

ESTTA Tracking number: **ESTTA1137878**

Filing date: **06/02/2021**

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	Mark-Edwards Apparel Inc./Vetements Mark-Edwards Inc.
Granted to Date of previous extension	06/02/2021
Address	8480, RUE JEANNE-MANCE MONTREAL, QC H2P2S3 CANADA
Attorney information	JENNIFER L. DEAN FAEGRE DRINKER BIDDLE & REATH LLP 1500 K STREET NW SUITE 1100 WASHINGTON, DC 20005 UNITED STATES Primary Email: tmlitdocket@faegredrinker.com Secondary Email(s): dctrademarks@faegredrinker.com, katlyn.moseley@faegredrinker.com, brian.coleman@faegredrinker.com No phone number provided.
Docket Number	

Applicant Information

Application No.	90354081	Publication date	02/02/2021
Opposition Filing Date	06/02/2021	Opposition Period Ends	06/02/2021
Applicant	L.A. T SHIRT & PRINT, INC. 2529 CHAMBERS STREET VERNON, CA 90028 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2016/11/01 First Use In Commerce: 2016/11/02 All goods and services in the class are opposed, namely: Hats; Hooded sweatshirts; Jackets; Long-sleeved shirts; T-shirts; Tank tops
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
The mark is generic	Trademark Act Sections 1, 2 and 45
Failure to function as a mark	Trademark Act Sections 1, 2 and 45
The mark is not inherently distinctive and has not	Trademark Act Sections 1, 2 and 45; and Section

acquired distinctiveness	2(f)
--------------------------	------

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	See Paragraph 12 of Notice of Opposition		
Goods/Services	tops and other clothing items		

Attachments	Notice of Opposition - Rose - L.A. T Shirt & Print Inc.pdf(422521 bytes)
-------------	---

Signature	/Katlyn M. Moseley/
Name	Katlyn M. Moseley
Date	06/02/2021

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

In re App. Ser. No. 90/354,081 –
Filed: December 2, 2020



MARK-EDWARDS APPAREL INC./
VETEMENTS MARK-EDWARDS INC., :

Opposer, :


v. : Opposition No. _____

L.A. T SHIRT & PRINT, INC., :

Applicant. :

NOTICE OF OPPOSITION

Mark-Edwards Apparel Inc./Vetements Mark-Edwards Inc., a Canadian corporation having a business address at 8480, Rue Jeanne-Mance, Montreal, Quebec Canada H2P2S3, believes and asserts that it will be damaged by the registration of the mark shown in application Serial

No. 90/354,081 –  (“Applicant’s Mark” or “Applicant’s Application”) for “Hats; Hooded sweatshirts; Jackets; Long-sleeved shirts; T-shirts; Tank tops.” Applicant’s Application was filed December 2, 2020 by L.A. T Shirt & Print, Inc., a California corporation having a business address at 2529 Chambers Street, Unit A, Vernon, California 90028. Opposer hereby opposes Applicant’s Application pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds for opposition, it is alleged that:

1. Opposer is a leading designer and manufacturer of clothing and accessories. Opposer designs, sells and distributes these goods in interstate and U.S. commerce.

2. Applicant's Mark consists of a single nondescript rose, without any meaningfully distinguishing characteristics, and is of a sort that commonly adorns clothing items and accessories in U.S. commerce.

3. Applicant's Mark serves as a mere ornamental design and not a trademark, and registration should be refused on the ground that Applicant's Mark fails to function as a trademark and has not acquired distinctiveness under Section 2(f) of the Trademark Act.

4. Applicant describes Applicant's Mark as follows: "The color(s) red and green is/are claimed as a feature of the mark. The mark consists of a red rose flower with a green stem and four green leaves, two leaves on the left side of the stem and two leaves on the right side of the stem."

5. Applicant's Mark consists of a common and ordinary red rose graphic that has been extensively used by third-party designers, manufacturers and sellers of clothing items in United States commerce. *See Exhibit A.*

6. Applicant's Mark lacks secondary meaning and is not recognized by consumers as an identifier of source of Applicant's goods.

7. Applicant's Mark does not function as an identifier of source of Applicant's goods and does not identify and distinguish Applicant's goods from others.

