

ESTTA Tracking number: **ESTTA1224262**

Filing date: **07/26/2022**

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	Shenzhen Shitaiyu Trading Co., Ltd.		
Entity	limited company	Citizenship	China
Address	ROOM 809, 8TH FLOOR, TIANJUN BUILDING NO. 3001, DONGMEN SOUTH ROAD SHENZHEN, 511464 CHINA		
Attorney information	SHENGMAO MU WHITEWOOD LAW PLLC 57 WEST, 57TH STREET 3RD AND 4TH FLOORS NEW YORK, NY 10019 UNITED STATES Primary email: smu@whitewoodlaw.com 9178588018		
Docket no.			

Applicant information

Application no.	90748413	Publication date	07/26/2022
Opposition filing date	07/26/2022	Opposition period ends	08/25/2022
Applicant	Guangzhou Enshui e-commerce Co., Ltd ZHONGHENG INTERNATIONAL COMMERCIAL CITY 173 YINGBIN AVENUE, HUADU DISTRICT GUANGZHOU, 510000 CHINA		

Goods/services affected by opposition

Class 025. First Use: Apr 21, 2016 First Use In Commerce: Apr 21, 2016 All goods and services in the class are opposed, namely: Aprons; Gloves; Hats; Hosiery; Socks; Sweatsocks; Artificial flower headdresses; Boat socks; Body shirts; Head scarves; Non-slip socks; Sport stockings; Sweat-absorbent socks; Sweat-absorbent stockings; Thermal socks; Thigh high stockings; Toe socks; Woollen socks; Yoga socks

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
The mark comprises matter that, as a whole, is functional	Trademark Act Section 2(e)(5)
No use of mark in commerce before application, amendment to allege use, or statement of use	Trademark Act Section 1(a) and (c)

was due	
Failure to function as a mark	Trademark Act Sections 1, 2 and 45
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Mark cited by opposer as basis for opposition

U.S. application/ registration no.	NONE	Application date	NONE
Register	NONE		
Registration date	NONE		
Mark	OMG I'M AN ADULT NOW		
Goods/services	socks and apparel		

Attachments	TTAB_ Notice of Opposition.pdf(116684 bytes)
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Signature	/Shengmao Mu/
Name	Shengmao Mu
Date	07/26/2022

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

In the Matter of Application Serial No. 90748413
For the mark: OMG I'M AN ADULT NOW
Published: July 26, 2022

	X	
Shenzhen Shitaiyu Trading Co., Ltd.,	:	
	:	Opposition No. _____
Opposer,	:	
	:	
v.	:	
	:	
Guangzhou Enshui e-commerce Co., Ltd.,	:	
	:	
Applicant.	:	
	X	

NOTICE OF OPPOSITION

Shenzhen Shitaiyu Trading Co., Ltd. ("Opposer"), a limited company organized and existing under the laws of China with a principal place of business in Shenzhen China, believes that it will be damaged by the issuance of a registration for the mark: OMG I'M AN ADULT NOW as shown in Guangzhou Enshui e-commerce Co., Ltd.'s ("Applicant") Application Serial No. 90748413 (the "Challenged Application") in connection various goods in International Class 25, and hereby opposes the Challenged Application all goods in this Application on grounds of fraud and nonuse pursuant to Section 13 of the Lanham Trademark Act of 1946 ("Lanham Act"), 15 U.S.C. § 1063, failure to function as a trademark, likelihood of confusion with Opposer's use of the same mark, if such mark functions as a trademark, pursuant to 15 U.S.C. § 1052(d), and

dilution of a famous mark under 15 U.S.C. § 1125(c). As grounds for opposition, Opposer alleges as follows:

1. Opposer is and has been in the business of clothing and apparel since 2015.

In connection with this business, Opposer offers and sells clothing and apparel.

2. Opposer has used the phrase OMG I'M AN ADULT NOW in U.S.

commerce in connection with clothing and apparel since at least as early as 2020. As a result of this use, consumers in the United States have come to associate the phrase OMG I'M AN ADULT NOW as used in connection with these goods, with Opposer and Opposer's goods.

Opposer therefore is the owner of common law rights in OMG I'M AN ADULT NOW in connection with clothing and apparel.

3. Because Opposer is in the business of manufacturing/distributing/selling

the goods identified in the Challenged Application, namely Aprons; Gloves; Hats; Hosiery;

Socks; Sweatsocks; Artificial flower headdresses; Boat socks; Body shirts; Head scarves; Non-slip socks; Sport stockings; Sweat-absorbent socks; Sweat-absorbent stockings; Thermal socks;

Thigh high stockings; Toe socks; Woollen socks; Yoga socks, and is using the phrase OMG I'M

AN ADULT NOW in connection with these goods, the Challenged Application and any resulting

registration interfere with the Opposer's current business. Opposer therefore has a real interest in

opposing the Challenged Application and the entitlement to a statutory cause of action to bring

this action.

FIRST GROUND FOR OPPOSITION — FRAUD AND NONUSE

4. Opposer realleges and incorporates by reference the allegations in the

previous paragraphs as if set forth full herein.

