

ESTTA Tracking number: **ESTTA75729**

Filing date: **04/11/2006**

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	LoveSac Corporation
Granted to Date of previous extension	04/12/2006
Address	155 North 400 West Suite 520 Salt Lake City, UT 84103 UNITED STATES

Attorney information	Robyn L. Phillips Workman Nydegger 60 East South Temple, Ste. 1000 Salt Lake City, UT 84111 UNITED STATES rphillips@wnlaw.com, jgarcia@wnlaw.com Phone:801-533-9800
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Applicant Information

Application No	76633460	Publication date	12/13/2005
Opposition Filing Date	04/11/2006	Opposition Period Ends	04/12/2006
Applicant	MARKOS & WIDLY, INC. 785 E. Harrison Street, #100 Corona, CA 91719 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. All goods and services in the class are opposed, namely: FOAM FILLED FURNITURE COMPRISING FOAM AND SLIPCOVER
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Attachments	001 Not Opp.pdf (6 pages)
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Signature	/Robyn L. Phillips/
Name	Robyn L. Phillips
Date	04/11/2006

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

In the matter of: Trademark Application Serial No. 76/633,460
Published in the Official Gazette of December 13, 2005, at TM 586, Int'l Class 20
Filed: March 15, 2005
Mark: COMFORT SAC with design

<p>LOVESAC CORPORATION, Opposer, v. MARKOS & WIDLY, INC., Applicant.</p>	<p style="text-align: center;">NOTICE OF OPPOSITION</p> <p>Opposition No.: _____</p>
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Opposer LoveSac Corporation, a Delaware corporation with offices at 155 North 400 West, Suite 520, Salt Lake City, Utah 84103, believes that it will be damaged by registration of the mark shown in United States Trademark Application Serial No. 78/633,460, in International Class 20, and hereby opposes the same. The grounds for the opposition are as follows:

1. Upon information and belief, Markos & Widly, Inc. ("Applicant") is a California corporation with a place of business at 785 E. Harrison Street, #100, Corona, California 91719. Applicant seeks to register the mark "COMFORT SAC with design" as a trademark to be used in International Class 20, as evidenced by the publication of such mark in the Official Gazette on

TM 586 of the December 13, 2005 issue, in conjunction with goods identified as “foam filled furniture comprising foam and slipcover.”

2. Applicant filed its application for registration for such mark under 15 U.S.C. § 1051(b) on March 15, 2005, and received an application serial number of 76/633,460.

3. For many years and long prior to the effective filing date of the subject application, LoveSac Corporation has been engaged in the development, manufacture and sale of a variety of goods, including furniture and pillows sold in interstate commerce throughout the United States and the world, in association with registered, pending, and common law trademarks of LoveSac Corporation. The goods and services offered by LoveSac Corporation in association with such registered, pending, and common law marks are such that the consuming public will likely be confused as to the source of the goods offered by Applicant.

4. Prior to the effective filing date of the subject application, LoveSac Corporation has developed and used a family of trademarks incorporating the word “SAC” in association with, on or in connection with various goods, including furniture and pillows, in interstate commerce throughout the United States, including but not limited to:

LOVESAC
LOVESAC with design
SAC
SUPERSAC
COMFORTSAC
COOLSAC
CHILLSAC

5. LoveSac Corporation is the owner of the following relevant trademark registrations which have duly and legally issued by the United States Patent and Trademark Office:

Registration No.	Mark	Goods and Services
3,028,008	SAC	Furniture; foam-filled chairs; frameless foam-filled furniture (International Class 20);
2,659,121	LOVESAC	Soft, frameless furniture, namely large beanbags for sitting or reclining (International Class 20).
3,035,784	LOVESAC	Furniture (International Class 20); Clothing, i.e. t-shirts, shirts, sweatshirts, jackets, pants, sweatpants, robes, wristbands, sweatbands, hats, caps, beanies (International Class 25); Retail furniture stores, retail clothing stores (International Class 35).
3,035,785	LOVESAC & DESIGN	Furniture (International Class 20); Clothing, i.e. t-shirts, shirts, sweatshirts, jackets, pants, sweatpants, robes, wristbands, sweatbands, hats, caps, beanies (International Class 25); Retail furniture stores, retail clothing stores (International Class 35).
3,021,039	GAMESAC	Furniture (International Class 20).

6. LoveSac Corporation is the owner of the following relevant trademark applications which are pending before the United States Patent and Trademark Office:

Application No.	Mark	Goods and Services
78/786,759	LOVESAC	Pillows (International Class 20); Bedding (International Class 24).
78/786,771	SAC	Pillows (International Class 20); Clothing, namely shirts, jackets, pants, robes, bands, caps (International Class 25).
78/495,098	CHILLSAC	Furniture (International Class 20).
78/602,928	SACTIONALS	Furniture (International Class 20).