8. Applicant's claim of trademark rights to an ordinary red rose graphic for clothing is inconsistent with the Lanham Act, 15 U.S.C. § 1051 et seq., as Applicant is attempting to gain exclusive rights to a design that does not possess secondary meaning, that does not function as an identifier of source, and that others are free to use for clothing sold in United States commerce.

9. In the alternative, due to the extensive use of Applicant's Mark, or marks substantially identical thereto, in the clothing industry, Applicant's Mark has become generic for Applicant's goods and does not serve as a source identifier for Applicant.

10. Allowing Applicant to register Applicant's Mark in connection with clothing would amount to a grant of trademark rights in an inherently nondistinctive, generic design in violation of Section 2 of the Lanham Act, 15 U.S.C. § 1052.

11. In the alternative, and to the extent that Applicant's Mark is deemed otherwise registrable, registration of Applicant's Mark should be refused because Applicant lacks priority of rights.

12. Starting as early as July 5, 2013, Opposer has provided in interstate and U.S. commerce tops and other clothing items featuring varying versions of a red rose with a green stem and leaves, including the following:



(collectively, "Opposer's Marks"). Through its bona fide use of Opposer's Marks in connection with such goods, which use was and is in a regular or recurring manner, Opposer has acquired common-law trademark rights.

13. By virtue of Opposer's extensive sales, distribution and promotion in the USA, Opposer's Marks have become well-known for Opposer's goods, and have acquired a high degree of distinctiveness indicating source in Opposer.


14. Applicant cannot claim a priority date in connection with Applicant's Mark earlier than Opposer with respect to Opposer's Marks.

15. The goods for which Opposer possesses common-law rights in Opposer's Marks and the goods for which Applicant has applied to register Applicant's Mark are identical.

16. The goods for which Opposer possesses common-law rights in Opposer's Marks and the goods for which Applicant has applied to register Applicant's Mark are likely to be sold or distributed through the same or otherwise overlapping channels of trade.

17. Opposer's Marks and Applicant's Mark are similar in appearance and commercial impression.

18. On information and belief, Applicant's use and registration of Applicant's Mark is likely to cause confusion, mistake, or deception by having the public erroneously assume or believe that Applicant's goods emanate from Opposer, or that they are endorsed, licensed or sponsored by, or in some way associated or connected with Opposer, in view of Opposer's prior use of Opposer's Marks, all to Opposer's irreparable damage.

19. For the reasons set forth in ¶¶ 1-18, Opposer believes and asserts that it will be damaged by the registration of the mark in application Serial No. 90/354,081 –  . Accordingly, Opposer prays that this opposition be sustained and that Applicant be refused registration of Applicant's Mark for the goods set forth in application Serial No. 90/354,081.

The filing fee for this Notice of Opposition is being paid electronically. If for any reason the electronic payment is rejected, or if additional fees are required, please charge them to the deposit account of the undersigned, No. 50-0573.

Dated: June 2, 2021

Respectfully submitted,

Mark-Edwards Apparel Inc./Vetements Mark-
Edwards Inc.

By: /Brian A. Coleman/
Jennifer L. Dean
Brian A. Coleman
Katlyn M. Moseley
Faegre Drinker Biddle & Reath LLP
1500 K Street, N.W., Suite 1100
Washington D.C. 20005-1209
Phone: (202) 842-8800
Fax: (202) 842-8465
Attorneys for Opposer

Exhibit A

amazon.com/BLACKMYTH-Womens-Graphic-shirt-Medium/dp/B074QL47M9/ref=sr_1_10?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654068&sr=8-10

amazon Hello Select your address All Shirts with Rose Patches Hello, Sign in Account & Lists Returns & Orders Cart

All Best Sellers Customer Service Prime New Releases Today's Deals Books Pharmacy Fashion Kindle Books Toys & Games Gift Cards Amazon Home Registry Sell Celebrate with Pride

Amazon Fashion Women Men Kids Luggage Sales & Deals New Arrivals Our Brands prime wardrobe

NSQTBA Womens T Shirts V Neck Short Sleeve Summer Tops... 4.5 stars 883 \$18.99 prime

Visit the BLACKMYTH Store

BLACKMYTH Women's Cute Graphic T Shirt Rose Tops Teen Girl Tees

4.5 stars 399 ratings

Price: **\$11.99** & Free Returns on some sizes and colors

Fit: True to size. Order usual size.

