

ESTTA Tracking number: **ESTTA580683**

Filing date: **01/08/2014**

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	Jumpin Jammerz L.L.C.
Granted to Date of previous extension	01/08/2014
Address	2406 South 24th Street, Unit C120 Phoenix, AZ 85034 UNITED STATES
Correspondence information	Paul I. Perlman Hodgson Russ LLP The Guaranty Building 140 Pearl Street, Suite 100 Buffalo, NY 14202 UNITED STATES pperlman@hodgsonruss.com, djoyce@hodgsonruss.com, ddovi@hodgsonruss.com Phone:716.856.4000

Applicant Information

Application No	85898887	Publication date	09/10/2013
Opposition Filing Date	01/08/2014	Opposition Period Ends	01/08/2014
Applicant	Gerber Childrenswear, LLC 7005 Pelham Rd Greenville, SC 29615 GERMANY		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Adult clothing, namely bodysuits and union suits

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Attachments	Notice of Opposition.pdf(150068 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	/Daniel F. Dovi/
Name	Daniel F. Dovi
Date	01/08/2014

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

In the Matter of Application Serial No. 85/898887, filed April 9, 2013. Published in the Official Gazette on September 10, 2013

JUMPIN' JAMMERZ L.L.C.,

Opposer

v.

Opposition No.

GERBER CHILDRENSWEAR, LLC,

Applicant.

NOTICE OF OPPOSITION

Opposer Jumpin Jammerz L.L.C. ("Opposer" or "Jammerz"), an Arizona L.L.C. duly organized and existing under the laws of the state of Arizona and having a regular and established place of business at 2406 South 24th Street, Unit C120, Phoenix, Arizona 85034, believes that it will be damaged by registration of the mark set forth in Application Serial No. 85/898887 for ONESIES and hereby opposes, by and through its undersigned attorneys, registration of such mark.

As the grounds therefor, it is alleged that:

1. The mark sought to be registered by Application Serial No. 85/898887, ONESIES, was published on September 10, 2013 in the Official Gazette for registration in International Class 25 for adult clothing, namely bodysuits and union suits. Said Application was based on intent to use under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

2. Opposer Jammerz is a limited liability company that has, since 1998, sold onesie footed pajamas for children and adults.

3. The term for which registration is sought is "ONESIES." ONESIES is commonly understood in the clothing field to be a one-piece garment. ONESIES is a common, descriptive term used in the clothing field to denote a particular type of clothing. ONESIES is used by Opposer Jammerz, by others in the clothing field, and by consumers in connection with one-piece garment.

4. Applicant's application describes the subject goods as "adult clothing, namely bodysuits and union suits." The term ONESIES is the common descriptive name for the goods for which Applicant seeks registration. Accordingly, ONESIES is not registrable as a trademark for goods in the adult clothing field.

5. The term ONESIES is not registrable under Section 2(e)(1), 15 U.S.C.S. 1052(e)(1), because it merely describes Applicant's goods. Applicant's goods are one-piece articles of adult clothing or underwear.

6. Applicant lacks secondary meaning in the term ONESIES for adult clothing and, upon information and belief, for children's and toddler's clothing. The material in the PTO records is insufficient to show acquired distinctiveness; in fact, Applicant's application is an intent-to-use application.

7. ONESIES are not manufactured or sold by a single source or under a single brand name.

8. The term ONESIES is a generic term and therefore is not a registrable trademark. As a generic term that cannot serve as a trademark, ONESIES is incapable of developing secondary meaning.

9. The term ONESIES has been in widespread use in the clothing field (for toddlers, children, and adults) for many years prior to and after Applicant's date of application, April 9, 2013, and has been used by many third-parties and consumers as the generic name for one-piece garment, with or without feet.

10. If the registration were issued, Applicant would be in a position to harass and harm Opposer, and others in the clothing field, by interfering with their ability to use the term ONESIES in connection with their manufacture and sale of one-piece clothing for adults and children, and others' ability to use a commonly used term in the clothing field, to the harm of Opposer, other manufacturers and sellers, and the public.

11. This Opposition is timely, as Opposer has received extensions of time up to and including January 8, 2014, within which to file this Opposition.

12. This Opposition is being filed electronically, pursuant to the Board's rules, along with the required filing fee. If there are any additional fees due and owing in connection with this request, please charge the Hodgson Russ LLP Deposit Account No. 082442.

WHEREFORE Opposer prays that the Application Serial No. 85/898887 be refused registration and that this Opposition be sustained in favor of Opposer.

Dated: Buffalo, New York
January 8, 2014

JUMPIN JAMMERZ L.L.C.

By: Paul I. Perlman

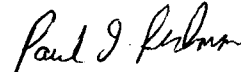
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(716) 848-1479

Attorneys for Opposer

CERTIFICATE OF SERVICE

I, Paul I. Perlman, hereby certify that a true and correct copy of the foregoing Notice of Opposition was served on January 8, 2014 by first-class mail in a postage prepaid envelope addressed to:

NEIL C. JONES
NELSON MULLINS RILEY SCARBOROUGH LLP
100 N TRYON ST FL 42
CHARLOTTE, NORTH CAROLINA 28202-4000
UNITED STATES



Paul I. Perlman

CERTIFICATE OF FILING

I hereby Certify that this Notice of Opposition is being electronically filed with the Trademark Trial and Appeal Board on January 8, 2014.



Paul I. Perlman