

ESTTA Tracking number: **ESTTA324311**

Filing date: **12/28/2009**

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	Brown Shoe Company, Inc.
Granted to Date of previous extension	12/27/2009
Address	8300 Maryland Avenue St. Louis, MO 63105 UNITED STATES

Attorney information	Michelle W. Alvey Husch Blackwell Sanders LLP 190 Carondelet Plaza Suite 600 St. Louis, MO 63105 UNITED STATES michelle.alvey@huschblackwell.com, arkadia.delay@huschblackwell.com, ptosl@huschblackwell.com, jenny.birmingham@huschblackwell.com Phone: 314-480-1500
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Applicant Information

Application No	77497702	Publication date	06/30/2009
Opposition Filing Date	12/28/2009	Opposition Period Ends	12/27/2009
Applicant	Cosway Company, Inc. 20633 Fordyce Avenue Carson, CA 90810 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. All goods and services in the class are opposed, namely: handbags
Class 025. Opposed goods and services in the class: footwear, namely, slippers, boots, shoes, beach shoes, thonged and strapped sandals, sporting and gymnastic footwear, athletic shoes, boots for sports

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3532103	Application Date	10/02/2007
Registration Date	11/11/2008	Foreign Priority	NONE

		Date	
Word Mark	N 5		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/09/30 First Use In Commerce: 2007/09/30 Footwear		

Attachments	77294597#TMSN.jpeg (1 page)(bytes) N4 opposition.pdf (4 pages)(114361 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	/Michelle W. Alvey/
Name	Michelle W. Alvey
Date	12/28/2009

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on December 28, 2009.

/s/ Michelle Alvey _____

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

Mark: N.4 and Design
U.S. Application Serial No. 77/497,702

BROWN SHOE COMPANY, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
COSWAY COMPANY, INC.)	
)	U.S. App. No. 77/497,702
Applicant.)	

NOTICE OF OPPOSITION
TO APPLICATION SERIAL NO. 77/497,702

Brown Shoe Company, Inc. (“Brown Shoe” or “Opposer”), a corporation organized and existing under the laws of the State of New York, having its principal place of business at Brown Shoe Company, Inc., 8300 Maryland Avenue, St. Louis, MO 63105, is being and will be damaged by the use and/or registration of the mark shown at U.S. Application Serial No. 77/497,702 in Class 18 and 25 and hereby opposes the same.

As grounds for its opposition, Opposer states:

1. Applicant Cosway Company, Inc. (“Applicant”), in U.S. Application Serial No. 77/497,702 (the “Application”), applied for registration of the trademark N.4 for various goods,

including “handbags” in International Class 18 and “footwear, namely, slippers, boots, shoes, beach shoes, thonged and strapped sandals, sporting and gymnastic footwear, athletic shoes, boots for sports” in Class 25 (“Applicant’s Class 18 and Class 25 goods”). The Application was filed on June 12, 2008 and is based on an alleged bona fide intent to use the mark in commerce.

2. Brown Shoe is the owner of the trademark N 5 and owns United States Trademark Registration No. 3,532,103 therefor, covering footwear, and common law rights thereto. For purposes of this Notice, the N 5 trademark of Opposer, including the referenced U.S. trademark Registration, is referred to as the “N 5 Mark”.

3. Since long prior to Applicant’s filing date, Opposer has used the N 5 Mark in commerce on or in connection with goods that are similar to Applicant’s Class 18 and Class 25 goods covered by the Application.

4. Opposer has promoted and continues to promote the N 5 Mark in interstate commerce within the United States for identifying Opposer’s goods.

5. Opposer’s N 5 Mark is inherently distinctive and uniquely associated with Opposer in connection with Opposer’s goods offered under the N 5 Mark by reason of Opposer’s extensive advertising, promotion and use. Such advertising, promotion and use occurred prior to the filing date of the Application.

6. Applicant’s N.4 mark, which is the subject of the Application herein opposed, so resembles Brown Shoe’s N 5 Mark as to be likely, if used in conjunction with Applicant’s Class 18 and Class 25 goods, to cause confusion, mistake, and to deceive customers, and Applicant’s mark is confusingly and deceptively similar to Opposer’s N5 Mark when used in connection with Applicant’s Class 18 and Class 25 goods.

7. Applicant's Class 18 and Class 25 goods are directed to the same or related class of customers as those for Opposer's goods and or will be sold in the same channels of trade. Accordingly, Applicant's Class 18 and Class 25 goods and Opposer's goods are so commercially related that Applicant's N.4 mark and Opposer's N 5 Mark, when used in conjunction with their respective goods, are confusingly similar.

8. Applicant's use of its N.4 mark under the Application, which so resembles and is colorably imitative of Opposer's N 5 Mark, is likely to cause confusion, mistake or deception of purchasers as to the source of Applicant's Class 18 and Class 25 goods and will inevitably falsely suggest a trade connection between Brown Shoe and Applicant.

WHEREFORE, Opposer Brown Shoe believes that it will be damaged by the registration sought by Applicant in Class 18 and Class 25 and prays that said application be refused registration in Class 18 and Class 25.

Opposer Brown Shoe requests that, if there is any insufficiency in the payment of the statutory filing fee, such amount be debited from our Deposit Account No. 11-0160.

DATED: December 28, 2009.

BROWN SHOE, INC.

By: /Michelle Ward Alvey/
Michelle Ward Alvey
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*Attorneys for Opposer Brown Shoe
Company, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Opposition has been duly served on the Applicant by mailing a copy of same via first class mail, postage prepaid, to its attorney of record, Daniel M. Cislo, Cislo & Thomas, LLP, 1333 2nd Street, Suite 500, Santa Monica, CA 90401-4110, on this 28th day of December, 2009:

/Arkadia DeLay/