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Date:

June 14, 2005

Sean F. Mellino
Sean F. Mellino

Attorney Docket: DT-28 (#90413)

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

In the Matter of Application Serial No. 78/412,130, filed May 3, 2004

Mark: "RAGS IN MOTION" in International Class 25

Applicant: A.K.A. Clothing, Inc.

Published in the *Official Gazette* of May 17, 2005 at page TM 303

Dots, LLC

Opposer,

vs.

A.K.A. Clothing, Inc.

Applicant.

Opposition No. _____

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Dear Sir:

Opposer, Dots, LLC, a limited liability company organized and existing under the laws of the State of Delaware, located and doing business at 30801 Carter Street, Solon, Ohio 44139, (hereinafter referred to as "DOTS" or "Opposer") believes that it will be damaged by the

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registration of the mark "RAGS IN MOTION" shown in the above-identified application in International Class 25, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer, Dots, LLC (and its predecessor in interest), is now and has for over twenty-five years been involved in the business of marketing women's and children's clothing and clothing accessories and providing retail clothing store services. Moreover, Opposer is now and has been for over four years been involved in providing said goods and retail clothing store services via the Internet.

2. Opposer has become widely known nationally as a marketer of items of clothing and apparel, those items having aesthetic appearance and good quality, and Opposer has acquired a favorable reputation throughout large segments of the retail industry for its above-described goods and services sold and provided under, and in association with, the marks "R.A.G." (& design), "RAG" (& design), "RAGSPORT" and "RAG". Conversely, the term "RAGS IN MOTION" is the subject of merely an intent-to-use application by the Applicant.

3. Opposer is the owner of U.S. trademark registration No. 2,450,263 granted May 8, 2001 for the mark "RAGSPORT" in International Class 25 for the goods of "men's, women's and children's clothing, namely, dresses, skirts, shirts, blouses, pants, overalls, jackets, coats, vests, shorts, t-shirts, sweatshirts, sweaters, swimsuits, headwear, socks, hosiery, pajamas, underwear, belts, scarves, ties, gloves, shoes, boots, sneakers, sandals and slippers." This mark has been in use in commerce for goods in International Class 25 since at least August 1997. A copy of the registration and the recordation in the United States Patent and Trademark Office of the assignment of the mark to Opposer are attached hereto, and made part hereof as Opposer's

Exhibit A1. Opposer is also the applicant of U.S. trademark application Serial No. 76/363,509 filed January 28, 2002 for the mark "RAGSPORT" in International Class 18 for the goods of "handbags, purses, backpacks, wallets, billfolds, credit card cases, tote bags, duffle bags, and umbrellas." A copy of the application is attached hereto as Exhibit A2.

4. Opposer is the owner of U.S. trademark registration No. 2,901,881 granted November 9, 2004 for the mark "R.A.G." (& design) in International Class 25 for the goods of "men's, women's and children's clothing, namely, dresses, skirts, shirts, blouses, pants, overalls, jackets, coats, vests, shorts, T-shirts, sweatshirts, sweaters, swimsuits, headwear, socks, hosiery, pajamas, underwear, belts, scarves, ties, gloves, shoes, boots, sneakers, sandals and slippers." This mark has been in use in commerce for goods in International Class 25 since at least September 15, 1998. A copy of this registration is attached hereto as Exhibit B.

5. Opposer is the owner of U.S. trademark registration No. 2,955,189 granted May 24, 2005 for the mark "RAG" (& design) in International Class 25 for the goods of "men's, women's and children's clothing, namely, dresses, skirts, shirts, blouses, pants, overalls, jackets, coats, vests, shorts, t-shirts, sweatshirts, sweaters, swimsuits, headwear, socks, hosiery, pajamas, underwear, belts, scarves, ties, gloves, shoes, boots, sneakers, sandals, and slippers." This mark has been in use in commerce for goods in International Class 25 since at least January 1, 1998. A copy of the registration is attached hereto as Exhibit C1. Opposer is also the applicant of U.S. trademark application Serial No. 76/363,508 filed January 28, 2002 for the mark "RAG" (& design) in International Class 18 for the goods of "handbags, purses, backpacks, wallets, billfolds, credit card cases, tote bags, duffle bags, and umbrellas" and in International Class 35 for services of "retail clothing services." A copy of this application is attached hereto as Exhibit

C2.

6. Opposer is the applicant of U.S. trademark application Serial No. 76/505,806 filed April 11, 2003 for the mark "RAG" in International Class 25 for the goods of "women's and children's clothing, namely, dresses, skirts, shirts, blouses, pants, overalls, jackets, coats, vests, shorts, t-shirts, sweatshirts, sweaters, hosiery, and pajamas, in International Class 25 for the goods of "men's, women's and children's clothing, namely, swimsuits, headwear, socks, underwear, belts, scarves, ties, gloves, shoes, boots, sneakers, sandals and slippers," and in International Class 35 for the services of "retail clothing services." This mark has been in use for the latter goods in International Class 25 since at least January 1, 1998. A copy of the application is attached hereto as Exhibit D.

7. Notwithstanding Opposer's prior rights in and to said marks, Applicant, on May 3, 2004, filed an application for registration of the trademark "RAGS IN MOTION" in International Class 25 for "clothing, namely, shirts, pants, jackets, coats, blouses, skirts, dresses, socks, hats, gloves, mittens, scarves, overalls, body socks, stockings, underwear, and tops." Said application was given Serial No. 78/412,130 and the mark was published for Opposition in the *Official Gazette* on May 17, 2005 at page TM 303, International Class 25 and is an intent-to-use application.

8. The goods for which Applicant seeks to register its "RAGS IN MOTION" term are identical to, substantially similar to or of the same general type of goods as the goods sold in connection with the retail store goods and services of Opposer under its "R.A.G." (& design), "RAG" (& design), "RAGSPORT" and "RAG" marks.

9. Since long prior to May 3, 2004, Opposer has become extensively associated with

retail sales of men's, women's and children's clothing and accessories by virtue of its contemporarily designed products. Opposer's customers include purchasers of apparel and accessories and are likely to include the same people before whom Applicant is using or intending to use the "RAGS IN MOTION" trademark. Applicant's customers or prospective customers are very possibly customers of Opposer, and would unwittingly believe that Opposer was directly or indirectly involved with the goods provided by Applicant. Users of Opposer's products are likely to believe, to be confused or deceived into thinking that Applicant's goods originate with, or in some way are associated with, connected with, sponsored, endorsed or authorized by Opposer. By reason of the substantially similar identity, appearance and sound of Applicant's alleged mark "RAGS IN MOTION" and Opposer's marks "R.A.G." (& design), "RAG" (& design), "RAGSPORT" and "RAG" and the likely overlapping of the class of customers and channels of trade, Applicant's alleged mark, when applied to its goods is likely to cause confusion or mistake, or to deceive, all to the injury or threatened injury of Opposer.

10. Opposer has developed an exceedingly valuable amount of goodwill with respect to its marks "R.A.G." (& design), "RAG" (& design), "RAGSPORT" and "RAG." By virtue of its efforts, and the expenditure of considerable sums of promotional activities and by virtue of the excellence of its products, Opposer has gained for its "R.A.G." (& design), "RAG" (& design), "RAGSPORT" and "RAG" marks a most valuable reputation.

11. If Applicant is permitted to register "RAGS IN MOTION" as specified in the application herein opposed, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the perception of a relationship between goods bearing the mark and name "RAGS IN MOTION" of Applicant and Opposer's goods and

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