

ESTTA Tracking number: **ESTTA843475**

Filing date: **09/01/2017**

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 party opposes registration of the indicated application.

**Opposer Information**

Name	L & L Wings, Inc.
Granted to Date of previous extension	09/02/2017
Address	666 Broadway, 2nd Floor NYC, NY 10012 UNITED STATES

Attorney information	Bennett D Krasner The Law Offices of Bennett D. Krasner 1233 Beech Street, No. 49 Atlantic Beach, NY 11509 UNITED STATES Email: bkrasner@bdklaw.net, bonnie.krasner@bdklaw.net, bkrasner@optonline.net Phone: 5165519864
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**Applicant Information**

Application No	87352526	Publication date	07/04/2017
Opposition Filing Date	09/01/2017	Opposition Period Ends	09/02/2017
Applicant	US Pony Holdings LLC 3rd Floor 1450 Broadway New York, NY 10018 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Shirts, t-shirts, sweatshirts, sweatpants, hooded pullovers, jackets, pants and hats
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3458144	Application Date	08/29/2006
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Registration Date	07/01/2008	Foreign Priority Date	NONE
Word Mark	WINGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1978/02/01 First Use In Commerce: 1978/02/01 Retail apparel stores; Retail clothing stores; Retail discount store services in the field of beachwear clothing		

U.S. Registration No.	4205040	Application Date	12/21/2011
Registration Date	09/11/2012	Foreign Priority Date	NONE
Word Mark	WINGS		
Design Mark			
Description of Mark	The mark consists of the word "WINGS" in a double band oval with two hibiscus flowers cutting into the lower right corner of the oval.		
Goods/Services	Class 024. First use: First Use: 2008/02/09 First Use In Commerce: 2008/02/09 Beach towels Class 025. First use: First Use: 2008/02/09 First Use In Commerce: 2008/02/09 Men's, Women's and Children's clothing, namely, sweat pants, sweatshirts, tee shirts, tank tops, shirts, shorts, dresses, skirts, pants, jackets, sweaters, swim-suits, swimsuit cover-ups, and pareos; beach shoes, namely, sandals, thongs		

	<p>andslippers; socks, namely, aqua socks; head wear, namely, swim caps, hats, caps, headbands, bandanas, and kerchiefs; accessories, namely, wristbands, vests, shawls, scarves and belts</p> <p>Class 035. First use: First Use: 2008/02/09 First Use In Commerce: 2008/02/09</p> <p>Retail store services featuring body boards, swim boards, swim floats, beach umbrellas, beach towels, scuba diving equipment, swim goggles, beach mats, costumejewelry, souvenirs, gift items, candy and bottled water</p>
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U.S. Registration No.	4193881	Application Date	12/21/2011
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Registration Date	08/21/2012	Foreign Priority Date	NONE
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Word Mark	WINGS
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 024. First use: First Use: 1990/03/01 First Use In Commerce: 1990/03/01</p> <p>Beach towels</p> <p>Class 025. First use: First Use: 1978/02/01 First Use In Commerce: 1978/02/01</p> <p>Men's, Women's and Children's clothing,namely, sweat pants, sweatshirts, tee shirts, tank tops, shirts, shorts, dresses, skirts, pants, jackets, sweaters, swim-suits, swimsuit cover-ups, and pareos; beach shoes, namely, sandals, thongs andslippers; socks, namely, aqua socks; head wear, namely, swim caps, hats, caps, headbands, bandanas, and kerchiefs; accessories, namely, wristbands, vests, shawls, scarves and belts</p> <p>Class 035. First use: First Use: 1978/02/01 First Use In Commerce: 1978/02/01</p> <p>Retail store services featuring body boards, swim boards, swim floats, beach umbrellas, beach towels, scuba diving equipment, swim goggles, beach mats, costumejewelry, souvenirs, gift items, candy and bottled water</p>
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Attachments	<p>78962652#TMSN.png( bytes )</p> <p>85501135#TMSN.png( bytes )</p> <p>85501012#TMSN.png( bytes )</p> <p>2017-08-31 Notice of Opp CITY WINGS final v4.pdf(157028 bytes )</p>
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Signature	/Bennett D Krasner/
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Name	Bennett D Krasner
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Date	09/01/2017
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Trademark Application Ser. No.: 87352526  
For the Mark: **CITY WINGS**  
Date Filed: 02/28/2017

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L & L WINGS, INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

US PONY HOLDINGS LLC,

Applicant.

