

ESTTA Tracking number: **ESTTA574105**

Filing date: **12/02/2013**

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 Wet Seal, Inc.
Granted to Date of previous extension	12/01/2013
Address	26972 Burbank Foothill Ranch, CA 92610 UNITED STATES

Attorney information	Marcy J. Bergman Bryan Cave LLP 560 Mission Street, Suite 2500 San Francisco, CA 94105 UNITED STATES katherine.keating@bryancave.com, todd.bolinger@bryancave.com
----------------------	--

Applicant Information

Application No	85289642	Publication date	06/04/2013
Opposition Filing Date	12/02/2013	Opposition Period Ends	12/01/2013
Applicant	J.Y. Rays, Inc. 2023 Chico Avenue South El Monte, CA 91733 CANADA		

Goods/Services Affected by Opposition

Class 025. First Use: 2012/03/00 First Use In Commerce: 2012/03/00 All goods and services in the class are opposed, namely: WOMEN'S SWIMWEAR

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	1508250	Application Date	07/15/1987
Registration Date	10/11/1988	Foreign Priority Date	NONE
Word Mark	WET SEAL		
Design Mark			


Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1963/00/00 First Use In Commerce: 1963/00/00 CLOTHING FOR WOMEN, NAMELY, PANTS, BLOUSES, SWEATERS, SHIRTS, SHORTS, SKIRTS, DRESSES, SUITS, JACKETS, SWIMWEAR, COATS,BELTS, SCARVES, UNDERWEAR, PANTYHOSE Class 042. First use: First Use: 1962/12/19 First Use In Commerce: 1963/02/14 RETAIL STORE SERVICES FOR SALE OF WOMEN'S CLOTHING AND ACCESSORIES

U.S. Registration No.	2241292	Application Date	09/30/1997
Registration Date	04/20/1999	Foreign Priority Date	NONE
Word Mark	WET SEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1998/01/16 First Use In Commerce: 1998/01/16 [catalogs in the field of men's, women's and children's clothing, footwear, hats and accessories] Class 035. First use: First Use: 1998/01/16 First Use In Commerce: 1998/01/16 [mail order services and]computer on-line ordering services in the field of men's, women's and children's clothing, footwear, hats and accessories		

U.S. Registration No.	3244361	Application Date	04/17/2006
Registration Date	05/22/2007	Foreign Priority Date	NONE
Word Mark	WET SEAL		
Design Mark			
Description of Mark	The mark consists of Stylized W in Wet Seal as a butterfly.		
Goods/Services	Class 025. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Clothing, namely, hats, caps, visors, gloves, mittens, scarves, belts, ties, socks, tights, hosiery, stockings, shoes, boots, slippers, blouses, shirts, camisoles, tops, tank-tops, t-shirts, sweatshirts, pullovers, sweaters, blazers, jackets, coats, dresses, skirts, skorts, capris, jeans, shorts, pants, sweatpants, underwear, bras, panties, slips, teddies, nightgowns, pajamas, sleep shirts, bathrobes, lingerie, beach cover-ups, swimwear, rainwear		

U.S. Registration	4316787	Application Date	08/13/2012
-------------------	---------	------------------	------------

No.			
Registration Date	04/09/2013	Foreign Priority Date	NONE
Word Mark	WET SEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/01/16 First Use In Commerce: 1998/01/16 footwear, namely, boots, shoes, leishoes, sandals, sneakers, loafers and slippers		

U.S. Application No.	86038610	Application Date	08/15/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WET SEAL +		
Design Mark			
Description of Mark	The mark consists of the word elements 'WET' and 'SEAL', with the latter word 'SEAL' appearing in italic format, followed by the non-italicized '+' design symbol element.		
Goods/Services	<p>Class 025. First use: First Use: 2013/07/01 First Use In Commerce: 2013/08/08 clothing, namely, hats, caps, visors, gloves, mittens, scarves, belts, ties, socks, tights, hosiery, stockings, shoes, boots, slippers, blouses, shirts, camisoles, tops, tank-tops, t-shirts, sweatshirts, pullovers, sweaters, blazers, jackets, coats, dresses, skirts, shorts, capris, jeans, pants, sweatpants, underwear, bras, panties, slips, teddies, nightgowns, pajamas, sleep shirts, bathrobes, lingerie, beach cover-ups, swimwear, rainwear</p> <p>Class 035. First use: First Use: 2013/07/01 First Use In Commerce: 2013/08/08 retail and online retail store services in the field of clothing and accessories</p>		


Attachments	78862902#TMSN.jpeg(bytes) 85702009#TMSN.jpeg(bytes) 86038610#TMSN.jpeg(bytes) JYRaysNOPP.PDF(67976 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	/Marcy J. Bergman/
Name	Marcy J. Bergman
Date	12/02/2013

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

THE WET SEAL, INC.,		Opposition No. _____
	Opposer,	
v.		Serial No.: 85/289,642
J.Y. RAYS, INC.,		
	Applicant.	Mark: WET (stylized) ()
		Filed: April 7, 2011
		Published: June 4, 2013
		Class: 25

NOTICE OF OPPOSITION


The Wet Seal, Inc. (“Wet Seal” or “Opposer”) believes it will be damaged by registration of Application No. 85/289,642 (the “Application”) for the mark WET (stylized), filed on April 7, 2011, by J.Y. Rays, Inc. (“Applicant”), and hereby opposes such registration. As grounds for opposition, Opposer alleges as follows:

1. Opposer Wet Seal is a Delaware corporation with its principal place of business at 26972 Burbank, Foothill Ranch, California 93610.
2. On information and belief, Applicant is a California corporation with its principal place of business at 2023 Chico Avenue, South El Monte, California 91733.
3. Opposer Wet Seal sells women’s clothing and accessory products worldwide at its Wet Seal retail stores and through its online storefront at www.wetseal.com.
4. Wet Seal adopted and began using the WET SEAL mark in connection with its retail stores and women’s clothing and accessory products at least as early as 1963.

