

ESTTA Tracking number: **ESTTA903050**

Filing date: **06/13/2018**

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	Dr. Martens International Trading GmbH
Granted to Date of previous extension	06/13/2018
Address	Ahornstrasse 8a Grafelfing, 82166 GERMANY

Attorney information	Anne Hiaring Hocking Donahue Fitzgerald LLP 80 E. Sir Francis Drake Blvd. Suite 3E Larkspur, CA 94939 UNITED STATES Email: ahocking@donahue.com, ndrake@donahue.com, ebaxter@donahue.com, trademarks@donahue.com Phone: 415-381-4161
----------------------	--

Applicant Information

Application No	87627651	Publication date	02/13/2018
Opposition Filing Date	06/13/2018	Opposition Period Ends	06/13/2018
Applicant	Living Tall & Lean LLC 3216 Raleigh Street Denver, CO 80212 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: Blazers; Boots; Bottoms as clothing for men; Coats for men; Fashion hats; Footwear for men; Headwear for men; Hooded sweatshirts for men; Jackets for men; Men's suits; Men's underwear; Pajamas for men; Shirt inserts, namely, dickies; Shirts for men; Shoes for men; Shorts for men; Suit coats; Sweaters for men; Sweatpants for men; Sweatshirts for men; T-shirts for men; Tops as clothing for men; Trousers for men; Water repelling leather shoes and boots; Waterproof leather shoes and boots; Woven shirts for men; Men's socks

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.	3330342	Application Date	02/26/2002
-----------------------	---------	------------------	------------

Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	DM'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/11/30 First Use In Commerce: 2006/11/30 Clothing, namely, [coats,] jackets, [anoraks, parkas,] T-shirts, [polo shirts, long and short sleeved shirts, blouses, tank tops, sweaters,] sweatshirts,[sweatpants, pants, jeans, shorts, skirts, dresses, vests, waistcoats,] belts, socks, hats, [gloves,] and caps		

U.S. Registration No.	2364671	Application Date	09/15/1999
Registration Date	07/04/2000	Foreign Priority Date	NONE
Word Mark	DM'S		
Design Mark	DM'S		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1982/00/00 First Use In Commerce: 1992/00/00 Footwear		

Attachments	75799586#TMSN.png(bytes) Notice of Opposition - DM - Living Tall and 6.13.18.pdf(105708 bytes)
-------------	--

Signature	/Anne Hiaring Hocking/
Name	Anne Hiaring Hocking
Date	06/13/2018


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

In the matter of application Serial No. 87/627,651

For the Trademark: 
Published in the Official Gazette on February 13, 2018

Dr. Martens International Trading GmbH, Opposer, v. Living Tall & Lean LLC, Applicant.	Opposition No.:
---	-----------------

NOTICE OF OPPOSITION

Dr. Martens International Trading GmbH, a corporation organized under the laws of Germany, whose business address is Ahornstrasse 8a, 82166 Gräfelfing, Germany (“**Opposer**”), believes that it will be damaged by registration of the mark  (“**DM Mark**”), Application Serial No. 87/627,651, filed on behalf of Living Tall & Lean LLC, a Colorado limited liability company located at 3216 Raleigh Street, Denver, Colorado 80212 (“**Applicant**”).

This Opposition is properly and timely filed, as the DM Mark was published in the Official Gazette on February 13, 2018, and Opposer timely filed a request for extension of time to oppose which granted Opposer until June 13, 2018 to file this Opposition.

As grounds of opposition, Opposer alleges that:

1. Opposer is the owner of U.S. Trademark Registration Nos. 2,364,671 (“**671 Registration**”) and 3,330,342 (“**342 Registration**”) for the mark DM’S (“**DM’S Marks**”) in International Class 25 for “Footwear” and “Clothing, namely, jackets, T-shirts, sweatshirts, belts, socks, hats, and caps” (collectively, “**Opposer’s Goods**”), respectively. Attached as **Exhibit A** are true and correct copies of the ‘671 and ‘342 Registrations for the DM’S Marks.

2. Opposer's '671 Registration for the DM'S Mark was issued on July 4, 2000, and its '342 Registration for the DM'S Mark was issued on November 6, 2007.

3. Opposer's DM'S Marks are subsisting and not abandoned.

4. Opposer has continuously used the DM'S Marks in interstate commerce since at least as early as November 30, 2006.

5. Opposer has invested time, money, and effort in marketing, advertising, and promotion of the DM'S Marks in connection with the sale of Opposer's Goods.

6. As a consequence of Opposer's long and continuous use, and its investment in marketing, advertising, and promotion of the DM'S Marks in connection with Opposer's Goods, the DM'S Marks have acquired a high degree of distinctiveness indicating source in Opposer, and Opposer has established significant and valuable goodwill in the DM'S Marks.

7. Applicant applied to register the DM Mark on September 29, 2017, Application Serial No. 87/627,651, in International Class 25 for "Blazers; Boots; Bottoms as clothing for men; Coats for men; Fashion hats; Footwear for men; Headwear for men; Hooded sweatshirts for men; Jackets for men; Men's suits; Men's underwear; Pajamas for men; Shirt inserts, namely, dickies; Shirts for men; Shoes for men; Shorts for men; Suit coats; Sweaters for men; Sweatpants for men; Sweatshirts for men; T-shirts for men; Tops as clothing for men; Trousers for men; Water repelling leather shoes and boots; Waterproof leather shoes and boots; Woven shirts for men; Men's socks" ("**Applicant's Goods**").

8. Opposer's DM'S Marks were registered well prior to Applicant's application to register the DM Mark or, on information and belief, any actual use by Applicant of the DM Mark.

9. Opposer has not licensed or authorized Applicant's use of the DM'S Marks in any way.

10. The DM Mark is confusingly similar to the DM'S Marks, as the combination of the letters "DM" and "DM'S" are nearly identical in sight, sound, and connotation.

11. Applicant's Goods are closely related to Opposer's Goods.

12. The DM Mark is so similar to the DM'S Marks as to cause consumer confusion, mistake, and/or deceit within the meaning of Section 2(d) of the Lanham Act (15 U.S.C. § 1052(d)).

13. Opposer will be damaged by registration of the DM Mark in connection with Applicant's Goods because such registration will create registered trademark rights in the DM Mark and the color of authority to use its confusingly similar Mark in commerce in connection with Applicant's Goods.

14. Opposer will be damaged by Applicant's use of the DM Mark in connection with Applicant's Goods because such use is likely to give consumers the false impression that Opposer is the source of Applicant's Goods.

Therefore, Opposer respectfully requests that this Opposition be sustained and that: (i) registration of Applicant's DM Mark be denied; and (ii) the Opposed Application be ordered abandoned with prejudice.

FEE AND DEPOSIT REQUEST

The filing fee in the amount of \$400.00 for this Notice of Opposition is submitted with this Notice of Opposition.

Date: June 13, 2018

Respectfully submitted,

DONAHUE FITZGERALD LLP

/Anne Hiaring Hocking/

Anne Hiaring Hocking, Esq.

Noah R. Drake, Esq.

80 E. Sir Francis Drake Blvd., Suite 3E

Larkspur, California 94939

Tel: (415) 381-4161

Attorneys for Opposer