

ESTTA Tracking number: **ESTTA917514**

Filing date: **08/22/2018**

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	Zna P. Houston dba Heir
Granted to Date of previous extension	08/22/2018
Address	6651 Garth Avenue Los Angeles, CA 90056 UNITED STATES

Attorney information	Brian J. Philpott (CA Bar No. 241,450) Koppel Patrick Heybl & Philpott 2815 Townsgate Rd #215 Westlake Village, CA 91361 UNITED STATES BPhilpott@koppelip.com, CDonaldson@koppelip.com, morgan.lynch@alumnimail.pepperdine.edu, generalmail@koppelip.com (805) 373-0060
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Applicant Information

Application No	87696918	Publication date	04/24/2018
Opposition Filing Date	08/22/2018	Opposition Period Ends	08/22/2018
Applicants	Nash, LaLonne R 1266 W Paces Ferry Rd NW #412 Atlanta, GA 30327 UNITED STATES Nash, Terius Y 1266 W Paces Ferry Rd NW #412 Atlanta, GA 30327 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: Children's cloth eating bibs; children's and infants' cloth bibs; clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; body suits for infants and children; bottoms as clothing for infants and children; coats for infants and children; dresses for infants and children; headwear for infants and children; hooded sweatshirts for infants and children; jackets for infants and children; pajamas for infants and children; pants for infants and children; shirts for infants and children; shoes for infants and children; shorts for infants and children; sweaters for infants and children; sweatpants for infants and children; sweatshirts for infants and children; t-shirts for infants and chil-

dren; tops as clothing for infants and children; trousers for infants and children; woven shirts for infants and children

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3008548	Application Date	09/13/2003
Registration Date	10/25/2005	Foreign Priority Date	NONE
Word Mark	HEIR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2003/01/01 First Use In Commerce: 2003/01/01 Jewelry in various forms including but not limited to watches with straps, bands, faces, case, chains, movements; cuff-links, crosses, chains, bracelets, earrings and rings Class 018. First use: First Use: 2003/01/01 First Use In Commerce: 2003/01/01 Bags in all fabrications, namely backpacks, sholder bags, handbags, purses, athletic bags, messenger bags, bookbags, diaper bags, tote bags, beach bags, make-up bags sold empty, and toiletry bags sold empty; wallets, credit card cases, business card cases, key cases and cosmeticcases sold empty; brief cases, luggage and umbrellas Class 025. First use: First Use: 2003/01/01 First Use In Commerce: 2003/01/01 Clothing in all fabrications and weights, namely pants, denim jeans, overalls, shorts, shirts, blouses, T-shirts, tank tops, crop tops, sweaters, dusters, shifts, skirts, dresses, jumpers, jackets, vests, sweatshirts, sweatpants, neck-ties, headwear, namely caps, hats, scarves, and headbands, belts, underwear, sleepwear; outerwear in all fabrications, namely cloth, denim, leather and suede jackets; coats and rainwear; footwear and socks		

Attachments	Notice of Opposition 87696918.pdf(271935 bytes)
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Signature	/Brian J. Philpott/
Name	Brian J. Philpott (CA Bar No. 241,450)
Date	08/22/2018

1 Brian J. Philpott (CA Bar No. 241,450)
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9 Attorneys for Opposer

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

12 ZNA P. HOUSTON,

13 Opposer,

14 v.

15 LALONNE R. NASH & TERIUS Y. NASH,

16 Applicants

Opposition No: TBD

NOTICE OF OPPOSITION OF APPLICATION
SERIAL NO. 87/696,918

17 **NOTICE OF OPPOSITION**

18 1. Opposer, Zna P. Houston, d/b/a HEIR, a California Sole Proprietorship with a business address
19 of 6651 Garth Avenue Los Angeles, California 90056, hereby opposes registration of the mark HEIR AND
20 HEIRESS that is the subject of application Serial No. 87/696,918, published in the *Official Gazette* of April
21 24, 2018, and requests that registration to Applicants be refused.

