

ESTTA Tracking number: **ESTTA348862**

Filing date: **05/20/2010**

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	Swarm, LLC
Granted to Date of previous extension	05/22/2010
Address	149 S. Barrington Avenue Suite 727 Los Angeles, CA 90049 UNITED STATES

Attorney information	Jessie K. Reider, CA Bar No. 237,113 Buchalter Nemer, A Professional Corporation 1000 Wilshire Blvd., Suite 1500 Los Angeles, CA 90017 UNITED STATES trademark@buchalter.com Phone:213-891-5031
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Applicant Information

Application No	77852023	Publication date	03/23/2010
Opposition Filing Date	05/20/2010	Opposition Period Ends	05/22/2010
Applicant	Cohen, Nancy Sidonie 3744 Mandeville Canyon Road Los Angeles, CA 90049 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, tee shirts, shirts, tops, pants, jeans, shorts, bottoms, jackets, suits, outerwear, underwear, hats, scarves, gloves and shoes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant did not have a bona fide intent to use Applicant#s Mark in commerce as of the filing date of Applicant#s Application as required under 15 U.S.C. Â§1051(b).

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77961310	Application Date	03/17/2010
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SHADES OF GREIGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/02/13 First Use In Commerce: 2007/02/13 Clothing, namely, pants, shorts, shirts, tee shirts, polo style shirts, sweaters, sweatshirts, sweatpants, jackets, coats, suits, scarves, underwear, loungewear, pajamas, robes, belts, footwear and headwear		

Related Proceedings	Swarm, LLC v. Micah A. Cohen and Nancy Sidonie Cohen, 2:2010 CV 10 3188 DDP (Central District of California)
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Attachments	77961310#TMSN.jpeg (1 page)(bytes) Notice of Opposition.PDF (13 pages)(244678 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	/jkr/
Name	Jessie K. Reider, CA Bar No. 237,113
Date	05/20/2010

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

In the matter of Trademark Application Serial Number 77/852,023

For the Mark: **SHADES OF GREY**

Published in the *Official Gazette* on March 23, 2010

SWARM, LLC,

Opposer;

v.

NANCY SIDONIE COHEN,

Applicant

Opposition No.: _____

Application: Serial No. 77/852,023

Mark: SHADES OF GREY

Published For Opposition: March 23,
2010

NOTICE OF OPPOSITION

Opposer SWARM, LLC (“Opposer”) believes that it will be damaged by registration on the Principal Register of the captioned mark SHADES OF GREY (“Applicant’s Mark”), in the name of Applicant NANCY SIDONIE COHEN (“Applicant”), and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a limited liability company duly organized and existing under the laws of the State of California, with a principal place of business at 149 South Barrington Avenue, Suite 727, Los Angeles, California 90049.

2. Upon information and belief, Applicant is an individual of the United States, with a principal place of business at 3744 Mandeville Canyon Road, Los Angeles, California 90049.

3. Opposer is the sole and exclusive owner of, and uses in commerce, the mark SHADES OF GREIGE, for goods including, without limitation, clothing and accessories (“Opposer’s Mark”). A common and accepted pronunciation of the word “Greige” is “Grey”. Opposer is the owner of a pending application to register the SHADES OF GREIGE mark, Serial No. 77/961,310.

4. On information and belief, on or about October 19, 2009, Applicant filed an application, Serial Number 77/852,023, to register on the Principal Register the mark SHADES OF GREY, based on an intent to use the mark in commerce in connection with *Clothing, namely, tee shirts, shirts, tops, pants, jeans, shorts, bottoms, jackets, suits, outerwear, hats, scarves, gloves and shoes* in Class 025 (“Applicant’s Application”).

5. On October 19, 2009, Applicant signed and submitted Applicant’s Application to register Applicant’s Mark and identified herself as the owner of the mark. Applicant’s signature represented her attestation as to the veracity of the declaration included with Applicant’s Application.

6. Applicant made this representation to induce the Trademark Office to issue a registration for Applicant’s Mark. A copy of Applicant’s Application signed by Applicant is attached as Exhibit A.

7. However, upon filing Applicant’s Application, Applicant did not have any intent to use the mark in commerce. Rather, Applicant’s son is the individual who actually had the intent to use mark in commerce.

