

ESTTA Tracking number: **ESTTA873076**

Filing date: **01/24/2018**

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	Bonobos, Inc.
Granted to Date of previous extension	01/24/2018
Address	45 West 25th Street New York, NY 10010 UNITED STATES

Attorney information	Leo Kittay Fross Zelnick Lehrman & Zissu, P.C. 4 Times Square, 17th Floor New York, NY 10036 UNITED STATES Email: lkittay@fzlj.com, ddonahue@fzlj.com, mortiz@fzlj.com Phone: 212-813-5900
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Applicant Information

Application No	87411797	Publication date	09/26/2017
Opposition Filing Date	01/24/2018	Opposition Period Ends	01/24/2018
Applicant	Natural Cosmeceuticals of America Inc. 2909 Hillcroft Street, Suite 250 Houston, TX 770575820 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Nutritional and dietary supplements; Dietary supplements, namely, antioxidants, minerals, proteins, amino acids, super food supplements and nutraceuticals; all of the foregoing not being for veterinary use
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Applicant Information

Application No	87266841	Publication date	11/28/2017
Opposition Filing Date	01/24/2018	Opposition Period Ends	12/28/2017
Applicant	Natural Cosmeceuticals of America Inc. 2909 Hillcroft Street, Suite 250 Houston, TX 770575820 UNITED STATES		

Goods/Services Affected by Opposition


Class 003. First Use: 0 First Use In Commerce: 0


All goods and services in the class are opposed, namely: Skin care preparations, namely, skin creams, lotions, gels, softeners, oils, milks and masks, skin moisturizers, and bath oils; cosmetic preparations for removing makeup and removing hair; Pre-moistened cosmetic towelettes impregnated with lotions and creams; body powder; facial make-up; hair care preparations, namely, shampoo, conditioner, hair lotions, oils, creams and sprays; hair styling preparations, namely, creams, oils and sprays

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.	3559959	Application Date	01/16/2008
Registration Date	01/13/2009	Foreign Priority Date	NONE
Word Mark	BONOBOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/04/07 First Use In Commerce: 2007/04/09 Pants; Belts		

U.S. Registration No.	4739250	Application Date	03/29/2010
Registration Date	05/19/2015	Foreign Priority Date	NONE
Word Mark	BONOBOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2009/12/31 First Use In Commerce: 2009/12/31		

	<p>gift boxes Class 024. First use: First Use: 2011/09/13 First Use In Commerce: 2011/09/13 handkerchiefs</p> <p>Class 025. First use: First Use: 2007/04/07 First Use In Commerce: 2007/04/09 Clothing for men, namely, pants, jeans, trousers, shorts, belts, tops, shirts, turtle-necks, t-shirts, sweatshirts, sweatpants, suits, tuxedos, blazers, sport coats, sweaters, knitwear, namely, sweaters, pants, caps, cardigans; outerwear, namely, jackets, coats, overcoats; vests, hats, scarves, coats, jackets, overcoats, parkas, ties, swimwear, headwear, beanies, raincoats, wind-resistant jackets, wool hats</p> <p>Class 035. First use: First Use: 2007/04/07 First Use In Commerce: 2007/04/09 Online retail store services featuring apparel, footwear, bags, luggage and leather goods, jewelry</p>
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U.S. Registration No.	5235376	Application Date	08/08/2016
Registration Date	07/04/2017	Foreign Priority Date	NONE
Word Mark	BONOBOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2012/05/01 First Use In Commerce: 2012/05/01 Retail store services featuring clothing and also featuring personalized shopping assistance by sales agents</p> <p>Class 045. First use: First Use: 2012/05/01 First Use In Commerce: 2012/05/01 Personal wardrobe styling services; fashion consulting services; personal stylist services, namely, evaluating the physical attributes, lifestyle, and fashion styles of others and recommending clothing and accessories to achieve the personal image desired by the client; personal shopping for others</p>		

Related Proceedings	91238164
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Attachments	<p>77372978#TMSN.png(bytes) 85001375#TMSN.png(bytes) 87130662#TMSN.png(bytes) F2491642.pdf(22782 bytes)</p>
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Signature	/Leo Kittay/
Name	Leo Kittay
Date	01/24/2018

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

BONOBOS, INC.,

Opposer,

- against -

NATURAL COSMECEUTICALS OF
AMERICA INC.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Bonobos, Inc., a Delaware corporation, located and doing business at 45 W. 25th St., 5th Floor, New York, New York 10010 (“Opposer”), believes that it would be damaged by the issuance of a registration to Applicant Natural Cosmeceuticals of America Inc. (“Applicant”) for the mark BONOBOS in International Classes 3 and 5 as applied for in Application Serial No. 87/266,841 and No. 87/411,797, respectively (the “Applications”) for all identified goods, and therefore opposes the same. Application Serial No. 87/411,797 was published for opposition on September 26, 2017, and Opposer obtained a timely 90-day Extension of Time. Application Serial No. 87/266,841 was published for opposition on November 28, 2017. As grounds for its opposition, Opposer, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Since at least as early as 2007, and prior to any date upon which Applicant can rely, Opposer has marketed and sold clothing and related goods and services under the mark BONOBOS (“Opposer’s Mark”) extensively throughout the United States with substantial sales.

