

ESTTA Tracking number: **ESTTA389395**

Filing date: **01/20/2011**

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	Weber-Stephen Products Co.
Granted to Date of previous extension	01/23/2011
Address	200 E. Daniels Road Palatine, IL 60067 UNITED STATES

Attorney information	Paula Jill Krasny Baker & McKenzie LLP 130 E. Randolph Drive One Prudential Plaza Chicago, IL 60601 UNITED STATES paula.krasny@bakermckenzie.com
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**Applicant Information**

Application No	77811726	Publication date	07/27/2010
Opposition Filing Date	01/20/2011	Opposition Period Ends	01/23/2011
Applicant	SUNDAY ROCKS LLC 4715 S ALAMEDA ST LOS ANGELES, CA 90058 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. All goods and services in the class are opposed, namely: Long-sleeved and short-sleeved shirts, dresses and skirts, scarves, shirts, shorts, sweatshirts, sweatpants, socks
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Violations of 15 USC Sections 1051(b)(3)(B) and 1051(b)(3)(D)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3834455	Application Date	01/07/2010
Registration Date	08/17/2010	Foreign Priority Date	NONE

Word Mark	NONE
Design Mark	
Description of Mark	The mark consists of an open grill with a flame coming out of it and an oval shadow below.
Goods/Services	Class 009. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Magnetic coded gift cards Class 016. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 paper napkins; printed menus; printed survey cards; printed promotional materials relating to restaurant and catering services and cooking Class 025. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 chef hats and shirts, server uniforms, shirts, caps, hats Class 030. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 sauces for cooking and grilling; cooking spices; cooking rubs Class 043. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 restaurant, bar and catering services; restaurant reservation services

U.S. Registration No.	2540281	Application Date	04/23/2001
Registration Date	02/19/2002	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1999/12/31 First Use In Commerce: 1999/12/31 clothing, namely hats, t-shirts, sweatshirts, polo shirts and chef shirts		

Attachments	77907082#TMSN.jpeg ( 1 page )( bytes ) 76245074#TMSN.gif ( 1 page )( bytes )
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	opposition.pdf ( 18 pages )(871373 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 Overnight Courier on this date.

Signature	/Paula Jill Krasny/
Name	Paula Jill Krasny
Date	01/20/2011

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

Applicant:	Sunday Rocks LLC	)	
		)	
Serial No.:	77/811726	)	Opposition No. _____
		)	
Filing Date:	August 24, 2009	)	
		)	
Mark:	SUNDAY ROCKS (and design)	)	
		)	
		)	
<hr/>			
	Weber-Stephens Products Co.,	)	
		)	
	Opposer,	)	
		)	
	v.	)	
		)	
	Sunday Rocks LLC,	)	
		)	
	Applicant.	)	

**NOTICE OF OPPOSITION**

In a matter of application Serial No. 77/811726 for the registration of the trademark  in Class 25 (the "*Sunday Rocks Mark*") in the name of Sunday Rocks LLC, a California limited liability company, having a place of business at 110 E. 9th St., Los Angeles, California, 90070 ("*Applicant*"), Weber-Stephens Products Co., an Illinois corporation having a place of business at 200 E. Daniels Road, Palatine, Illinois 60067 ("*Opposer*"), believes that it will be damaged by the registration of the Sunday Rocks Mark and therefore opposes its registration on the following grounds:

1. Opposer is a well known manufacturer of outdoor barbecue grills.



Registration No. and Date	Mark	Class/Relevant Goods & Services	Date of First Use in Class 25 & Status
2540281  February 19, 2002		(Int'l Class: 25) Clothing, namely hats, t-shirts, sweatshirts, polo shirts and chef shirts	At least as early as December 31, 1999  Incontestable Registration

Collectively, these marks will hereinafter be referred to as the "*Weber Grill Marks*."

6. Opposer has used, and its successor-in-title, Weber-Stephen Products LLC ("*Weber LLC*"), continues to use the Weber Marks on an array of apparel, including but not limited to shirts, hats, chef wear and server uniforms. Neither Opposer nor its successor-in-title has abandoned rights in the Weber Marks, which are valid and subsisting.

