

ESTTA Tracking number: **ESTTA777649**

Filing date: **10/19/2016**

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	H. Best, Ltd.
Granted to Date of previous extension	10/19/2016
Address	1411 BROADWAY, 8TH FLOOR NEW YORK, NY 10018 UNITED STATES

Attorney information	Meichelle MacGregor Cowan, Liebowitz & Latman, P.C. 114 W. 47th Street New York, NY 10036 UNITED STATES mrm@cll.com, rxa@cll.com
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Applicant Information

Application No	86752846	Publication date	06/21/2016
Opposition Filing Date	10/19/2016	Opposition Period Ends	10/19/2016
Applicant	Saint-Jean, Renel 1140 NE 161 ter North Maimi Beach, FL 33162 UNITED STATES		

Goods/Services Affected by Opposition

Class 014. First Use: 2015/07/10 First Use In Commerce: 2015/07/10 All goods and services in the class are opposed, namely: Watches
Class 025. First Use: 2015/07/10 First Use In Commerce: 2015/07/10 All goods and services in the class are opposed, namely: Clothing, namely, t-shirts, tops, sweatshirts; Headwear; Athletic apparel, namely, tops, bottoms, pants, shorts, shirts

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.	3600100	Application Date	07/01/2004
Registration Date	03/31/2009	Foreign Priority Date	NONE
Word Mark	2(X)IST		

Design Mark	2(X)IST		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1991/01/01 First Use In Commerce: 1991/01/01 T-SHIRTS; TANK TOPS; UNDERWEAR		

U.S. Registration No.	2406472	Application Date	02/08/2000
Registration Date	11/21/2000	Foreign Priority Date	NONE
Word Mark	2(X)IST		
Design Mark	2(X)IST		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1991/01/01 First Use In Commerce: 1991/01/01 T-SHIRTS and MEN'S UNDERWEAR		

Attachments	78444348#TMSN.png(bytes) 75912895#TMSN.png(bytes) Notice_of_Opposition.pdf(65202 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	/Meichelle R. MacGregor/
Name	Meichelle MacGregor
Date	10/19/2016

Marks_), in connection with a variety of goods and services, including, but not limited to, apparel, watches and fashion related accessories.

3. Opposer's 2(X)IST Marks are comprised of a number '2_ and letters 'XIST, _ which are pronounced as the phrase 'TO EXIST. _

4. Opposer owns U.S. federal registrations and applications for Opposer's 2(X)IST Marks in International Classes 3, 14, 25, and 35, namely, 3,600,100, 2,406,472 and Application Serial Nos. 85/633,419 and 86/475,251. Registration Nos. 3,600,100 and 2,406,472 are incontestable.

5. Since long prior to September 10, 2015, July 10, 2015 or any earlier date upon which Applicant could rely, Opposer has promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's 2(X)IST Marks, including, but not limited to, apparel, watches and fashion related accessories and has offered such goods and rendered such services in commerce.

6. As a result of the sales and promotion of its goods and services bearing or offered in connection with Opposer's 2(X)IST Marks, Opposer has built up highly valuable goodwill in Opposer's 2(X)IST Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

7. On September 10, 2015, Applicant filed the Application for Applicant's Mark for 'watches_ in International Class 14 and 'clothing, namely, t-shirts, tops, sweatshirts; headwear; athletic apparel, namely, tops, bottoms, pants, shorts, shirts_ in Class 25.

8. Applicant alleged a first use date of July 10, 2015 for the goods in Classes 14 and 25 in the Application.

9. Upon information and belief, Applicant did not use Applicant's Mark for the goods covered by the Application in United States commerce prior to its filing date or its alleged first use date of July 10, 2015.

10. Applicant's Mark is similar to Opposer's 2(X)IST Marks and the goods covered by the Application are identical and/or closely related to the goods offered and services rendered in connection with Opposer's 2(X)IST Marks.

11. Applicant's Mark so resembles Opposer's 2(X)IST Marks, as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Meichelle M. MacGregor, Krystil McDowall (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Meichelle R. MacGregor, Esq. at the address listed below.

Dated: New York, New York
October 19, 2016

Respectfully submitted,
COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: / Meichelle R. MacGregor /
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 19, 2016, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant as follows: Renel Saint-Jean, 1140 Ne 161 Ter, North Miami Beach, Florida 33162.

 /Meichelle R. MacGregor/
Meichelle R. MacGregor