

ESTTA Tracking number: **ESTTA442120**

Filing date: **11/21/2011**

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	5 Senses LLC
Granted to Date of previous extension	11/30/2011
Address	5300 NW 37th Avenue Miami, FL 33142 UNITED STATES

Correspondence information	5 Senses LLC 5300 NW 37th Avenue Miami, FL 33142 UNITED STATES copus@aol.com Phone:(516) 295-2070
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Applicant Information

Application No	85102761	Publication date	08/02/2011
Opposition Filing Date	11/21/2011	Opposition Period Ends	11/30/2011
International Registration No.	NONE	International Registration Date	NONE
Applicant	Urbas, Nancy 98 Gray Rock Circle Gananoque, ONTARIO, K7G2V4 CANADA		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Cloth diapers; Inserts specially adapted for cloth diapers made of bamboo; Inserts specially adapted for cloth diapers made of hemp; Inserts specially adapted for cloth diapers made of microfiber
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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.	2118843	Application Date	01/29/1996
Registration Date	12/09/1997	Foreign Priority Date	NONE
Word Mark	SWEET PEA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1995/04/15 First Use In Commerce: 1995/04/15 clothing, namely, robes, gowns, camisole, bloomers, pettidresses, pinafores, jumpers, slips and dresses

U.S. Registration No.	2855632	Application Date	01/16/2003
Registration Date	06/22/2004	Foreign Priority Date	NONE

Word Mark	SWEET PEA
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 025. First use: First Use: 1996/07/01 First Use In Commerce: 1996/07/01 clothing articles for women, men, and children, namely, shirts, pants, belts, underwear, [socks, stockings,] gloves, neckties, scarves, sweaters, caps and hats, wind-resistant jackets, [leather jackets,] and sport coats
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U.S. Registration No.	3108392	Application Date	10/16/2003
Registration Date	06/27/2006	Foreign Priority Date	NONE

Word Mark	SWEET PEA
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Design Mark	
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Description of Mark	The mark consists of the stylized words SWEET PEA followed by a green dot. The designated color is a feature of the mark.
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Goods/Services	Class 025. First use: First Use: 1996/07/01 First Use In Commerce: 1996/07/01 Women's, men's and children's clothing, outerwear and accessories, namely, sport shirts, knit shirts, sweaters, trousers, overcoats, rain coats, leather coats, jackets, swimwear, loungewear, pajamas, robes, suits, sport coats, dress trousers, dress shirts, neckwear, scarves, belts, and shoes
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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	/Todd A. Gabor/
Name	5 Senses LLC
Date	11/21/2011

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

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5 SENSES LLC,

Opposer,

NOTICE OF OPPOSITION

- against -

NANCY URBAS,

Applicant.

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In the matter of U.S. Trademark Serial No. 85102761 for the trademark SWEET PEA ISN'T YOUR "SWEET PEA" WORTH IT? for wearing apparel owned by Nancy Urbas ("Applicant") alleging an undisclosed first use (the "Subject Application").

As grounds for opposition of the above identified Subject Application, Opposer 5 Senses LLC ("Opposer"), by and through its attorney, alleges as follows:

1. Opposer, a limited liability company organized and existing under the laws of the State of Florida, having offices and a place of business at 5300 NW 37th Avenue, Miami, Florida 33142, believes that it will be damaged by the registration of the Subject Application and hereby opposes the same.

2. Opposer has adopted, used and continues to use the inherently distinctive trade name, trademark and service marks SWEET PEA and SWEET PEA (design) since 1996 in connection with the sale of wearing apparel (collectively, the

"SWEET PEA Marks").

3. Products sold under the SWEET PEA Marks are offered for sale and sold to retailers nationwide as well other distribution channels.

4. Products sold under the SWEET PEA Marks have been promoted and advertised throughout the United States.

5. The SWEET PEA Marks have come to be known to the purchasing public throughout the United States as representing products of high quality, emanating from a single source. As a result thereof, the SWEET PEA Marks have acquired widespread public recognition and goodwill and is an important and valuable asset to Opposer.

6. By virtue of the renown acquired by the SWEET PEA Marks, the SWEET PEA Marks have developed a secondary meaning and significance in the minds of the purchasing public and products bearing such trademark are identified with a single source.

7. Long after Opposer commenced use of the SWEET PEA Marks, and long after the SWEET PEA Marks became well known to consumers, Applicant applied to register the Subject Application for the mark SWEET PEA ISN'T YOUR "SWEET PEA" WORTH IT?. (the "Infringing Mark"), alleging an undisclosed first use date.

8. By virtue of Opposer's use of the SWEET PEA Marks since 1996, Opposer has priority over the Subject Application with respect to the filing date of the Subject Application.

9. The Infringing Mark is confusingly similar to the SWEET PEA Marks. The likelihood of confusion is exacerbated because the SWEET PEA Marks and the Infringing Mark are used for wearing apparel.

10. Based on the foregoing, the use and/or registration of the Infringing Mark by Applicant is likely to cause confusion and mistake in the minds of the purchasing public, and, in particular, will, upon information and belief, tend to falsely create the impression that the products sold under the Accused Mark are authorized, sponsored, or approved by Opposer when, in fact, they are not.

11. Accordingly, it is Opposer's belief that if Applicant is granted registration of the Subject Application, Opposer will suffer irreparable harm and damage.

WHEREFORE, Opposer respectfully requests that the mark shown in U.S. Trademark Application Serial No. 85102761 be refused registration and this Opposition be sustained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd A. Gabor', written over a horizontal line.

Todd A. Gabor, Esq.
Attorney for Opposer
5 Senses LLC
132 Spruce Street
Cedarhurst, New York 11516
(516) 295-2070

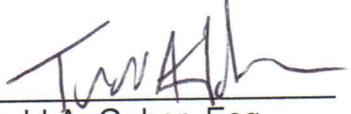
Dated: Cedarhurst, New York
November 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that true and complete copies of the foregoing NOTICE OF OPPOSITION have been served on Applicant by delivering said copies via U.S. First Class mail to Applicant's attorney of record as follows:

Applicant's Attorney of Record

M. Scott Alprin
Alprin Law Offices
5 Pinehurst Circle, N.W.
Washington DC 20015

By: 

Todd A. Gabor, Esq.

Dated: Cedarhurst, New York
November 21, 2011