

ESTTA Tracking number: **ESTTA1201753**

Filing date: **04/08/2022**

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	Jay-Y Enterprise Co., Inc.
Granted to date of previous extension	04/09/2022
Address	280 S. LEMON AVENUE #686 WALNUT, CA 91788 UNITED STATES
Attorney information	MATTHEW J. CLARK FROST BROWN TODD LLC 201 N. ILLINOIS ST. STE. 1900 INDIANAPOLIS, IN 46204 UNITED STATES Primary email: mclark@fbtlaw.com Secondary email(s): fbtiplitigation@fbtlaw.com, sberten@fbtlaw.com (317) 237 -3848
Docket no.	

Applicant information

Application no.	90428546	Publication date	02/08/2022
Opposition filing date	04/08/2022	Opposition period ends	04/09/2022
Applicant	Shen Zhen Shi Mei Mi Ke Ji You Xian Gong Si RM 211C, BLDG B, WISDOM VALLEY IND PARK, 8 CHANGFA M RD,BANTIAN ST, LONGGANG DIST, SHENZHEN, GUANGDONG, 518116 CHINA		


Goods/services affected by opposition

Class 009. First Use: Jul 8, 2020 First Use In Commerce: Jul 8, 2020
All goods and services in the class are opposed, namely: Computer peripheral devices; Diagnostic apparatus for testing food; Downloadable computer software for controlling and managing access server applications; Downloadable software in the nature of a mobile application for use in database management, for use as a spreadsheet and for word processing; Earphones; Eyeglasses; Locks, electric; Measuring rules; Protective face masks for the prevention of accident or injury; Safety goggles; Scales; Scales with body mass analyzers; Smartwatches; Stands adapted for laptops; Tool measuring instruments

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was due	Trademark Act Section 1(a) and (c)

Mark cited by opposer as basis for opposition

U.S. registration no.	4525662	Application date	09/26/2013
Register	Principal		
Registration date	05/06/2014	Foreign priority date	NONE
Word mark	LOCS		
Design mark			
Description of mark	NONE		
Goods/services	Class 009. First use: First Use: Sep 1, 2005 First Use In Commerce: Sep 1, 2005 Eyeglass cases; Eyewear; Protective glasses; Sunglasses		

Attachments	86075514#TMSN.png(bytes) Notice_of_Opp_Against_PESLOC_App.pdf(120908 bytes) EXHIBIT_A_Notice_of_Opp_Against_PESLOC_App.pdf(58269 bytes)
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Signature	/Matthew J. Clark/
Name	MATTHEW J. CLARK
Date	04/08/2022

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

In the Matter of Serial No. 90/428,546
Mark: PESLOC
Publication Date: February 8, 2022
30-Day Extension Filed
Deadline to File Opposition: April 9, 2022

JAY-Y ENTERPRISE CO., INC.,

Opposer,

v.

SHEN ZHEN SHI MEI MI KE JI YOU
XIAN GONG SI
Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Jay-Y Enterprise Co., Inc., a California corporation with a principal place of business at 280 S. Lemon Avenue, #686, Walnut, California 91788 (“**Jay-Y**”), believes it will be damaged by the registration of the PESLOC trademark (the “**PESLOC Mark**”) as shown in U.S. Application Serial No. 90/428,546 filed by Shen Zhen Shi Mei Mi Ke Ji You Xian Gong Si (“**Applicant**”), and hereby opposes the same pursuant to Trademark Act § 13(a), 15 U.S.C. § 1063(a).

As grounds for its opposition, Jay-Y alleges as follows:

1. Jay-Y is a manufacturer, importer and wholesale distributor of eyewear and accessories related thereto with over thirty years of experience in the eyewear and optical industry.

2. Jay-Y sells a wide selection of eyewear for men, women and children under an assortment of exclusive brands throughout the United States, one of which is the brand LOCS.

JAY-Y'S LOCS MARK

3. Jay-Y has continuously used in commerce the mark LOCS to identify and distinguish its aforementioned eyewear since at least as early as September 1, 2005 (“**LOCS Mark**”).

