

ESTTA Tracking number: **ESTTA272978**

Filing date: **03/18/2009**

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	Westin Hotel Management, L.P.
Granted to Date of previous extension	03/18/2009
Address	1111 Westchester Ave. White Plains, NY 10604 UNITED STATES

Correspondence information	David Ehrlich Fross Zelnick 866 UN Plaza New York, NY 10017 UNITED STATES ehrllich-docket@fzllz.com Phone:212 813-5920
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**Applicant Information**

Application No	77453451	Publication date	11/18/2008
Opposition Filing Date	03/18/2009	Opposition Period Ends	03/18/2009
Applicant	Portillo, Armando 12106 Zeus Avenue Norwalk, CA 906502423 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 2007/09/01 First Use In Commerce: 2007/09/01 All goods and services in the class are opposed, namely: On-line retail store services featuring cotton baby clothing, cotton cloth diapers, baby bedding, blankets, towels, bibs, diaper covers, diaper liners and doublers, wipes and washcloths, all made of cotton from an organically grown plant and free of chemical processing or treatment
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**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.	2749819	Application Date	06/10/2002
Registration Date	08/12/2003	Foreign Priority Date	NONE
Word Mark	HEAVENLY		

Design Mark	<b>HEAVENLY</b>		
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 1999/08/01 First Use In Commerce: 1999/08/01 Furniture, namely, beds, mattresses, cribs, bassinets and infant cradles, throw pillows, bolster pillows, fitted fabric furniture covers all offered in connection with hotel, motel, and resort hotel services		

U.S. Registration No.	2776045	Application Date	06/11/2001
Registration Date	10/21/2003	Foreign Priority Date	NONE

Word Mark	HEAVENLY
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Design Mark	<b>HEAVENLY</b>		
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 1999/08/00 First Use In Commerce: 1999/08/00 THROW PILLOWS AND BOLSTER PILLOWS Class 024. First use: First Use: 1999/08/00 First Use In Commerce: 1999/08/00 BATH LINEN, BED BLANKETS, BED LINEN, BED SHEETS, BED SPREADS, BED BLANKETS, PILLOW CASES, DUVET COVERS, CURTAINS, DUVETS, HOUSEHOLD LINEN, PILLOW SHAMS, TOWELS, SHAMS, BED SKIRTS AND SHOWER CURTAINS		

U.S. Registration No.	2851136	Application Date	06/11/2001
Registration Date	06/08/2004	Foreign Priority Date	NONE

Word Mark	HEAVENLY
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Design Mark	<b>HEAVENLY</b>
Description of Mark	NONE
Goods/Services	Class 024. First use: First Use: 2001/07/01 First Use In Commerce: 2001/07/01 BED CANOPIES, BED PADS, CRIB BUMPERS, CRIB CANOPIES, CLOTH DOILIES, WASH CLOTHS, COMFORTERS, DUST RUFFLES, EIDERDOWNS (QUILTS), MATTRESS COVERS, MATTRESS PADS, QUILTS, WASHING MITTS, BOX SPRING COVERS, COVERLET, UNFITTED FURNITURE COVERS AND FABRIC BATHMATS

Attachments	76419014#TMSN.gif ( 1 page )( bytes ) 75983339#TMSN.gif ( 1 page )( bytes ) 75982074#TMSN.gif ( 1 page )( bytes ) NOTICE OF OPPOSITION (F0432146).PDF ( 3 pages )(50338 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	/dwe/
Name	David Ehrlich
Date	03/18/2009



2. The opposed application was filed on April 21, 2008 and claims use since September 1, 2007. Upon information and belief, Applicant has no basis to claim earlier rights than September 1, 2007.

3. Applicant's mark so resembles Opposer's HEAVENLY mark as to be likely, when used for the services of Applicant, to cause confusion, or to cause mistake, or to deceive.

4. Opposer would be injured by the granting to Applicant of a Certificate of Registration for its mark because this would tend to damage Opposer's goodwill in its mark.

5. By reason of the foregoing, Applicant is not entitled to register the mark in the application herein opposed.

WHEREFORE, Opposer respectfully prays that this opposition be sustained and that the application be denied.

Dated: New York, New York  
March 18, 2009

Respectfully submitted,

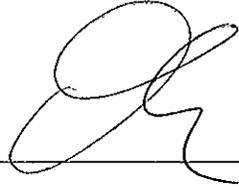
FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.

By: \_\_\_\_\_

  
David Ehrlich  
866 United Nations Plaza  
New York, New York 10017  
(212) 813-5900  
Attorney for Opposer  
Opposer's Ref: WTIN USA TC-0814571

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by first class mail on the applicant, Armando Portillo, 12106 Zeus Avenue, Norwalk, CA 90650-2423, on March 18, 2009.



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David Ehrlich