

ESTTA Tracking number: **ESTTA600212**

Filing date: **04/23/2014**

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	Speculative Product Design, LLC DBA Speck Products
Granted to Date of previous extension	04/23/2014
Address	303 Bryant Street Mountain View, CA 94041 UNITED STATES
Attorney information	Margarita Wallach, Esq. McCarter & English, LLP 245 Park Avenue, 27th Floor New York, NY 10167 UNITED STATES mwallach@mccarter.com, apang@mccarter.com, dlynch@mccarter.com Phone:(212) 609-6800

**Applicant Information**

Application No	86018610	Publication date	12/24/2013
Opposition Filing Date	04/23/2014	Opposition Period Ends	04/23/2014
Applicant	KLEW, LLC Suite 400 Wilmington, DE 19808 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Nutritional supplements; dietary supplements; dietary food supplements; nutritional supplement meal replacement bars for boosting energy; nutritional supplement energy bars for use as a meal substitute
Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: protective covers and cases for mobile phones and tablet computers; computer bags; magnets
Class 018. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Leather bags; all purpose sport, athletic and carrying bags; back packs
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, shirts, sweatshirts, shorts, pants, sweat pants, flip flops, slippers, sneakers, footwear, wristbands, jackets, wind jackets
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Providing consultation in the field of exercise, nutrition, sports, fitness and wellness; providing fitness training featuring instruction in the field of


exercise, nutrition, sports, fitness and wellness; providing fitness and exercise facilities; physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities

## Grounds for Opposition

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.	3666072	Application Date	10/22/2008
Registration Date	08/11/2009	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of an asterisk between parentheses.		
Goods/Services	Class 009. First use: First Use: 2007/01/31 First Use In Commerce: 2007/01/31 Protective carrying cases for portable electronic listening devices and music players, namely, MP3 players, and for portable computers, global positioning systems (GPS devices), mobile and cellular telephones, portable media players, and personal digital assistants		

U.S. Registration No.	3944337	Application Date	09/17/2010
Registration Date	04/12/2011	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of an asterisk between parentheses.		

Goods/Services	Class 018. First use: First Use: 2009/01/16 First Use In Commerce: 2009/01/16 Backpacks, messenger bags, shoulder bags, tote bags, and all-purpose carrying bags		
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U.S. Registration No.	3666082	Application Date	10/24/2008
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Registration Date	08/11/2009	Foreign Priority Date	NONE
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Word Mark	SPECK		
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Design Mark			
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Description of Mark	The mark consists of an asterisk between parentheses followed by the word "SPECK" in stylized letters.		
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Goods/Services	Class 009. First use: First Use: 2007/01/31 First Use In Commerce: 2007/01/31 Protective carrying cases for portable electronic listening devices and music players, namely, MP3 players, and for portable computers, global positioning systems (GPS devices), mobile and cellular telephones, portable media players, and personal digital assistants		
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U.S. Registration No.	3944336	Application Date	09/17/2010
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Registration Date	04/12/2011	Foreign Priority Date	NONE
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Word Mark	SPECK		
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Design Mark			
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Description of Mark	The mark consists of an asterisk between parentheses followed by the word "SPECK" in stylized letters.		
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Goods/Services	Class 018. First use: First Use: 2009/01/16 First Use In Commerce: 2009/01/16 Backpacks, messenger bags, shoulder bags, tote bags, and all-purpose carrying bags		
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Attachments	77598153#TMSN.jpeg( bytes ) 85132144#TMSN.jpeg( bytes ) 77600462#TMSN.jpeg( bytes ) 85132141#TMSN.jpeg( bytes ) Notice of Opposition.pdf(332825 bytes ) Exhibit A.pdf(101863 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	/mw/
Name	Margarita Wallach, Esq.
Date	04/23/2014




and existing under the laws of the State of Delaware, having its principal place of business at Suite 400, 711 Centerville Road, Wilmington, Delaware 19808 (“Applicant”) on July 24, 2013 based on an intent to use in connection with “nutritional supplements; dietary supplements; dietary food supplements; nutritional supplement meal replacement bars for boosting energy; nutritional supplement energy bars for use as a meal substitute” in International Class 5, “protective covers and cases for mobile phones and tablet computers; computer bags; magnets” in International Class 9, “leather bags; all purpose sport, athletic and carrying bags; back packs” in International Class 18, “clothing, namely, shirts, sweatshirts, shorts, pants, sweat pants, flip flops, slippers, sneakers, footwear, wristbands, jackets, wind jackets” in International Class 25, and “providing consultation in the field of exercise, nutrition, sports, fitness and wellness; providing fitness training featuring instruction in the field of exercise, nutrition, sports, fitness and wellness; providing fitness and exercise facilities; physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities” in International Class 41 (“Applicant’s Goods and Services”). Opposer believes that it will be damaged by the registration of Applicant’s Mark and opposes the foregoing application (the “Application”) on the following grounds:




1. Opposer is the owner of the trademark  which Opposer has used in connection with protective carrying cases for portable electronic listening devices and music players, namely, MP3 players, and for portable computers, global positioning systems (GPS devices), mobile and cellular telephones, portable media players, and personal digital assistants

as early as January 31, 2007 and used in connection with backpacks, messenger bags, shoulder bags, tote bags, and all-purpose carrying bags as early January 16, 2009.

