

ESTTA Tracking number: **ESTTA969695**

Filing date: **04/26/2019**

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	Abercrombie & Fitch Trading Co.
Granted to Date of previous extension	04/28/2019
Address	6301 Fitch Path New Albany, OH 43054 UNITED STATES

Correspondence information	Terrance Roberts Assistant Legal Counsel Abercrombie & Fitch Trading Co. 6301 Fitch Path New Albany, OH 43054 UNITED STATES ipdocketingwest@anfcorp.com 6142836228
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Applicant Information

Application No	87799542	Publication date	10/30/2018
Opposition Filing Date	04/26/2019	Opposition Period Ends	04/28/2019
Applicant	Football Historians, LLC 1209 Orange Street Wilmington, DE 19801 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: Clothing, namely, footwear, T-shirts, shirts, polo shirts, sweatshirts, sweatpants, pants, jerseys, shorts, socks, hats, caps, visors, jackets, coats, gloves, dresses, swimsuits
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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)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2503382	Application Date	06/02/1998
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Registration Date	11/06/2001	Foreign Priority Date	NONE
Word Mark	AF		
Design Mark	AF		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1994/07/00 First Use In Commerce: 1994/07/00 clothing, namely, [hats,] t-shirts, pants, shorts, [caps,] shirts [and boxer shorts]		


U.S. Registration No.	2530664	Application Date	01/31/2000
Registration Date	01/15/2002	Foreign Priority Date	NONE
Word Mark	A & F		
Design Mark	A & F		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/11/00 First Use In Commerce: 1997/11/00 clothing, namely, [hats, caps,] shirts, t-shirts, tank tops, knit tops, woventops, [halter tops,] sweatshirts, sweatpants, underwear, boxer shorts, [bras, panties, socks,] pants, short pants, jeans, [dresses,] skirts, [belts,] footwear, sweaters, vests, coats, jackets, [scarves and ties] Class 035. First use: First Use: 1997/11/00 First Use In Commerce: 1997/11/00 retail personal care product and clothing store services [and mail order catalog services featuring personal care products and clothing]		


U.S. Registration No.	3739561	Application Date	06/16/2009
Registration Date	01/19/2010	Foreign Priority Date	NONE
Word Mark	A & F		

Design Mark			
Description of Mark	The mark consists of "A & F" in a stylized format.		
Goods/Services	Class 025. First use: First Use: 2009/01/05 First Use In Commerce: 2009/01/05 Polo shirts; Shirts and short-sleeved shirts		


U.S. Registration No.	3221986	Application Date	01/12/2006
Registration Date	03/27/2007	Foreign Priority Date	NONE
Word Mark	A & F 92		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1999/11/30 First Use In Commerce: 1999/11/30 Clothing, namely, [hats, caps, visors,] shirts, t-shirts, [tank tops,] knittops, [woven tops, halter tops,] sweatshirts, sweatpants, jogging pants, [swimwear, underwear, boxer shorts, bras, panties, hosiery, socks,] pants and short pants, [jeans, dresses, skirts, belts, footwear, sweaters, vests, gloves, coats, jackets, and scarves]		

U.S. Registration No.	4354241	Application Date	08/24/2009
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Registration Date	06/18/2013	Foreign Priority Date	NONE
Word Mark	A&F		
Design Mark			
Description of Mark	The mark consists of the letters "a&f" in a stylized format.		
Goods/Services	Class 025. First use: First Use: 2009/09/00 First Use In Commerce: 2009/09/00 Bottoms; Coats; Footwear; Jackets; Leggings; Sleepwear and Tops		

U.S. Registration No.	4354242	Application Date	08/24/2009
Registration Date	06/18/2013	Foreign Priority Date	NONE
Word Mark	A&F		
Design Mark			
Description of Mark	The mark consists of the letters "a&f" in a stylized format.		
Goods/Services	Class 035. First use: First Use: 2009/10/00 First Use In Commerce: 2009/10/00 Retail store and on-line retail store services featuring clothing, accessories and personal care products		


