

ESTTA Tracking number: **ESTTA506653**

Filing date: **11/20/2012**

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	Dreamwell, Ltd.		
Entity	limited liability company	Citizenship	Nevada
Address	2215-B Renaissance Drive Las Vegas, NV 89119 UNITED STATES		

Attorney information	Thomas J. Mango Cantor Colburn LLP 20 Church Street, 22nd Floor Hartford, CT 06103 UNITED STATES tmango@cantorcolburn.com, cwilkinson@cantorcolburn.com Phone:860-286-2929
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Applicant Information

Application No	85634133	Publication date	10/23/2012
Opposition Filing Date	11/20/2012	Opposition Period Ends	11/22/2012
Applicant	Sheex, Inc. 109 Oak Park Drive Irmo, SC 29063 UNITED STATES		

Goods/Services Affected by Opposition

Class 024. All goods and services in the class are opposed, namely: Bed linen; Bed sheets; Pillow cases; Pillow covers

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.	4151768	Application Date	08/19/2011
Registration Date	05/29/2012	Foreign Priority Date	NONE
Word Mark	RECHARGE		

Design Mark	<h1>RECHARGE</h1>
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 2012/01/29 First Use In Commerce: 2012/01/29 Mattresses; mattress foundations; box springs

Attachments	85402497#TMSN.jpeg (1 page)(bytes) Notice of Opposition.PDF (11 pages)(711913 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	/Thomas J. Mango/
Name	Thomas J. Mango
Date	11/20/2012

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

In the Matter of Trademark Application Serial No.	85634133
Filed:	May 24, 2012
Mark:	RECHARGE
Published in the Official Gazette:	October 23, 2012

Dreamwell, Ltd.,

Opposer,

v.

Sheex, Inc.,

Applicant.

Opposition No: _____

NOTICE OF OPPOSITION

In the matter of United States Trademark Application Serial No. 85634133, filed May 24, 2012 (“Application”), for registration of the mark RECHARGE (“Applicant’s Mark”), by Sheex, Inc. (“Applicant”), covering “Bed linen; Bed sheets; Pillow cases; Pillow covers” in International Class 24, and published for opposition in the United States Patent and Trademark Office’s Official Gazette on October 23, 2012, Opposer Dreamwell, Ltd. believes it will be damaged by such registration, and hereby opposes the registration of the Application.

The grounds for the opposition are as follows:

1. Dreamwell, Ltd. is a limited liability company organized and existing under the laws of the state of Nevada, with a principal place of business located at 2215-B Renaissance Drive, Las Vegas, Nevada 89119. Dreamwell, Ltd. is a wholly-owned subsidiary of Simmons Bedding Company (collectively, “Opposer”).

2. Founded in 1870, Opposer is a major manufacturer of mattresses and related bedding products. Opposer sells its mattresses and related bedding products throughout the United States.

3. Opposer licenses its well-known trademarks to select manufacturers of sleep and bedding related products.

4. Opposer is dedicated to producing distinctive, consumer-benefit-driven products, and is committed to helping consumers attain a higher quality of sleep and supports this mission by developing superior mattresses and promoting a sound, smart sleep routine.

5. Opposer owns both common law and federally-registered rights to its well-known RECHARGE mark (“RECHARGE Mark”) used on and in connection with a variety of goods, including mattresses and bedding related products (“Opposer’s Goods”). Opposer began using the RECHARGE Mark at least as early as January 2012 anywhere and in interstate commerce.

6. Opposer owns United States Trademark Registration No. 4151768 for the mark RECHARGE, filed on August 19, 2011, and registered on May 29, 2012, for “Mattresses; mattress foundations; box springs” in International Class 20, with a date of first use in commerce of January 29, 2012.

7. A true and accurate copy of the printout from the United States Patent and Trademark Office’s Trademark Status and Document Retrieval database for the Opposer’s United States Trademark Registration is attached hereto as “Exhibit A.”

8. The RECHARGE Mark is prominently featured in Opposer’s advertising, marketing, and promotional materials for the Opposer’s Goods, and in connection with the Opposer’s Goods that are offered for purchase at retail outlets throughout the U.S. and on Opposer’s websites located at <http://www.simmons.com> and <http://www.beautyrest.com>.

