

ESTTA Tracking number: **ESTTA1100014**

Filing date: **12/07/2020**

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	Abercrombie & Fitch Trading Co.
Granted to Date of previous extension	12/06/2020
Address	6301 FITCH PATH NEW ALBANY, OH 43054 UNITED STATES
Correspondence information	LINDSAY YEAKEL CAPPS SENIOR LEGAL COUNSEL ABERCROMBIE & FITCH TRADING CO. 6301 FITCH PATH NEW ALBANY, OH 43054 UNITED STATES Primary Email: <a href="mailto:ipdocketingwest@anfcorp.com">ipdocketingwest@anfcorp.com</a> 614-283-6500

**Applicant Information**

Application No.	87430079	Publication date	06/09/2020
Opposition Filing Date	12/07/2020	Opposition Period Ends	12/06/2020
Applicant	Phenix Salon, LLC 1084 N. EL CAMINO REAL, SUITE B #427 ENCINITAS, CA 92024 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. First Use: 2013/00/00 First Use In Commerce: 2013/00/00 All goods and services in the class are opposed, namely: Hair spray
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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.	3927049	Application Date	06/10/2010
Registration Date	03/01/2011	Foreign Priority Date	NONE

Word Mark	ABERCROMBIE CLUTCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2010/10/30 First Use In Commerce: 2010/10/30 Cologne; Fragrances for personal use		

U.S. Registration No.	3927048	Application Date	06/10/2010
Registration Date	03/01/2011	Foreign Priority Date	NONE
Word Mark	CLUTCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2010/10/30 First Use In Commerce: 2010/10/30 Cologne; Fragrances for personal use		

U.S. Registration No.	4511050	Application Date	12/23/2010
Registration Date	04/08/2014	Foreign Priority Date	NONE
Word Mark	CLUTCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2012/10/10 First Use In Commerce: 2012/10/10 Body spray used as a personal deodorant and as fragrance; Body sprays; Deodorants [ and antiperspirants ] for personal use		

U.S. Registration No.	5459749	Application Date	08/15/2016
Registration Date	05/01/2018	Foreign Priority Date	NONE
Word Mark	CLUTCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2010/10/30 First Use In Commerce: 2010/10/30 Air fragrancing preparations; Body wash; Hair wax; Non-medicated skin care preparations		

Attachments	CLUTCH_final.pdf(165256 bytes )
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Signature	/Lindsay Yeakel Capps/
Name	LINDSAY YEAKEL CAPPS
Date	12/07/2020

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

Abercrombie & Fitch Trading Co.,	)	
	)	Opposition No. _____
Opposer,	)	
	)	Application No. 87/430,079
	)	
v.	)	Subject Mark: CLUTCH
	)	
Phenix Salon, LLC	)	
	)	Published: June 09, 2020
	)	
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, Phenix Salon, LLC (“Applicant”) is a United States limited liability company with an address of 1084 N. El Camino Real, Suite B #427 Encinitas, California 92024 and owner of Application No. 87/430,079 (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 April 28, 2017 for use in connection with, hair spray in International Class 03. The Application was published for opposition on June 09, 2020. An extension of time to oppose was timely sought by Opposer and duly granted.

As grounds for the Opposition, it is alleged that:

1. The Opposer, Abercrombie & Fitch Co., is one of the largest manufacturers, wholesalers, and retailers of high-quality casual apparel, including personal care products for men, women, and

children. For over 10 years, Opposer's parent company and its predecessors in interest have manufactured and sold personal care products under the brand name CLUTCH, which is used alone and as ABERCROMBIE CLUTCH (the "A&F CLUTCH Marks").

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 the following US registrations for the A&F CLUTCH Marks:

MARK	REG. NO./ APP. NO.	REG. DATE/ APP. DATE	GOODS	FIRST USE DATE
ABERCROMBIE CLUTCH	Reg: 3927049	01-MAR- 2011	03 – Fragrances	30-OCT- 2010
CLUTCH	Reg: 3927048	01-MAR- 2011	03 – Fragrances	30-OCT- 2010
CLUTCH	Reg: 4511050	08-APR- 2014	03 – Fragrances and skincare products	10-OCT- 2012
CLUTCH	Reg: 5459749	01-MAY- 2018	03 – Fragrances and skincare products; Hair wax	30-OCT- 2010

4. In accordance with § 5 of the Federal Trademark Act, all use of the A&F CLUTCH Marks by Opposer's affiliated and related companies, as alleged herein, inures to the benefit of 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 three of the A&F CLUTCH Marks (Reg. Nos. 3,927,048; 3,927,049; and 4,511,050) 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 Opposer's exclusive right to use the A&F CLUTCH Marks in commerce.

7. Since at least as early as October of 2010, Opposer and its predecessors in interest have sold fragrances and personal care products under the A&F CLUTCH Marks, including but not limited to fragrances, hair wax and personal care products.

8. Opposer has spent substantial sums advertising its A&F CLUTCH Marks and its use of the A&F CLUTCH Marks has been valid since at least as early as each of the respective dates of first use and has not been abandoned.

9. Applicant is the owner of U.S. Application No. 87/430,079, which was filed on April 28, 2017 under § 1(a) of the Trademark Act, for the mark comprising of the word CLUTCH (hereinafter, "Phenix Salons CLUTCH Mark") for hair spray in International Class 03.

10. Opposer's filing date to register and registrations of the A&F CLUTCH Marks predates Applicant's filing date.

11. Opposer's use of the A&F CLUTCH Marks predates Applicant's filing date, and Applicant's alleged first use date of 2013.

12. Applicant's Phenix Salons CLUTCH Mark so closely resembles Opposer's previously used and registered A&F CLUTCH Mark in appearance and commercial impression so as to be likely to cause confusion, mistake or deception under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

13. Applicant's applied-for goods as set forth in the Application are identical and/or closely related to the goods set forth in Opposer's registrations for the A&F CLUTCH Marks.

14. Applicant's goods are likely to be sold to the same or overlapping classes of purchasers as Opposer's goods and are likely to be sold through the same channels of trade, as there are no limitations in the identification of goods in the respective registrations owned by Opposer and Applicant's Application.

15. 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 Phenix Salons CLUTCH Mark

emanate from and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer.

16. Registration of Applicant's Phenix Salons CLUTCH Mark will inevitably capitalize upon the distinctiveness of the A&F CLUTCH Marks, which have acquired renown as used by Opposer.

17. If Applicant's Phenix Salons CLUTCH Mark is registered, Applicant will receive a *prima facie* nationwide exclusive right to use a mark that is likely to cause confusion as to source, sponsorship and affiliation with the A&F CLUTCH Marks in commerce.

18. WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present Opposition be sustained in favor of A&F, and that Application No. 87/430,079 be refused registration.

Respectfully submitted,

Abercrombie & Fitch Trading Co.

By: /Lindsay Yeakel Capps/  
Lindsay Yeakel Capps  
Attorneys for Opposer  
6301 Fitch Path  
Columbus, Ohio 43054  
(614) 765-4303  
Lindsay\_Capps@anfcorp.com  
ipdocketingwest@anfcorp.com

Dated: 12/07/2020