

ESTTA Tracking number: **ESTTA1186920**

Filing date: **01/26/2022**

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	Wrangler Apparel Corp.
Granted to date of previous extension	01/26/2022
Address	3411 SILVERSIDE ROAD WILMINGTON, DE 19810 UNITED STATES

Attorney information	PAUL J. KENNEDY TROUTMAN PEPPER HAMILTON SANDERS LLP 3000 TWO LOGAN SQUARE EIGHTEENTH AND ARCH STREETS PHILADELPHIA, PA 19103-2799 UNITED STATES Primary email: paul.kennedy@troutman.com Secondary email(s): sean.mcconnell@troutman.com, theresa.catalano@troutman.com, sarah.introna@troutman.com 215-981-4194
Docket no.	

Applicant information

Application no.	90332530	Publication date	09/28/2021
Opposition filing date	01/26/2022	Opposition period ends	01/26/2022
Applicant	Balance Athletica, LLC 5303 HAVANA STREET, #150 DENVER, CO 80239 UNITED STATES		

Goods/services affected by opposition

Class 025. First Use: 2018/08/00 First Use In Commerce: 2018/08/00 All goods and services in the class are opposed, namely: Bottoms as clothing; Capri pants; Leggings; Pants; Shorts; Tights; Athletic bottoms; Athletic pants; Athletic shorts; Athletic tights; Crop pants; Gym pants; Gym shorts; Jogging pants; Lounge pants; Sports pants; Stretch pants; Yoga pants

Grounds for opposition

Failure to function as a mark	Trademark Act Sections 1, 2 and 45
The mark is not inherently distinctive and has not acquired distinctiveness	Trademark Act Sections 1, 2 and 45; and Section 2(f)

Attachments	Notice of Opposition - Balance Athletica.pdf(218663 bytes)
Signature	/Paul J. Kennedy/
Name	PAUL J. KENNEDY
Date	01/26/2022

and splits into two lines that extend up and curve toward opposing sides of the garment near the waist forming a “Y” shape” in International Class 25 for “Bottoms as clothing; Capri pants; Leggings; Pants; Shorts; Tights; Athletic bottoms; Athletic pants; Athletic shorts; Athletic tights; Crop pants; Gym pants; Gym shorts; Jogging pants; Lounge pants; Sports pants; Stretch pants; Yoga pants” (“Applicants Mark”).

2. Applicant is not now, and never was, entitled to registration on the Principal Register of Applicant’s Mark either on November 20, 2020, the date of Applicant’s filing of the application, or on September 28, 2021, the date of publication in the Official Gazette.

3. Applicant’s Mark has no distinctiveness, either inherent or acquired.

4. Applicant’s Mark does not serve to identify the goods or services of Applicant.

5. Applicant’s Mark does not serve to distinguish Applicant’s goods from the goods sold by others.

6. Applicant’s Mark consists solely of stitching on the rear portion of a garment that contains two lines extended in a curve on opposing sides of the garment that forms a “Y” shape.

7. Upon information and belief, the design of Applicant’s Mark is a common design and/or is a mere refinement of common designs that are applied to the types of products identified in Applicant’s Mark.

8. Upon information and belief, Applicant has touted the functional aspects and/or aesthetic enhancing benefit of the design elements and/or design of Applicant’s Mark.

9. Accordingly, Applicant's Mark is functional, ornamental, decorative, descriptive and/or commonly-adopted by others and, therefore, is not viewed as a trademark, and is thus unregistrable.

10. Further, after Applicant's application was refused registration because it is "merely a decorative or ornamental feature of applicant's clothing and, thus, does not function as a trademark to indicate the source of applicant's clothing," Applicant submitted a response claiming, in part, that Applicant's Mark functions as a strong source identifier due to its distinctive design relative to other designs common in the apparel industry and has acquired distinctiveness."

11. Upon information and belief, Applicant's use of Applicant's Mark has not become distinctive of the Applicant's goods and/or services.

12. Upon information and belief, there are several third parties who have long employed the same or very similar "Y" stitching design on similar products in the same placement. This includes Opposer.

13. The consumers and channels of trade and advertising for Applicant's, third parties' and Opposer's goods directly overlap.

14. Applicant is a present or potential competitor of Opposer.

15. Opposer has an interest in using functional, ornamental, generic, decorative, descriptive designs in its business.

16. Opposer is likely to be damaged by registration of Applicant's Mark. The *prima facie* effect of such registration will tend to impair Opposer's right to use this functional, ornamental, decorative, and/or descriptive design.

WHEREFORE, Opposer requests that registration of Applicant's Mark (Serial No. 90/332530) be denied to Applicant and this opposition be sustained.

Respectfully submitted,

Dated: January 26, 2022

/Paul J. Kennedy/

Paul J. Kennedy

Sean P. McConnell

TROUTMAN PEPPER HAMILTON SANDERS LLP

3000 Two Logan Square

Eighteenth and Arch Streets

Philadelphia, PA 19103-2799

(215) 981-4194

Attorneys for Opposer

Wrangler Apparel Corp.

CERTIFICATE OF ESTTA FILING

I, Paul J. Kennedy, hereby certify that on January 26, 2022, this Notice of Opposition is being electronically filed with the U.S. Patent and Trademark Office Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313, via ESTTA.

/Paul J. Kennedy/

Paul J. Kennedy

CERTIFICATE OF SERVICE

I, Paul J. Kennedy, hereby certify that on January 26, 2022, a true and correct courtesy copy of the foregoing Notice of Opposition was served via electronic mail (jon.milgrom@milgromlaw.com) upon the following:

Jonathan Milgrom, Esquire
MILGROM & DASKAM
1550 Larimer Street, #503
Denver, CO 80202

Attorneys for Applicant

/Paul J. Kennedy/
Paul J. Kennedy