9. As a result of Opposer's substantially exclusive and continuous use of the RECHARGE Mark in connection with Opposer's Goods, and having expended considerable effort and expense in promoting the goods associated with the RECHARGE Mark, the RECHARGE Mark and the goods bearing this mark have come to be recognized and associated with Opposer and the RECHARGE Mark has developed substantial goodwill and a positive reputation among the industry, the trade, and consumers. The RECHARGE Mark has become one of Opposer's most valuable assets.

10. The RECHARGE Mark distinguishes Opposer's Goods from those of its competitors. As a result, relevant consumers readily recognize, associate, identify, and distinguish Opposer's Goods from those of others.

11. On information and belief, Applicant is a corporation organized and existing under the laws of the state of Delaware, with a principal place of business located at 109 Oak Park Drive, Irmo, South Carolina 29063. Applicant has no relationship with Opposer.

12. On or about May 24, 2012, Applicant filed the Application (Serial No. 85634133). As currently pending, the Application covers "Bed linen; Bed sheets; Pillow cases; Pillow covers" in International Class 24.

13. The Application was filed without Opposer's authorization, consent, or prior knowledge.

14. The Application was filed based on an Intent-To-Use basis of the Lanham Act, 15 U.S.C. §1051(b), and remains filed on an Intent-To-Use basis as of the date of this Opposition.

15. The RECHARGE Mark, including Opposer's common law rights, predates the Application. Opposer therefore has rights that are senior to any rights that may be claimed by Applicant.

COUNT I
LIKELIHOOD OF CONFUSION

16. Opposer incorporates paragraphs 1 – 15 by reference and realleges the same as if originally set forth herein.

17. There is a likelihood of confusion between the RECHARGE Mark and the goods Opposer offers under the RECHARGE Mark, and Applicant's Mark and the goods Applicant intends to offer under the Applicant's Mark.

18. In particular, Applicant's Mark is identical to the RECHARGE Mark, and, therefore, it is confusingly similar to the RECHARGE Mark.

19. Further, Applicant intends to use the Applicant's Mark in connection with goods, including, but not limited to, bedding products that are related and overlapping to the goods offered under the RECHARGE Mark.

20. Given the filing date of the Application, Applicant was clearly exposed to and aware of the Opposer and the RECHARGE Mark before filing the Application. Applicant's selection of a mark that is confusingly similar to the RECHARGE Mark was no coincidence, and was intended to trade off of the substantial reputation and goodwill of the RECHARGE Mark.

21. As a result of the similarity between Applicant's Mark and the RECHARGE Mark and the respective goods, registration of Applicant's Mark would be likely to cause confusion, mistake, and/or deception of purchasers as to the source of the parties' respective goods.

22. As a result of the similarity between Applicant's Mark and the RECHARGE Mark, registration of Applicant's Mark would be likely to cause confusion, mistake, and/or deception as to (a) the affiliation, connection, or association between Opposer and Applicant, and/or (b) the origin, sponsorship, or approval of Applicant's goods by Opposer.

WHEREFORE, Opposer Dreamwell, Ltd. respectfully requests that the Trademark Trial and Appeal Board sustain this opposition and refuse registration for United States Trademark Application Serial No. 85634133.

Respectfully submitted,

Dreamwell, Ltd.

Dated: November 20, 2012

By: /Thomas J. Mango/
Thomas J. Mango, Esq.
George A. Pelletier, Jr., Esq.
Cantor Colburn LLP
20 Church Street, 22nd Floor
Hartford, CT 06103-3207
Phone: 860-286-2929
Fax: 860-286-0115
tmango@cantorcolburn.com
gpelletier@cantorcolburn.com

Attorneys for Dreamwell, Ltd.

CERTIFICATE OF SERVICE

I, Thomas J. Mango, Esq., counsel to Dreamwell, Ltd. in the above-captioned proceeding, hereby certify that, on the 20th day of November 2012, I served a copy of the foregoing Notice of Opposition, by first class mail, postage prepaid, upon the following individual, identified in the Application as the attorney of record and correspondent:

SOFIA JEONG, ESQ.
TROUTMAN SANDERS LLP
600 PEACHTREE ST NE STE 5200
ATLANTA, GEORGIA 30308-2216

/Thomas J. Mango/
Thomas J. Mango

EXHIBIT A

Generated on: This page was generated by TSDR on 2012-11-20 8:34:53 EST

Mark: RECHARGE

RECHARGE

US Serial Number: 85402497

Application Filing Date: Aug. 19, 2011

US Registration Number: 4151768

Registration Date: May 29, 2012

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: May 29, 2012

Publication Date: Dec. 13, 2011

Notice of Allowance Date: Feb. 07, 2012

Mark Information

[expand all](#)

