

ESTTA Tracking number: **ESTTA306058**

Filing date: **09/14/2009**

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	Retail Royalty Company
Granted to Date of previous extension	09/13/2009
Address	101 Convention Center Drive Las Vegas, NV 89109 UNITED STATES

Attorney information	Lisa Pearson, Amanda McCoy Kilpatrick Stockton LLP 31 West 52nd Street New York, NY 10019 UNITED STATES tsiddiqui@kilpatrickstockton.com, amccoy@kilpatrickstockton.com, tadmin@kilstock.com, lpearson@kilpatrickstockton.com
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**Applicant Information**

Application No	77545481	Publication date	03/17/2009
Opposition Filing Date	09/14/2009	Opposition Period Ends	09/13/2009
Applicant	Drayton, Shawn T. 2 Grace Court 2-O Brooklyn, NY 11201 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. All goods and services in the class are opposed, namely: Belts; Caps; Clothing, namely, khakis; Eyeshades; Hoods; Leather belts; Mufflers; Perspiration absorbent underwear clothing; Ties; Tops; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Wearable garments and clothing, namely, shirts
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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. Application No.	78803194	Application Date	01/31/2006
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	NONE
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 003. First use:  After-shave lotions, non-medicated lip balm, bath oil, bath powder, non-medicated bath salts, bubble bath, beauty masks, body cream, body oil, body powder, cologne, perfume, toilet water, cosmetic pencils, hand cream, eye cream, night cream, shaving cream, skin cleansing cream, skin cream, deodorant soap, personal deodorants, antiperspirants, and combination deodorants/antiperspirants, emery boards, essential oils for personal use, eye makeup, eye makeup remover, eye pencils, eye shadow, eyebrow pencils, eyeliners, face powder, facial scrubs, foundation makeup, bath gel, shaving gel, shower gel, lip gloss, lipstick, hair conditioners, hair gel, hair rinses, hair spray, skin lotion, facial lotion, body lotion, makeup, facial makeup, mascara, massage oil, skin moisturizer, nail enamel, nail polish, rouge, sachets, hair shampoo, shaving balm, shaving lotion, skin cleansing lotion, skin soap, skin toners, liquid soaps for hand, face, and body, and compacts containing cosmetics</p> <p>Class 018. First use:  Athletic bags, all-purpose athletic bags, all-purpose sports bags, backpacks, barrel bags, beach bags, book bags, clutch bags, duffel bags, gym bags, leather shopping bags, shoulder bags, tote bags, travel bags, billfolds, briefcases, business card cases, calling card cases, credit card cases, attache cases, document cases, key cases, overnight cases, wallets for carrying passports, credit card holders, cosmetic cases sold empty, toiletry cases sold empty, vanity cases sold empty, change purses, clutch purses, coin purses, drawstring pouches, waist packs, handbags, leather key fobs, knapsacks, luggage, luggage tags, pocketbooks, briefcase-type portfolios, purses, rucksacks, satchels, suitcases, and wallets</p> <p>Class 025. First use:  Clothing and accessories, namely, blazers, vests, sweaters, turtleneck sweaters, sweater coats, skirts, skorts, pants, jeans, shorts, shirts, t-shirts, sport shirts, pull-overs, overalls, blouses, shortalls, polo shirts, rugby shirts, halters, halter tops, sweatshirts, sweatpants, and fleecewear, namely, pullovers, jackets, vests, pants, mittens, and hats all made of fleece; swimwear; beach cover-ups; sleepwear; pajamas; robes; underwear, namely bras, panties, boxer shorts, shell bra tanks, and undershirts; outerwear, namely, jackets, vests, parkas, coats, pea coats, ski pants and ski jackets, 3-in-1 system coats, snowboarding pants and jackets, anoraks, gloves, ear muffs, scarves and mittens; ties; belts; footwear, namely, socks, shoes, slippers, leather boots, rubber boots, insoles, sandals, flipflops, sneakers, clogs and slides, and hosiery; athletic footwear, namely, athletic shoes, trail and hiking shoes and boots, canvas shoes, headwear, namely, hats, hoods, caps, baseball caps, visors, sun visors, headbands, babushkas, head and wrist sweatbands, headscarves, berets</p> <p>Class 035. First use:</p>

