

ESTTA Tracking number: **ESTTA778810**

Filing date: **10/25/2016**

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	Eschenbach Optik GmbH
Granted to Date of previous extension	11/12/2016
Address	Schopenhauerstrasse 10 Nuremberg, GERMANY

Attorney information	Norman H. Zivin COOPER & DUNHAM LLP 30 Rockefeller Plaza 20th Floor New York, NY 10112 UNITED STATES nzivin@cooperdunham.com, efinnegan@cooperdunham.com Phone: 212 278 0400
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Applicant Information

Application No	86765762	Publication date	09/13/2016
Opposition Filing Date	10/25/2016	Opposition Period Ends	11/12/2016
Applicant	JAC Enterprises, LLC 125 Lincoln Ave. #114 Santa Fe, NM 87501 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2012/09/30 First Use In Commerce: 2013/08/12 All goods and services in the class are opposed, namely: Retail stores featuring artistic independent eyewear

Applicant Information

Application No	86765889	Publication date	09/13/2016
Opposition Filing Date	10/25/2016	Opposition Period Ends	
Applicant	JAC Enterprises, LLC 125 Lincoln Ave., #114 Santa Fe, NM 87501 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2012/09/30 First Use In Commerce: 2013/08/12
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All goods and services in the class are opposed, namely: Retail store services featuring artistic independent eyewear

Grounds for Opposition


Priority and likelihood of confusion

Trademark Act Section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3631773	Application Date	10/22/2008
Registration Date	06/02/2009	Foreign Priority Date	04/23/2008
Word Mark	OIO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 0 First Use In Commerce: 0 Spectacles, spectacle frames		

U.S. Registration No.	3651470	Application Date	10/22/2008
Registration Date	07/07/2009	Foreign Priority Date	04/23/2008
Word Mark	OIO		

Design Mark	
Description of Mark	<p>The color yellow appears in the text of the upside-down letters "OIO". The color blue appears as the shading in the oval design, and in the outermost outline of the oval design. The color black appears as the outlining of the text of the upside-down letters "OIO", and in the innermost outline of the oval design. The color white appears in the outline between the black and blue outlines.</p>
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Spectacles, spectacle frames</p>

Attachments	<p>79062383#TMSN.png(bytes) 79062382#TMSN.png(bytes) opposition.pdf(48783 bytes)</p>
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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	/norman h. zivin/
Name	Norman H. Zivin
Date	10/25/2016

1. Opposer long has used and is the owner of the marks OiO and O!O (with design) for spectacles and spectacle frames in Class 9.
2. Opposer is the owner of U.S. trademark Registrations No. 3,631,773, issued June 2, 2009, and No. 3,651,470, issued July 7, 2009, for its marks OiO and O!O (with design). Both registrations are in full force and effect and are incontestable.
3. Opposer has made substantial use of the marks in the United States and international commerce since prior to any use by Applicant, and its marks are widely known and recognized throughout this country and the world as an indication of the source of the Opposer's goods. Opposer has substantial goodwill in its marks.
4. Applicant has applied to register the mark OJO OPTIQUE and OJO OPTIQUE (with design) for retail stores featuring artistic independent eyewear. Its applications, Serial Nos. 86/765,762 and 86/765,889, both were filed on September 23, 2015, and claim a date of first use of September 30, 2012, and a date of first use in commerce of August 12, 2013.
5. Upon information and belief, Applicant has used its mark in connection with the sale of spectacles and spectacle frames.
6. Applicant's alleged dates of first use of its marks are long after Opposer's first use and registration of its marks.
7. Applicant's use and potential registration of its marks for complimentary goods and services are likely to cause confusion, mistake or deception with Opposer's prior use and registration of its marks, to Opposer's detriment and damage.

WHEREFORE, Opposer respectfully submits that its oppositions should be sustained and registrations to Applicant be refused.