

ESTTA Tracking number: **ESTTA1095371**

Filing date: **11/13/2020**

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	Axel Gothe
Granted to Date of previous extension	11/14/2020
Address	194 MALCOLM X BLVD. NEW YORK, NY 10026 UNITED STATES

Attorney information	BRUNO TARABICHI TMW LAW 4750 ALMADEN EXPRESSWAY 124-359 SAN JOSE, CA 95118 UNITED STATES Primary Email: bruno@tmwlawfirm.com 408-634-0324
Docket Number	0300-09

Applicant Information

Application No.	88354109	Publication date	09/15/2020
Opposition Filing Date	11/13/2020	Opposition Period Ends	11/14/2020
Applicant	Shenzhen XinBaoKang Electronic Technology Co., Ltd. RM 301,3/F,UNIT 1,FUYUAN INDUSTRIAL ZONE FANSHEN RD,45TH AREA,XIN'AN ST BAO'AN DIST,SHENZHEN, 518101 CHINA		

Goods/Services Affected by Opposition

Class 025. First Use: 2018/11/14 First Use In Commerce: 2018/11/14 All goods and services in the class are opposed, namely: Belts; Coats; Fabric sold as an integral component of finished clothing items, namely, coats and jackets; Hats; Hosiery; Pajama bottoms; Pants; Shawls; Shirts for infants, babies, toddlers and children; Shoes; Socks and stockings; Sports bra; Suspender belts; Swim wear; Swim trunks; T-shirts; Tights; Underclothes; Underpants; Waist bands; Waterskiing suits

Grounds for Opposition

No use of mark in commerce before application or amendment to allege use was filed	Trademark Act Sections 1(a) and (c)
Applicant not rightful owner of mark for identified goods or services	Trademark Act Section 1

Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)
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Attachments	Anew Notice of Opposition.pdf(60538 bytes)
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Signature	/bruno tarabichi/
Name	BRUNO TARABICHI
Date	11/13/2020

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

Axel Gothe,

Opposer,

v.

Shenzhen XinBaoKang Electronic Technology
Co., Ltd.,

Applicant.

Opposition No. _____
Application Serial No. 88/354,109
Mark: ANEW

NOTICE OF OPPOSITION

Axel Gothe (“Opposer”), an individual, believes he will be damaged by registration on the Principal Register of the mark ANEW shown in U.S. Application Serial No. 88/354,109 and hereby opposes the same.

Opposer was granted an extension of time until November 14, 2020 within which to file this Notice of Opposition.

As grounds for his opposition, Opposer alleges as follows:

1. Applicant owns U.S. trademark application Serial No. 88/907,991 for the HIP HOP ANEW design mark in connection with “footwear; headwear; jackets; pants; robes; sweat suits; t-shirts; bow ties” (the “HIP HOP ANEW Application”).

2. On August 14, 2020, the U.S. Patent and Trademark Office (“USPTO”) issued a nonfinal office action citing Applicant Shenzhen XinBaoKang Electronic Technology Co., Ltd.’s (“Applicant”) U.S. trademark application Serial No. 88/354,109 for the ANEW standard character mark in connection with “belts; coats; fabric sold as an integral component of finished clothing items, namely, coats and jackets; hats; hosiery; pajama bottoms; pants; shawls; shirts for infants, babies, toddlers, and children; shoes; socks and stockings; sports bra; suspender belts; swim wear; swim trunks; t-shirts; tights; underclothes; underpants; waist bands; waterskiing suits” (the “ANEW Application”).

3. On September 12, 2020, the USPTO suspended the HIP HOP ANEW Application pending the registration or abandonment of the ANEW Application.

CLAIM NO. 1: APPLICATION VOID AB INITIO FOR FAILURE TO USE WITH ANY GOODS

4. Opposer incorporates by reference the allegations in paragraphs 1-3.

5. On March 15, 2019, Applicant filed the ANEW Application based on use in interstate commerce.

6. On information and belief, Applicant was not using the ANEW mark in interstate commerce in connection with any of the goods listed in the ANEW Application as of March 15, 2019.

7. Accordingly, the ANEW Application is void *ab initio*.

CLAIM NO. 2: APPLICATION VOID FOR FAILURE TO USE WITH ALL GOODS

8. Opposer incorporates by reference the allegations in paragraphs 1-7.

9. On March 15, 2019, Applicant filed the ANEW Application based on use in interstate commerce.

10. On information and belief, Applicant was not using the ANEW mark in interstate commerce in connection with one or more of the goods listed in the ANEW Application as of March 15, 2019.

11. Accordingly, the ANEW Application is void *ab initio*.

CLAIM NO. 3: APPLICATION VOID DUE TO WRONG APPLICANT

12. Opposer incorporates by reference the allegations in paragraphs 1-11.

13. On March 15, 2019, Applicant filed the ANEW Application in its own name, i.e., Shenzhen XinBaoKang Electronic Technology Co., Ltd.

14. On information and belief, to the extent any use of the ANEW mark has even been made in United States commerce, such use was not made by Applicant and the wrong applicant was listed.

15. Accordingly, the ANEW Application is void *ab initio*.

CLAIM NO. 4: FRAUD ON THE USPTO

16. Opposer incorporates by reference the allegations in paragraphs 1-15.

17. On March 15, 2019, Applicant filed the ANEW Application stating under oath that it was using the ANEW mark in connection with all the goods listed in United States interstate commerce.

18. On information and belief, the representation was false because the Applicant was not using the ANEW mark in connection with any or all of the goods as of March 15, 2019.

19. The representation was material.

20. Applicant made the false, material representation knowingly with the intent to induce the USPTO grant registration of the mark.

21. Accordingly, registration of the ANEW Application should be refused due to fraud on the USPTO.

WHEREFORE, Opposer requests that registration of the mark sought to be registered herein, ANEW of Application Serial No. 88/354,109, be denied and that this opposition be sustained.

Dated: November 13, 2020

Respectfully submitted,

/s/ bruno tarabichi

Bruno Tarabichi

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Axel Gothe