	Retail store services, computerized online retail store services, catalog ordering services, mail order catalog and phone order services all featuring a wide range of goods in the nature of fragrances, cosmetics and personal care goods, candles; sunglasses; jewelry and wristwatches; stationery, posters, pictorial, art and color prints, calendars and travel diaries, pens, pencils, portfolios, notepads, greeting cards, and note cards; a wide range of bags and wallets, handbags, purses, shoulder bags, and luggage, school bags, backpacks, daypacks, waist packs, duffle bags, general purpose sport bags, laundry bags, and portfolios; and umbrellas; and wearing apparel and clothing accessories, namely, clothing, headwear and footwear
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U.S. Application No.	78897414	Application Date	05/31/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use:  Equipment used in providing telecommunications services, namely, telephones, mobile radios, two-way radios, cellular telephones, digital cellular telephones, mobile telephones, wireless telephones, pagers, mobile dispatch radios, mobile data receivers and transmitters and handheld units for the wireless receipt and transmission of voice, data, video, music and pictures, namely, handheld personal computers and personal digital assistants (PDAs), handheld computers for entertainment used to receive and play pictures, videos, movies, television shows, computer game programs and computer game cartridges; Accessories for phones, cellular telephones, wireless telephones, and portable communications equipment, namely, batteries, battery chargers, power adapters, cigarette lighter adapters, hands-free dialers, microphones and audio speakers, audio receivers, transceivers, modems, PCMCIA data cards, and electrical cables, phone cradles, RF electrical cables, antennas, antenna adapters, carrying cases for the foregoing goods and holsters and pouches adapted for use with the foregoing goods, carrying clips for wireless telephones; machine readable magnetically encoded calling cards, magnetically encoded caller identification cards; and caller identification boxes</p> <p>Class 035. First use:  Retail store services featuring telephones, wireless phones, wireless hand-held devices for access to a global computer networks, pagers, personal digital assistants, and related accessories and equipment</p> <p>Class 038. First use:  Telecommunication services, namely, electronic, electric and digital transmission of voice, text, images, data, pictures, music, games, movies, video and information via wireless networks, two-way radio dispatching services,</p>		

	electronic transmission of voice, text, images, data, music, games, movies, video and information by means of telephones, mobile radios, two-way radios, cellular telephones, digital cellular telephones, mobile telephones, wireless telephones, pagers, mobile dispatch radios, mobile data receivers and transmitters and handheld units, namely, personal computers and digital assistants (PDAs), dispatch radios, and pagers; paging services; mobile telephone communication services; wireless Internet access services; and wireless data services for mobile devices via a wireless network for the purpose of sending and receiving electronic mail, facsimiles, data, images, music, videos, games, movies, information, text, numeric messaging and text messaging and for accessing a global communications network
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Attachments	78803194#TMSN.jpeg ( 1 page )( bytes ) 78897414#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 10 pages )(52064 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	/Amanda L. McCoy/
Name	Lisa Pearson, Amanda McCoy
Date	09/14/2009

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

In the Matter of Serial No. 77/545,481  
Mark:



Filing Date: August 12, 2008  
Publication Date: March 17, 2009  
Our Reference No.: 57289-374002

RETAIL ROYALTY COMPANY,

Petitioner,

v.

SHAWN T. DRAYTON D/B/A OSLOH,

Applicant.

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

**NOTICE OF OPPOSITION**

Opposer is Retail Royalty Company, a Nevada corporation with an address at 101 Convention Center Drive, Las Vegas, Nevada 89109 (“Opposer”). Opposer believes that it will be damaged by the registration of the OSLOH (and eagle design) mark in Application Serial No. 77/545,481 (the “Application”) and hereby opposes the same pursuant to 15 U.S.C. § 1063.

As grounds for its opposition, Opposer alleges as follows:

1. Opposer, together with its affiliated companies American Eagle Outfitters, Inc. and AEO Management Co. (collectively, “AEO”), is a leading retailer that designs, markets and

sells clothing, accessories, footwear, and other products and operates retail stores under a family of bird design marks, among other marks. These include the eagle design shown below (the “AEO Eagle Design”).



2. AEO has continuously used the AEO Eagle Design in connection with its extremely popular AMERICAN EAGLE OUTFITTERS clothing and accessories since at least as early as 2003. The goods offered and sold under the AEO Eagle Design include, but are not limited to, shirts, pants, shorts, skirts, jackets, underwear, belts, hats, caps, bags, backpacks, purses, and wallets, among numerous other related goods. AEO has also continuously used the AEO Eagle Design in connection with its AMERICAN EAGLE OUTFITTERS retail store services and related services for such clothing and accessories since at least as early as 2003.

3. AEO operates over 950 stand-alone AMERICAN EAGLE OUTFITTERS retail stores under the AEO Eagle Design mark, and offers products bearing the AEO Eagle Design in all such stores, as well as on its website [www.ae.com](http://www.ae.com).

4. AEO has spent substantial sums of money to promote the goods and services offered under the AEO Eagle Design. Based on AEO’s extensive use and promotion of the AEO Eagle Design, the AEO Eagle Design has acquired a highly favorable reputation and good will, and has come to be immediately identified with Opposer. Accordingly, Opposer has developed broad rights at common law in the AEO Eagle Design.

