

ESTTA Tracking number: **ESTTA659327**

Filing date: **03/04/2015**

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	03/04/2015
Address	26972 Burbank Foothill Ranch, CA 92610 UNITED STATES

Attorney information	Katherine Keating Bryan Cave LLP 560 Mission Street, Suite 2500 San Francisco, CA 94105 UNITED STATES katherine.keating@bryancave.com, todd.bolinger@bryancave.com Phone:415-268-1972
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Applicant Information

Application No	86315434	Publication date	11/04/2014
Opposition Filing Date	03/04/2015	Opposition Period Ends	03/04/2015
Applicant	RED PDG LLC 209 Virginia DR Mexico Beach, FL 32456 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Wholesale and retail store services featuring clothing, decals, sports and outdoor living related merchandise
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	lack of bona fide intent to use mark with services listed in application

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 No.	4316787	Application Date	08/13/2012
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, leisureshoes, sandals, sneakers, loafers and slippers		

U.S. Registration No.	4571078	Application Date	08/15/2013
Registration Date	07/22/2014	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	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, skorts, capris, jeans, shorts, pants, sweatpants, underwear, bras, panties, slips, teddies, nightgowns, pajamas, sleep shirts, bathrobes, lingerie, beach cover-ups, swimwear, rainwear 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		

U.S. Registration No.	4640746	Application Date	04/08/2014
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Registration Date	11/18/2014	Foreign Priority Date	NONE
Word Mark	WET SEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1994/01/01 First Use In Commerce: 1994/01/01 handbags, purses, satchels, wallets, backpacks, makeup bags sold empty		

U.S. Registration No.	4632405	Application Date	04/08/2014
Registration Date	11/04/2014	Foreign Priority Date	NONE
Word Mark	WET SEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 026. First use: First Use: 1994/01/01 First Use In Commerce: 1994/01/01 hair ornaments		

U.S. Registration No.	4632408	Application Date	04/08/2014
Registration Date	11/04/2014	Foreign Priority Date	NONE
Word Mark	WET SEAL		

Design Mark	WET SEAL
Description of Mark	NONE
Goods/Services	Class 014. First use: First Use: 1994/01/01 First Use In Commerce: 1994/01/01 jewelry; necklaces; bracelets; bangles; earrings; watches

Attachments	78862902#TMSN.png(bytes) 85702009#TMSN.png(bytes) 86038610#TMSN.png(bytes) 86245551#TMSN.png(bytes) 86245494#TMSN.png(bytes) 86245595#TMSN.png(bytes) SF01DOCS-#237909-v1-WSI_-_Notice_of_Opposition_-_WET_SPOT.pdf(21422 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	/katherine keating/
Name	Katherine Keating
Date	03/04/2015

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

THE WET SEAL, INC.,

Opposer,

v.

RED PDG LLC,

Applicant.

Opposition No. _____

Serial No.: 86/315,434

Mark: WET SPOT

Filed: June 20, 2014

Published: November 4, 2014


Class: 35

NOTICE OF OPPOSITION

The Wet Seal, Inc. (“Wet Seal” or “Opposer”) believes it will be damaged by registration of Application No. 86/315,434 (the “Application”) for the mark WET SPOT (“Applicant’s Mark”), filed on June 20, 2014, by RED PDG LLC (“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 Florida limited liability company with its principal place of business at 209 Virginia Dr., Mexico Beach, Florida 32456.
3. Opposer Wet Seal sells clothing and fashionable 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 store services, clothing, and fashionable 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, apparel, and fashionable accessories.

6. 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
wet seal+	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, slippers, teddies, nightgowns, pajamas, sleep shirts, bathrobes, lingerie, beach cover-ups, swimwear, rainwear (class 25)</i>	n/a
WET SEAL	4,640,746	<i>handbags, purses, satchels, wallets, backpacks, makeup bags sold empty (class 18)</i>	Nov. 18, 2014
WET SEAL	4,632,408	<i>jewelry; necklaces; bracelets; bangles; earrings; watches (class 14)</i>	Nov. 4, 2014
WET SEAL	4,632,405	<i>hair ornaments (class 26)</i>	Nov. 4, 2014

7. 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.

8. 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.

9. 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.

10. On June 20, 2014, Applicant filed the Application (No. 86/315,434) for the mark WET SPOT in class 35, in connection with the following services:

Wholesale and retail store services featuring clothing, decals, sports and outdoor living related merchandise

(“Applicant’s Services”).

11. Through the filing of the Application, Applicant claims to have a bona fide intent to use the WET SPOT mark in commerce in connection with each of Applicant’s Services.

12. Applicant has not alleged use of the WET SPOT mark in connection with any class 35 services.

13. Wet Seal has priority and is the senior user in these opposition proceedings.

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 Applicant’s Services is likely to cause confusion, mistake, and/or deception as to the source of Applicant’s Services.

15. Applicant’s Services are identical to or closely related to retail store services that are offered by Opposer under its WET SEAL mark and are covered by Opposer’s federal trademark registrations.

16. Applicant’s Mark falsely suggests a connection with Wet Seal and its goods and services.

17. Registration of Applicant’s Mark will lead the public to incorrectly conclude that Applicant’s Services are or have been authorized, sponsored, or licensed by Wet Seal, resulting in damage to Wet Seal and the public.

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

19. 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.

20. Wet Seal is informed and believes and on that basis alleges that Applicant lacked a bona fide intent to use Applicant's Mark in interstate commerce in connection with Applicant's Services as of the filing date of the Application, rendering the Application void *ab initio*.

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

Respectfully submitted,

BRYAN CAVE LLP

Dated: March 4, 2015

/s/ katherine keating
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