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Trademark Trial and Appeal Board  
Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

L & L WINGS, INC., a corporation duly organized and existing under the laws of the State of South Carolina, with a principal place of business at 666 Broadway, 2<sup>nd</sup> FL, New York, New York (hereinafter, "Opposer"), believes it will be damaged by the registration of U.S. Application Ser. No. 87352526 filed February 28, 2017 for the design plus words, letters and/or numbers mark **CITY WINGS** in Class 025 applied for by US Pony Holdings LLC, a Delaware limited liability company, having an address at 1450 Broadway, 3<sup>rd</sup> FL, New York, NY 10018 (hereinafter, "Applicant") and hereby opposes same. The subject application was published for opposition on July 4, 2017. The period of time within which to file an opposition was extended until September 2, 2017.

As grounds in support of its Notice of Opposition, Opposer, through its attorney, Bennett D. Krasner, Esq., asserts as follows:

1. Opposer is the owner of all right, title and interest in the following United States Trade and Service Mark Registrations (herein, “the **WINGS** marks”):

Mark: **WINGS** (standard character mark)

Registration No.: 3458144

Date of Registration: July 1, 2008

Goods/Services: Retail apparel stores; retail clothing stores; retail discount store services in the field of beachwear clothing in IC 035.

Mark: **WINGS** (design plus words, letters and/or numbers)

Registration No.: 4205040

Date of Registration: September 11, 2012

Goods/Services: Beach Towels in IC 024; Retail store services featuring body boards, swim boards, swim floats, beach umbrellas, beach towels, scuba diving equipment, swim goggles, beach mats, costume jewelry, souvenirs, gift items, candy and bottled water in IC 035; and Men's, Women's and Children's clothing, namely, sweat pants, sweatshirts, tee shirts, tank tops, shirts, shorts, dresses, skirts, pants, jackets, sweaters, swimsuits, swimsuit cover-ups, and pareos; beach shoes, namely, sandals, thongs and slippers; socks, namely, aqua socks; head wear, namely, swim caps, hats, caps, headbands, bandanas, and kerchiefs; accessories, namely, wristbands, vests, shawls, scarves and belts in IC 025.

Mark: **WINGS** (standard character mark)

Registration No.: 4193881

Date of Registration: August 21, 2012

Goods/Services: Beach Towels in IC 024; Retail store services featuring body boards, swim boards, swim floats, beach umbrellas, beach towels, scuba diving equipment, swim goggles, beach mats, costume jewelry, souvenirs, gift items, candy and bottled water in IC 035; and Men's, Women's and Children's clothing, namely, sweat pants, sweatshirts, tee shirts, tank tops, shirts, shorts, dresses, skirts, pants, jackets, sweaters, swimsuits, swimsuit cover-ups, and pareos; beach shoes, namely, sandals, thongs and slippers; socks, namely, aqua socks; head wear, namely, swim caps, hats, caps, headbands, bandanas, and kerchiefs; accessories, namely, wristbands, vests, shawls, scarves and belts in IC 025.

2. Registration number 3458144 is incontestable pursuant to 15 U.S.C. §§1065 and 1115(b).

3. Registration number 4193881 is incontestable pursuant to 15 U.S.C. §§1065 and

1115(b) based upon a renewal period commencing on August 21, 2017 and Combined Declaration of Use & Incontestability Under Sections 8 & 15 filed August 23, 2017.

4. Registration number 4205040 is valid and subsisting and therefore constitutes *prima facie* evidence of the validity of the trademark and service mark set forth in that registration and of Opposer's exclusive rights to use this trademark and service mark in connection with the goods and services set forth in the registration.

5. The **WINGS** registrations provide constructive notice of Opposer's ownership of its **WINGS** marks.

6. Opposer operates a well-known chain of clothing, including but not limited to, beachwear and beach items retail stores in several states of the United States. Opposer currently operates 28 stores (2 more slated to open soon) under the mark **WINGS** in the States of North Carolina, South Carolina, Florida, California and Texas, with a headquarters in New York.