5. In addition to its common law rights, Opposer is the owner of the following U.S. trademark and service mark applications, *inter alia*, for the AEO Eagle Design:

Mark	Serial No.	Goods/Services	Filing Date
	78803194	<p>IC 003: After-shave lotions, non-medicated lip balm, bath oil, bath powder, non-medicated bath salts, bubble bath, beauty masks, body cream, body oil, body powder, cologne, perfume, toilet water, cosmetic pencils, hand cream, eye cream, night cream, shaving cream, skin cleansing cream, skin cream, deodorant soap, personal deodorants, antiperspirants, and combination deodorants/antiperspirants, emery boards, essential oils for personal use, eye makeup, eye makeup remover, eye pencils, eye shadow, eyebrow pencils, eyeliners, face powder, facial scrubs, foundation makeup, bath gel, shaving gel, shower gel, lip gloss, lipstick, hair conditioners, hair gel, hair rinses, hair spray, skin lotion, facial lotion, body lotion, makeup, facial makeup, mascara, massage oil, skin moisturizer, nail enamel, nail polish, rouge, sachets, hair shampoo, shaving balm, shaving lotion, skin cleansing lotion, skin soap, skin toners, liquid soaps for hand, face, and body, and compacts containing cosmetics</p> <p>IC 018: Athletic bags, all-purpose athletic bags, all-purpose sports bags, backpacks, barrel bags, beach bags, book bags, clutch bags, duffel bags, gym bags, leather shopping bags, shoulder bags, tote bags, travel bags, billfolds, briefcases, business card cases, calling card cases, credit card cases, attache cases, document cases, key cases, overnight cases, wallets for carrying passports, credit card holders, cosmetic cases sold empty, toiletry cases sold empty, vanity cases sold empty, change purses, clutch purses, coin purses, drawstring pouches, waist packs, handbags, leather key fobs, knapsacks, luggage, luggage tags, pocketbooks, briefcase-type portfolios, purses, rucksacks, satchels, suitcases, and wallets</p>	Jan. 31, 2006

		<p>IC 025: Clothing and accessories, namely, blazers, vests, sweaters, turtleneck sweaters, sweater coats, skirts, shorts, pants, jeans, shorts, shirts, t-shirts, sport shirts, pull-overs, overalls, blouses, shortalls, polo shirts, rugby shirts, halters, halter tops, sweatshirts, sweatpants, and fleecewear, namely, pullovers, jackets, vests, pants, mittens, and hats all made of fleece; swimwear; beach cover-ups; sleepwear; pajamas; robes; underwear, namely bras, panties, boxer shorts, shell bra tanks, and undershirts; outerwear, namely, jackets, vests, parkas, coats, pea coats, ski pants and ski jackets, 3-in-1 system coats, snowboarding pants and jackets, anoraks, gloves, ear muffs, scarves and mittens; ties; belts; footwear, namely, socks, shoes, slippers, leather boots, rubber boots, insoles, sandals, flipflops, sneakers, clogs and slides, and hosiery; athletic footwear, namely, athletic shoes, trail and hiking shoes and boots, canvas shoes, headwear, namely, hats, hoods, caps, baseball caps, visors, sun visors, headbands, babushkas, head and wrist sweatbands, headscarves, berets</p> <p>IC 035: Retail store services, computerized online retail store services, catalog ordering services, mail order catalog and phone order services all featuring a wide range of goods in the nature of fragrances, cosmetics and personal care goods, candles; sunglasses; jewelry and wristwatches; stationery, posters, pictorial, art and color prints, calendars and travel diaries, pens, pencils, portfolios, notepads, greeting cards, and note cards; a wide range of bags and wallets, handbags, purses, shoulder bags, and luggage, school bags, backpacks, daypacks, waist packs, duffle bags, general purpose sport bags, laundry bags, and portfolios; and umbrellas; and</p>	
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		wearing apparel and clothing accessories, namely, clothing, headwear and footwear	
	78897414	<p>IC 009: Equipment used in providing telecommunications services, namely, telephones, mobile radios, two-way radios, cellular telephones, digital cellular telephones, mobile telephones, wireless telephones, pagers, mobile dispatch radios, mobile data receivers and transmitters and handheld units for the wireless receipt and transmission of voice, data, video, music and pictures, namely, handheld personal computers and personal digital assistants (PDAs), handheld computers for entertainment used to receive and play pictures, videos, movies, television shows, computer game programs and computer game cartridges; Accessories for phones, cellular telephones, wireless telephones, and portable communications equipment, namely, batteries, battery chargers, power adapters, cigarette lighter adapters, hands-free dialers, microphones and audio speakers, audio receivers, transceivers, modems, PCMCIA data cards, and electrical cables, phone cradles, RF electrical cables, antennas, antenna adapters, carrying cases for the foregoing goods and holsters and pouches adapted for use with the foregoing goods, carrying clips for wireless telephones; machine readable magnetically encoded calling cards, magnetically encoded caller identification cards; and caller identification boxes</p> <p>IC 035: Retail store services featuring telephones, wireless phones, wireless hand-held devices for access to a global computer networks, pagers, personal digital assistants, and related accessories and equipment</p> <p>IC 038: Telecommunication services,</p>	May 31, 2006