U.S. Registration No.	1169714	Application Date	11/14/1979
Registration Date	09/15/1981	Foreign Priority Date	NONE
Word Mark	A & F		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1978/09/29 First Use In Commerce: 1978/09/29 Retail Store [and mail order] services in the field of sporting goods, * namely, bottoms, headwear, jackets, leggings, swimwear, tops, and undergarments all for use in sporting activities such as running, walking, weight lifting and training, yoga, and swimming *		

U.S. Registration No.	3624670	Application Date	03/25/2005
Registration Date	05/19/2009	Foreign Priority Date	NONE
Word Mark	A&F NEW YORK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/09/27 First Use In Commerce: 2006/09/27 Clothing, namely, [jeans,] knit shirts, knit tops, shirts, shorts, [sweat pants,] sweat shirts, sweat shorts, and t-shirts		



U.S. Registration No.	4760557	Application Date	02/21/2012
Registration Date	06/23/2015	Foreign Priority Date	NONE
Word Mark	A & F		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/11/00 First Use In Commerce: 1997/11/00 Belts; Bottoms; Coats; Dresses; Footwear; Gloves; Headwear; Jackets; Leggings; Scarves; Sleepwear; Swimwear; Tops; Undergarments		

U.S. Registration No.	4756239	Application Date	02/22/2012
Registration Date	06/16/2015	Foreign Priority Date	NONE

Word Mark	A & F		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1997/11/00 First Use In Commerce: 1997/11/00 On-line retail store services featuring clothing, clothing accessories, jewelry, bags, candles and personal care products; Retail store services featuring clothing, clothing accessories, jewelry, bags, candles and personal care products		

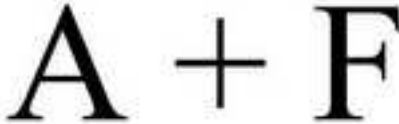
U.S. Registration No.	5365342	Application Date	03/24/2015
Registration Date	12/26/2017	Foreign Priority Date	NONE
Word Mark	A&F CO		

Design Mark			
Description of Mark	The mark consists of the stylized wording "A&F CO" with "CO" appearing below "&F", and the top of the letter "C" intersecting and forming the arm of the letter "F".		
Goods/Services	Class 025. First use: First Use: 2015/10/18 First Use In Commerce: 2015/10/18 Belts; Bottoms; Coats; Footwear; Gloves; Headwear; Jackets; Sleepwear; Swimwear; Tops		
U.S. Registration No.	5142426	Application Date	05/13/2015
Registration Date	02/14/2017	Foreign Priority Date	NONE
Word Mark	AF		
Design Mark			
Description of	The mark consists of the letters "A" and "F" with a heart connected in between.		

Mark	
Goods/Services	Class 025. First use: First Use: 2015/09/19 First Use In Commerce: 2015/09/19 Bottoms; Headwear; Sleepwear; Tops

U.S. Registration No.	5356213	Application Date	09/30/2016
Registration Date	12/12/2017	Foreign Priority Date	NONE

Word Mark	A + F
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 025. First use: First Use: 2017/01/23 First Use In Commerce: 2017/01/23 Belts; Bottoms; Coats; Headwear; Jackets; Sleepwear; Socks; Tops; Undergarments
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Attachments	75494357#TMSN.png(bytes) 75981420#TMSN.png(bytes) 77760432#TMSN.png(bytes) 78790810#TMSN.png(bytes) 77811482#TMSN.png(bytes) 77811488#TMSN.png(bytes) 78594968#TMSN.png(bytes) 85547931#TMSN.png(bytes) 85549384#TMSN.png(bytes) 86574046#TMSN.png(bytes) 86628653#TMSN.png(bytes) 87189144#TMSN.png(bytes) 87799542 Opposition.pdf(176138 bytes)
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Signature	/Terrance Roberts/
Name	Terrance Roberts
Date	04/26/2019