8. Opposer timely filed an Extension of Time to Oppose Applicant’s Application with the Trademark Trial and Appeal Board on April 7, 2010. An opposition to Applicant’s Application must be filed on or before May 22, 2010. Therefore, this Notice of Opposition is being timely filed.

9. On information and belief, Applicant has never provided goods under the SHADES OF GREY mark.

10. On information and belief, Applicant did not, at the time of filing the Application, have a bona fide intent to use the SHADES OF GREY mark in commerce, whether on the goods identified in Applicant's Application, or upon any goods.

11. On information and belief, Applicant does not currently have, and has never had, a bona fide intent to use the SHADES OF GREY mark in commerce, whether on the goods identified in Applicant's Application, or upon any goods.

12. The representations Applicant made to the Trademark Office on October 19, 2009 were false.

13. Applicant knew that the representations were false.

14. Applicant knowingly made material misrepresentations to the Trademark Office to procure a registration for Applicant's Mark.

15. Applicant intended to deceive the Trademark Office.

16. The Trademark Office relied on the representations when issuing a Notice of Publication for Applicant's Application

17. The Trademark Office would not have published Applicant's Application but for Applicant's false representations.

18. Applicant's actions in the filing of Applicant's Application constitute fraud, thereby invalidating Applicant's Application. Accordingly, Applicant's Application should be struck from the register in its entirety.

19. Opposer's Mark was used in commerce as early as February 13, 2007, long prior to the filing date of Applicant's Application. Prior to the filing of Applicant's Application, purchasers had come to recognize Opposer's Mark as identifying goods emanating exclusively from Opposer.

20. Since first use, Opposer's Mark has been in continuous use in commerce and has not been abandoned.

21. Opposer has expended substantial resources to advertise and promote Opposer's goods, all under Opposer's Mark.

22. By reason of Opposer's advertisement, sale, offering for sale, promotion and use of Opposer's Mark, Opposer's Mark has come to be recognized as signifying Opposer. Opposer has built up extensive goodwill in Opposer's Mark.

23. Applicant's Mark so resembles Opposer's Mark as to be likely, when used on or in connection with the goods claimed in the Application, to cause confusion, to cause mistake, or to deceive in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), as amended.

24. Applicant's use and registration of Applicant's Mark is likely to falsely suggest a connection with Opposer and Opposer's Mark. The purchasing public is likely to be led to believe that goods bearing Applicant's Mark emanate from or are approved, licensed or sponsored by Opposer or that Applicant and its business are owned by or are affiliated with Opposer and its business.

25. If Applicant is permitted to use Applicant's Mark as specified in the Application, consumer confusion is likely, resulting in damage and injury to Opposer, because of the similarity between Applicant's Mark and Opposer's Mark.

26. Consumers familiar with Opposer's Mark would be likely to believe Applicant's goods are provided by Opposer or provided with Opposer's authorization or approval. Any such confusion would inevitably result in lost sales

for Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under Applicant's Mark would injure Opposer's reputation and the goodwill Opposer has established in Opposer's Mark.

27. Applicant did not have a bona fide intent to use Applicant's Mark in commerce as of the filing date of Applicant's Application as required under 15 U.S.C. §1051(b).

28. Opposer believes it will be damaged by registration of Applicant's Application, because such registration would give Applicant at least a *prima facie* exclusive right to use Applicant's Mark in commerce in the United States, in derogation of Opposer's senior rights in Opposer's Mark.

29. Applicant's use and registration of Applicant's Mark will damage Opposer, its business and its goodwill.

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WHEREFORE, Opposer believes and avers that it will be damaged by the registration of SHADES OF GREY, and prays for judgment sustaining this opposition and refusing the registration of Application Serial No. 77/852,023, and that such other and further relief as is deemed just and proper be granted.

The requisite filing fee prescribed by 37 C.F.R. §2.6(a)(17), in the amount of \$300.00 should be charged to Deposit Account No. 500977. If there are any additional fees due in connection with this Notice of Opposition, they should also be charged to Deposit Account No. 500977, and any excess fees should be credited to the same. All correspondence relating to this matter should be directed to the undersigned attorney for Opposer.

