, dusters, shifts, sleepshirts, gowns, peignoirs, pajamas, bedjackets, jackets, caftans, nightshirts, dresses, jog suits, cover-ups and sportswear, namely, pullover tops, sweaters and jackets.
3,277,772	ME & Design	women's shirts, pants, loungewear, sleepwear, robes, dusters, shifts, sleepshirts, gowns, peignoirs, pajamas, bedjackets, jackets, caftans, nightshirts, dresses, jog suits, cover-ups and sportswear, namely, pullover tops, sweaters and jackets.

3. Opposer is also the owner of common law rights in the marks listed above. The marks listed above and the corresponding common law marks are referred to hereinafter collectively as the "**ME** Family of Marks." Opposer has used marks in the **ME** Family of Marks for more than 45 years.

4. Opposer is in the business of offering women's shirts, pants, loungewear, sleepwear, robes, dusters, shifts, sleepshirts, gowns, peignoirs, pajamas, bedjackets, jackets, caftans, nightshirts, dresses, jog suits, cover-ups and sportswear, namely, pullover tops, sweaters and jackets under the **ME** Family of Marks.

5. Opposer has prominently and extensively used, promoted and advertised the goods sold under its **ME** Family of Marks throughout the United States and in other parts of the world. By virtue of Opposer's efforts, the expenditure of considerable sums for promotional activities and the excellence of Opposer's goods, Opposer has gained a most valuable reputation in its **ME** Family of Marks.

6. Opposer's use and registration of its **ME** Family of Marks predate any date upon which Applicant can rely.

7. Upon information and belief, Applicant's intended use of and application for ME. (Stylized) are intended to trade off of Opposer's goodwill in its **ME** Family of Marks.

8. Upon information and belief, Applicant's goods and Opposer's goods are likely to be sold, offered and/or used by the same class of purchasers.

9. Upon information and belief, Applicant's goods and Opposer's goods are likely to be offered, promoted and/or sold in the same channels of trade.

10. Opposer's **ME** Family of Marks are famous, and became famous prior to the filing date of Applicant's application and prior to Applicant's use of Applicant's mark captioned above. Opposer's **ME** Family of Marks are therefore entitled to a high degree and wide zone of protection. If Applicant's alleged trademark captioned above is allowed to register, such registration will dilute the distinctive quality of Opposer's famous **ME** Family of Marks.

11. Applicant's alleged mark "so resembles a mark registered in the Patent and Trademark Office, or a mark...previously used in the United States and not

abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d).

12. If Applicant is permitted to use and register the alleged mark captioned above, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the confusingly similar nature of Applicant's alleged mark captioned above and Opposer's **ME** Family of Marks. Furthermore any defect, misrepresentation, objection or fault found with Applicant's goods promoted under its alleged mark captioned above would necessarily reflect on and seriously injure the reputation that Opposer has established through use of its **ME** Family of Marks.

13. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

14. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register its alleged mark and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. § 1152 (d).

WHEREFORE, Opposer prays that Application Serial No. 85/733,774 be rejected, and that registration of Applicant's alleged mark shown and specified therein be refused and denied, that that this Opposition be sustained in favor of Opposer.

Opposer hereby gives notice under Rule 2.122(d) of the Trademark Rules of Practice that at hearing and in any appeal on this opposition proceeding, it will rely on Opposer's United States registrations as referenced above as evidence in support of this Notice of Opposition.

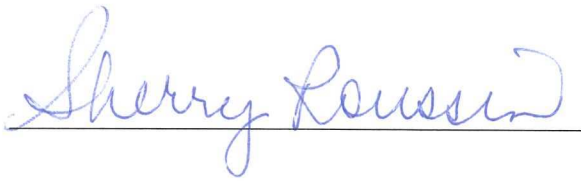
The $300 requisite government filing fee is being paid by credit card payment. Please deduct any additional fees due from Deposit Account 50-5565.

Respectfully submitted,

Cathy J. Futrowsky, Reg. No. 37,172
EVANS & DIXON, LLC
Metropolitan Square
211 N. Broadway, Suite 2500
St. Louis, Missouri 63102
Tel: 314/621-7755
Fax: 314/621-3136
Email: cjfutrowsky@evans-dixon.com and
ip@evans-dixon.com
Attorney for Opposer

Date: August 30, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Opposition was sent, via First Class Mail, postage prepaid, this 30th day of August, 2013, to the Applicant's attorney, as follows:

Charles N. Quinn, Esq.
Fox Rothschild LLP
Eagleview Corporate Centre
747 Constitution Drive, Suite 100
Exton, PA 19341