2. Opposer also owns the trademark **(\*) speck** which Opposer has used in connection with protective carrying cases for portable electronic listening devices and music players, namely, MP3 players, and for portable computers, global positioning systems (GPS devices), mobile and cellular telephones, portable media players, and personal digital assistants as early as January 31, 2007 and used in connection with backpacks, messenger bags, shoulder bags, tote bags, and all-purpose carrying bags as early as January 16, 2009.

3. Opposer owns the following trademark registrations for the foregoing marks (collectively the “**(\*)** Marks”) on the Principal Register in the United States Patent and Trademark Office (“USPTO”):

Mark	Registration No.	Filing Date / Registration Date	Goods	Date of First Use / First Use In Commerce
	3,666,072	October 22, 2008 / August 11, 2009	“Protective carrying cases for portable electronic listening devices and music players, namely, MP3 players, and for portable computers, global positioning systems (GPS devices), mobile and cellular telephones, portable media players, and personal digital assistants” in Class 9.	January 31, 2007 / January 31, 2007


Mark	Registration No.	Filing Date / Registration Date	Goods	Date of First Use / First Use In Commerce
	3,944,337	September 17, 2010 / April 12, 2011	“Backpacks, messenger bags, shoulder bags, tote bags, and all-purpose carrying bags” in Class 18.	January 16, 2009 / January 16, 2009
	3,666,082	October 24, 2008 / August 11, 2009	“Protective carrying cases for portable electronic listening devices and music players, namely, MP3 players, and for portable computers, global positioning systems (GPS devices), mobile and cellular telephones, portable media players, and personal digital assistants” in Class 9.	January 31, 2007 / January 31, 2007
	3,944,336	September 17, 2010 / April 12, 2011	“Backpacks, messenger bags, shoulder bags, tote bags, and all-purpose carrying bags ” in Class 18.	January 16, 2009 / January 16, 2009

Copies of the registration certificates printed from the USPTO website for the above referenced trademarks are attached as Exhibit A.

4. Opposer has never abandoned and has continuously used the (\*) Marks in connection with the foregoing goods prior to any date of priority that may be claimed by Applicant.

5. During its longstanding, widespread and continuous use of the (\*) Marks, Opposer has expended considerable time, effort and financial resources in advertising and publicizing the sale of goods under the (\*) Marks. The (\*) Marks are symbolic of the extensive goodwill and consumer recognition that Opposer has established through substantial and extensive expenditures of time, effort and other resources in the promotion and advertising of goods Opposer offers and sells under the (\*) Marks. As a result of the foregoing and the high quality of Opposer's goods, the public and the trade have come to recognize the goods offered in conjunction with the (\*) Marks as signifying Opposer and its goods.


6. Upon information and belief, Applicant is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at Suite 400, 711 Centerville Road, Wilmington, Delaware 19808.

7. On July 24, 2013 Applicant filed an Application for the trademark  KLEW based on an intent to use in connection with "nutritional supplements; dietary supplements; dietary food supplements; nutritional supplement meal replacement bars for boosting energy; nutritional supplement energy bars for use as a meal substitute" in International Class 5,

“protective covers and cases for mobile phones and tablet computers; computer bags; magnets” in International Class 9, “leather bags; all purpose sport, athletic and carrying bags; back packs” in International Class 18, “clothing, namely, shirts, sweatshirts, shorts, pants, sweat pants, flip flops, slippers, sneakers, footwear, wristbands, jackets, wind jackets” in International Class 25 and “providing consultation in the field of exercise, nutrition, sports, fitness and wellness; providing fitness training featuring instruction in the field of exercise, nutrition, sports, fitness and wellness; providing fitness and exercise facilities; physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities” in International Class 41.



Accordingly, Opposer’s **(\*)** Marks cited above have priority of use and registration over any date of priority that may be claimed by Applicant.

8. The Application was published for opposition on December 24, 2013. Opposer has timely filed a request for extension of the deadline for opposing the Application. The current deadline to oppose the Application is April 23, 2014.