		<p>namely, electronic, electric and digital transmission of voice, text, images, data, pictures, music, games, movies, video and information via wireless networks, two-way radio dispatching services, electronic transmission of voice, text, images, data, music, games, movies, video and information by means of telephones, mobile radios, two-way radios, cellular telephones, digital cellular telephones, mobile telephones, wireless telephones, pagers, mobile dispatch radios, mobile data receivers and transmitters and handheld units, namely, personal computers and digital assistants (PDAs), dispatch radios, and pagers; paging services; mobile telephone communication services; wireless Internet access services; and wireless data services for mobile devices via a wireless network for the purpose of sending and receiving electronic mail, facsimiles, data, images, music, videos, games, movies, information, text, numeric messaging and text messaging and for accessing a global communications network</p>	
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6. Notwithstanding Opposer’s prior rights in the AEO Eagle Design in connection with clothing, accessories, and related goods and services, on August 12, 2008, Shawn T. Drayton d/b/a Osloh, a U.S. individual with an address at 2 Grace Court 2-O Brooklyn, New York 11201 (the “Applicant”) filed an intent-to-use Application in the U.S. Patent and Trademark Office for registration of the OSLOH (and eagle design) mark shown below (the “OSLOH Eagle Design”) for a variety of goods in Class 25:



7. The description of goods in Applicant's Application is as follows:

Belts; Caps; Clothing, namely, khakis; Eyeshades; Hoods; Leather belts; Mufflers; Perspiration absorbent underwear clothing; Ties; Tops; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Wearable garments and clothing, namely, shirts in International Class 25.

8. The Application was filed on a Section 1(b) basis on August 12, 2008, and was subsequently published in the *Trademark Official Gazette* on March 17, 2009. On April 14, 2009, Opposer timely filed a request for a thirty (30) day extension of time to oppose the Application, which was granted the same day by the Trademark Trial and Appeal Board (the "TTAB") through and until May 16, 2009. On May 16, 2009, Opposer timely filed a request for a further sixty (60) day extension of time to oppose the Application for good cause, which was granted the same day by the TTAB through and until July 15, 2009. On July 15, 2009, Opposer timely filed a request upon consent for an additional sixty (60) day extension of time to oppose the Application, which was granted the same day by the TTAB through and until Sunday August 13, 2009.

9. Applicant's OSLOH Eagle Design, as used and as set forth in the Application, is similar in overall commercial impression to Opposer's AEO Eagle Design.

10. The goods listed by Applicant in the Application are identical and/or closely related to the goods Opposer has offered in connection with its AEO Eagle Design.

11. Accordingly, Applicant's use of the OSLOH Eagle Design is likely to cause confusion, mistake, or deception in the minds of consumers as to the origin or source of

Applicant's services in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer and the public.

12. There is no issue as to priority. Opposer began using its AEO Eagle Design in commerce at least as early as 2003, well prior to the August 12, 2008 filing date of Applicant's intent-to-use Application.

13. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* exclusive right to the use of the OSLOH Eagle Design. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer requests that that registration of Application Serial No. 77/545,481 be denied pursuant to 15 U.S.C. §§ 1052(d) and 1063(a).

The opposition fee in the amount of \$300.00 for a notice of opposition in one class is filed herewith. If for any reason this amount is insufficient, it is requested that Kilpatrick Stockton LLP's Deposit Account No. 11-0860 be charged with any deficiency. This paper is filed electronically.

Dated: New York, New York  
August 14, 2009

Respectfully submitted,  
**KILPATRICK STOCKTON LLP**

By: /s/ Amanda L. McCoy

Lisa Pearson  
Amanda L. McCoy  
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New York, New York 10019  
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*Attorneys for Opposer, Retail Royalty Company*

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

In the Matter of Serial No. 77/545,481

Mark:



**OSLOH**

Filing Date: August 12, 2008

Publication Date: March 17, 2009

Our Reference No.: 57289-374002

RETAIL ROYALTY COMPANY,

Petitioner,

v.

SHAWN T. DRAYTON D/B/A OSLOH,

Applicant.

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been served on the Applicant Shawn T. Drayton d/b/a Osloh, by mailing said copy on September 14, 2009, via First Class Mail, postage prepaid, and addressed as follows:

Shawn T. Drayton d/b/a Osloh  
2 Grace Court 2-O  
Brooklyn, NY 11201

/s/ Amanda L. McCoy  
Amanda L. McCoy

Attorney for Opposer  
Retail Royalty Company