

ESTTA Tracking number: **ESTTA485804**

Filing date: **07/26/2012**

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	Glen Raven, Inc.
Granted to Date of previous extension	09/26/2012
Address	1831 North Park Avenue Glen Raven, NC 27217 UNITED STATES

Attorney information	Christopher Kelly Wiley Rein LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
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Applicant Information

Application No	85494103	Publication date	05/29/2012
Opposition Filing Date	07/26/2012	Opposition Period Ends	09/26/2012
Applicant	Stacey Berland 105 Grandview Drive Hampton, VA 23664 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. All goods and services in the class are opposed, namely: Beach umbrellas; Parasols
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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.	3731230	Application Date	06/02/2009
Registration Date	12/29/2009	Foreign Priority Date	NONE
Word Mark	SUNBRELLA		

Design Mark	
Description of Mark	The mark consists of a stylized umbrella design and the word "SUNBRELLA", all in orange
Goods/Services	Class 024. First use: First Use: 2008/10/21 First Use In Commerce: 2008/10/21 fabrics sold in the piece for use in producing awnings, sun and windcreens, tents, canopies, boat covers and tops, indoor and outdoor furniture, beach umbrellas, area rugs, draperies, sheers, window treatments

U.S. Registration No.	3652524	Application Date	08/26/2008
Registration Date	07/07/2009	Foreign Priority Date	NONE
Word Mark	SUNBRELLA		
Design Mark			
Description of Mark	The mark consists of "SUNBRELLA" & Stylized Umbrella Design.		
Goods/Services	Class 024. First use: First Use: 2008/10/21 First Use In Commerce: 2008/10/21 fabrics sold in the piece for use in producing awnings, sun and windcreens, tents, canopies, boat covers and tops, indoor and outdoor furniture, beach umbrellas, area rugs, draperies, sheers, window treatments		

U.S. Registration No.	2966133	Application Date	06/09/2004
Registration Date	07/12/2005	Foreign Priority Date	NONE
Word Mark	SUNBRELLA "PLUS"		
Design Mark	SUNBRELLA "PLUS"		
Description of Mark	NONE		
Goods/Services	Class 024. First use: First Use: 1991/06/00 First Use In Commerce: 1991/06/00		

	fabrics sold in the piece for use in producing awnings, sun and windscreens, tents, canopies, boat covers and tops, indoor and outdoor furniture and beach umbrellas
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U.S. Registration No.	709110	Application Date	05/03/1960
Registration Date	12/27/1960	Foreign Priority Date	NONE
Word Mark	SUNBRELLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U042 (International Class 024). First use: First Use: 1959/12/11 First Use In Commerce: 1959/12/11 Fabrics for Awnings, Furniture, Handbags, and Sportswear		

Attachments	77749650#TMSN.jpeg (1 page)(bytes) 77556137#TMSN.jpeg (1 page)(bytes) 76596398#TMSN.gif (1 page)(bytes) AWESUMBRELLA NOTICE OF OPPOSITION.pdf (12 pages)(258472 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	/Christopher Kelly/
Name	Christopher Kelly
Date	07/26/2012

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

IN RE APPLICATION SER. NO. 85/494,103

FILED: DECEMBER 13, 2011

MARK: AweSUMBRELLA & Design

Published: MAY 29, 2012

_____)
GLEN RAVEN, INC.)
)
Opposer,)
)
v.)
)
STACEY BERLAND,)
)
Applicant.)
_____)

NOTICE OF OPPOSITION

Opp. No. _____

Glen Raven, Inc., a corporation organized under the laws of the state of North Carolina, with principal offices located at 1831 North Park Avenue, Glen Raven, North Carolina 27217 (“Opposer”), hereby opposes registration of application Ser. No. 85/494,103 – AweSumbrella & Design for “beach umbrellas; parasols,” in International Class 18, filed December 13, 2011, by Stacey Berland (“Applicant”) and published for opposition in the *Official Gazette* dated May 29, 2012.

Opposer will be damaged if the opposed application matures to registration and puts forth the following grounds for opposition:

1. Opposer is a leading manufacturer of fabrics sold in the piece for use in a diverse array of applications, including, without limitation, umbrellas, including beach and market umbrellas, awnings, canopies, wind screens, cabanas and tents.

2. Opposer adopted and commenced use of its flagship trademark SUNBRELLA in 1959 to identify a line of performance fabrics for many of the products identified in the preceding paragraph, including beach umbrellas.

3. Opposer's SUNBRELLA brand fabrics are sold throughout the United States and abroad.

4. Opposer's SUNBRELLA mark and fabrics are closely associated with such finished products as umbrellas in the minds of the public and consumers frequently base purchasing decisions on whether such goods are made using SUNBRELLA brand fabrics.

5. Opposer extensively advertises and promotes its SUNBRELLA brand fabrics in major newspapers, magazines, trade journals and via the Internet. Opposer distributes promotional brochures, pamphlets, promotional videos and podcasts and point of purchase materials and maintains an active presence on the Internet in support of its SUNBRELLA brand fabrics through its website found at <www.sunbrella.com> and such social networking sites as Facebook and Twitter.

