

ESTTA Tracking number: **ESTTA617846**

Filing date: **07/25/2014**

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	Fey Cha
Granted to Date of previous extension	07/26/2014
Address	1334 North Grand Ave Porterville, CA 93257 UNITED STATES
Party who filed Extension of time to oppose	FeyCha
Relationship to party who filed Extension of time to oppose	Space between first and last name

Correspondence information	Fey Cha OHYO Clothing 1334 North Grand Ave Porterville, CA 93257 UNITED STATES fey@ohyoclothing.com Phone:5597892237
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Applicant Information

Application No	86166710	Publication date	05/27/2014
Opposition Filing Date	07/25/2014	Opposition Period Ends	07/26/2014
Applicant	Watson, Maisie Attn: Mark R. Leonard, Esq. Sacramento, CA 95823 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. First Use: 2013/11/28 First Use In Commerce: 2013/11/28 All goods and services in the class are opposed, namely: T-shirts

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application	86176286	Application Date	01/27/2014
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OHYO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2012/12/19 First Use In Commerce: 2013/10/14 Men, women, and children's clothing, namely, t-shirts, dress shirts, sweatshirts, socks, hats, beanies, tank tops, jackets, sweatpants, skirts, belts, vests		

Attachments	86176286#TMSN.png(bytes) Opposition.pdf(187804 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	/Fey Cha/
Name	Fey Cha
Date	07/25/2014

In the matter of Application Serial No. **86166710** by Maisie Watson DBA A1 Wicked Prints (“Applicant”) for registration of the mark OHYO! in Class 25 for “T-shirts,” Fey Cha, whose address is 13334 North Grand Ave., Porterville, CA 93257 (“Opposer”), believes he would be damaged by the registration of the mark covered by the referenced application and hereby opposes the registration of said mark.

The grounds for opposition are as follows:

1. Opposer believes that it would be damaged by the registration on the Principal Register of the mark OHYO! that is the subject of Application Serial No. **86166710** (the “Application”).

2. The Application declares intent to use the mark OHYO! on “t-shirts.” Opposer has engaged in the sale of articles of clothing (described in detail below) under the mark OHYO, and various stylizations and variations thereof, and also under various design marks, including, without limitation, as shown in the marks below (and referred to hereinafter as “Opposer’s Marks”): Such use on clothing by Opposer of Opposer’s Marks predates and has been continuous to the present since before the filing date of the Application. Such use on clothing by Opposer has been continuous to the present and, upon information and belief, predates any prior use (if any) by Applicant of OHYO! as a mark.



3. Opposer has used various stylizations and variations of Opposer’s Marks on and in connection with the sale of the following items which are included in and virtually identical to the Class 25 goods that are the subject of the Application: t-shirts.

4. At least one or more of Opposer's Marks have been used continuously and actively in commerce in connection with selling items of clothing since at least as early as 2012.

5. The Application evidences that Applicant's goods and the mark applied for relate to and specifically target the precise market occupied by the Opposer's Marks.

6. Products bearing the Opposer's Marks are sold on Opposer's website, www.shop.ohyoclothing.com, and receives email and telephone orders for goods sold under the Opposer's Marks from throughout the United States.

7. Opposer has owned the domain name www.ohyoclothing.com and has operated its website at that url since at least as early as 2012. The website was the portal to the clothing line and displayed Opposer's contact information and acted as a page to promote the launch of the store site, www.shop.ohyoclothing.com, where customers would then be able to purchase products bearing the Opposer's Marks online.

8. Opposer created and has managed accounts on social media platforms to increase awareness and sales of products bearing the Opposer's Marks. The facebook page, www.facebook.com/ohyoclothing, was created in 2011. The Instagram account, www.instagram.com/ohyoclothing, was created in 2013 and the first post was made on September 26th 2013 displaying an image of products bearing Opposer's Mark and utilizing the hashtag "#ohyo".

9. The use and registration (and either separately) of the mark OHYO! by Applicant for use in connection with the goods described in the Application reduces and is likely to reduce the distinctiveness of Opposer's Marks, and reduces and is likely to reduce the capacity of Opposer's Marks to distinguish and identify Opposer and Opposer's goods in commerce. As a result, Applicant's registration and use (and either separately) of the OHYO! mark in connection with the goods described in the Application dilutes and is likely to dilute Opposer's Marks.

10. In view of the strength of Opposer's Marks, the fact that the Applicant's goods and the mark applied for are related to and specifically target the precise market occupied by Opposer's Marks, and the fact that the mark applied for so resembles Opposer's Marks, Opposer believes that use by the Applicant of the mark for which registration is sought is likely to cause confusion, or to cause mistake, or to deceive purchasers in that they are likely to believe that Applicant's goods are Opposer's goods or are in some way legitimately connected with, sponsored, or approved by Opposer. Therefore, registration of Applicant's mark would cause damage to Opposer, and registration is opposed pursuant to Section 13(a) of the Lanham Act (15 U.S.C. § 1063(a)) and on the basis of Section 2(d) of the Lanham Act (15 U.S.C. § 1052(d)).

11. In December of 2013, the Applicant sold t-shirts and sweatshirts displaying Opposer's Marks at the Fresno Hmong International New Year festival under the business name "A1 Wicked Prints." During that event the Opposer met with the applicant

and applicant's husband, "Roddy". The Opposer informed Roddy that the Opposer's Marks were already being used in commerce and that the Applicant's use of the Opposer's Mark would diminish the distinctiveness, uniqueness, effectiveness and prestigious connotations of Opposer's Marks.

12. The Application includes a verification and declaration by Applicant (via her attorney of record's signature) that "he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive....", which declaration is required pursuant to 15 U.S.C. §1051(b); 37 C.F.R. §2.33(b)(2).

13. In light of Applicant's prior knowledge of Opposer's prior use of one or more of Opposer's Marks in connection with the sale of clothing, upon information and belief, Opposer asserts that Applicant's declaration pursuant to 15 U.S.C. Section 1051(b) and 37 C.F.R. §2.33(b)(2) is a knowingly false misrepresentation of fact and constitutes fraud on the Trademark Office, as an attempt to procure a trademark application to which Applicant is not entitled, as Applicant has (and had at the time of the making of the declaration by Applicant's attorney) actual knowledge of Opposer's preexisting common law rights in and to Opposer's Marks. Accordingly, any registration resulting from the Applicant's Application should be void for fraud on the office.

14. This Notice of Opposition is filed in a timely manner pursuant to 15 U.S.C. § 1063. Opposer has previously requested, and has been granted, Requests for Extension of Time for Filing Notice of Opposition, which extended the time in which to file this Notice of Opposition to July 26, 2014.