

**Sara Lee Corporation**  
Intellectual Property Law Department  
1000 East Hanes Mill Road  
Winston-Salem, NC 27105

Phone 336.519.2011  
Fax 336.519.7312  
Writer's Direct Dial Number  
336.519.7407

June 7, 2005



Via Facsimile 571-273-4301

Harold Ross  
Legal Assistant  
United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**Re: Applicant: Gafitex, S.R.L.**  
**Mark: TEXENERGY**  
**Serial No.: 78/197,414**

Dear Mr. Ross:

As we discussed, I have attached a copy of Notice of Opposition Sara Lee Corporation filed with the TTAB on November 17, 2004 and the return postcard stamped by the USPTO. Please note that the certificate of mailing required by 37 C.F.R. 2.197(a) is located on the first page of the Notice of Opposition. I have also attached the declaration of Nicholas J. Valenziano, Jr. attesting that the Notice of Opposition was filed with the TTAB on November 17, 2004.

Accordingly, Sara Lee Corporation respectfully requests that the TTAB accept the Notice of Opposition as timely filed and institute the opposition proceedings.

Sincerely,

Anne Fleeson  
Contract Attorney - Intellectual Property

Commissioner of Patents and Trademarks

Applicant/Inventor: Gafitex SKL  
 Serial No.: 7819740 Filing Date: 11-17-04  
 Reg. No.: \_\_\_\_\_ Patent No.: \_\_\_\_\_  
 Mark/Title: TEKENERGY  
 Operating Unit: \_\_\_\_\_

Please confirm receipt of the document(s) and serial number:



tamp

Trademark applies

11-19-2004

- Patent application
- Amendment/response
- Section 8 Declaration
- Renewal application
- Request for ext. of time
- Statement of use
- Other

U.S. Patent & TMO/TM Mail Rpt Dt: #38 if

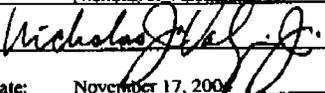
- Section 15 Declaration
- Petition to Commissioner
- Notice of opposition
- Amendment to allege use

Very truly yours,  
Arthur J. DeBaugh

NV

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451 Alexandria, VA 22313-1451, on: November 17, 2004

Nicholas J. Valenziano, Jr.

  
Date: November 17, 2004

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

In the Matter of Application Serial No. 78/197,414  
Published on July 20, 2004  
Mark: TEXENERGY & Design

Sara Lee Corporation,

Opposer,

v.

Gafitex, S.R.L.,

Applicant.

NOTICE OF  
OPPOSITION

Opposer Sara Lee Corporation, a Maryland corporation having a principal place of business at 1000 East Hanes Mill Road, Winston-Salem, North Carolina 27105 ("opposer"), believes it will be damaged by registration of the mark TEXENERGY & Design, published in the Official Gazette on July 20, 2004 (TM 106), for "gauze fabric; textile used as inner and outer lining for clothing and footwear; textile linings for garments; fabrics for the manufacture of clothing articles; linen lining fabrics for shoes and boots; fabric for boots and shoes; fabrics for the manufacture of gussets for tights, stockings, bathing suits, underwear, leotards and footlets; cotton fabric, linen fabric, jute cloth, ramie fabric, silk cloth, silk fabric for printing patterns,

woolen fabric, curtain fabric, nylon fabric, polyester fabric, upholstery fabric; unfitted fabric furniture covers; felt cloth; towels; dishcloths; handkerchiefs; bed sheets, bed linen, quilts, bed blankets, pillow cases; table cloths not of paper, curtains, textile wall hangings; tapestries of textile; all of the aforementioned goods being formed by the weaving of spun threads and yarns and metal threads and yarns" (International Class 24) and "clothing, namely, footlets, corsets, corselets, jackets, coats, overcoats, raincoats, capes, anoraks, socks, stockings, socks with separated toes, tights, underpants, slips, knickers, shorts, bermuda shorts, boxer shorts, panties, pants, undershirts, vests, camisoles, leotards, pullovers, sport shirts, polo shirts, sweat shirts, t-shirts, shirts, blouses, cardigans, jerseys, jumpers, sweaters, skirts, suits and dresses, jeans, trousers, scarves, mufflers, gloves, ear muffs, head bands, ankle bands, knee bands, wrist bands, nightgowns, pajamas, bathing suits, tracksuits, gym suits, overalls, smocks, belts, collars, cuffs, hoods, bonnets, hats, caps, balaclavas, slippers; inner soles, insoles, heel inserts, cloth diapers, infant cloth diapers; girdles, being foundation garments; parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; sleepwear, underwear, beachwear, neckwear, headwear, footwear; all of the aforementioned goods being formed by the weaving of spun threads and yarns and metal threads and yarns" (International Class 25), and hereby opposes same. As grounds for the opposition, it is alleged that:

1. Opposer is now, and its predecessors in interest have been, engaged in the manufacture, distribution, and sale in interstate commerce of a wide variety of clothing products, including without limitation, hosiery, pantyhose, socks, lingerie, and shapewear.

