

ESTTA Tracking number: **ESTTA566657**

Filing date: **10/23/2013**

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	AIRLIE CREATIONS, LLC
Granted to Date of previous extension	10/23/2013
Address	600 HOPSCOTCH CT WILMINGTON, NC 28411 UNITED STATES
Correspondence information	AIRLIE CREATIONS, LLC 600 HOPSCOTCH CT WILMINGTON, NC 28411 UNITED STATES tvarnum@brookspierce.com Phone:3362713161

Applicant Information

Application No	85808321	Publication date	06/25/2013
Opposition Filing Date	10/23/2013	Opposition Period Ends	10/23/2013
Applicant	Vantreese, Zeke 1504 Rainbow Drive Greensboro, NC 27403 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2011/12/01 First Use In Commerce: 2012/12/01 All goods and services in the class are opposed, namely: Hats; Hooded sweat shirts; Sweat shirts; T-shirts

Grounds for Opposition

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Mere ornamentation; failure to function as a mark; void ab initio.

Attachments	Notice of Opposition - Final.pdf(151209 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	/Thomas G. Varnum/
Name	AIRLIE CREATIONS, LLC
Date	10/23/2013

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

In re Trademark Application Serial No. 85808321
For the Mark: HOME.
Filed: December 24, 2012
Published for Opposition: June 25, 2013

AIRLIE CREATIONS, LLC,

Opposer,

v.

ZEKE VANTREESE,

Applicant.

Opposition No. _____

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
Transmitted via ESTTA

NOTICE OF OPPOSITION

Opposer Airlie Creations, LLC (“Opposer”) hereby opposes registration of the word “home.” depicted inside an image of the state of North Carolina (the “Design”), as sought in Application Serial No. 85808321 (the “Application”), filed by Zeke Vantreese (“Applicant”) on December 24, 2012. Having been granted an extension of time to oppose the Application up to and including October 23, 2013, Opposer now opposes the Application, by and through undersigned counsel, pursuant to 15 U.S.C. § 1063, on grounds of mere ornamentation, fraud on the USPTO, and that the Application is void ab initio.

As set forth in more detail below, Opposer believes it will be damaged by the registration of the Design as a mark because registration of the Design may negatively affect well-established public domain protections that apply to the Design. Applicant does not use the Design as a source-

identifying mark—rather, Applicant uses the Design merely as an ornamental design in a series of other similar t-shirt designs. Upon information and belief, Applicant attempted to register the Design as a copyright-protected design with the U.S. Copyright Office, but such registration was refused (because of, for example, insufficient originality). Now, as an end-run around copyright law’s protection of the public domain, Applicant is seeking trademark registration to manufacture exclusive rights to an ornamental design that copyright law clearly places in the public domain.

Moreover, the USPTO initially refused registration of the Design precisely for the principles discussed above: the Design is merely ornamentation which fails to function as a mark. However, in a calculated effort to circumvent the USPTO’s initial refusal (issued on April 6, 2013), Opposer is informed and believes that Applicant committed fraud on the USPTO. As further explained below, Applicant submitted specimen showing the Design on a tag that, upon information and belief, Applicant does not in fact use and did not use when the §1(a) Application was filed. Further, Opposer is informed and believes that Applicant knowingly submitted a false declaration, stating that the contrived specimen was in use at the time the Application was filed. As such, Applicant has committed fraud on the USPTO and the Application is void ab initio.

As more specific grounds for opposition, Opposer alleges and says the following:

1. Opposer is a North Carolina limited liability company with a principal place of business in Wilmington, North Carolina.
2. The Application recites that the Applicant is Zeke Vantreese, a resident of Greensboro, North Carolina.
3. Among other things, Opposer sells a variety of t-shirts featuring aesthetic designs composed of the word “home.” contained within and overlying the image of a state, and has done so since before the Application was filed.

MERELY ORNAMENTATION

4. The allegations of all preceding paragraphs are re-alleged and incorporated herein by reference.
5. Upon information and belief, Applicant's use of the Design is merely as a decorative or ornamental feature of the Applicant's clothing and does not function as a mark used to identify and distinguish applicant's clothing or services from those of others, or to indicate the source of the clothing and services.
6. Accordingly, the Application should be denied registration under Sections 1, 2 and 45 of the Lanham Act, 15 U.S.C. §§ 1051, 1052 & 1127.
7. Upon information and belief, Applicant's use of the Design will fail to function as a mark and/or be ornamental due to Applicant's intention to use it prominently on the clothing as ornamentation rather than as a mark or indicia of source.
8. The Design ("home." written inside the boundary of North Carolina) is merely one of at least 50 decorative and ornamental designs now offered by the Applicant, and is not used to identify the Applicant as the source of the clothing.
9. The Design is located in large format, centered, and on the upper half of the clothing in a position and manner not typically perceived by consumers as trademark use.
10. Upon information and belief, Applicant instead attempts to use the term "The Original Home T." or "HomeStateApparel" to identify the source of clothing and services offered by Applicant.
11. Applicant now markets, offers for sale, and distributes clothing including the Design and similarly decorative designs for each of the 50 states of the United States, which include the outline of each state with the word "home." written inside, all in a common and unoriginal font.

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