7. The transfer of the Weber Marks from Opposer to Weber-Stephens Products LLC is explained in further detail in the accompanying Motion to Change Name of Parties that Applicant is filing simultaneously with this Notice of Opposition.

8. On August 24, 2009, Applicant's predecessor-in-title, Lafayette Textiles Corp. ("*Lafayette*"), filed an application to register the Sunday Rocks Mark on an intent-to-use basis for "long-sleeved and short-sleeved shirts, dresses and skirts, shirts, shorts, sweatshirts, sweatpants, socks."

9. On September 15, 2009, Lafayette assigned the application for the Sunday Rocks Mark and, upon information and belief, sold the part of the business to which the Sunday Rocks Mark pertained, to Applicant.

10. On June 17, 2010, Applicant assigned the application for the Sunday Rocks Mark, and upon information and belief, the ongoing and existing business associated with the Sunday Rocks Mark, to Angela Locke, an individual ("**Locke**"). A copy of the USPTO Trademark Assignment Abstract of Title showing the assignment of the Sunday Rocks Mark from Lafayette to Applicant and from Applicant to Locke is attached hereto as Exhibit A.

11. The transfers of the Sunday Rocks Mark are also discussed in further detail in the Motion to Change Name of Parties that is being filed simultaneously with this Notice of Opposition.

12. Upon information and belief, Locke is an officer or key employee of Applicant.

13. The Sunday Rocks Mark contains a depiction of a Weber Grill Mark between the words SUNDAY and ROCKS.

14. In the alternative, the Sunday Rocks Mark contains a depiction of a mark virtually or substantially identical to a Weber Grill Mark between the words SUNDAY and ROCKS.

15. On or about August 17-19, 2010, Applicant, and/or Locke participated in the PROJECT trade show at The Mandalay Bay Hotel in Las Vegas, Nevada. Attached as Exhibit B are the relevant pages from the "PROJECT Show Guide," demonstrating the Sunday Rocks LLC participated in the trade show.

16. All of Applicant's apparel on display at the PROJECT trade show bore the Sunday Rocks Mark or marks containing a depiction of a Weber Grill Mark or a mark substantially similar to a Weber Grill Mark.

17. In the alternative, most of Applicant's apparel on display at the PROJECT trade show bore the Sunday Rocks Mark or marks containing a depiction of a Weber Grill Mark or a mark substantially similar to a Weber Grill Mark.

18. To further link in buyers' minds Applicant's products to Opposer and the Weber Grill Marks, Applicant used Weber® brand grills in her display at the PROJECT show. Attached as Exhibit C is a photograph of the top of the back of Applicant's booth at the PROJECT trade show, which contains a Weber® brand grill. Several Weber® brand grills were displayed at the Sunday Rocks booth at the PROJECT trade show.

19. Upon information and belief, Applicant knew that Opposer had prior rights in the configuration of its Weber® Kettle Grills and/or its Weber Grill Marks.

20. The Sunday Rocks Mark and the Weber Grill Marks cover the same goods, *i.e.*, apparel.

21. The Weber Grill Marks have priority of use over the Sunday Rocks Marks.

22. Applicant's Sunday Rocks Mark incorporates a Weber Grill Mark or a mark substantially similar to the Weber Grill Mark. Applicant and Opposer sell the same, similar and related goods under their respective marks, and Opposer's Weber Grill Marks have priority over the Sunday Rocks Mark. Accordingly, Applicant's Sunday Rocks Mark so resembles Opposer's Weber Grills Marks so as to be likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1052(d).

23. Registration of Applicant's mark will dilute Opposer's famous Weber Grill Marks and lessen the ability of the Weber Grill Marks to distinguish Opposer as the

source of the goods and services offered under the Weber Grill Marks in violation of 15 U.S.C. § 1125(c).

24. Upon information and belief, Applicant does not have a *bona fide* intention to use the Sunday Rocks Mark on each and every product listed in the application to register the Sunday Rocks Mark.

25. Applicant therefore is in violation of 15 U.S.C. §1051(b)(3)(B) because Applicant does not have a *bona fide* intent to use the Sunday Rocks Mark in connection with all of the goods recited in the application.