9. The trademark proposed for registration by the Applicant, namely,  KLEW, is identical to and/or confusingly similar to the **(\*)** Marks, and is applied to goods and services that are identical and closely related to the goods offered and sold by Opposer under the **(\*)** Marks. Applicant’s Mark so closely resembles Opposer’s **(\*)** Marks as to be likely to be confused therewith and mistaken therefor. Applicant’s Mark is deceptively similar to

Opposer's (\*) Marks so as to cause confusion and lead to deception as to the origin of Applicant's Goods and Services bearing the Applicant's Mark.


10. Upon information and belief, Applicant's Goods and Services bearing Applicant's Mark will be promoted and sold or offered for sale through the same distribution channels and to the same classes of consumers.


11. If Applicant is permitted to use and register its trademark  KLEW for Applicant's Goods and Services as specified in its Application, there will be confusion in the trade. As a result, the Opposer will be injured and damaged by reason of the similarity between the Applicant's mark  KLEW and Opposer's (\*) Marks. Consumers will associate Applicant's Goods and Services with those of the Opposer, and mistakenly believe that such goods and services are provided, endorsed by, or otherwise affiliated with the Opposer.


### COUNT ONE


#### Likelihood of Confusion

12. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 11.

13. Based on the similarities between Opposer's (\*) Marks and Applicant's Mark , and the similarity and related nature of the goods and/or services of the respective parties, Applicant's Mark so resembles Opposer's (\*) Marks, which were previously and continuously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive consumers, with consequent injury to Opposer and to the public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. The public is likely to falsely associate Applicant's Goods and Services under the  mark with Opposer or with Opposer's goods, falsely believe that Applicant's Goods and Services emanate from or are sponsored, endorsed or licensed by Opposer, or falsely believe that there is some relationship between Applicant and Opposer.

15. The granting of a trademark registration for the trademark  to Applicant would be contrary to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and would violate or diminish the prior and superior rights of Opposer in its (\*) Marks.

16. Applicant's Application and the presumption of exclusivity that would arise from a registration to Applicant of the trademark  are inconsistent with Opposer's prior rights in the (\*) Marks.

17. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's Mark and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

## COUNT TWO

### Falsely Suggests a Connection with Opposer

18. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 17.

19. Opposer believes it will be damaged by registration of Applicant's Mark under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that Applicant's use and registration of the subject mark will falsely suggest a connection between Applicant and Opposer to the damage of Opposer and injury to the public, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. 1052(a).


## COUNT THREE

### Dilution

20. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 19.

21. In view of the strength of Opposer's (\*) Marks, the duration and extent of Opposer's use and advertising of its (\*) Marks, the nationwide use of Opposer's (\*) Marks, and the degree of recognition of Opposer's (\*) Marks, Opposer's (\*) Marks have become famous. Opposer's (\*) Marks were famous prior to any use by Applicant, and the filing date of the Application for Applicant's Mark.

22. Applicant's Mark is likely to cause, and will cause, dilution of the distinctive value of Opposer's (\*) Marks under Section 43(c) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(c).

23. Opposer will be damaged if Applicant's Mark is granted registration because Applicant will obtain statutory rights in the mark  KLEW in violation and derogation of the established prior rights of Opposer.

WHEREFORE, Opposer respectfully requests that said Application Serial No. 86/018,610 be rejected, that no registration be issued thereon to Applicant, that this Opposition be sustained in favor of Opposer and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and appropriate.


Payment has been provided in the requisite amount to cover the statutory filing fee for filing a Notice of Opposition. All communications should be addressed to Opposer's counsel, McCarter & English at the address stated below.

Dated: April 23, 2014

Respectfully submitted,  
McCarter & English, LLP

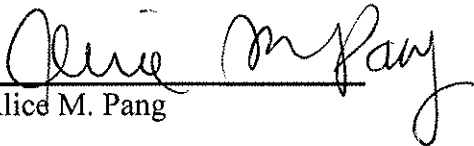
By: /s/ Margarita Wallach  
Margarita Wallach  
Gary Fechter  
Attorneys for Opposer  
Speculative Product Design, LLC  
d/b/a Speck Products  
245 Park Ave, 27<sup>th</sup> Floor  
New York, NY 10167  
Tel: (212) 609-6800  
Fax: (212) 609-6921

CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Opposition against Trademark Application Serial No. 86/018,610 for the trademark  KLEW has been served on counsel for Applicant by First Class Mail at the following address:

Norm J. Rich  
Foley & Lardner LLP  
3000 K Street NW FL 6  
Washington, District of Columbia 20007-5109

