

ESTTA Tracking number: **ESTTA529120**

Filing date: **03/27/2013**

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 parties oppose registration of the indicated application.

Opposers Information

Name	KieAnn Brownell
Granted to Date of previous extension	03/27/2013
Address	6071 Russell Lane Golden, CO 80403 UNITED STATES
Party who filed Extension of time to oppose	KieAnnBrownell
Relationship to party who filed Extension of time to oppose	There should be a space between the opposer's first and last name, KieAnn Brownell.

Name	Lisa Couch
Granted to Date of previous extension	03/27/2013
Address	6071 Russell Lane Golden, CO 80403 UNITED STATES
Party who filed Extension of time to oppose	LisaCouch
Relationship to party who filed Extension of time to oppose	There should be a space between the opposer's first and last name, Lisa Couch.

Name	Life Forever Changed, LLC
Granted to Date of previous extension	03/27/2013
Address	6071 Russell Lane Golden, CO 80403 UNITED STATES

Attorney information	Sabrina C. Stavish, Sarah J. Schneider Sheridan Ross P.C. 1560 Broadway, Suite 1200 Denver, CO 80202 UNITED STATES
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	sstavish@sheridanross.com, sschneider@sheridanross.com Phone:303-863-9700
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Applicant Information

Application No	85639133	Publication date	11/27/2012
Opposition Filing Date	03/27/2013	Opposition Period Ends	03/27/2013
Applicant	Waggoner-Patton, Lynne 6520 Wadsworth Blvd., Unit 130 Arvada, CO 80003 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2012/05/30 First Use In Commerce: 2012/05/30 All goods and services in the class are opposed, namely: Entertainment services in the nature of childrens' shadow dance performances

Applicant Information

Application No	85639140	Publication date	11/27/2012
Opposition Filing Date	03/27/2013	Opposition Period Ends	
Applicant	Waggoner-Patton, Lynne 6520 Wadsworth Blvd., Unit 130 Arvada, CO 80003 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2012/05/24 First Use In Commerce: 2012/05/24 All goods and services in the class are opposed, namely: Entertainment services in the nature of children's shadow dance performances

Applicant Information

Application No	85639143	Publication date	11/27/2012
Opposition Filing Date	03/27/2013	Opposition Period Ends	
Applicant	Waggoner-Patton, Lynne 6520 Wadsworth Blvd., Unit 130 Arvada, CO 80003 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2012/05/30 First Use In Commerce: 2012/05/30 All goods and services in the class are opposed, namely: Entertainment services in the nature of children's shadow dance performances

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 is not, and was not at the time of filing Application Serial Nos. 85/639133, 85/639140

	and 85/639143, and is not the rightful owner.
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THE SILHOUETTES		
Goods/Services	Dance events; entertainment in the nature of dance performances; entertainment in the nature of visual and audio performances; dance instruction; dance studios;		

Related Proceedings	Kieann Brownell et al v. Lynne Waggoner-Patton et al, Colorado District Court Case No. 1:12-cv- 01789-PAB-CBS
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Attachments	Joint & Consolidated Ntc of Opposition.pdf (9 pages)(875847 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	/Sarah J. Schneider/
Name	Sarah J. Schneider
Date	03/27/2013

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

In the Matter of Trademark Application Serial Nos. 85/639133, 85/639140, 85/639143
For the Marks THE ORIGINAL SILHOUTTES & Design, LYNNE WAGGONER-PATTON
SILHOUTTES & Design and THE SILHOUETTES & Design

Life Forever Changed, LLC,)	
KieAnn Brownell and Lisa Couch,)	
)	
Opposers,)	Opposition No. _____
)	
v.)	JOINT & CONSOLIDATED
)	NOTICE OF OPPOSITION
Waggoner-Patton, Lynne)	UNDER TBMP §§ 303.06 and 305.01
)	
Applicant.)	

JOINT & CONSOLIDATED NOTICE OF OPPOSITION

Opposers, Life Forever Changed, LLC, a Colorado limited liability company, having an address at 6071 Russell Lane, Golden, Colorado 80403, KieAnn Brownell, an individual, having an address of 6071 Russell Lane, Golden, Colorado, 80403 and Lisa Couch, and individual, having an address of 192 October Place, Castle Rock, Colorado 80201 (collectively, “Opposers”), believe they will be damaged by registration of the marks THE ORIGINAL SILHOUTTES & Design, LYNNE WAGGONER-PATTON SILHOUTTES & Design and THE SILHOUETTES & Design as shown in application Serial Nos. 85/639133, 85/639140, 85/639143 (hereinafter “The Silhouettes Applications”) and hereby oppose the same.