4. Based on Jay-Y’s long time and exclusive use and promotion of the LOCS Mark, as well as the fanciful nature of the LOCS Mark in relation to the goods offered under it, consumers and businesses identify such goods offered under the LOCS Mark as originating from or otherwise affiliated or connected with Jay-Y or a single source.

5. As a result of Jay-Y’s long time and exclusive use and promotion of the LOCS Mark, the LOCS Mark has acquired valuable reputation and goodwill.

6. In addition to common law rights Jay-Y has gained through its prior use of the LOCS Mark, Jay-Y also owns the following trademark registration for the LOCS Mark on the Principal Register of the United States Patent and Trademark Office (the “**LOCS Registration**”):

Trademark	Filing Date	Reg. Date	Reg. No.	Goods
LOCS	09/26/2013	05/06/2014	4525662	Class 9: Eyeglass cases; Eyewear; Protective glasses; Sunglasses

7. Pursuant to 37 C.F.R. § 2.122(d)(1), a current printout of information from the electronic database records of the United States Patent and Trademark Office showing the

current status and title of the LOCS Registration is attached to this Notice of Opposition as Exhibit A.

8. The certificate of registration for the LOCS Registration has been registered on the Principal Register for more than five years and has become incontestable within the meaning of § 15 of the Trademark Act, 15 U.S.C. § 1065. Accordingly, the certificate of registration serves as conclusive evidence of the validity of the registered mark and of the registration of the mark, of Jay-Y's ownership of the registered mark, and of Jay-Y's exclusive right to use the registered mark in commerce with the registered goods.

APPLICANT'S PESLOC MARK

9. Despite Jay-Y's prior rights in the LOCS Mark and in the face of the LOCS Registration, Applicant filed on December 30, 2020 U.S. Trademark Application Serial No. 90/428,546 to register on the Principal Register the PESLOC Mark in standard characters used in connection with the following goods in international class 9 ("**PESLOC Application**"): "Computer peripheral devices; Diagnostic apparatus for testing food; Downloadable computer software for controlling and managing access server applications; Downloadable software in the nature of a mobile application for use in database management, for use as a spreadsheet and for word processing; Earphones; Eyeglasses; Locks, electric; Measuring rules; Protective face masks for the prevention of accident or injury; Safety goggles; Scales; Scales with body mass analyzers; Smartwatches [sic]; Stands adapted for laptops; Tool measuring instruments" (the "**Applied-for Goods**").

10. Applicant filed the PESLOC Application based on its alleged use of the PESLOC Mark in commerce on or in connection with the Applied-for Goods.

11. Applicant alleges in the PESLOC Application that the PESLOC Mark was first used by the Applicant or the Applicant's related company or licensee predecessor in interest at least as early as July 8, 2020, and first used in commerce at least as early as July 8, 2020.

12. In the PESLOC Application, Applicant's Principal, Che Yan Yang, represented to the United States Patent and Trademark Office that Applicant was actively using the PESLOC Mark in commerce on or in connection with each of the Applied-for Goods as of the PESLOC Application's filing date.

13. Upon information and belief, Applicant was not using, and had not used, the PESLOC Mark in commerce on or in connection with each of the Applied-for Goods as of the filing date of the PESLOC Application.

14. Upon information and belief, Applicant was not using, and had not used, the PESLOC Mark in commerce on or in connection with any of the Applied-for Goods as of the filing date of the PESLOC Application.

CLAIM I – NO BONA-FIDE USE IN COMMERCE

15. Jay-Y hereby realleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

16. As alleged above, on and prior to the filing date of the PESLOC Application, Applicant made no use of the PESLOC Mark in commerce, as defined by Trademark Act § 45, 15 U.S.C. §1127, on or in connection with any of the Applied-for Goods.