5. On belief and information, Applicant was organized in China as a limited company on March 10, 2020.

6. On 06/02/2021, Applicant submitted the application, and alleged that it used the so-called mark as early as 04/21/2016. This allegation constitutes fraud because Applicant's first date of use of the mark is earlier than the existence of Applicant. It is impossible that Applicant could use the mark before it is organized.

7. On 06/02/2021, Applicant provided falsified specimen based on a fake website http://bobauna.com/index.php?route=product/product&product_id=197, which was never accessible or functional.

8. On 05/20/2022, Applicant provided substituted specimen based on another fake website https://www.iooodu.com/omg-i'm-an-adult-now-aprons-plaid-apron-tartan-buffalo-cook-aprons?search=OMG&category_id=0, which contains no identifying information about Applicant. This website is believed to be established around 05/20/2022, for the sole purpose of obtaining the alleged mark and is not functional in terms of providing goods or services to customers.

9. On information and belief, and as evidence obtained through discovery in this proceeding will likely further show, Applicant and its attorney Kanakia in this application knew the Representation was false at the time it was made.

10. The only reasonable inference from the foregoing is that Kanakia made the Representation on Applicant's behalf to mislead the USPTO and to cause the USPTO to approve the Challenged Application for publication and grant a registration for the OMG I'M AN ADULT NOW mark.

11. The false Representation was material because, but for the false Representation, the USPTO would not have approved the Challenged Application for publication. However, in reliance on the false Representation, the USPTO approved the Challenged Application for publication and registration on July 6, 2022.

12. Therefore, Applicant defrauded the USPTO by providing falsified specimen based on fake websites and never used the alleged mark in commerce.

13. As a further basis for opposition, because Applicant was not using OMG I'M AN ADULT NOW mark in connection with any goods when the Applicant filed the Challenged Application based on actual use, the Challenged Application should be denied in its entirety.

**SECOND GROUND FOR OPPOSITION—FAILURE TO FUNCTION AS A
TRADEMARK**

14. Opposer realleges and incorporates by reference the allegations in the previous paragraphs as if set forth full herein.

15. Alternatively, Applicant's use of the alleged mark is merely a decorative or ornamental feature of the packaging for the goods and, thus, does not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others.

16. Applicant printed the words OMG I'M AN ADULT NOW on its so-called specimen. However, it does not indicate the source of the goods as it does not contain any identifiable information of Applicant. Therefore, the usage of the alleged mark failed to function as a trademark.

17.

**THIRD GROUND FOR OPPOSITION— LIKELIHOOD OF CONFUSION WITH
OPPOSER’S USE OF THE SAME MARK**

18. Opposer realleges and incorporates by reference the allegations in the previous paragraphs as if set forth full herein.

19. Opposer has used phrase OMG I'M AN ADULT NOW as a trademark since January 14, 2020 in connection with the distribution, offering for sale, sale, marketing, advertising, and promotion of socks.

20. As a result of its widespread, continuous, and exclusive use of the OMG I'M AN ADULT NOW Mark to identify its goods and Opposer as their source, Opposer owns valid and subsisting common law rights to the OMG I'M AN ADULT NOW Mark.

21. Because of Opposer’s socks’ high quality, sales and marketing of socks under Opposer’s Mark were so extensive and successful that most of the customers who bought Opposer’s socks have given five-star reviews and positive comments on the Opposer’s socks.

22. Opposer’s same Mark has priority over Applicant’s mark because Opposer’s first-use date for the same Mark predates the filing date of Applicant’s application or any other date on which the Applicant may rely for purposes of priority.

23. The goods covered by Opposer’s Mark is substantially similar to Applicant’s Mark.

24. Therefore, Applicant’s application should be denied because it consists of or comprises a mark which so resembles Opposer's previously used same Mark as to be likely, when used in connection with Applicant's goods, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d), and to cause damage to Opposer thereby.

**FOURTH GROUND FOR OPPOSITION— DILUTION OF A FAMOUS MARK UNDER
15 U.S.C. § 1125(C)**

25. Opposer realleges and incorporates by reference the allegations in the previous paragraphs as if set forth full herein.

26. Opposer's OMG I'M AN ADULT NOW Mark is distinctive and a "famous mark" within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

27. Opposer's OMG I'M AN ADULT NOW Mark became distinctive and famous prior to the filing date of Applicant's application here or any other date on which the Applicant may rely for purposes of priority.

28. Applicant's application impairs the distinctiveness and causes dilution by blurring of, and thereby damages, Opposer's famous OMG I'M AN ADULT NOW Mark in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1064, this Application should be denied.

29. Applicant's Application tarnishes the reputation and causes dilution by tarnishment of, and thereby damages, Opposer's famous OMG I'M AN ADULT NOW Mark in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1064, Applicant's Application should be denied.

WHEREFORE, Opposer respectfully prays that its opposition be sustained and that the Challenged Application be denied in its entirety.

Dated: July 26, 2022

Respectfully submitted,

Whitewood Law PLLC

/Shengmao Mu/

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