7. Opposer is and has been for many years, actively engaged in the advertising, promotion and marketing of its retail stores and goods, under the name **WINGS**, and in particular, including, but not limited to, the sale of clothing, including but not limited to, beachwear and beach items including nearly all of the items listed in the description of goods contained in the application under IC 025.

8. Opposer has used and applied its distinctive mark **WINGS** to clothing, including but not limited to, beachwear and beach items since at least as early as February, 1978, on information and belief, earlier than any date of first use on which Applicant could rely.

9. Opposer has expended since its inception in February, 1978 and continues to expend, considerable resources, to market, advertise, promote and generally build goodwill and a reputation for its goods, namely, clothing, including but not limited to, beachwear and beach items, and retail store services.

10. Applicant filed U.S. Trademark Application Ser. No. 87352526 on February 28, 2017 under §1B, for **CITY WINGS** with design plus words, letters, and/or numbers for, “*Shirts, t-shirts, sweatshirts, sweatpants, hooded pullovers, jackets, pants and hats*” in IC 025.

11. The mark of application serial number 87352526 contains the identical word to Opposer’s mark, **WINGS**, and is dominated by the word **WINGS**, and therefore the mark as a whole is confusingly similar to Opposer’s **WINGS** marks.

12. Applicant’s **CITY WINGS** mark when applied to clothing and the like is confusingly similar to Opposer’s **WINGS** marks such that registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant’s goods and will injure and damage Opposer and the goodwill and reputation of Opposer symbolized by the **WINGS** marks.

13. The respective goods of Opposer and Applicant in the nature of clothing are closely related, are often promoted in and travel through the same channels of trade for sale to, and use by, the same class of prospective consumer.

14. Likelihood of confusion in this case is enhanced by the nationwide reputation of Opposer and it’s **WINGS** marks and by the fact that consumers associate these marks with the goods and services sold, approved or endorsed by Opposer.

15. The use and registration of **CITY WINGS** for clothing by Applicant would likely confuse and deceive consumers into thinking that Applicant's goods are affiliated with, authorized or sponsored by, or connected with Opposer or Opposer's services.

16. Applicant's designation, **CITY WINGS**, is substantially similar to Opposer's **WINGS** marks and is likely, when used in connection with the goods, namely clothing and related goods in IC 025, identified in the subject application, to cause confusion, deception or mistake, and Applicant's mark is, therefore, prohibited registration under §2(d) of the United States Trademark Act, 15 U.S.C. §1052(d).

17. By virtue of the long term (since at least as early as February, 1978) and widespread use by Opposer of its **WINGS** marks and Opposer's diligent and continuous efforts to promote its **WINGS** marks, Opposer's marks have become distinctive and well known and are associated by the consumer with Opposer. Applicant's **CITY WINGS** mark is dominated by the word "wings" and therefore so resembles Opposer's prior used and registered **WINGS** marks as to dilute or to be likely to cause dilution of the distinctive quality of Opposer's marks under section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

18. Opposer would be damaged by the registration sought by Applicant because such registration would allow Applicant's misleading use of the designation sought to be registered, and would give the color of exclusive statutory right to Applicant in violation and derogation of the prior superior rights of Opposer.



**WHEREFORE**, Opposer believes that it will be damaged by registration of the mark shown in the Application and respectfully requests that the opposition be sustained and that registration to Applicant be refused.

Please address all correspondence to:

Bennett D. Krasner, Esq.  
1233 Beech Street #49  
Atlantic Beach NY 11509

Dated: September 1, 2017

Respectfully submitted,



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**BENNETT D. KRASNER, ESQ.**  
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## Certificate of Service

The undersigned hereby certifies that a copy of the within Notice of Opposition has been served by United States First Class Mail, postage prepaid, on this date, September 1, 2017, upon Applicant's correspondent and upon Applicant's attorney at the correspondence addresses of record in the United States Patent and Trademark Office as follows:

Karl Scheider  
Iconix Brand Group, Inc.  
1450 Broadway 3<sup>rd</sup> FL  
New York, NY 10018

Jason Schaefer, Esq.  
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