

ESTTA Tracking number: **ESTTA692779**

Filing date: **08/31/2015**

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	Pinkette Clothing, Inc.
Granted to Date of previous extension	09/02/2015
Address	4550 Alcoa Avenue Vernon, CA 90058 UNITED STATES
Attorney information	Kelly W. Cunningham Cislo & Thomas LLP 12100 Wilshire Boulevard, Suite 1700 Los Angeles, CA 90025-7103 UNITED STATES tmk@cislo.com,kcunningham@cislo.com,trichen@cislo.com Phone:310-451-0647

Applicant Information

Application No	86310344	Publication date	05/05/2015
Opposition Filing Date	08/31/2015	Opposition Period Ends	09/02/2015
Applicant	Mallard, Lawrence 19410 NW 27th AVE Miami Gardens, FL 33056 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. First Use: 2014/06/10 First Use In Commerce: 2014/06/15 All goods and services in the class are opposed, namely: Belts; Bottoms; Bottoms for clothing, namely, men, women, kids; Capri pants; Cargo pants; Clothing, namely, crops; Croppants; Denims; Dress pants; Footwear for men and women; Hats; Jackets; Jackets and socks; Jeans; Jogging pants; Leatherpants; Men's and women's jackets, coats, trousers, vests; Pants; Socks; Sports caps and hats; T-shirts; Tops; Tops for clothing, namely, men, women, kids; Women's clothing, namely, shirts, dresses, skirts, blouses
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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. Registration No.	3816441	Application Date	05/11/2009
Registration Date	07/13/2010	Foreign Priority	NONE

		Date	
Word Mark	LUSH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/07/00 First Use In Commerce: 2003/09/29 clothing, namely, tops, bottoms and dresses		

Attachments	77733582#TMSN.png(bytes) Notice of Opposition to LASH as filed.PDF(654686 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	/Kelly W. Cunningham/
Name	Kelly W. Cunningham
Date	08/31/2015

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

IN THE MATTER OF TRADEMARK SERIAL NO. 86/310,344

Pinkette Clothing, Inc., a California corporation,)	
)	
Opposer,)	
)	
v.)	Opposition No.: _____
)	
Lawrence Mallard, a Florida corporation,)	
)	
Applicant.)	
)	
)	
)	

NOTICE OF OPPOSITION

Opposer Pinkette Clothing, Inc., a California corporation, having an address of 1100 S. San Pedro Street, #A-12 Los Angeles, California 90015, (“Pinkette”), believes that it will be damaged by the registration of the trademark shown in Application Serial No. 86/310,344 (the “Application”), filed by Applicant Lawrence Mallard, listing an address in Miami Gardens, Florida (“Mallard”). Pinkette therefore opposes the Application and requests that registration of the Application be refused.

As grounds for its opposition, Pinkette alleges that:

1. Mallard seeks to register a mark that consists of the term LASH CLOTHING & CO. and Design (“Applicant’s Mark”) for use in connection with “Belts; Bottoms; Bottoms for clothing, namely, men, women, kids; Capri pants; Cargo pants; Clothing, namely, crops; Crop pants; Denims; Dress pants; Footwear for men and women; Hats; Jackets; Jackets and socks;

Jeans; Jogging pants; Leather pants; Men's and women's jackets, coats, trousers, vests; Pants; Socks; Sports caps and hats; T-shirts; Tops; Tops for clothing, namely, men, women, kids; Women's clothing, namely, shirts, dresses, skirts, blouses” in International Class 025 (“Mallard’s Goods”). Mallard filed the Application on June 16, 2014.

2. Pinkette obtained the necessary extension of time to file this Notice of Opposition; so filing of this Notice is timely.

3. Since at least as early as July 2003, Pinkette, its predecessors, its related companies, or its licensees have continuously used the term LUSH (“Pinkette’s Trademark”) in interstate commerce as an identifier of a variety of goods and services, including clothing, namely, tops, bottoms and dresses (“Pinkette’s Goods”).

4. Pinkette’s Trademark has also continuously appeared in substantial advertising and promotion of Pinkette’s Goods, such that the mark is closely identified with Pinkette’s Goods and has gained valuable public recognition. Pinkette’s Trademark is inherently distinctive or has become distinctive through acquisition of secondary meaning. By virtue of its sales of high-quality products bearing Pinkette’s LUSH Trademark in interstate commerce, its expenditures of considerable sums for promotional activities, and the excellence of its products, Pinkette has developed significant goodwill in its LUSH Trademark and a valuable reputation.

5. Pinkette has continuously used the LUSH Trademark in interstate commerce for goods related to Mallard’s Goods since prior to any date upon which Mallard can rely.

6. Pinkette is the owner of U.S. Trademark Registration No. 3,816,441 for LUSH for “clothing, namely, tops, bottoms and dresses” in International Class 025. This trademark was registered on the Principal Register on July 13, 2010 from an application filed on May 11, 2009.

7. Pinkette's Trademark is distinctive, strong, and famous such that the public would associate Pinkette's LUSH Trademark with Pinkette when encountering it apart from its clothing, namely, tops, bottoms and dresses.

8. Applicant's Mark so resembles Pinkette's Trademark, as it is intended to be used may currently be used, as to be likely to cause confusion, or cause mistake, or to deceive, in violation of Section 2(d) of The Trademark Act, 15 U.S.C. §1052(d), when used on or in connection with Mallard's Goods. Applicant's Mark is substantially the same as Pinkette's Trademark.

9. Under the circumstances, registration of Applicant's Mark will injure Pinkette by causing the trade or purchasing public to be confused or deceived into believing that Mallard's Goods are those of Pinkette or are sponsored by Pinkette, and will place a cloud over Pinkette's title to its LUSH mark, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

10. The Application should be refused because Pinkette's rights of continuing its present use of the LUSH Trademark in commerce are, or would be, threatened by Mallard's registration of the LASH design mark for Belts; Bottoms; Bottoms for clothing, namely, men, women, kids; Capri pants; Cargo pants; Clothing, namely, crops; Crop pants; Denims; Dress pants; Footwear for men and women; Hats; Jackets; Jackets and socks; Jeans; Jogging pants; Leather pants; Men's and women's jackets, coats, trousers, vests; Pants; Socks; Sports caps and hats; T-shirts; Tops; Tops for clothing, namely, men, women, kids; Women's clothing, namely, shirts, dresses, skirts, blouses, and because Pinkette's business would be otherwise damaged by Mallard's registration of the LASH design mark for clothing. The Application is also inconsistent with the prior established rights of Pinkette in its LUSH Trademark and is now and will continue to be a source of damage and injury to them.

WHEREFORE, Pinkette prays that Application Serial No. 86/310,344 be rejected, and that registration for the mark sought for the goods in the Application be denied and refused.

The required fee for opposing one class of goods, and any additional fees, may be charged to Pinkette's representative's deposit account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: August 31, 2015



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition was served upon Lawrence Mallard, by first class mail, postage prepaid, to the addresses listed on the date given below.

Lawrence Mallard
19410 NW 27th Avenue
Miami Gardens, Florida 33056

Dated: August 31, 2015

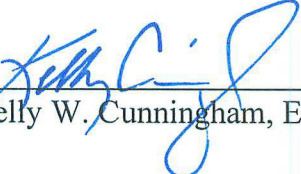


Kelly W. Cunningham, Esq.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on the date shown below.

Dated: August 31, 2015



Kelly W. Cunningham, Esq.

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