

ESTTA Tracking number: **ESTTA629108**

Filing date: **09/24/2014**

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	Jimlar Corporation
Granted to Date of previous extension	09/24/2014
Address	350 Fifth Ave9th Floor New York, NY 10118 UNITED STATES

Correspondence information	Jimlar Corporation 350 Fifth Ave9th Floor New York, NY 10118 UNITED STATES edocket@crowell.com
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Applicant Information

Application No	86166886	Publication date	05/27/2014
Opposition Filing Date	09/24/2014	Opposition Period Ends	09/24/2014
Applicants	Fazio, Shalon 376 Colony Ave Staten Island, NY 10306 UNITED STATES Fazio, Joseph 376 Colony Ave Staten Island, NY 10306 UNITED STATES		

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: Clothing, namely, t-shirts, hooded sweat-shirts, hats, shorts, yoga pants
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Grounds for Opposition

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

U.S. Registration No.	3039511	Application Date	11/01/2004
Registration Date	01/10/2006	Foreign Priority Date	NONE

Word Mark	FF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2003/06/01 First Use In Commerce: 2003/06/01 LEATHER BAGS, NAMELY, DUFFLE BAGS, PURSES BRIEFCASES and SMALL LEATHER GOODS, NAMELY, WALLETS Class 025. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 CLOTHING, NAMELY, FOOTWEAR [, JACKETS]		
U.S. Registration No.	4342210	Application Date	10/01/2012
Registration Date	05/28/2013	Foreign Priority Date	NONE
Word Mark	FF		

Design Mark	
Description of Mark	The mark consists of mirrored stylized letter "F"s; the top arm of each "F" goes out of the stem of the letter at an upward angle and is tapered to a point; the center arm of each "F" widens to a straight horizontal line; the bottom of each "F" is curved into the stem of the letter; the two "F"s are separated by a thin vertical space.
Goods/Services	Class 025. First use: First Use: 2012/03/05 First Use In Commerce: 2012/03/05 Clothing, namely shirts and t-shirts

Attachments	76618758#TMSN.png(bytes) 85742623#TMSN.png(bytes) Notice of Opposition - Fit Force.PDF(421155 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	/Dickerson M. Downing/
Name	Jimlar Corporation
Date	09/24/2014

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

In re Application Serial No.: 86/166,886

Filed: January 16, 2014

Trademark: FIT FORCE

JIMLAR CORPORATION,

Opposer,

Opposition No.

v.

Joseph Fazio
Shalon Fazio

Applicants.

NOTICE OF OPPOSITION

Jimlar Corporation, a New York corporation, having a place of business at Empire State Building, 350 Fifth Avenue, New York, New York 10118 (hereinafter "Opposer") believes that it will be damaged by the issuance of a trademark registration based on Application Serial No. 86/166,886 for the trademark FIT FORCE and Design, and, having been granted timely requests for extensions of time to oppose until September 24, 2014, hereby opposes the same.

As grounds therefore, it is alleged that:

1. Opposer, Jimlar Corporation, is a corporation organized and existing under the laws of the State of New York, located and doing business at Empire State Building, 350 Fifth Avenue, New York, New York 10118.
2. Opposer is a supplier and distributor of footwear, apparel and handbags.

3. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessors in interest, have engaged, and Opposer is now engaged in the distribution, promotion and/or sale in interstate commerce of clothing, including footwear and shirts, and handbags under the FRYE'S trademark and distinctive FF Design mark. A rendering of Opposer's FF design mark is set forth below:



4. Opposer is owner of, and will rely herein, upon the following Federal Trademark registrations:

MARK	REG. NO.	ISSUE DATE	GOODS
FF	3,039,511	January 10, 2006	Clothing, namely footwear in Class 25. Leather bags in Class 18.
FF	4,342,210	May 28, 2013	Clothing, namely shirts and t-shirts in Class 25.

5. The above registrations are valid, subsisting and constitute *prima facie* evidence of Opposer's exclusive right to use the registered FF Design marks in commerce for the goods specified in said registrations. Current printouts from the electronic database records of the United States Patent and Trademark Office of the aforementioned registrations are attached hereto as Exhibit A.

6. Opposer has made substantial investments in advertising and promoting its goods under Opposer's FF Design marks since it acquired The Frye Company. Opposer and its predecessors in interest have extensively used, advertised, promoted and offered goods bearing

Opposer's FF Design marks to the public through various channels of trade in commerce for many years prior to the filing of Applicant's application, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's FF Design marks and associate them with Opposer and its goods.

