

ESTTA Tracking number: **ESTTA261292**

Filing date: **01/19/2009**

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	Swank, Inc.
Granted to Date of previous extension	01/17/2009
Address	90 Park Avenue New York,, NY 10016 UNITED STATES
Correspondence information	Paul Fields, Esq. Darby & Darby PC 7 World Trade Center 250 Greenwich Street New York City, NY 10007 UNITED STATES tmdocket@darbylaw.com, arubinstein@darbylaw.com, pfields@darbylaw.com Phone:212-527-7700

Applicant Information

Application No	77506637	Publication date	11/18/2008
Opposition Filing Date	01/19/2009	Opposition Period Ends	01/17/2009
Applicant	Motorola, Inc. 1303 E. Algonquin Road Schaumburg, IL 60196 UNITED STATES		

Goods/Services Affected by Opposition


Class 009. All goods and services in the class are opposed, namely: Cellular telephones


Grounds for Opposition

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.	3448767	Application Date	10/12/2007
Registration Date	06/17/2008	Foreign Priority Date	NONE
Word Mark	SWANK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1984/02/15 First Use In Commerce: 1984/02/15 Retail store services in the field of jewelry, belts, wallets, umbrellas and briefcases

U.S. Registration No.	3425568	Application Date	05/01/2007
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	SWANK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1975/00/00 First Use In Commerce: 1975/00/00 Shoe cleaner sets consisting primarily of shoe polish, shoe polish applicators, and shoe brushes</p> <p>Class 014. First use: First Use: 1927/07/01 First Use In Commerce: 1927/07/01 Items of men's jewelry, namely, collar pins; jewelry cases not made of precious metal; collar holders formed wholly or in part of precious metal; jewelry for personal wear, not including watches, namely, cuff links, dress sets consisting of cufflinks and matching studs, tie holders, key rings made in whole of, in part of, or plated with precious metal</p> <p>Class 016. First use: First Use: 1927/07/01 First Use In Commerce: 1927/07/01 Money clips</p> <p>Class 018. First use: First Use: 1935/05/21 First Use In Commerce: 1935/05/21 Wallets, billfolds, key cases, fitted traveling cases, tie cases, luggage accessories, namely luggage tags</p> <p>Class 020. First use: First Use: 1935/05/21 First Use In Commerce: 1935/05/21 Tie racks</p> <p>Class 021. First use: First Use: 1935/05/21 First Use In Commerce: 1935/05/21</p>		

	Military-style hair brush sets, clothes brush sets, brush and shoe brush sets Class 025. First use: First Use: 1934/03/04 First Use In Commerce: 1934/03/04 Belts in the nature of garment supporters and for outer wear; suspenders Class 026. First use: First Use: 1927/07/01 First Use In Commerce: 1927/07/01 Belt buckles
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U.S. Registration No.	1131853	Application Date	08/28/1978
Registration Date	03/11/1980	Foreign Priority Date	NONE
Word Mark	SWANK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1978/08/10 First Use In Commerce: 1978/08/10 NECKWEAR		

Attachments	77303155#TMSN.jpeg (1 page)(bytes) 77169842#TMSN.jpeg (1 page)(bytes) Notice of Opposition (as filed).PDF (6 pages)(21383 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	/Abigail Rubinstein/
Name	/Abigail Rubinstein/
Date	01/19/2009

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

SWANK, INC.,

Opposer,

v.

MOTOROLA, INC.,

Applicant.

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) Opposition No. _____
) Application Ser. No. 77/506,637
) Published in the Official Gazette on
) November 18, 2008
) Filing Date: June 24, 2008.
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NOTICE OF OPPOSITION

Swank, Inc. (“Opposer”), a Delaware corporation located at 90 Park Avenue, New York, New York 10016, believes it will be damaged by the registration of the designation SWANK as shown in Application Serial No. 77/506,637 (the “ ’637 App.”) for use in connection with cellular telephones, filed by Motorola, Inc. (“Applicant”) and hereby opposes the same. An extension of time to oppose the ‘637 Application has been granted until January 17, 2009 on behalf of Opposer.

The grounds for opposition are:

1. Continuously since at least as early as 1984, Opposer has operated retail stores in the United States and has provided retail store services under the SWANK name. The stores sell various items including jewelry, belts, wallets, umbrellas, and briefcases and other related goods such as leather cases for cellular telephones. The name and mark SWANK appears on the façade of and is used within the stores.

2. Since long prior to the filing date of the ‘637 App., Opposer has used SWANK in the United States in connection with the promotion and sale of a wide variety

of goods including but not limited to, jewelry, cuff links, dress sets, tie holders, collar pins, and key rings; neckwear; wallets, luggage accessories, military brush sets, clothes brush sets, belts, suspenders, belt buckles, and mechanical pens and pencils.

3. Opposer has spent large sums of money and expended tremendous effort in promoting products and rendering services under its SWANK marks, which marks have become extremely well known and famous and are associated exclusively with Opposer and its products and services. The goodwill of the business connected with the use of, and symbolized by, the SWANK marks is an asset of incalculable value.

4. Opposer is the sole owner, *inter alia*, of the following United States trademark registrations and of all the business and goodwill connected with said marks issued on the dates and under the number set out beside them. The following SWANK marks are now in full force and effect and have not been canceled.

TRADEMARK	REGISTRATION DATE	REGISTRATION NUMBER	GOOD/SERVICES
SWANK	June 17, 2008	3448767	retail store services in the field of jewelry, belts, wallets, umbrellas and briefcases
SWANK	May 13, 2008	3425568	Shoe cleaner sets consisting primarily of shoe polish, shoe polish applicators, and shoe brushes in Class 3; Items of men's jewelry, namely, collar pins; jewelry cases not made of precious metal; collar holders formed wholly or in part of precious metal; jewelry for personal wear, not including watches,



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