Dated: April 23, 2014

  
\_\_\_\_\_  
Alice M. Pang

# **EXHIBIT A**

Int. Cl.: 9

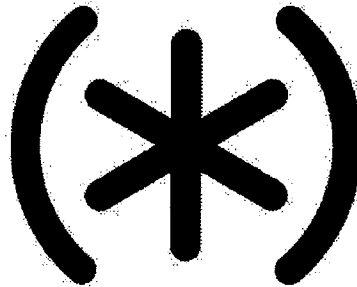
Prior U.S. Cls.: 21, 23, 26, 36 and 38

**United States Patent and Trademark Office**

**Reg. No. 3,666,072**

Registered Aug. 11, 2009

**TRADEMARK  
PRINCIPAL REGISTER**



SPECULATIVE PRODUCT DESIGN, INC. (CALIFORNIA CORPORATION), DBA SPECK PRODUCTS  
227 FOREST AVENUE  
PALO ALTO, CA 94301

FOR: PROTECTIVE CARRYING CASES FOR PORTABLE ELECTRONIC LISTENING DEVICES AND MUSIC PLAYERS, NAMELY, MP3 PLAYERS, AND FOR PORTABLE COMPUTERS, GLOBAL POSITIONING SYSTEMS (GPS DEVICES), MOBILE AND CELLULAR TELEPHONES, PORTABLE MED-

IA PLAYERS, AND PERSONAL DIGITAL ASSISTANTS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-31-2007; IN COMMERCE 1-31-2007.

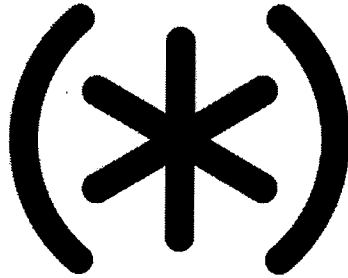
THE MARK CONSISTS OF AN ASTERISK BETWEEN PARENTHESES.

SER. NO. 77-598,153, FILED 10-22-2008.

AISHA SALEM, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office



**Reg. No. 3,944,337**

**Registered Apr. 12, 2011**

**Int. Cl.: 18**

**TRADEMARK**

**PRINCIPAL REGISTER**

SPECULATIVE PRODUCT DESIGN, INC. (CALIFORNIA CORPORATION), DBA SPECK PRODUCTS  
227 FOREST AVENUE  
PALO ALTO, CA 94301

FOR: BACKPACKS, MESSENGER BAGS, SHOULDER BAGS, TOTE BAGS, AND ALL-PURPOSE CARRYING BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 1-16-2009; IN COMMERCE 1-16-2009.

OWNER OF U.S. REG. NOS. 3,666,072 AND 3,666,082.

THE MARK CONSISTS OF AN ASTERISK BETWEEN PARENTHESES.

SER. NO. 85-132,144, FILED 9-17-2010.

LINDA LAVACHE, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 3,666,082

Registered Aug. 11, 2009

TRADEMARK  
PRINCIPAL REGISTER

(\*) speck

SPECULATIVE PRODUCT DESIGN, INC. (CALIFORNIA CORPORATION), DBA SPECK PRODUCTS

227 FOREST AVENUE  
PALO ALTO, CA 94301

FOR: PROTECTIVE CARRYING CASES FOR PORTABLE ELECTRONIC LISTENING DEVICES AND MUSIC PLAYERS, NAMELY, MP3 PLAYERS, AND FOR PORTABLE COMPUTERS, GLOBAL POSITIONING SYSTEMS (GPS DEVICES), MOBILE AND CELLULAR TELEPHONES, PORTABLE MED-

IA PLAYERS, AND PERSONAL DIGITAL ASSISTANTS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-31-2007; IN COMMERCE 1-31-2007.

THE MARK CONSISTS OF AN ASTERISK BETWEEN PARENTHESES FOLLOWED BY THE WORD "SPECK" IN STYLIZED LETTERS.

SER. NO. 77-600,462, FILED 10-24-2008.

AISHA SALEM, EXAMINING ATTORNEY

United States of America  
United States Patent and Trademark Office

(\*) speck

Reg. No. 3,944,336

Registered Apr. 12, 2011

Int. Cl.: 18

TRADEMARK

PRINCIPAL REGISTER

SPECULATIVE PRODUCT DESIGN, INC. (CALIFORNIA CORPORATION), DBA SPECK  
PRODUCTS  
227 FOREST AVENUE  
PALO ALTO, CA 94301

FOR: BACKPACKS, MESSENGER BAGS, SHOULDER BAGS, TOTE BAGS, AND ALL-  
PURPOSE CARRYING BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 1-16-2009; IN COMMERCE 1-16-2009.

OWNER OF U.S. REG. NOS. 3,663,010 AND 3,666,082.

THE MARK CONSISTS OF AN ASTERISK BETWEEN PARENTHESES FOLLOWED BY THE  
WORD "SPECK" IN STYLIZED LETTERS.

SER. NO. 85-132,141, FILED 9-17-2010.

LINDA LAVACHE, EXAMINING ATTORNEY



David J. Kyffas

Director of the United States Patent and Trademark Office