Size: Select Size Chart

Color: Black



- 95% Cotton, 5% Spandex
- Soft, stretchy and breathable fabric provides exceptional comfort and durability.
- The tops with classic round neck design, short sleeve, fashion letter print.
- Suitable for different clothes on many occasion, any season.
- You can wear it for gym, work, yoga, etc.
- Please refer to the size measurement image before ordering.

To buy, select Size

Add to Cart

Add to List

Share

Women American Flag Print Tee Faith Family Freedom Short... 4.5 stars 545 \$16.99 prime

https://www.amazon.com/BLACKMYTH-Womens-Graphic-shirt-Medium/dp/B074QL47M9/ref=sr_1_10?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654068&sr=8-10

amazon.com/DIDK-Womens-Embroidered-Stripe-Sweatshirt/dp/B077D6BMKT/ref=sr_1_13?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654068&sr=8-13

amazon Hello, Sign In Account & Lists Returns & Orders Cart

All Best Sellers Customer Service Prime New Releases Today's Deals Books Pharmacy Fashion Kindle Books Toys & Games Gift Cards Amazon Home Registry Sell Welcome the sun, for less

Amazon Fashion Women Men Kids Luggage Sales & Deals New Arrivals Our Brands prime wardrobe

COOrun Women's Long Sleeve Workout Hoodies... 15% off coupon 53 119.99 prime

Visit the DIDK Store

DIDK Embroidered Rose Patch Stripe Sleeve Hoodie Sweatshirt


★★★★★ 892 ratings | 29 answered questions

Price: \$22.99 & Free Returns on some sizes and colors

Fit: True to size. Order usual size.

Size: Select Size Chart

Color: Black



- 95% Cotton, 5% Spandex
- Hooded with drawstring
- Banded cuff and hem
- Embroidered rose, long striped sleeves
- Fabric has some stretch
- Please refer to the item description below for size details

To buy, select Size

Add to Cart

Add to List

Share

Doublej Lightweight Thin Zip-Up Hoodie Jacket for Women... 173 132.99 prime

https://www.amazon.com/DIDK-Womens-Embroidered-Stripe-Sweatshirt/dp/B077D6BMKT/ref=sr_1_13?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654068&sr=8-13


amazon.com/SweatyRocks-Womens-Patch-Sleeve-Shirts/dp/B07VKSX7L5/ref=sr_1_48?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654068&sr=8-48

amazon Hello Select your address All Shirts with Rose Patches

Amazon Fashion Women Men Kids Luggage Sales & Deals New Arrivals

FMALL Women's Short Sleeve Shirts Loose fit Crew Neck... \$17.96 prime

Visit the SweatyRocks Store
SweatyRocks Women's Crop Cut Out Neck Top Long Sleeve T Shirts
 ★★★★★ 146 ratings | 3 answered questions
 Price: \$4.99 - \$16.99 & Free Returns on some sizes and colors
 Fit: Between sizes? Order a size up.
 Size: Select Size Chart
 Color: Embroidered Black Rose



- 95% Cotton, 5% Spandex
- Material: 5% Spandex
- long sleeve, cut out v neck, rose embroidered, crop length
- Great for Women/Juniors/Teen Girls. Suitable for Spring/Autumn
- Perfect for Casual/School/Work/Sports or daily life wear
- Please refer to the size measurement below before ordering

To buy, select Size
 Add to Cart
 Add to List
 Share

FMALL Women's Short Sleeve Shirts Loose fit Crew Neck... \$17.96 prime

https://www.amazon.com/SweatyRocks-Womens-Patch-Sleeve-Shirts/dp/B07VKSX7L5/ref=sr_1_48?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654068&sr=8-48

amazon.com/Women-Rhinestones-T-Shirt-Ripped-1X-Large/dp/B06Y4YD7TZ/ref=src_1_55?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654162&sr=8-55

amazon Hello Select your address All Shirts with Rose Patches

Amazon Fashion Women Men Kids Luggage Sales & Deals New Arrivals

SAMPEEL Women's Basic V Neck Short Sleeve T Shirts Summer 13,111 \$17.99 prime

Brand: Fashion2ne1
Fashion2ne1 Women Roses Patch & Rhinestones T-Shirt Ripped Cut Out Short 01
 8 ratings
 Price: \$17.99 - \$20.99
 Fit: True to size. Order usual size.