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

Abercrombie & Fitch Trading Co.,)	
)	Opposition No. _____
Opposer,)	
)	Application No. 87/799,542
v.)	
)	Date of Filing: February 15, 2018
Football Historians, LLC)	
)	
)	Subject Mark: AAF
Applicant.)	
)	

NOTICE OF OPPOSITION

Abercrombie & Fitch Trading Co. (“Opposer”) is an Ohio corporation with its principal place of business at 6301 Fitch Path, New Albany, Ohio 43054.

To the best of Opposer’s knowledge, Football Historians, LLC (“Applicant”) is a limited liability company with an address of 1209 Orange Street, Wilmington, Delaware, 19801, and owner of Application No. 87/799,542 (the “Application”).

Opposer believes that it is or will be damaged by registration of the Application and hereby opposes registration of same.




The Application was filed for registration on the Principal Register on February 15, 2018 for use in connection with clothing, namely, footwear, t-shirts, shirts, polo shirts, sweatshirts, sweatpants, pants, jerseys, shorts, socks, hats, caps, visors, jackets, coats, gloves, dresses, and swimsuits in International Class 25. The Application was published for opposition on October 30, 2018. An extension of time to oppose the Application was timely sought by Opposer and duly granted.



As grounds for the Opposition, it is alleged that:

1. The parent company of Opposer, Abercrombie & Fitch Co., is one of the largest manufacturers, wholesalers and retailers of high quality, casual apparel and accessories for men, women, and children with an active, youthful lifestyle in the U.S.A. The parent company and its predecessors in interest have been engaged in the business of manufacturing and selling high-end apparel and related accessories in the United States for over 100 years under the brand name “Abercrombie & Fitch,” also known as “A&F.”

2. Opposer, Abercrombie & Fitch Trading Co., is a wholly owned subsidiary and holding company of Abercrombie & Fitch Co., the parent company, a Delaware corporation.

3. Opposer is the owner of numerous US Registrations for “AF” marks (collectively, the “AF Marks”):

MARK	REG. NO./ APP. NO.	REG. DATE/ APP. DATE	CLASS	FIRST USE DATE
AF	US Reg. No. 2,503,382	11/06/2001	Int’l Class: 25	7/01/1994
A & F	US Reg. No. 2,530,664	1/15/2002	Int’l Class: 25, 35	11/01/1997
	US Reg. No. 3,739,561	1/19/2010	Int’l Class: 25	1/05/2009
A & F 92	US Reg. No. 3,221,986	3/27/2007	Int’l Class: 25	11/30/1999
	US Reg. No. 4,354,241	6/18/2013	Int’l Class: 25	9/01/2009
	US Reg. No. 4,354,242	6/18/2013	Int’l Class: 35	10/01/2009
A & F	US Reg. No. 1,169,714	9/15/1981	Int’l Class: 35	9/29/1978
A & F NEW YORK	US Reg. No. 3,624,670	5/19/2009	Int’l Class: 25	9/27/2006
A & F	US Reg. No. 4,760,557	6/23/2015	Int’l Class: 25	11/01/1997
A & F	US Reg. No. 4,756,239	6/16/2015	Int’l Class: 35	11/01/1997

	US Reg. No. 5,365,342	3/24/2015	Int'l Class: 25	12/26/2017
	US Reg. No. 5,142,426	5/13/2015	Int'l Class: 25	02/14/2017
A + F	US Reg. No. 5,356,213	9/30/2016	Int'l Class 25	12/12/2017

4. In accordance with § 5 of the Federal Trademark Act, all use of the Opposer's AF Marks by Opposer's affiliated and related companies, as alleged herein, inures to the benefit of the Opposer.