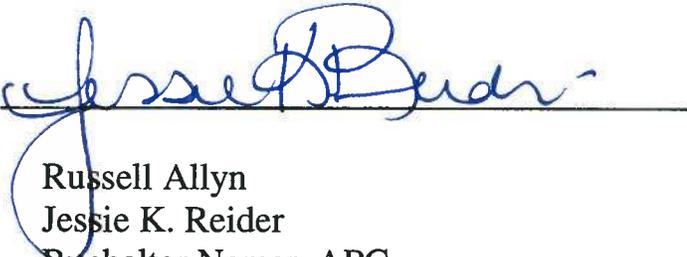
Respectfully submitted,

BUCHALTER NEMER

A Professional Corporation

Date: May ,2010

By:

A handwritten signature in blue ink, appearing to read "Russell Allyn", is written over a horizontal line. The signature is cursive and somewhat stylized.

Russell Allyn
Jessie K. Reider
Buchalter Nemer, APC
California Bar No. 237,113
1000 Wilshire Boulevard, Suite 1500
Los Angeles, California 90017-2457
Telephone: (213) 891-5031
Facsimile: (213) 630-5745

Email: jreider@buchalter.com;
trademark@buchalter.com

Attorneys for Opposer

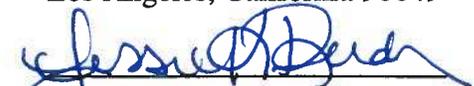
SWARM, LLC

Proof of Service

I hereby certify that a true and correct copy of the instant **Notice of Opposition** has been served on the Correspondence of Record, Nancy Sidonie Cohen, at the address of record for the instant proceeding. A copy of the instant Response was sent via First Class mail, postage pre-paid, on May 20, 2010 to:

Nancy Sidonie Cohen
3744 Mandeville Canyon Road
Los Angeles, California 90049

By:



Jessie K. Reider

BN 6161220v3

EXHIBIT A

Document Description: **Application**
 Mail / Create Date: **19-Oct-2009**

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PTO Form 1478 (Rev 9/2006)
 OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77852023

Filing Date: 10/19/2009

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77852023
MARK INFORMATION	
*MARK	<u>SHADES OF GREY</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	SHADES OF GREY
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Cohen, Nancy Sidonie
*STREET	3744 Mandeville Canyon Road
*CITY	Los Angeles
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	90049
PHONE	3104729094
FAX	3104729094

EMAIL ADDRESS	lychou@aol.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	
*IDENTIFICATION	Clothing, namely, tee shirts, shirts, tops, pants, jeans, shorts, bottoms, jackets, suits, outerwear, underwear, hats, scarves, gloves and shoes.
FILING BASIS	SECTION 1(b)
CORRESPONDENCE INFORMATION	
NAME	Cohen, Nancy Sidonie
STREET	3744 Mandeville Canyon Road
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90049
PHONE	3104729094
FAX	3104729094
EMAIL ADDRESS	lychou@aol.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/NSC/

SIGNATORY'S NAME	Nancy Sidonie Cohen
SIGNATORY'S POSITION	Owner
DATE SIGNED	10/19/2009

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77852023

Filing Date: 10/19/2009

To the Commissioner for Trademarks:

MARK: SHADES OF GREY (Standard Characters, see mark)

The literal element of the mark consists of SHADES OF GREY.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Nancy Sidonie Cohen, a citizen of United States, having an address of
3744 Mandeville Canyon Road
Los Angeles, California 90049
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class _____: Clothing, namely, tee shirts, shirts, tops, pants, jeans, shorts, bottoms, jackets, suits, outerwear, underwear, hats, scarves, gloves and shoes.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

Correspondence Information: Cohen, Nancy Sidonie

3744 Mandeville Canyon Road
Los Angeles, California 90049
3104729094(phone)
3104729094(fax)
lychou@aol.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm,

corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /NSC/ Date Signed: 10/19/2009
Signatory's Name: Nancy Sidonie Cohen
Signatory's Position: Owner

RAM Sale Number: 2575
RAM Accounting Date: 10/20/2009

Serial Number: 77852023
Internet Transmission Date: Mon Oct 19 16:50:10 EDT 2009
TEAS Stamp: USPTO/BAS-72.37.129.152-2009101916501053
3386-77852023-4609892d9ca40e55eaa368ad1d
dfb1a44df-CC-2575-20091019162136323142

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NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.