

ESTTA Tracking number: **ESTTA494952**

Filing date: **09/17/2012**

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	Undeclared, Inc.
Granted to Date of previous extension	09/19/2012
Address	112-1/2 South La Brea Ave Los Angeles, CA 90036 UNITED STATES
Correspondence information	John R. Sommer John R. Sommer, Attorney-at-Law 17426 Daimler Street Irvine, CA 92614 UNITED STATES sommer@stussy.com Phone:(949) 752-5344

Applicant Information

Application No	85498563	Publication date	05/22/2012
Opposition Filing Date	09/17/2012	Opposition Period Ends	09/19/2012
Applicant	Collins, Vickie Apartment 2 3453 Sunnyside Drive Portage, IN 46368 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. All goods and services in the class are opposed, namely: T-shirts


Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3218703	Application Date	02/02/2005
Registration Date	03/13/2007	Foreign Priority Date	NONE

Word Mark	UNDEFEATED
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2001/02/00 First Use In Commerce: 2002/11/00 Clothing, namely, shirts, pants, t-shirts, footwear, headwear, baseball caps, shorts, sweatshirts, jackets, shoes, and wrist bands

U.S. Registration No.	2754149	Application Date	02/04/2002
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	UNDEFEATED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/03/01 First Use In Commerce: 2002/03/01 Retail store services featuring a wide variety of shoes, including athletic shoes		

U.S. Registration No.	3406295	Application Date	03/15/2007
Registration Date	04/01/2008	Foreign Priority Date	NONE
Word Mark	UNDEFEATED		

Design Mark	UNDEFEATED
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2002/11/01 First Use In Commerce: 2002/11/01 Online retail services and retail store services in the fields of footwear, athletic accessories, athletic apparel, clothing, headwear, athletic bags, sports bags, backpacks

Attachments	78559308#TMSN.jpeg (1 page)(bytes) 76366232#TMSN.gif (1 page)(bytes) 77132373#TMSN.jpeg (1 page)(bytes) NO-DEFEAT.opposition.pdf (5 pages)(129928 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John R. Sommer/
Name	John R. Sommer
Date	09/17/2012

In the matter of Application Serial No. 85/498563
Published for Opposition in the OFFICIAL GAZETTE of May 22, 2012

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2. Since at least as early as 2002, Opposer has been using its UNDEFEATED Mark on a variety of goods and services as listed on the registrations listed below, among others goods and services. Opposer is the owner of the registrations listed below:

<u>Class</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods (partial list)</u>
25	3,218,703	03/13/07	Clothing, footwear, headgear
35	2,754,149	08/19/03	Retail store services
35	3,406,215	04/01/08	Retail store services featuring clothing, footwear, headgear

3. There is no issue as to priority. Applicant's priority date for her intent-to-use application is the filing date, December 19, 2011. Opposer's priority dates and registration dates are long before Applicant's priority date.

4. Since long prior to Applicant's filing of the application for Applicant's Mark (no use of Applicant's Mark having been alleged by Applicant so Applicant's priority date is the filing date), Opposer has made substantial and continuous use of the UNDEFEATED Mark in interstate, foreign, and intrastate commerce on and in connection with the advertising, promotion, and sale of its goods, since as early as 2002.

5. By virtue of the aforesaid advertising, promotion, and sales, and by virtue of the excellence of its products, Opposer's UNDEFEATED Mark has come to represent exceedingly valuable goodwill owned by Opposer.

6. The goods on which Opposer uses its UNDEFEATED Mark and the goods for which Applicant seeks to register Applicant's Mark are identical or are closely related. In the absence of any restrictions, Applicant's Application, if registered, would allow her goods to be sold through the same channels of trade and to the same class of purchasers as Opposer's.

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