2. As a result of its reputation and longstanding use, Opposer's Mark has become a strong trademark identifying Opposer's goods and services exclusively. As such, Opposer's Mark represents an enormous goodwill and is an extremely valuable asset to Opposer.

3. Opposer is the owner of all right, title, and interest in and to Opposer's Mark in connection with clothing and related goods and services.

4. Additionally, Opposer owns valid and subsisting U.S. trademark registrations for Opposer's Mark for clothing and related goods and services, including the following:

- BONOBOBOS, U.S. Reg. No. 3,559,959, for use in connection with "Pants; Belts" in International Class 25 based on first use in 2007;
- BONOBOBOS, U.S. Reg. No. 4,739,250, for use in connection with "gift boxes" in International Class 16 based on first use in 2009, "handkerchiefs" in International Class 24 based on first use in 2011, "Clothing for men, namely, pants, jeans, trousers, shorts, belts, tops, shirts, turtle-necks, t-shirts, sweatshirts, sweatpants, suits, tuxedos, blazers, sport coats, sweaters, knitwear, namely, sweaters, pants, caps, cardigans; outerwear, namely, jackets, coats, overcoats; vests, hats, scarves, coats, jackets, overcoats, parkas, ties, swimwear, headwear, beanies, raincoats, wind-resistant jackets, wool hats" in International Class 25 based on first use in 2007, and "Online retail store services featuring apparel, footwear, bags, luggage and leather goods, jewelry" in International Class 35 based on first use in 2007; and
- BONOBOBOS, U.S. Reg. No. 5,235,376 for use in connection with "Retail store services featuring clothing and also featuring personalized shopping assistance by

sales agents” in International Class 35 based on first use in 2012, and “Personal wardrobe styling services; fashion consulting services; personal stylist services, namely, evaluating the physical attributes, lifestyle, and fashion styles of others and recommending clothing and accessories to achieve the personal image desired by the client; personal shopping for other” in International Class 45 based on first use in 2012.

All of the registrations for Opposer’s Mark relied upon herein are valid, subsisting, and in full effect and serve as prima facie evidence of the validity of the mark and of Opposer’s exclusive right to use the mark in connection with the goods and services identified therein, pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(a). Additionally, U.S. Reg. No. 3,559,959 has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and therefore serves as conclusive proof of Opposer’s exclusive right to use the mark in connection with the goods identified therein, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

5. Upon information and belief, Applicant is a Texas corporation with an address of 2909 Hillcroft Street, Suite 250, Houston, Texas 77057-5820.

6. Upon information and belief, on December 13, 2016, Applicant filed Application Serial No. 87/266,841 for the mark BONOBO in Class 3 and, on April 14, 2017, Applicant filed Application Serial No. 87/411,797 for the mark BONOBO in Class 5, both based on an intent to use the mark in commerce, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

7. Application Serial No. 87/266,841 specifies the following goods: “Skin care preparations, namely, skin creams, lotions, gels, softeners, oils, milks and masks, skin moisturizers, and bath oils; cosmetic preparations for removing makeup and removing hair; Pre-

moistened cosmetic towelettes impregnated with lotions and creams; body powder; facial make-up; hair care preparations, namely, shampoo, conditioner, hair lotions, oils, creams and sprays; hair styling preparations, namely, creams, oils and sprays” in International Class 3.

8. Application Serial No. 87/411,797 specifies the following goods: “Nutritional and dietary supplements; Dietary supplements, namely, antioxidants, minerals, proteins, amino acids, super food supplements and nutraceuticals; all of the foregoing not being for veterinary use” in International Class 5.

9. Opposer’s rights in Opposer’s Mark are prior and superior to any rights Applicant may claim in the applied-for mark.

10. The applied-for mark is identical to Opposer’s Mark and, as a result, confusingly similar in sight, sound and commercial appearance.

11. The goods for which Applicant seeks to register the applied-for mark are related to and/or highly similar to the goods and services for which Opposer has registered Opposer’s Mark.

12. Applicant’s use and registration of the applied-for mark for the goods listed in the Applications is likely to create the erroneous impression that Applicant’s goods originate with, are endorsed, sponsored or promoted by, come from, or are otherwise associated with Opposer or Opposer’s goods and services provided under Opposer’s Mark. Any such use and registration of the applied-for mark by Applicant in connection with the goods listed in the Applications is therefore likely to cause confusion, cause mistake or deceive the public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