Mark Literal Elements: RECHARGE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration [1114043](#)
Number:

International Application [A0028462/1114043](#)
(s)/Registration(s) Based on
this Property:

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Mattresses; mattress foundations; box springs

International Class: 020 - Primary Class

U.S Class: 002, 013, 022, 025, 032, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 29, 2012

Use in Commerce: Jan. 29, 2012

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Dreamwell, Ltd.

Owner Address: Suite 12
2215-B Renaissance Drive
Las Vegas, NEVADA 89119
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: NEVADA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: George A. Pelletier, Jr.

Docket Number: SSB0378TUS

Correspondent

Correspondent Name/Address: GEORGE A. PELLETIER, JR.
CANTOR COLBURN LLP
20 CHURCH ST FL 22
HARTFORD, CONNECTICUT 06103-1221
UNITED STATES

Phone: 860-286-2929

Fax: 860-286-0115

Correspondent e-mail: TM-CT@cantorcolburn.com

Correspondent e-mail No Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 24, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
May 29, 2012	REGISTERED-PRINCIPAL REGISTER	
Apr. 25, 2012	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Apr. 24, 2012	LAW OFFICE REGISTRATION REVIEW COMPLETED	68552
Apr. 23, 2012	ASSIGNED TO LIE	68552
Apr. 04, 2012	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Mar. 30, 2012	STATEMENT OF USE PROCESSING COMPLETE	69302
Mar. 05, 2012	USE AMENDMENT FILED	69302
Mar. 30, 2012	CASE ASSIGNED TO INTENT TO USE PARALEGAL	69302
Mar. 05, 2012	TEAS STATEMENT OF USE RECEIVED	
Feb. 07, 2012	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Dec. 13, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 13, 2011	PUBLISHED FOR OPPOSITION	
Nov. 23, 2011	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 07, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 07, 2011	ASSIGNED TO EXAMINER	73706
Aug. 25, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 23, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Apr. 24, 2012

Assignment Abstract of Title Information

Conveyance Filter

Summary

Total Assignments: 2

Registrant: Dreamwell, Ltd.

Assignment 1 of 2

Conveyance: SECURITY AGREEMENT

Reel/Frame: 4881/0153

Pages: 26

Date Recorded: Oct. 15, 2012

Supporting Documents: assignment-tm-4881-0153.pdf

Assignor

Name: SIMMONS BEDDING COMPANY

Execution Date: Oct. 01, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized:
DELAWARE

Name: DREAMWELL, LTD.

Execution Date: Oct. 01, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:
NEVADA

Name: NATIONAL BEDDING COMPANY L.L.C.

Execution Date: Oct. 01, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:
ILLINOIS

Assignee

Name: UBS AG, STAMFORD BRANCH, AS AGENT

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where Organized:
UNITED STATES

Address: 677 WASHINGTON BLVD.
STAMFORD, CONNECTICUT 06901

Correspondent

Correspondent Name: ROBIN RILEY

Correspondent Address: 75 EAST 55TH ST
PAUL HASTINGS LLP
NEW YORK, NY 10022

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: SECURITY AGREEMENT

Reel/Frame: 4881/0193

Pages: 26

Date Recorded: Oct. 15, 2012

Supporting Documents: assignment-tm-4881-0193.pdf

Assignor

Name: SIMMONS BEDDING COMPANY

Execution Date: Oct. 01, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized:
DELAWARE

Name: DREAMWELL, LTD.

Execution Date: Oct. 01, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:
NEVADA

Name: NATIONAL BEDDING COMPANY L.L.C.

Execution Date: Oct. 01, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:
ILLINOIS

Assignee

Name: UBS AG, STAMFORD BRANCH, AS AGENT

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where Organized: UNITED STATES

Address: 677 WASHINGTON BLVD.
STAMFORD, CONNECTICUT 06901

Correspondent

Correspondent Name: ROBIN RILEY

Correspondent Address: 75 EAST 55TH STREET
PAUL HASTINGS LLP
NEW YORK, NY 10022

Domestic Representative - Not Found