Size: Select Size Chart

- 95% Cotton, 5% Spandex
- Women Roses Patch & Rhinestones T-Shirt Ripped Cut Out Short 01

Skeleton Hand Red Rose Flower T-Shirt 105 \$19.99 prime

To buy, select Size Add to Cart Add to List Share

simlu Sexy and Trendy Off Shoulder Dolman Tops Dolman Tops for Women Sexy Off The Shoulder Tops Banded Waistband... 7,219 \$17.99 prime



https://www.amazon.com/Women-Rhinestones-T-Shirt-Ripped-1X-Large/dp/B06Y4YD7TZ/ref=src_1_55?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654162&sr=8-55

amazon.com/ROMWE-Hoodie-Sweatshirt-Sleeve-Embroidered/dp/B075DY3SHY/ref=sr_1_60?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654162&sr=8-60

amazon Hello Select your address All Shirts with Rose Patches

Amazon Fashion Women Men Kids Luggage Sales & Deals New Arrivals

COOrun Women's Long Sleeve Workout Hoodies... 15% off coupon \$19.99 vprime

Visit the ROMWE Store

ROMWE Women's Casual Long Sleeve Crop Sweatshirt Hoodies Pullover Top

★★★★☆ 505 ratings | 20 answered questions

Price: **\$17.99 - \$18.99** & Free Returns on some sizes and colors

Fit: True to size. Order usual size. =

Size: Select Size Chart

Color: Black Raw Hem Rose



- Crop Sweatshirt with hood
- Hem: cool raw hem design and well made hem, two styles for you
- Color: solid, plain, rose patched, tie dye print, butterfly patched, rose floral patched, more colors is coming soon.
- Style: Fashion Hoodies and Sweatshirts
- XS-Shoulder:20.6", Bust:38.2", Length:16.3"/5-Shoulder:21.5", Bust:39.8", Length:16.5"/M-Shoulder:22.3", Bust:41.3", Length:16.8"/L-Shoulder:23.6", Bust:43.7", Length:17.2"/XL-Shoulder:24.8", Bust:45.1", Length:17.6"

To buy, select Size

Add to Cart

Add to List

Share

Doubtju Lightweight Thin Zip-Up Hoodie Jacket for Women... ★★★★★ 175 \$32.99 vprime

https://www.amazon.com/ROMWE-Hoodie-Sweatshirt-Sleeve-Embroidered/dp/B075DY3SHY/ref=sr_1_60?dchild=1&keywords=Shirts+with+Rose+Patches&qid=1622654162&sr=8-60

amazon.com/Floral-T-Shirts-Rose-Flower-T-Shirt/dp/B07KWNX4K2/ref=sr_1_36?dchild=1&keywords=Rose+Tee&qid=1622654081&sr=8-36

amazon Hello, Sign in Account & Lists Returns & Orders Cart

All Best Sellers Customer Service Prime New Releases Today's Deals Books Pharmacy Fashion Kindle Books Toys & Games Gift Cards Amazon Home

Amazon Fashion Women Men Kids Luggage Sales & Deals New Arrivals

I'm Not Clumsy Funny Sayings Sarcastic Men Women Boys... \$19.99 prime

Visit the Floral Store

Single Red Rose Flower T-Shirt

★★★★★ 14 ratings

Price: \$17.99 Get Fast, Free Shipping with Amazon Prime
FREE Returns

Fit Type: Men
Men Women Youth

Color: Black

Size: Select

- Solid colors: 100% Cotton; Heather Grey: 90% Cotton, 10% Polyester; All Other Heathers: 50% Cotton, 50% Polyester
- Imported
- Machine wash cold with like colors, dry low heat.
- Great for anyone who loves roses, flowers, floral designs and nature
- Great romantic gift to show that special girl/woman how much you love them on valentines day.
- Linings: Flat-top fit, Double-needle collar and bottom hem

To buy, select Size
Add to Cart
Add to List

Share

Skeleton Hand Red Rose Flower T-Shirt
★★★★★ 103
\$19.99 prime



https://www.amazon.com/Floral-T-Shirts-Rose-Flower-T-Shirt/dp/B07KWNX4K2/ref=sr_1_36?dchild=1&keywords=Rose+Tee&qid=1622654081&sr=8-36