

ESTTA Tracking number: **ESTTA818908**

Filing date: **05/04/2017**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Twin Tiger USA, LLC		
Entity	Limited liability company	Citizenship	California
Address	1168 Bellevue, Suite 106 Los Angeles, CA 90012 UNITED STATES		

Name	Twin Tiger Assets Corp.		
Entity	Corporation	Citizenship	Nevada
Address	1168 Bellevue, Suite 106 Los Angeles, CA 90012 UNITED STATES		

Attorney information	Deborah A. Gubernick Call & Jensen, A Professional Corporation 610 Newport Center Dr., Suite 700 Newport Beach, CA 92660 UNITED STATES dgubernick@calljensen.com, ipdocket@calljensen.com Phone:949-717-3000		
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Applicant Information

Application No	86662979	Publication date	04/04/2017
Opposition Filing Date	05/04/2017	Opposition Period Ends	05/04/2017
Applicant	Lokai Holdings LLC Suite 602 New York, NY 10016 UNITED STATES		

Goods/Services Affected by Opposition

Class 014. First Use: 2015/02/24 First Use In Commerce: 2015/02/24 All goods and services in the class are opposed, namely: Jewelry
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Grounds for Opposition

The mark comprises matter that, as a whole, is functional	Trademark Act Section 2(e)(5)
Failure to function as a mark	Trademark Act Sections 1, 2 and 45
The mark is not inherently distinctive and has not acquired distinctiveness	Trademark Act Sections 1, 2 and 45; and Section 2(f)
Other	The mark comprises matter that, as a whole, is aesthetically functional

Related Proceedings	United States District Court, Southern District of New York under Case No. 15-cv-9363-ALC; TTAB Opposition No. 91232946
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Attachments	2017.05.04_Ntc. Opp_Blue.pdf(109640 bytes)
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Signature	/dag/
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Name	Deborah A. Gubernick
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Date	05/04/2017
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1 2. Opposer Twin Tiger USA, LLC, together with the other defendants in the Civil Case,
2 filed counterclaims in the Civil Case for declaratory judgment of 1) patent invalidity or in the
3 alternative, non-infringement; 2) non-infringement of trademark; 3) false advertising; and 4) unfair
4 competition under state and federal laws based on, *inter alia*, the functionality and non-distinctive
5 nature of Applicant’s trade dress. The Civil Case remains pending.

6 3. Opposers are in the business of designing, manufacturing and selling bracelets
7 consisting of a single piece of molded silicon having the appearance of beads joined to adjacent beads
8 in various colorways, some of which are shown below:



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13 4. Applicant’s Application was filed June 15, 2015. Drawing shown below:



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18 5. The description of Applicant’s mark is as follows: “The color(s) black, white, and blue
19 is/are claimed as a feature of the mark. The mark consists of a beaded bracelet comprised of two
20 diametrically opposed beads, one black and the other white, both bearing a stylized water droplet, on
21 either side of which are blue beads.”

22 6. Applicant’s mark disclaims “bracelets and beads which are round in shape.” Thus,
23 what is not disclaimed is the color.
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25 7. Opposer Twin Tiger Assets Corp. is the owner of various trademarks related to its
26 bracelet business, including but not limited to U.S. Registration No. 5009588, 5009587, 4822576,
27 4841510.
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1 8. Opposers, being in the bracelet business, believe they will be damaged by registration
2 of Applicant’s Application on the principal register, particularly because Applicant’s Application, if
3 registered, could potentially afford Applicant rights to a mark that is merely functional and/or
4 ornamental.

5 9. Opposers assert that the mark sought to be registered by Applicant is aesthetically
6 functional, in that the color is so common that the exclusive rights thereto, on beaded bracelets,
7 “would put a competitor at a significant non-reputation-related disadvantage” (*Qualitex Co. v.*
8 *Jacobson Prods. Co.*, 514 U.S. 159, 165, 34 USPQ2d 1161, 1163-1164 (1995)). Indeed, the Examiner
9 noted that “there are legitimate and pro-competitive reasons why blue bracelets exist in the
10 marketplace. There is an aesthetic appeal with regard to the color blue.” A functional mark cannot be
11 registered. 15 U.S.C. §§ 1052(e)(5), 1064(3), and 1115(b)(8).

12 10. In the alternative, Opposers assert that the mark shown is nondistinctive product design
13 and/or merely ornamental, not inherently distinctive and has not obtained secondary meaning. The
14 mark in the Application is incapable of functioning as a trademark/source identifier and therefore not
15 entitled to registration under the Trademark Act.

16 11. Opposer disputes that Applicant’s mark in the Application has acquired secondary
17 meaning: Opposers have sold bracelets under their brand name and registered trademarks using similar
18 blue color and began doing so long before Applicant could have acquired any secondary meaning.

19 12. Opposers dispute the finding by the USPTO Examiner and/or Managing Attorney that
20 the mark is not a merely nondistinctive product design. Nothing exists on the record to explain the
21 USPTO’s withdrawal of its Section 1, 2, and 45 refusal.

22 Believing they will be damaged by the registration of Applicant’s Application, Opposers pray
23 that this opposition be sustained and that registration of Applicant’s Application be denied.

24 Opposers hereby appoint Deborah A. Gubernick, Esq., Scott P. Shaw, Esq. and Samuel G.
25 Brooks, Esq. of the law firm Call & Jensen, members of the bar of the State of California, to act as
26 attorneys for Opposers herein, with full power to prosecute said Opposition, to transact all relevant
27 business with the Patent and Trademark Office and in the United States Courts, and to receive all
28 official communications in connection with this Notice of Opposition.

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Dated: May 4, 2017

Respectfully submitted,

By: /Deborah A. Gubernick/
Deborah A. Gubernick

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