6. Opposer's SUNBRELLA brand fabrics also receive considerable gratuitous publicity and awards.

7. Due to the renown of Opposer's SUNBRELLA brand fabrics, manufacturers and distributors enthusiastically promote use of SUNBRELLA fabrics in their finished products through a variety of means and Opposer routinely supplies pass-through hang tags, labels and other materials bearing the SUNBRELLA trademark to its manufacturing customers to affix to their articles of finished merchandise containing SUNBRELLA fabric.

8. Based on Opposer's extensive, exclusive and continuous use of its SUNBRELLA trademark, SUNBRELLA is recognized by the consuming public as a designator of origin with respect to Opposer's products and related goods and services.

9. Opposer is the owner of all right, title and interest in the SUNBRELLA word mark and SUNBRELLA Logo collectively (“SUNBRELLA Mark”) and corresponding registrations issued by the U.S. Patent and Trademark Office, including, without limitation, the following:

- Reg. No. 3,731,230 – **SUNBRELLA & Umbrella Logo Design** for “fabrics sold in the piece for use in producing awnings, sun and windscreens, tents, canopies, boat covers and tops, indoor and outdoor furniture, beach umbrellas, area rugs, draperies, sheers, window treatments,” with a date of first use of 2008 and registered on the Principal Register December 29, 2009.
- Reg. No. 3,652,524 – **SUNBRELLA & Umbrella Logo Design** for “fabrics sold in the piece for use in producing awnings, sun and windscreens, tents, canopies, boat covers and tops, indoor and outdoor furniture, beach umbrellas, area rugs, draperies, sheers, window treatments,” with a date of first use of 2008 and registered on the Principal Register July 7, 2009.
- Reg. No. 2,966,133 – **SUNBRELLA “PLUS”** for “fabrics sold in the piece for use in producing awnings, sun and windscreens, tents, canopies, boat covers and tops, indoor and outdoor furniture and beach umbrellas,” with a date of first use of 1991 and registered on the Principal Register July 12, 2005.
- Reg. No. 709,110 – **SUNBRELLA** in standard character form for “fabrics for awnings, furniture, handbags and sportswear,” with a date of first use of 1959 and registered on the Principal Register on December 27, 1960.

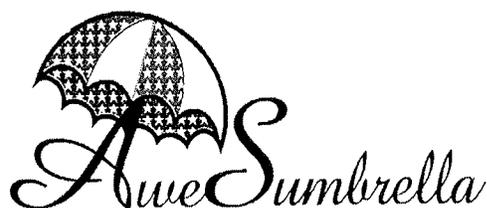
Photocopies of the foregoing registrations are attached as Exhibit A.

10. Opposer’s pleaded registrations are valid and subsisting in law. Opposer’s Reg. Nos. 709,110 and 2,966,133, moreover, are statutorily incontestable as to all goods listed therein and are conclusive evidence of the validity of the registered mark, Opposer’s ownership thereof and of Opposer’s exclusive right to use the SUNBRELLA Mark in commerce on or in connection with the goods identified in the registration, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

11. Opposer has invested substantial sums advertising and promoting the sale of goods offered under the SUNBRELLA Mark. Based on the extensive, exclusive and continuous use of the SUNBRELLA Mark by Opposer, the relevant consuming public has come to

recognize the SUNBRELLA Mark as being used by Opposer and to associate and identify the SUNBRELLA Mark with Opposer. Opposer has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the SUNBRELLA Mark.

13. On information and belief, Applicant intends to manufacture and distribute beach umbrellas and parasols under the designation AweSumbrella & Design, reproduced below:



14. The literal portion of Applicant's proposed designation, AweSumbrella, closely resembles Opposer's SUNBRELLA word mark in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's goods, to cause confusion and mistake and to deceive.

15. The design element featured in Applicant's proposed designation closely resembles the SUNBRELLA Umbrella Logo adopted by Opposer in the early 1990s, reproduced below, and the SUNBRELLA Logo contained in pleaded Reg. Nos. 3,652,524 and 3,731,230, also shown below, as to be likely, when applied to Applicant's goods, to cause confusion and mistake and to deceive.





16. Applicant's proposed goods are closely related to Opposer's fabrics and finished products made from Opposer's SUNBRELLA brand fabrics.

17. Applicant's proposed designation AweSumbrella & Design is confusingly similar to Opposer's SUNBRELLA Mark so that Applicant's registration of AweSumbrella & Design would be inconsistent with and damaging to Opposer's prior and exclusive rights in its marks as applied to the goods with which they are used.

18. Opposer will be damaged by Applicant's registration of AweSumbrella & Design.

WHEREFORE, Opposer prays that its opposition be sustained and that Applicant's Mark be denied registration.

Contemporaneously with the electronic filing of this Notice of Opposition, Opposer's counsel authorizes filing fees in the amount of \$300.00 to be debited from counsel's Deposit Account No. 501129. If the amount received is insufficient and additional fees are required, the USPTO is authorized to charge Deposit Account No. 501129.