7. As a result of the aforesaid advertising, promotion and sale, Opposer's FF Design marks have become well-known and recognized by the public and associated with Opposer well prior to the filing of the opposed application and/or well prior to the Applicant's intended use of the mark of the opposed application.

8. Notwithstanding Opposer's rights in and to Opposer's FF Design marks, on January 16, 2014, Applicant filed an Intent-To-Use application to register FIT FORCE and Design for clothing in Class 25, including, but not limited to, t-shirts, hooded sweatshirts, and hats. Said application was assigned Serial No. 86/166,886 and was published for Opposition in the Official Gazette on May 27, 2014.

9. The goods for which Applicant seeks to register FIT FORCE and Design are identical to the goods upon which Opposer has used and currently uses its FF Design marks and both parties' goods would move through substantially the same channels of trade.

10. The design portion of the mark of the opposed application is dominated by two stylized "F" letters that are the same size, oriented back-to-back, and therefore blatantly mimic Opposer's FF Design mark. As a result, Applicant's mark so resembles Opposer's FF Design marks, as to be likely, when applied to, for example, clothing, to cause confusion or mistake or to deceive purchasers and potential purchasers as to the source thereof, resulting in damage and detriment to Opposer and its reputation.

11. Opposer avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of the aforementioned goods to be marketed under Applicant's alleged FIT FORCE and Design mark and misled into believing that such goods emanate from, or are licensed by, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

12. Opposer avers that it will be damaged by the registration by Applicant of the alleged FIT FORCE and Design trademark, as set forth in Applicant's Trademark Application Serial No. 86/166,886 in that the mark is substantially similar to Opposer's FF Design marks, and in view of the high degree of public knowledge and recognition of Opposer's FF Design marks and of the goods offered to the public by Opposer under Opposer's FF design marks, and the identical goods of the respective parties, the goods for which Applicant seeks registration will be mistakenly presumed to emanate from or be licensed by, approved by or otherwise connected with Opposer, either directly or indirectly.

13. Wherefore, Opposer, Jimlar Corporation, d/b/a The Frye Company, believes and avers that it is being and will continue to be damaged by registration of the alleged FIT FORCE and Design as aforesaid and prays that Application Serial No. 86/166,886 be rejected and that this Opposition be sustained in favor of Opposer.

Dated: New York, New York
September 24, 2014

Respectfully submitted,

CROWELL & MORING LLP

By: /s/ Dickerson M. Downing
Dickerson M. Downing
590 Madison Avenue, 20th Floor
New York, New York 10022-2524

Attorney for Opposer
Jimlar Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2014, the foregoing Notice of Opposition was served upon Applicant by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

JOSEPH FAZIO
SHALON FAZIO
376 COLONY AVE
STATEN ISLAND, NY 10306

/s/ Preetha Chakrabarti _____

Preetha Chakrabarti

EXHIBIT A



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Word Mark	FF
Goods and Services	IC 018. US 001 002 003 022 041. G & S: LEATHER BAGS, NAMELY, DUFFLE BAGS, PURSES BRIEFCASES and SMALL LEATHER GOODS, NAMELY, WALLETS. FIRST USE: 20030601. FIRST USE IN COMMERCE: 20030601
	IC 025. US 022 039. G & S: CLOTHING, NAMELY, FOOTWEAR [, JACKETS]. FIRST USE: 19780000. FIRST USE IN COMMERCE: 19780000
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	76618758
Filing Date	November 1, 2004
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 18, 2005
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	3039511
Registration Date	January 10, 2006
Owner	(REGISTRANT) Jimlar Corporation CORPORATION NEW YORK 160 Great Neck Road Great Neck NEW YORK 11021
Attorney of Record	Lora A. Moffatt
Prior	

Registrations 1244640
Description of Mark Color is not claimed as a feature of the mark.
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Word Mark	FF
Goods and Services	IC 025. US 022 039. G & S: Clothing, namely shirts and t-shirts. FIRST USE: 20120305. FIRST USE IN COMMERCE: 20120305
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	85742623
Filing Date	October 1, 2012
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 12, 2013
Registration Number	4342210
Registration Date	May 28, 2013
Owner	(REGISTRANT) JIMLAR CORPORATION CORPORATION NEW YORK 160 Great Neck Road Great Neck NEW YORK 11021
Attorney of Record	Lora A. Moffatt
Prior Registrations	3039511;3700365
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of mirrored stylized letter "F"'s; the top arm of each "F" go out of the stem of the letter at an upward angle and is tapered to a point; the center arm of each "F" widens to a straight horizontal line; the bottom of each "F" is curved into the stem of the letter; the two "F"'s are separated by a thin vertical space.

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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