

ESTTA Tracking number: **ESTTA799114**Filing date: **02/02/2017**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	Retail Royalty Company		
Entity	Corporation	Citizenship	Nevada
Address	101 Convention Center Drive Las Vegas, NV 89109 UNITED STATES		

Attorney information	Kristin Garris KILPATRICK TOWNSEND & STOCKTON LLP 1114 Avenue of the Americas, 21st Floor New York, NY 10036 UNITED STATES lpearson@kilpatricktownsend.com, kgarris@kilpatricktownsend.com, agar-cia@ktslaw.com, tmadmin@ktslaw.com Phone:212-775-8700
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**Applicant Information**

Application No	87127627	Publication date	01/03/2017
Opposition Filing Date	02/02/2017	Opposition Period Ends	02/02/2017
Applicant	TRAVEN, REGI #5 BELLEVUE, WA 98004 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Caps; Coats; Dress shirts; Hats; Hoodedsweatshirts; Jackets; Jeans; Neckties; Polo shirts; Scarves; Shoes; Shorts; Socks; Sweat pants; T-shirts; Underwear; Vests

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4729314	Application Date	01/03/2014
Registration Date	04/28/2015	Foreign Priority Date	NONE
Word Mark	THE REAL YOU IS SEXY		

Design Mark	THE REAL YOU IS SEXY
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 2014/04/00 First Use In Commerce: 2014/04/00 Bags, namely, tote bags Class 025. First use: First Use: 2014/01/17 First Use In Commerce: 2014/01/17 Clothing, namely, bras Class 035. First use: First Use: 2014/01/17 First Use In Commerce: 2014/01/17 Retail and on-line retail stores services featuring a wide variety of goods

U.S. Registration No.	4948091	Application Date	01/03/2014
Registration Date	04/26/2016	Foreign Priority Date	NONE
Word Mark	THE REAL YOU IS SEXY		
Design Mark	THE REAL YOU IS SEXY		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2014/01/17 First Use In Commerce: 2014/01/17 Clothing, namely, tops		

Attachments	86976046#TMSN.png( bytes ) 86978592#TMSN.png( bytes ) Notice of Opposition - THE REAL U.pdf(261403 bytes )
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Signature	/Kristin Garriss/
Name	Kristin Garriss
Date	02/02/2017

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

*In the Matter of* Application Serial No.: 87127627

Mark: THE REAL U

Filing Date: August 4, 2016

Publication Date: January 3, 2017

RETAIL ROYALTY COMPANY,

Opposer,

v.

REGI TRAVEN,

Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer Retail Royalty Company, a Nevada corporation with an address at 101 Convention Center Drive Las Vegas, Nevada 89109 (“Opposer”), believes that it will be damaged by the registration of Application Serial No. 87127627 (the “Application”) and hereby opposes the Application pursuant to 15 U.S.C. § 1063.

As grounds for its opposition, Opposer alleges as follows:

1. Opposer, together with its affiliated companies (collectively, “AEO”), is a leading retailer offering a broad assortment of apparel and accessories for men and women under the AMERICAN EAGLE OUTFITTERS brand, and intimates, apparel and personal care products for women under the AERIE brand.

**Opposer’s THE REAL YOU IS SEXY Marks**

2. Since at least as early as January 2014, AEO has used the mark THE REAL YOU IS SEXY alone or in conjunction with other words or designs (collectively, the “THE REAL

YOU IS SEXY Marks”), in connection with multiple AEO products such as bras, tops, and tote bags, as well as AEO’s retail store and online retail store services. Products and services are offered under THE REAL YOU IS SEXY Marks on AEO’s ecommerce website accessible at AE.COM and AERIE.COM, and in more than 900 AMERICAN EAGLE OUTFITTERS stores and AERIE stores across the United States. AEO’s THE REAL YOU IS SEXY Marks are used in connection with the AERIE REAL campaign as well, which focuses on body positivity and inspiring confidence in AEO’s customers and is highlighted in AEO’s commitment to not retouching its photographs or images.<sup>1</sup>

3. AEO has spent substantial sums of money promoting its goods and services offered in connection with the THE REAL YOU IS SEXY Marks. Based on AEO’s use and promotion of its THE REAL YOU IS SEXY Marks for three years, AEO’s THE REAL YOU IS SEXY Marks have come to embody goodwill associated with AEO, and consumers immediately identify the THE REAL YOU IS SEXY Marks with AEO.

4. In addition to the common law rights it has developed through continuous use of the THE REAL YOU IS SEXY Marks for three years, Opposer owns the following U.S. trademark registrations for the THE REAL YOU IS SEXY Marks (collectively, the “THE REAL YOU IS SEXY Registrations”):

Mark	Reg. No.	Goods/Services	Filing Date	Reg. Date
THE REAL YOU IS SEXY	4729314	Class 18: Bags, namely, tote bags.  Class 25: Clothing, namely, bras.  Class 35: Retail and on-line retail stores services featuring a wide variety of goods.	January 3, 2014	April 28, 2015

<sup>1</sup> Information about AEO may be found in the annual report available at <http://investors.ae.com/financials-and-filings/sec-filings/sec-filings-details/default.aspx?FilingId=11250338>.

THE REAL YOU IS SEXY	4948091	Class 25: Clothing, namely, tops.	January 3, 2014	April 26, 2016
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The foregoing registrations are valid and in full force and effect, and thereby constitute *prima facie* evidence of Opposer's exclusive right to use the THE REAL YOU IS SEXY Marks in commerce in connection with the goods and services specified in the registrations. Pursuant to 37 C.F.R. § 2.122(d)(1), printouts of information from the electronic database records of the USPTO showing the current status and title of the THE REAL YOU IS SEXY Registrations are attached hereto as **Exhibit A**.

5. Opposer's THE REAL YOU IS SEXY Registrations cover a variety of products, including clothing such as bras and tops in International Class 25, and tote bags in International Class 18. Opposer's THE REAL YOU IS SEXY Registrations also cover retail store services and online retail store services in International Class 35.

**Applicant's THE REAL U Mark**

6. Notwithstanding Opposer's prior rights in its THE REAL YOU IS SEXY Marks and THE REAL YOU IS SEXY Registrations, Applicant Regi Traven, with an address at #5 187 108TH AVE SE BELLEVUE WASHINGTON 98004 ("Applicant"), filed on August 4, 2016 an intent-to-use application (Application Serial No. 87127627) to register the THE REAL U designation (the "THE REAL U Mark") for use in connection with the following goods in International Class 25: "Caps; Coats; Dress shirts; Hats; Hooded sweatshirts; Jackets; Jeans; Neckties; Polo shirts; Scarves; Shoes; Shorts; Socks; Sweat pants; T-shirts; Underwear; Vests."

7. The Application was published in the *Trademark Official Gazette* on January 3, 2017.

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