2. For many years, and long prior to applicant's priority date, opposer has used and is using the mark SHEER ENERGY alone and in conjunction with other words and designs (hereinafter collectively referred to as the "SHEER ENERGY Trademarks") in interstate commerce on an din connection with the sale of hosiery and pantyhose.

3. Opposer is the owner of the following registrations for the SHEER ENERGY Trademarks:

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods</u>
SHEER ENERGY	978,180	February 5, 1974	Ladies' hosiery and Pantyhose
SHEER ENERGY	1,478,786	March 1, 1988	Gloves
SHEER ENERGY	1,523,620	February 7, 1989	Slippers

The aforesaid registrations are valid and subsisting, unrevoked, and uncanceled, and opposer is the owner of them and the marks shown thereby and all of the business and goodwill represented thereby. All three registrations have become incontestable pursuant to 15 U.S.C. § 1065.

4. Ever since the adoption and use of the SHEER ENERGY Trademarks as aforesaid, opposer has widely and extensively advertised and sold goods bearing said SHEER ENERGY Trademarks. As a consequence of the inherent distinctiveness of the SHEER ENERGY Trademarks, as well as the aforementioned extensive advertising and sales, the consuming public and trade have come to recognize and do recognize the SHEER ENERGY Trademarks as being used by opposer or by a single source, and to associate and identify said

mark and name with opposer, or with a single source, and opposer derives substantial goodwill and value from the aforesaid identification by the consuming public and trade.

5. Opposer has spent hundreds of millions of dollars in marketing, advertising, and promoting the sale of ladies' hosiery and pantyhose under the SHEER ENERGY Trademarks, and has sold billions of dollars worth of such products as marked.

6. SHEER ENERGY is a brand of hosiery and pantyhose extremely well known among the relevant purchasing public.

#### GROUND I – LIKELIHOOD OF CONFUSION

7. Opposer incorporates by reference the allegations set forth above.

8. By the application herein opposed, applicant seeks to register TEXENERGY & Design for “gauze fabric; textile used as inner and outer lining for clothing and footwear; textile linings for garments; fabrics for the manufacture of clothing articles; linen lining fabrics for shoes and boots; fabric for boots and shoes; fabrics for the manufacture of gussets for tights, stockings, bathing suits, underwear, leotards and footlets; cotton fabric, linen fabric, jute cloth, ramie fabric, silk cloth, silk fabric for printing patterns, woolen fabric, curtain fabric, nylon fabric, polyester fabric, upholstery fabric; unfitted fabric furniture covers; felt cloth; towels; dishcloths; handkerchiefs; bed sheets, bed linen, quilts, bed blankets, pillow cases; table cloths not of paper, curtains, textile wall hangings; tapestries of textile; all of the aforementioned goods being formed by the weaving of spun threads and yarns and metal threads and yarns” (Internatioal Class 24) and “clothing, namely, footlets, corsets, corselets, jackets, coats, overcoats, raincoats, capes, anoraks, socks, stockings, socks with separated toes, tights, underpants, slips, knickers, shorts, bermuda shorts, boxer shorts, panties, pants, undershirts,

vests, camisoles, leotards, pullovers, sport shirts, polo shirts, sweat shirts, t-shirts, shirts, blouses, cardigans, jerseys, jumpers, sweaters, skirts, suits and dresses, jeans, trousers, scarves, mufflers, gloves, ear muffs, head bands, ankle bands, knee bands, wrist bands, nightgowns, pajamas, bathing suits, tracksuits, gym suits, overalls, smocks, belts, collars, cuffs, hoods, bonnets, hats, caps, balaclavas, slippers; inner soles, insoles, heel inserts, cloth diapers, infant cloth diapers; girdles, being foundation garments; parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; sleepwear, underwear, beachwear, neckwear, headwear, footwear; all of the aforementioned goods being formed by the weaving of spun threads and yarns and metal threads and yarns" (International Class 25). The goods identified in applicant's application are identical or closely related to opposer's products which bear the SHEER ENERGY Trademarks and which are covered by opposer's registrations for the SHEER ENERGY Trademarks.