As grounds for this Petition, Opposers allege:

1. Applicant, Lynne Waggoner-Patton, seeks registration of The Silhouettes Applications as service marks for “entertainment services in the nature of children’s shadow dance performances” in Class 41. Applicant filed The Silhouettes Applications on May 31, 2012 based on use of the marks in commerce, pursuant to Section 1(a) of the Trademark Act, claiming the following first use in commerce dates:

a. May 30, 2012 for Application Serial No. 85/639133 for “THE ORIGINAL SILHOUETTES & Design”;

b. May 24, 2012 for Application Serial No. 85/639140 for “LYNNE WAGGONER-PATTON SILHOUETTES & Design”;

c. May 30, 2012 for Application Serial No. 85/639143 for “THE SILHOUETTES & Design”.

2. Prior to and at the time The Silhouettes Applications were filed by the Applicant, the mark THE SILHOUETTES has been owned and used in commerce in connection with children’s shadow dance performances by Opposers.

3. Opposer, Life Forever Changed, LLC, was created by individual Opposers KieAnn Brownell, Lisa Couch and Applicant to operate the children’s shadow dancing company under the mark THE SILHOUETTES.

4. KieAnn Brownell and Lisa Couch and Applicant are equal members and managers of Opposer, Life Forever Changed, LLC, which was organized and registered with the Colorado Secretary of State on November 30, 2011, prior to Applicant’s claimed first use dates and application filing dates for The Silhouettes Applications.

5. Opposers have used the mark THE SILHOUETTES in connection with children’s shadow dance performances prior to Applicant’s first use and filing dates for The Silhouettes Applications, specifically:

a. Opposer Life Forever Changed, LLC has used THE SILHOUETTES in connection with children’s shadow dance performances since at least as early as November 2011;

b. Opposer KieAnn Brownell has used THE SILHOUETTES in connection with children’s shadow dance performances since at least as early as March 2009; and

c. Opposer Lisa Couch has used THE SILHOUETTES in connection with children’s shadow dance performances since at least as early as October 2010.

6. The grounds for this Opposition include:

i. That Applicant is not, and was not at the time of filing The Silhouettes Applications, the rightful owner of the mark THE SILHOUETTES and is not entitled to registration thereof under Section 1(a) of the Trademark Act;

ii. That Applicant has committed fraud on the United States Patent and Trademark Office by filing The Silhouettes Applications; and

iii. That marks in The Silhouettes Applications resemble marks or trade names previously used in the United States by Opposers, as to be likely, when used in connection with the services of the Applicant, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Trademark act, 15 U.S.C. § 1052(d).

7. In March 2009, Life Forever Changed, LLC's ("LFC") member/manager Brownell worked with Olympic producer Scott Givens and his company Five Currents to create an opening ceremony for Sportaccord in Denver Colorado that was to include children dancers. At Brownell's suggestion, the children dancers were obtained through the Applicant, who operated Rocky Mountain School of Dance. The resulting shadow dance performance was offered under the mark THE COLORADO SILHOUETTES on March 24, 2009.

8. Thereafter, a talent agent, Mr. Chris Starkey, asked Applicant if he could book the shadow dancers for local corporate shows, and Applicant requested that LFC's member/manager Brownell obtain Givens for permission to do the performances. LFC's member/manager Brownell also obtained the video overlay necessary for the performance of the shadow dancing routine. With Brownell's assistance, additional live shadow dancing performances were held under the mark THE SILHOUETTES.

9. In October 2010, LFC's member/manager Brownell worked with videographers to create the appropriate audition video to submit to producers of the television show America's Got Talent ("AGT), which audition video was presented by the dance students to AGT without Applicant's presence. On December 17, 2010, Applicant was informed that THE SILHOUETTES had been chosen for the television audition of AGT, and on March 24, 2011 in Minneapolis, Minnesota, the judges voted to send THE SILHOUETTES to the next round in Las Vegas.

10. In March 2011, LFC's members and managers Brownell and Couch prepared a "to do" list in preparation for AGT, organized the dancers' parents into various committees, and Applicant told the dancers' parents that Brownell and Couch would be in charge of the committees and were authorized to make decisions.

