

ESTTA Tracking number: **ESTTA131168**

Filing date: **03/21/2007**

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	Budgetel Licensing Corporation		
Entity	Corporation	Citizenship	Georgia
Address	2100 Parklake Drive, N.E. Suite A Atlanta, GA 30345 UNITED STATES		

Correspondence information	James J. Wolfson, Esq. Greenberg Traurig, LLP 3290 Northside Parkway Suite 400 Atlanta, GA 30327 UNITED STATES atltrademark@gtlaw.com, wolfsonj@gtlaw.com Phone:678-553-2272
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Applicant Information

Application No	78239214	Publication date	03/06/2007
Opposition Filing Date	03/21/2007	Opposition Period Ends	04/05/2007
Applicant	JSK, LLC 593 Providence - New London Turnpike North Stonington, CT 06359 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 2003/04/16 First Use In Commerce: 2003/04/16 All goods and services in the class are opposed, namely: Hotel and motel services

Related Proceedings	Notice of Opposition filed for Serial Number 78239205
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Attachments	Notice of Opp (Budget Inn & Design).pdf (7 pages)(19372 bytes)
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Signature	/James J. Wolfson/
Name	James J. Wolfson, Esq.
Date	03/21/2007

As grounds for opposition, it is alleged:

1. For many years, and long prior to the filing date of the subject application, Opposer, through its predecessors-in-interest, has been engaged in the provision of motel services throughout the United States and Canada under the marks BUDGETEL, BUDGETEL (stylized), BUDGETEL INNS (and design), and BUDGETEL INNS (and design) (collectively “Opposer’s Marks”).

2. Opposer owns and relies on U.S. Trademark Registration No. 1,677,835 for the Mark BUDGETEL for “motel services” in International Class 42, which registration issued on March 3, 1992, and is based on an application filed in the United States Patent and Trademark Office (“PTO”) on February 25, 1991 claiming November 21, 1973 as its date of first use. The date of first use, filing date and registration date of Opposer’s ‘835 Registration are prior to the filing date of and date of first use alleged in Applicant’s BUDGET INN application.

3. Opposer’s ‘835 Registration identified above is valid, subsisting, unrevoked, and uncanceled, and constitutes *prima facie* evidence of the validity of Opposer’s mark, the registration thereof, Opposer’s ownership of the mark shown therein, and Opposer’s exclusive right to use the mark in commerce in connection with the goods set forth therein, without condition or limitation. It also constitutes use of Opposer’s mark, conferring right of priority nationwide in effect as of the filing date, and notice to Applicant of Opposer’s claim of ownership of the mark shown therein

4. Opposer owns and relies on U.S. Trademark Registration No. 1,009,574 for the mark BUDGETEL (stylized) for “motel services” in International Class 42, which registration issued on April 29, 1975, and is based on an application filed in the United

States Patent and Trademark Office (“PTO”) on January 14, 1974 claiming November 21, 1973 as its date of first use. The date of first use, filing date and registration date of Opposer’s ‘574 Registration are prior to the filing date of and date of first use alleged in Applicant’s BUDGET INN application.

5. Opposer’s ‘574 Registration identified above is valid, subsisting, unrevoked, and uncanceled, and constitutes *prima facie* evidence of the validity of Opposer’s mark, the registration thereof, Opposer’s ownership of the mark shown therein, and Opposer’s exclusive right to use the mark in commerce in connection with the goods set forth therein, without condition or limitation. It also constitutes use of Opposer’s mark, conferring right of priority nationwide in effect as of the filing date, and notice to Applicant of Opposer’s claim of ownership of the mark shown therein.

6. Opposer owns and relies on U.S. Trademark Registration No. 1,236,871 for the Mark BUDGETEL INNS (and design) for “motel services” in International Class 42, which registration issued on May 3, 1983 and is based on an application filed in the United States Patent and Trademark Office (“PTO”) on June 18, 1982 claiming March 26, 1982 as its date of first use. The design including a representation of a sun. The date of first use, filing date and registration date of Opposer’s ‘871 Registration are prior to the filing date of and date of first use alleged in Applicant’s BUDGET INN application.