Please recognize as attorneys for Opposer in this proceeding J. Timothy Hobbs, Christopher Kelly and Jennifer L. Elgin and the firm WILEY REIN LLP, 1776 K Street, N.W., Washington, D.C. 20006.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

GLEN RAVEN, INC.

By: /Christopher Kelly/
J. Timothy Hobbs
Christopher Kelly
Jennifer Elgin
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Opposer

Dated: July 26, 2012

EXHIBIT A

United States of America

United States Patent and Trademark Office

 sunbrella

Reg. No. 3,731,230 GLEN RAVEN, INC. (NORTH CAROLINA CORPORATION)
Registered Dec. 29, 2009 1831 NORTH PARK AVENUE
GLEN RAVEN, NC 27217

Int. Cl.: 24 FOR: FABRICS SOLD IN THE PIECE FOR USE IN PRODUCING AWNINGS, SUN AND WINDSCREENS, TENTS, CANOPIES, BOAT COVERS AND TOPS, INDOOR AND OUTDOOR FURNITURE, BEACH UMBRELLAS, AREA RUGS, DRAPERIES, SHEERS, WINDOW TREATMENTS, IN CLASS 24 (U.S. CLS. 42 AND 50).

TRADEMARK
PRINCIPAL REGISTER

FIRST USE 10-21-2008; IN COMMERCE 10-21-2008.

OWNER OF U.S. REG. NOS. 2,761,048, 3,118,723 AND OTHERS.

THE COLOR(S) ORANGE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A STYLIZED UMBRELLA DESIGN AND THE WORD "SUN-BRELLA", ALL IN ORANGE

SER. NO. 77-749,650, FILED 6-2-2009.

SHANNON TWOHIG, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Int. Cl.: 24

Prior U.S. Cls.: 42 and 50

Reg. No. 3,652,524

United States Patent and Trademark Office

Registered July 7, 2009

**TRADEMARK
PRINCIPAL REGISTER**

 sunbrella

GLEN RAVEN, INC. (NORTH CAROLINA CORPORATION)
1831 NORTH PARK AVENUE
GLEN RAVEN, NC 27217

FIRST USE 10-21-2008; IN COMMERCE 10-21-2008.

OWNER OF U.S. REG. NOS. 709,110, 2,028,355,
AND OTHERS.

FOR: FABRICS SOLD IN THE PIECE FOR USE IN PRODUCING AWNINGS, SUN AND WIND-SCREENS, TENTS, CANOPIES, BOAT COVERS AND TOPS, INDOOR AND OUTDOOR FURNITURE, BEACH UMBRELLAS, AREA RUGS, DRAPERIES, SHEERS, WINDOW TREATMENTS, IN CLASS 24 (U.S. CLS. 42 AND 50).

THE MARK CONSISTS OF "SUNBRELLA" & STYLIZED UMBRELLA DESIGN.

SN 77-556,137, FILED 8-26-2008.

KATHLEEN LORENZO, EXAMINING ATTORNEY

Int. Cl.: 24

Prior U.S. Cls.: 42 and 50

United States Patent and Trademark Office

Reg. No. 2,966,133

Registered July 12, 2005

**TRADEMARK
PRINCIPAL REGISTER**

SUNBRELLA "PLUS"

GLEN RAVEN, INC. (NORTH CAROLINA CORPORATION)
1831 NORTH PARK AVENUE
GLEN RAVEN, NC 27217

FOR: FABRICS SOLD IN THE PIECE FOR USE IN PRODUCING AWNINGS, SUN AND WIND-SCREENS, TENTS, CANOPIES, BOAT COVERS AND TOPS, INDOOR AND OUTDOOR FURNITURE AND BEACH UMBRELLAS, IN CLASS 24 (U.S. CLS. 42 AND 50).

FIRST USE 6-0-1991; IN COMMERCE 6-0-1991.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,815,959, 2,028,355 AND OTHERS.

SER. NO. 76-596,398, FILED 6-9-2004.

VERNA BETH RIRIE, EXAMINING ATTORNEY

United States Patent Office

709,110
Registered Dec. 27, 1960

PRINCIPAL REGISTER
Trademark

Ser. No. 96,329, filed May 3, 1960

SUNBRELLA

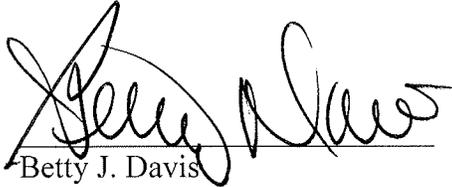
Glen Raven Cotton Mills, Inc. (North Carolina corporation)
Glen Raven, N.C.

For: FABRICS FOR AWNINGS, FURNITURE,
HANDBAGS, AND SPORTSWEAR, in CLASS 42.
First use Dec. 11, 1959; in commerce Dec. 11, 1959.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 2012, I served the foregoing NOTICE OF OPPOSITION by causing a copy thereof to be deposited in the United States Mail, postage prepaid to the following address:

Duncan G. Byers
Byers Law Group
142 W. York Street, Suite 910
Norfolk, VA 23510-2041


Betty J. Davis