5. All of Opposer's Registrations identified in the chart above, are *prima facie* evidence of the validity thereof and Opposer's ownership and exclusive right to use these marks in commerce, and are constructive notice of Opposer's ownership thereof, all as provided by §§ 7(b) and 22 of the Federal Trademark Act of 1946, as amended.

6. Opposer's registrations for AF (Reg. No. 2,503,382), A&F (Reg. No. 2,530,664), A&F (Reg. No. 1,169,714), and A&F (stylized) (3,739,561) are incontestable under 15 U.S.C. §1065, and as such, these registrations are conclusive evidence of the validity of the registered marks, of Opposer's ownership of the marks and of the Opposer's exclusive right to use the marks with the goods and services.

7. Opposer and its predecessors in interest have used the AF Marks on clothing since at least as early as 1994 ("Opposer's Goods"). Opposer and its predecessors in interest have also sold goods under the AF Marks in related classes and offered retail store services under the AF Marks since at least as early as 1978.

8. Opposer's use of its AF Marks has been valid and continuous since at least as early as each respective date of first use and has not been abandoned.

9. Opposer's total sales revenue for the A&F brand is in the multi-billions. Opposer has

prominently and extensively used, promoted and advertised its AF Marks for products and services through varied promotional and advertising media.

10. Opposer's AF branded goods, including but not limited to clothing, footwear, t-shirts, shirts, polo shirts, sweatshirts, sweatpants, pants, jerseys, shorts, socks, hats, caps, jackets, coats, gloves, dresses, and swimsuits, are sold in its "Abercrombie & Fitch" and "abercrombie" stores, as well as, through its website www.abercrombie.com.

11. As a result of Opposer's long and continuous use since at least as early as 1994, and its substantial investment in advertising and promotion, Opposer's AF Marks have become famous among its actual and target purchasers of casual apparel and accessories as well as other members of the public, as a distinctive symbol of Opposer's goodwill.

12. Opposer's AF Marks became famous long prior to Applicant's filing date of February 15, 2018.

13. Applicant is the owner of US Application No. 87/799,542, which was filed on February 15, 2018 under Section 1(b) of the Trademark Act, for the standard character mark "AAF" ("AAF Mark") covering "clothing, namely, footwear, t-shirts, shirts, polo shirts, sweatshirts, sweatpants, pants, jerseys, shorts, socks, hats, caps, visors, jackets, coats, gloves, dresses, and swimsuits" in International Class 25 ("Applicant's Goods").

14. Applicant's use of the AAF Mark will inevitably capitalize upon the fame and distinctiveness of Opposer's AF Marks, which have acquired renown in connection with, among other things, clothing and related accessories.

15. Applicant's AAF Mark so resembles Opposer's previously used and registered AF Marks in appearance and commercial impression so as to be likely to cause mistake, or to deceive, or to cause confusion as to source, sponsorship or affiliation

16. Applicant's applied-for goods are identical to Opposer's Goods under its AF Marks.

Therefore, consumers are likely to be confused, mistaken or deceived into the belief, contrary to the fact, that the goods offered by Applicant under the AAF Mark emanate from and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

17. The trade channels and consumers for Applicant's Goods and Opposer's Goods are legally identical.

18. Applicant's use and registration of the AAF Mark is likely to dilute Opposer's AF Marks by impairing their distinctiveness and ability to exclusively identify goods from Opposer.

19. Registration of Applicant's mark will lessen the capacity of Opposer's famous name and mark to identify and distinguish its goods and services.

20. Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that Applicant's mark so resembles the Opposer's AF Marks as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of the Federal Trademark Act, and because Applicant's mark is likely to dilute Opposer's AF Marks in violation of § 43(c) of the Federal Trademark Act, thereby damaging Opposer.

21. WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present Opposition be sustained and the registration of Application No. 87/799,542 be refused.

Respectfully Submitted,

Abercrombie & Fitch Trading Co.

April 26, 2019

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