7. Opposer’s ‘871 Registration identified above is valid, subsisting, unrevoked, and uncanceled, and constitutes *prima facie* evidence of the validity of Opposer’s mark, the registration thereof, Opposer’s ownership of the mark shown therein, and Opposer’s exclusive right to use the mark in commerce in connection with

the goods set forth therein, without condition or limitation. It also constitutes use of Opposers's mark, conferring right of priority nationwide in effect as of the filing date, and notice to Applicant of Opposer's claim of ownership of the mark shown therein.

8. Opposer owns and relies on U.S. Trademark Registration No. 1,243,322 for the mark BUDGETEL INNS (and design) for "motel services" in International Class 42, which registration issued on June 21, 1983 and is based on an application filed in the United States Patent and Trademark Office ("PTO") on June 17, 1982 claiming March 26, 1982 as its date of first use. The design including a representation of a sun. The date of first use, filing date and registration date of Opposer's '322 Registration are prior to the filing date of and date of first use alleged in Applicant's BUDGET INN application.

9. Opposer's '322 Registration identified above is valid, subsisting, unrevoked, and uncanceled, and constitutes *prima facie* evidence of the validity of Opposer's mark, the registration thereof, Opposer's ownership of the mark shown therein, and Opposer's exclusive right to use the mark in commerce in connection with the goods set forth therein, without condition or limitation. It also constitutes use of Opposers's mark, conferring right of priority nationwide in effect as of the filing date, and notice to Applicant of Opposer's claim of ownership of the mark shown therein.

10. Opposer has used its BUDGETEL marks in connection with motel services sold in interstate commerce since at least as early as 1973, and Opposer continues to so use its BUDGETEL marks.

11. Opposer has used its BUDGETEL INNS marks in connection with motel services sold in interstate commerce since at least as early as 1982, and Opposer continues to so use its BUDGETEL INNS marks.

12. Opposer's use of Opposer's Marks has been continuous since at least as early as the dates identified above in connection with motel services and has not been abandoned. Opposer's Marks are symbolic of the extensive goodwill and consumer recognition built up by Opposer through time, effort and great expense in sales, advertising and promotion. Opposer's Marks, by virtue of their substantial use, have become famous and acquired great value as identifiers of Opposer and of Opposer's services, and distinguish Opposer and Opposer's services from others and their services.

13. In addition to the protection afforded Opposer by its federal trademark registrations, Opposer has extensive common-law rights in its BUDGETEL and BUDGETEL INNS Marks throughout the United States. Opposer's common-law rights in its marks predate the date of first use of and filing date of the BUDGET INN application.

14. In view of the tremendous similarities between Opposer's Marks and Applicant's BUDGET INN (and design) mark and the identical nature of the services of the respective parties, Applicant's Mark so resembles Opposer's Marks as to be likely to cause confusion, mistake or deception.

15. Opposer will be damaged by registration of the BUDGET INN (and design) mark because it so resembles Opposer's Marks registered in the United States Patent and Trademark Office, and in which Opposer owns common law trademark rights, as to be likely, when used on or in connection with motel services as to cause confusion,

or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

16. Opposer will further be damaged by registration of the BUDGETEL INN Mark in that it is likely to cause dilution by blurring or dilution by tarnishment of Opposer's famous BUDGETEL and BUDGETEL INNS Marks.

17. In view of Opposer's prior rights in its marks, Applicant is not entitled to federal registration of the BUDGET INN (and design) mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 78/239,214 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Please charge Deposit Account No. 50-0653 to cover the opposition fee and any additional fees which may be required, or credit any overpayment to this account.

Respectfully submitted, this 21st day of March, 2007.

/s/ James J. Wolfson
James J. Wolfson, Esq.
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**BUDGETEL LICENSING
CORPORATION**

CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: March 21, 2006

I hereby certify that this paper is being transmitted electronically to the United States Patent & Trademark Office through the TEAS electronic filing system on the date indicated above and is addressed to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22323-1451.

/s/ James J. Wolfson
James J. Wolfson, Esq.

CERTIFICATE OF SERVICE

I hereby certify that Opposer's Notice of Opposition have been deposited with the United States Postal Service via First Class Mail with postage fully prepaid addressed to:

JSK, LLC
593 Providence - New London Turnpike
North Stonington, CT 06359

Christopher J. Day
Law Office of Christopher J. Day
301 East Bethany Home Road, Suite A-213
Phoenix, AZ 85012

Dated March 21, 2006

/s/ James J. Wolfson, Esq.