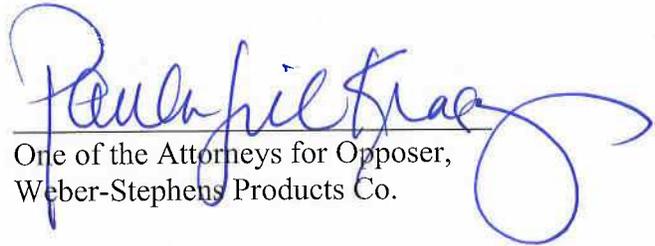
26. Applicant also is in violation of 15 U.S.C. §1051(b)(3)(D) because upon acquiring the Sunday Rocks Mark, Applicant knew, upon information and belief, that the Sunday Rocks Mark so resembles the Weber Grill Marks so as to be likely, when used on or in connection with Applicant's goods, to cause confusion, or to cause mistake or to deceive.

27. Based on the foregoing, registration of the Sunday Rocks Mark will cause injury, harm and damage to Opposer.

WHEREFORE, Opposer, Weber-Stephens Products Co., prays that this Opposition be sustained, and registration of Application Serial No. 77/811726 be denied.

Please charge the statutory filing fee of \$300 to Deposit Account No. 501649. If this amount is insufficient for any reason, please charge any shortfall or missing fees, or credit any excess fees, to Deposit Account No. 501649.

Respectfully submitted,



One of the Attorneys for Opposer,  
Weber-Stephens Products Co.

Dated: January 20, 2011

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**CERTIFICATE OF MAILING**

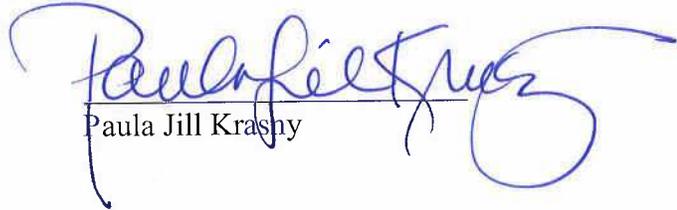
The undersigned certifies that the foregoing *Notice of Opposition* is being filed electronically via the Electronic System for the Trademark Trial and Appeals Board (ESSTA), with a copy sent by Federal Express to:

John Maltbie, Esq.  
Arnold & Porter LLP  
399 Park Avenue  
New York, NY 10022

and

Filippo Marchino  
Attorney  
The X-Law Group, a Professional Corporation  
633 W. 5th St,  
26th Floor, Suite 2629  
Los Angeles, CA 90071

on this 20th day of January, 2011.

  
Paula Jill Krasny

# **EXHIBIT A**



United States Patent and Trademark Office

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## Assignments on the Web &gt; Trademark Query

## Trademark Assignment Abstract of Title

**Total Assignments: 2****Serial #:** [77811726](#)**Filing Dt:** 08/24/2009**Reg #:** NONE**Reg. Dt:****Applicant:** LAFAYETTE TEXTILES CORP.**Mark:** SUNDAY ROCKS**Assignment: 1****Reel/Frame:** [4179/0435](#)**Received:** 04/02/2010**Recorded:** 04/02/2010**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [LAFAYETTE TEXTILES CORP.](#)**Exec Dt:** 09/15/2009**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** CALIFORNIA**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** CALIFORNIA**Assignee:** [SUNDAY ROCKS LLC](#)

4715 S ALAMEDA ST

LOS ANGELES, CALIFORNIA 90058

**Correspondent:** LOUIS EDERER, ARNOLD & PORTER LLP

399 PARK AVENUE

NEW YORK, NY 10022

**Assignment: 2****Reel/Frame:** [4259/0503](#)**Received:** 08/12/2010**Recorded:** 08/12/2010**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [SUNDAY ROCKS, LLC](#)**Exec Dt:** 06/17/2010**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** CALIFORNIA**Entity Type:** INDIVIDUAL**Citizenship:** UNITED STATES**Assignee:** [LOCKE, ANGELA](#)