17. Accordingly, Jay-Y respectfully requests that this opposition be sustained and the registration of the PESLOC Application be refused pursuant to Trademark Act §§1(a), 13(a), 15 U.S.C. §§ 1051(a), 1063(a), as it is *void ab initio* because Applicant did not make a bona fide use of the PESLOC Mark in commerce on or in connection with any of the Applied-for Goods on and prior to the filing date of the PESLOC Application.

CLAIM II – PRIORITY AND LIKELIHOOD OF CONFUSION

18. Jay-Y hereby realleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

19. As alleged above, Jay-Y has continuously used in commerce the LOCS Mark to identify and distinguish its eyewear since at least as early as September 1, 2005, which is before Applicant's alleged actual first use of the PESLOC Mark.

20. Accordingly, Jay-Y's use of the LOCS Mark has priority over the PESLOC Mark and the PESLOC Application.

21. The PESLOC Mark is highly similar to the LOCS Mark in sight, sound, meaning and commercial impression.

22. The Applied-for Goods are identical to, and related in the minds of relevant consumers to, the goods in which the LOCS Mark is used on or in connection with and as specified in the LOCS Registration.

23. Because the PESLOC Application and LOCS Registration have no restrictions as to channels of trade or class of purchasers, the Applied-for Goods are presumed to travel in the

same channels of trade to the same class of purchasers as those of the LOCS Mark and LOCS Registration.

24. The PESLOC Mark so resembles the previously used LOCS Mark, and as identified in the PESLOC Application, as to be likely when used on or in connection with the Applied-for Goods to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Jay-Y, or as to the origin, sponsorship or approval of the Applied-for Goods or commercial activities by Jay-Y, all in violation of § 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), with consequent injury to the public and Jay-Y's trade and goodwill.

25. If the PESLOC Mark is granted a registration, Applicant would obtain a *prima facie* exclusive right to use the mark in commerce on or in connection with the registered goods. Thus, such registration would be in furtherance of the injury to the public and Jay-Y's trade and goodwill.

26. Therefore, Jay-Y respectfully requests that this opposition be sustained and that the registration of the PESLOC Application be refused pursuant to §§ 2(d) and 13(a) of the Trademark Act, 15 U.S.C. §§ 1052(d), 1063(a).

Date: April 8, 2022

Respectfully submitted,

/Matthew J. Clark/

Matthew J. Clark
Samantha M. Berten
Frost Brown Todd LLC
201 N. Illinois St., Ste. 1900
Indianapolis, Indiana 46204
Telephone: (317) 237-3800
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Attorneys for Jay-Y Enterprise Co., Inc.

EXHIBIT A

Generated on: This page was generated by TSDR on 2022-04-08 10:35:14 EDT

Mark: LOCS

LOCS

US Serial Number: 86075514

Application Filing Date: Sep. 26, 2013

US Registration Number: 4525662

Registration Date: May 06, 2014

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Jul. 29, 2019

Publication Date: Feb. 18, 2014

Mark Information

Mark Literal Elements: LOCS

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US Registrations: 3418299

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Eyeglass cases; Eyewear; Protective glasses; Sunglasses

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 01, 2005

Use in Commerce: Sep. 01, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Jay-Y Enterprise Co., Inc.

Owner Address: 280 S Lemon Avenue #686
Walnut, CALIFORNIA UNITED STATES 91788

Legal Entity Type: CORPORATION

State or Country CALIFORNIA
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Constance R. Lindman

Attorney Primary trademarks@fbtlaw.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Constance R. Lindman
Name/Address: Frost Brown Todd LLC
201 N ILLINOIS ST.
Suite 1900
INDIANAPOLIS, INDIANA UNITED STATES 46204

Phone: 317-237-3800

Fax: 317-237-3900

Correspondent e- trademarks@fbtlaw.com clindman@fbtlaw.com
mail: clark@fbtlaw.com ajackson@fbtlaw.com

Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 29, 2019	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jul. 29, 2019	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	70131
Jul. 29, 2019	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70131
Jun. 12, 2019	TEAS SECTION 8 & 15 RECEIVED	
May 06, 2019	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Jan. 23, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jan. 23, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Apr. 03, 2015	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Apr. 03, 2015	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
May 06, 2014	REGISTERED-PRINCIPAL REGISTER	
Mar. 21, 2014	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Feb. 18, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 18, 2014	PUBLISHED FOR OPPOSITION	
Jan. 29, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 09, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 09, 2014	ASSIGNED TO EXAMINER	76081
Oct. 03, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 30, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 116

Date in Location: Jul. 29, 2019

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: [91275079](#) Filing Date: Mar 16, 2022
Status: Pending Status Date: Mar 16, 2022
Interlocutory Attorney: REBECCA J STEMPIEN_COYLE

Defendant

Name: Troy Cozart
Correspondent Address: TROY COZART
1514 N BROADWAY
BALTIMORE MD UNITED STATES , 21213
Correspondent e-mail: cozartcustom@gmail.com , tinsy00@aol.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
LOCS AND LOYALTY	Opposition Pending	90652600	

Plaintiff(s)

Name: Jay-Y Enterprise Co., Inc.
Correspondent Address: MATTHEW J. CLARK
FROST BROWN TODD LLC
201 N. ILLINOIS ST., SUITE 1900
INDIANAPOLIS IN UNITED STATES , 46204
Correspondent e-mail: mclark@fbtlaw.com , clindman@fbtlaw.com , fbtiplitigation@fbtlaw.com , sberten@fbtlaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
LOCS	Section 8 - Accepted	85295188	4667835
LOCS	Section 8 and 15 - Accepted and Acknowledged	86075514	4525662

Prosecution History

Entry Number	History Text	Date	Due Date
3	INSTITUTED	Mar 16, 2022	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 16, 2022	Apr 25, 2022
1	FILED AND FEE	Mar 16, 2022	

Type of Proceeding: Opposition

Proceeding Number: [91237259](#) Filing Date: Oct 17, 2017
Status: Terminated Status Date: Dec 10, 2018
Interlocutory Attorney: ANN LINNEHAN VOGLER

Defendant

Name: Carving Image LLC
Correspondent Address: JACKSON MACDONALD
MAC LEGAL LLC
PO BOX 86846
PORTLAND OR UNITED STATES , 97286
Correspondent e-mail: jackson@maclgl.com

Associated marks

Serial	Registration
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Mark	Application Status	Number	Number
CITYLOCS	ABANDONED-FAILURE TO RESPOND OR LATE RESPONSE	87322591	

Plaintiff(s)

Name: Jay-Y Enterprise Co., Inc.

Correspondent Address: CONSTANCE R LINDMAN
SMITHAMUNDSEN LLC
201 N ILLINOIS ST, S TOWER SUITE 1400
INDIANAPOLIS IN UNITED STATES , 46204

Correspondent e-mail: clindman@salawus.com , mclark@salawus.com , ajackson@salawus.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
LOCS	Section 8 and 15 - Accepted and Acknowledged	86075514	4525662
LOCS	REGISTERED AND RENEWED	78800219	3418299
LOCS	REGISTERED AND RENEWED	85304190	4060129

Prosecution History

Entry Number	History Text	Date	Due Date
12	TERMINATED	Dec 10, 2018	
11	BD DECISION: OPP SUSTAINED	Dec 10, 2018	
10	P RESP TO BD ORDER/INQUIRY	Nov 28, 2018	
9	RESPONSE DUE 30 DAYS (DUE DATE)	Oct 31, 2018	Nov 30, 2018
8	SUSPENDED	Dec 04, 2017	
7	PROCEEDINGS RESUMED	Nov 28, 2017	
6	D APPEARANCE / POWER OF ATTORNEY	Nov 07, 2017	
5	RESPONSE DUE 30 DAYS (DUE DATE)	Oct 25, 2017	Nov 24, 2017
4	D REQ TO W/DRAW AS ATTORNEY	Oct 17, 2017	
3	PENDING, INSTITUTED	Oct 17, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Oct 17, 2017	Nov 26, 2017
1	FILED AND FEE	Oct 17, 2017	