78/781,845	SUPERSAC	Furniture (International Class 20).
78/786,748	MOVIESAC	Furniture; pillows (International Class 20).

7. For many years and long prior to the effective filing date of the subject application, LoveSac Corporation has continuously used its “sac” marks in interstate commerce.

8. LoveSac Corporation’s “sac” marks are distinctive and serve as a unique designation of origin with respect to goods and services offered by LoveSac Corporation.

9. In addition to the rights inherent in each of the “sac” marks, LoveSac Corporation has also acquired broader rights to the “sac” marks as a family of marks.

10. LoveSac Corporation has used its “sac” marks to distinguish its products from all other goods of the same type, and LoveSac Corporation has acquired substantial goodwill in its “sac” marks and names through use thereof.

11. In addition, since long prior to the effective filing date of the subject application, LoveSac Corporation has undertaken common law use of its numerous “sac” marks in interstate commerce in connection with a variety of goods and services which are closely related to the subject application.

12. Since at least as early as the Spring of 2004, LoveSac Corporation has used the mark “COMFORTSAC” in interstate commerce on goods including furniture. Accordingly, Opposer has developed substantial goodwill and common law rights under 15 U.S.C. § 1125(a).

13. Since LoveSac Corporation’s initial use of its “sac” marks, including its mark “COMFORTSAC”, LoveSac Corporation has made a substantial investment in marketing and promoting its goods and services under those marks. LoveSac Corporation has extensively used, advertised, promoted and offered for sale goods and services in association with its “sac” marks with the result that LoveSac Corporation’s customers and the general public have come to know and recognize LoveSac Corporation’s “sac” marks and that the public associates these marks

with LoveSac Corporation and/or its goods and services. LoveSac Corporation has built up extensive goodwill with the sale of goods and services under its “sac” marks.

14. Notwithstanding the inherent distinctiveness of its “sac” marks, said “sac” marks have also acquired secondary meaning to the public indicating LoveSac Corporation as the source of goods and services bearing any of LoveSac Corporation’s “sac” marks.

15. Applicant’s mark wholly incorporates LoveSac Corporation’s trademark “SAC” and the “sac” portion of Applicant’s mark is identical in sound, spelling, and appearance to the “sac” portion of LoveSac Corporation’s marks. Further, the word portion of Applicant’s mark “COMFORT SAC with design” is likewise nearly identical in sound, spelling and appearance with the mark “COMFORTSAC” owned by LoveSac Corporation. The mark proposed for registration by Applicant, namely “COMFORT SAC with design”, is applied to goods that are closely related to the goods and services provided by LoveSac Corporation. Applicant’s mark coupled with the goods for which registration is sought so nearly resembles one or more of LoveSac Corporation’s marks and goods and services, so as to be likely to be confused therewith and mistaken therefore and to confuse, mislead and deceive the consuming public as to the source or origin of Applicant’s goods.

16. The likelihood of confusion in the marketplace exists between LoveSac Corporation’s “sac” trademarks, including its mark “COMFORTSAC,” when applied to the goods and services of the respective parties and Applicant’s trademark.

17. Registration of Applicant’s trademark will result in damage to LoveSac Corporation’s trademarks and LoveSac Corporation’s business.

18. If Applicant is permitted to register its mark for its goods as specified in the application herein opposed, such use and registration would result in confusion in the trade by reason of the similarity between Applicant’s mark and one or more of LoveSac Corporation’s “sac” marks, thereby damaging and injuring LoveSac Corporation. Any such confusion may result in the loss of business to LoveSac Corporation. Furthermore, any defect, objection or fault found with Applicant’s goods marketed under the “COMFORT SAC with design” mark may

reflect upon and injure the reputation which LoveSac Corporation has established for its goods and services in association with one or more of LoveSac Corporation's "sac" marks.

19. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a further source of damage to LoveSac Corporation.

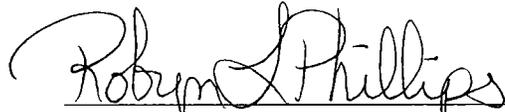
20. In view of the forgoing, Applicant is not entitled to federal registration of its claimed mark because Applicant's mark as used upon its identified goods is not entitled to protection. Further, Applicant does not have a right to exclusive use of said mark in commerce on Applicant's goods. Applicant's claimed mark does not and cannot function to identify such goods and to distinguish them from goods offered by LoveSac Corporation.

WHEREFORE, LoveSac Corporation requests that the registration sought by Applicant be refused and that this Opposition be sustained.

The fee required under 37 C.F.R. § 2.6(17) is submitted herewith.

DATED this 11th day of April, 2006.

Respectfully submitted,



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