5. Wet Seal is the exclusive owner of all rights, title, and interest in, to, and under the WET SEAL trademark for retail store services and women's apparel and accessories.

6. Wet Seal sells women's swimwear under its WET SEAL mark.

7. Wet Seal owns a number of federal trademark registrations and pending applications for its WET SEAL mark, including the following:

Mark	App. / Reg. No.	Goods / Services	Reg. Date
WET SEAL	1,508,250 (incontestable)	<i>clothing for women, namely, pants, blouses, sweaters, shirts, shorts, skirts, dresses, suits, jackets, swimwear, coats, belts, scarves, underwear, pantyhose (class 25)</i> <i>retail store services for sale of women's clothing and accessories (class 42)</i>	Oct. 11, 1988
WET SEAL	2,241,292 (incontestable)	<i>computer on-line ordering services in the field of men's, women's and children's clothing, footwear, hats and accessories (class 35)</i>	April 20, 1999
	3,244,361	<i>clothing, namely, hats, caps, visors, gloves, mittens, scarves, belts, ties, socks, tights, hosiery, stockings, shoes, boots, slippers, blouses, shirts, camisoles, tops, tank-tops, t-shirts, sweatshirts, pullovers, sweaters, blazers, jackets, coats, dresses, skirts, skorts, capris, jeans, shorts, pants, sweatpants, underwear, bras, panties, slips, teddies, nightgowns, pajamas, sleep shirts, bathrobes, lingerie, beach cover-ups, swimwear, rainwear (class 25)</i>	May 22, 2007
WET SEAL	4,316,787	<i>footwear, namely, boots, shoes, leisure shoes, sandals, sneakers, loafers and slippers (class 25)</i>	April 9, 2013

Mark	App. / Reg. No.	Goods / Services	Reg. Date
<i>wet seal</i> +	86/038,610	<i>clothing, namely, hats, caps, visors, gloves, mittens, scarves, belts, ties, socks, tights, hosiery, stockings, shoes, boots, slippers, blouses, shirts, camisoles, tops, tank-tops, t-shirts, sweatshirts, pullovers, sweaters, blazers, jackets, coats, dresses, skirts, skorts, capris, jeans, shorts, pants, sweatpants, underwear, bras, panties, slips, teddies, nightgowns, pajamas, sleep shirts, bathrobes, lingerie, beach cover-ups, swimwear, rainwear (class 25)</i>	n/a

8. Over the decades, Wet Seal has expended a substantial amount of time, money, and effort promoting, marketing, and advertising its goods and services under its WET SEAL mark.

9. Opposer's WET SEAL mark is inherently distinctive. Through Wet Seal's widespread and continuous use of its WET SEAL mark, the mark has become famous, having acquired substantial goodwill and secondary meaning among the relevant members of the public through Wet Seal's exclusive, widespread use for more than 40 years.

10. By virtue of Wet Seal's continuous and exclusive use of its WET SEAL mark, the mark has become strongly identified with fashionable, distinctive, and innovative apparel originating from Wet Seal.

11. On April 7, 2011, Applicant filed the Application (No. 85/289,642) for the mark shown below, in connection with "women's swimwear" in class 25:



("Applicant's Mark")

12. Applicant filed the Application on an intent-to-use basis and subsequently amended it to claim a first-use date of March 2012. Accordingly, Wet Seal indisputably has priority and is the senior user in these opposition proceedings.

13. On information and belief, Applicant sells women's swimwear under Applicant's Mark through retail outlets for fashionable apparel.

14. Section 2(d) of the Lanham Act precludes registration of Applicant's Mark because Applicant's Mark is confusingly similar to Opposer's WET SEAL mark in sound, appearance, and commercial impression, and the use of Applicant's Mark in connection with women's swimwear is likely to cause confusion, mistake, and/or deception as to the source of Applicant's goods.

15. The goods listed in the Application are identical to and directly competitive with apparel offered under Opposer's WET SEAL mark.

16. The goods listed in the Application are promoted and offered through the same channels of trade to the same or same classes of consumers as goods promoted and offered by Wet Seal under the WET SEAL mark.

17. Applicant's Mark falsely suggests a connection with Wet Seal and its goods and services.

18. Registration of Applicant's Mark will lead the public to incorrectly conclude that the goods with which Applicant uses its mark are or have been authorized, sponsored, or licensed by Wet Seal, resulting in damage to Wet Seal and the public.

19. In addition, Section 2(e) of the Lanham Act precludes registration of Applicant's Mark because Applicant's Mark is merely descriptive of the goods listed in the Application. The word "wet" describes a quality, characteristic, function, feature, purpose, and/or use of the

swimwear specified in the Application, and the minimal stylization of the mark is not sufficient to imbue Applicant's Mark with sufficient distinctiveness to permit registration.

20. Applicant has not shown – and could not show – that Applicant's Mark has acquired secondary meaning or become distinctive of Applicant's goods such that registration might be allowable despite the descriptiveness of Applicant's Mark.

21. Registration of Applicant's Mark would be inconsistent with Wet Seal's rights in its WET SEAL mark.


22. Registration of Applicant's Mark will give the color of exclusive right in Applicant's Mark to Applicant, in violation and derogation of the prior and superior rights of Wet Seal.

WHEREFORE, The Wet Seal, Inc. prays that this opposition be sustained and registration for Applicant's Mark in connection with all of the goods listed in the Application be denied.

Respectfully submitted,

BRYAN CAVE LLP

Dated: December 2, 2013



Katherine Keating
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999

Attorneys for The Wet Seal, Inc.