110 E. 9TH ST., SUITE C1101

LOS ANGELES, CALIFORNIA 90070

**Correspondent:** LOUIS S. EDERER

300 PARK AVENUE

NEW YORK, NY 10022-4690

Search Results as of: 01/18/2011 03:31 PM

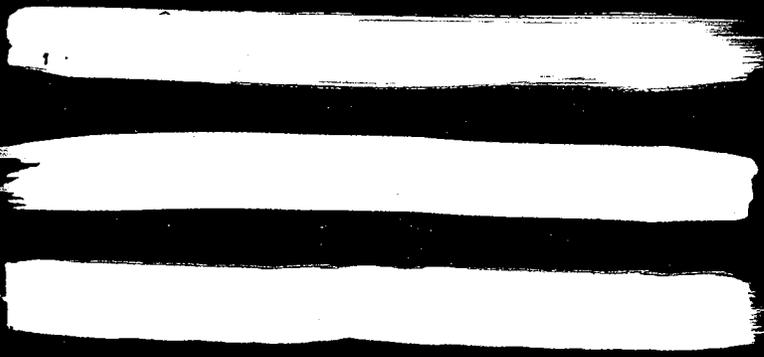
If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.1  
Web interface last modified: Apr 30, 2009 v.2.1[| .HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

# **EXHIBIT B**

AUGUST 2010

# PROJECT

SHOW GUIDE



AUGUST 2010  
**PROJECT**  
LAS VEGAS



COMPANY	BOOTH	CAT.	COMPANY	BOOTH	CAT.
STUDY	8141	M	T-LOS ANGELES	7041	W
THE STYLE ASSEMBLY	4030	V	TOKEN	10112	M
SUE GOODMAN SHOWROOM	7034	V	TOKURI	12067	M
SUKI AND THE BOYS	9114	M	TOMS SHOES	10031	M
SUNDAY ROCKS	5136	M	TOP GUN	19012	M
SUNDEK	11116	M	TOP SECRET SOCIETY	6059	W
SUPER	6112	M	TOPO RANCH	18015	M
SUPERDRY	9121	M	TOTEM	9027	V
SUPRA FOOTWEAR	11024	M	TOXXY	9052	V
SUPREMEBEING	8123	M	TRACY WATTS	10073	A
SUSAN AND COMPANY	9022	V	TRASH & LUXURY	7025	V
SWAY SHOWROOM	8010	V	TRETORN	10021	M
SWEAR	12044	M	TRILUXE APPAREL	13099	M
SWIMS	13043	M	TRINA TURK	7064	V
SWORN VIRGINS	4007	V	TRINA TURK SWIM AND SPA	7064	V

## T

TAG	7046	V
TAHITIAN MOVE	21005	M
TAILGATE CLOTHING CO.	5118	M
TAKEL	4116	M
TANKFARM	8138	M
TARINA TARANTINO	9031	V
TART	10028	V
TAVERNITI SO JEANS	16000	M
TAYLOR STITCH	10041	T
TAYLOR SUPPLY	10041	T
T-BAGS	6067	V
TCW TRENDS, INC.	11066	A
TED BAKER	12093	M
TEE LIBRARY	5116	M
TESTAMENT	7042	V
TEXTILE ELIZABETH AND JAMES	4106	M
TH GALLERY	6140	M
THREADS FOR THOUGHT	2141	M
THREE DOTS MEN'S	3139	M
THURSDAY ISLAND	8013	V
TIGERLILY	4047	V
THE TIMBERLAND BOOT COMPANY	13048	M

TRUE RELIGION BRAND		
HEADWEAR, BELTS & ACCESSORIES	7144	M
TRUE RELIGION BRAND JEANS	10093	M
TRUE RELIGION FOOTWEAR	10007	M
TSOVET TIME INSTRUMENTS	4117	M
TT COLLECTION	5062	V
TTEE	5062	V
TTMATES	5062	V
TWEEN	10085	M
TWENTY&TWELVE BY S. MILLER	5075	V
TWISTED HEART	10040	V
TYLIE MALIBU	8052	V
TYSA	4041	V

## U

UMA	4001	V
UNALUNA COLLECTION	7010	V
UNDREST	9021	V
UNIF CLOTHING	8139	M
UNION	5144	M
URBAN BEHAVIOR	2110	M
URBAN REPUBLIC CLOTHING	19010	M
URBANEARS	6114	M
URSHUZ	10011	M
US ARMY	5112	M



**LAS VEGAS**  
**AUG 17, 18, 19, 2010**  
**THE MANDALAY BAY**  
**WWW.PROJECTSHOW.COM**

# **EXHIBIT C**