22 2. As grounds in support of its opposition, Opposer asserts as follows:

23 3. Opposer, for many years and since long prior to any date of first use upon which Applicants can
24 rely, has adopted and continuously used the term "HEIR" as a trademark for, among other goods, clothing
25 in all fabrications and weights, namely pants, denim jeans, overalls, shorts, shirts, blouses, T-shirts, tank
26 tops, crop tops, sweaters, dusters, shifts, skirts, dresses, jumpers, jackets, vests, sweatshirts, sweatpants,
27 neckties, headwear, namely caps, hats, scarves, and headbands, belts, underwear, sleepwear; outerwear in
28 all fabrications, namely cloth, denim, leather and suede jackets; coats and rainwear; footwear and socks.

1 4. Opposer is the owner of Registration No. 3,008,548 for the mark HEIR for, among other goods
2 in other classes, “clothing in all fabrications and weights, namely pants, denim jeans, overalls, shorts, shirts,
3 blouses, T-shirts, tank tops, crop tops, sweaters, dusters, shifts, skirts, dresses, jumpers, jackets, vests,
4 sweatshirts, sweatpants, neckties, headwear, namely caps, hats, scarves, and headbands, belts, underwear,
5 sleepwear; outerwear in all fabrications, namely cloth, denim, leather and suede jackets; coats and rainwear;
6 footwear and socks.” That registration is valid, subsisting, unrevoked, and uncanceled.

7 5. Applicants filed an intent-to-use application to register the mark HEIR AND HEIRESS for
8 “children's cloth eating bibs; children's and infants' cloth bibs; clothing for babies, toddlers and children,
9 treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; body suits for infants
10 and children; bottoms as clothing for infants and children; coats for infants and children; dresses for infants
11 and children; headwear for infants and children; hooded sweatshirts for infants and children; jackets for
12 infants and children; pajamas for infants and children; pants for infants and children; shirts for infants and
13 children; shoes for infants and children; shorts for infants and children; sweaters for infants and children;
14 sweatpants for infants and children; sweatshirts for infants and children; t-shirts for infants and children;
15 tops as clothing for infants and children; trousers for infants and children; woven shirts for infants and
16 children.” That application was filed on November 26, 2017 and was assigned Serial No. 87/696,918.

17 6. Applicants’ applied-for mark HEIR AND HEIRESS contains the entirety of Opposer’s mark
18 HEIR. Furthermore, the goods covered in Applicants’ application amount to a species of the genus of
19 goods for which Opposer’s mark is registered, i.e. children’s clothing is a subset of clothing. Thus,
20 Applicants’ mark so resembles Opposer’s previously used and registered mark HEIR as to be likely, when
21 applied to the goods set forth in Applicants’ application, to cause confusion within the meaning of Section
22 2(d) of the Trademark Act.

23 7. Opposer’s HEIR mark has become conceptually and commercially strong, rendering it famous
24 for the purposes of §43(c)(2)(A), by virtue of Opposer’s long standing and pervasive use of its mark, the
25 appreciable amount of sales of goods in connection with the use of the mark, the actual recognition the
26 mark has gained with respect to the goods sold, and the fact that the mark has been registered for nearly
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28

1 thirteen years. As stated above, Applicants' mark contains the entirety of Opposer's mark; thus, the degree
2 of similarity between the marks is significant. Therefore, Applicants' mark so resembles Opposer's
3 previously used and registered mark HEIR as to be likely, when applied to the goods set forth in Applicants'
4 application, to cause dilution within the meaning of Section 2(d) of the Trademark Act.

5 8. WHEREFORE, Opposer prays that the opposition be sustained and that registration to
6 Applicants be refused.

7 Dated this 22nd of August, 2018.

8
9 /Brian J. Philpott/

10 Brian J. Philpott
11 Attorney for Opposer,
12 Zna P. Houston, d/b/a HEIR
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