9. Applicant's mark **TEXENERGY & Design** is confusingly similar to opposer's **SHEER ENERGY Trademarks** in sight, sound, and meaning.

10. Applicant's mark opposed herein, when applied to the identified goods, is likely to cause confusion and mistake and to deceive, with consequent injury to opposer, the consuming public and the trade.

11. Opposer will be damaged by the registration sought by applicant because such registration will support and assist applicant in the confusing and misleading use of applicant's mark sought to be registered, and will give color and exclusive right to applicant in violation and derogation of prior and superior rights of opposer.

GROUND II – DILUTION

12. Opposer incorporates by reference the allegations set forth above.

13. Because of the high degree of inherent and acquired distinctiveness of the SHEER ENERGY Trademarks, the length of time and extent to which opposer has used the SHEER ENERGY Trademarks, the vast advertising and publicity the SHEER ENERGY Trademarks have received, the nationwide trading area in which the SHEER ENERGY Trademarks are used, and the high degree of consumer recognition of the SHEER ENERGY Trademarks, the SHEER ENERGY Trademarks are famous trademarks pursuant to 15 U.S.C. § 1125(c)(1).

14. Applicant's mark TEXENERGY & Design would lessen the capacity of opposer's famous SHEER ENERGY Trademarks to identify and distinguish opposer's goods sold thereunder and, as such, would cause dilution of the SHEER ENERGY Trademarks in violation of 15 U.S.C. § 1125(c).

15. Opposer will be damaged by the registration sought by applicant because such registration will support and assist applicant in diluting the distinctive quality of opposer's famous SHEER ENERGY Trademarks.

WHEREFORE, opposer believes it will be damaged by registration of applicant's mark and prays that it not be allowed.

In addition to the undersigned, please recognize as attorney for opposer in this proceeding Bruce Bradford, a member of the Bar of the State of Illinois, whose office is located at 1000 East Hanes Mill Road, Winston-Salem, North Carolina, 27105, telephone (336) 519-7072.

SARA LEE CORPORATION

Dated: November 17, 2004

  
\_\_\_\_\_  
Nicholas J. Valenziano, Sr.  
1000 East Hanes Mill Road  
Winston-Salem, NC 27105  
Telephone: 336.519.7450  
Attorney for Opposer

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

In the Matter of Application Serial No. 78/197,414  
Published on July 20, 2004  
Mark: **TEXENERGY & Design**

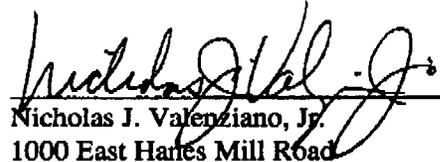
_____		)
Sara Lee Corporation,		)
		)
	Opposer,	)
		)
v.		)
		)
Gafitex, S.R.L.,		)
		)
	Applicant.	)
_____		)

**PAYMENT OF FILING FEE**

Please charge the \$600.00 filing fee (two classes opposed), as well as any additional charges associated with filing the above-referenced opposition, to Deposit Account No. 19-0142.

Respectfully submitted,

SARA LEE CORPORATION



Nicholas J. Valenziano, Jr.  
1000 East Hanes Mill Road  
Winston-Salem, NC 27105  
Telephone: 336.519.7450  
Attorney for Opposer

Dated: November 17, 2004

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

In re Application of: )  
 )  
 Gafitex, S.R.L. )  
 )  
 Serial No.: 78/197,414 )  
 )  
 Filed: December 23, 2002 )  
 )  
 Published: July 20, 2004 )  
 )  
 Mark: TEXENERGY & Design )  
 \_\_\_\_\_ )

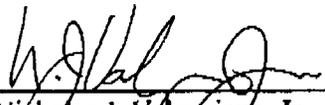
Declaration of Nicholas J. Valenziano, Jr.

I, Nicholas J. Valenziano, Jr., do hereby declare as follows:

1. I am an attorney at Sara Lee Corporation.
2. On November 17, 2004, I signed the attached Notice of Opposition and deposited the Notice of Opposition with the U.S. Postal Service as first class mail addressed to the Trademark Trial and Appeal Board, as noted in the certificate of mailing on the first page of the Notice of Opposition.
3. I declare under penalty of perjury that the foregoing is true and correct.

SARA LEE CORPORATION

Dated: 6-7-05

  
 \_\_\_\_\_  
 Nicholas J. Valenziano, Jr.  
 Sara Lee Corporation  
 1000 East Hanes Mill Road  
 Winston-Salem, NC 27105  
 Telephone: 336.519.7450