11. In March 2011 through June 2011, LFC's members and managers Brownell and Couch obtained the domain names www.rockymountainsilhouettes.com (www.thesilhouettes.com was too expensive), met with a website developer, began overseeing the development of a logo for THE SILHOUETTES, and a contract for THE SILHOUETTES

dancers and Rocky Mountain School of Dance, and met with the committee chairs they created to discuss progress and work. On information and belief, during this time, Applicant was developing choreography and communicating with AGT producers.

12. LFC's members and managers Brownell and Couch spearheaded and developed the www.rockymountainsilhouettes.com website by contacting and working with third party developers, obtained headshots and biographies for all 42 of the dancers and organized and worked with the dancer's parents to obtain the same and to build the website and related Facebook page. LFC's members and managers Brownell and Couch were the official correspondents between NBC's social media department and its Facebook page entitled "SilhouetteAGT" and THE SILHOUETTES and were responsible for the on-line media presence of THE SILHOUETTES, maintaining Twitter and Facebook pages and related blogs and video posts to NBC.com blog.

13. In June 2011 through September 2011, LFC's members and managers Couch and Brownell continued to meet with the dancers' parents, discussed social media restrictions, arranged for and coordinated travel details, YouTube videos and fees to Rocky Mountain School of Dance and continued meeting with and arranging for payment of website support for THE SILHOUETTES and, at Applicant's behest, began working with AGT's Facebook, Blog and Twitter accounts, and continued to provide myriad business, marketing and support services including purchasing a new laptop for Applicant.

14. After AGT ended on September 14, 2011, LFC's members and managers Brownell, Couch and Applicant decided agreed to a company logo for THE SILHOUETTES that included a stylized version of THE SILHOUETTES mark, and decided they would like to move forward together as a formal company offering dance performances under the mark THE SILHOUETTES.

15. On information and belief, on September 28, 2011, Applicant confirmed this intention by emailing her staff at Rocky Mountain School of Dance that she and LFC's members and managers Brownell and Couch planned to move forward with THE SILHOUETTES, and Applicant and LFC's members and managers Brownell and Couch met with local producer, Mr. Morris regarding potential performances by THE SILHOUETTES.

16. In October 2011, three new email address were established, one for Applicant as lynn@rockymountainsilhouettes.com, and one each for LFC's members and managers

Brownell and Couch, kieann@rockymountainsilhouettes.com and lisa@rockymountainsilhouettes.com, and LFC, through members and managers Brownell and Couch, continued to create and deliver performance proposals for performances for THE SILHOUETTES that were subsequently booked and executed.

17. While THE SILHOUETTES were on AGT and thereafter, LFC, through members and managers Couch and Brownell, continued to provide advertisement and promotional and business services for THE SILHOUETTES by meeting with various representatives interested in performances by THE SILHOUETTES, setting up local news footage and events, and negotiating and arranging for performances by THE SILHOUETTES, such as the November 11, 2011 performance in London at the LIA Awards and November 19, 2011 at Operation Freebird performance.

18. On November 21, 2011, Applicant and LFC's members and managers Brownell and Couch met to finalize a "partnership" agreement that they decided would be for "three equal partners" understanding the actual of the entity would be a limited liability company.

19. On November 22, 2011, Applicant, together with LFC's members and managers Brownell and Couch, met with THE SILHOUETTES dancers and parents to announce the formation of the Opposers' company Life Forever Changed, LLC doing business as The Silhouettes. At the meeting, a power-point presentation was given wherein "The Silhouettes" and "Life Forever Changed, LLC" were used interchangeably to refer to a new corporation formed by "Lynne, KieAnn and [Couch]," as a "new corporation" to "house and operate THE SILHOUETTES".....a "professional company that will be operated completely independently of [Rocky Mountain School of Dance]," and which depicted the roles of each member manager in the limited liability corporation structure as follows: Chief Creative Officer – Patton, "responsible for creative product – design, development and deliver;" and Chief Operating Officer/Couch and Chief Executive Officer/Brownell, responsible for business, operations building the brands, supporting the children."

20. On November 30, 2011, the Articles of Organization with the Colorado Secretary of State for Life Forever Changed, LLC were filed providing that members Brownell, Couch and Applicant were responsible for management of Life Forever Changed, LLC.

21. Opposers, and not the Applicant alone, are the true owners of the mark THE SILHOUETTES.

22. If Applicant is allowed to register The Silhouettes Applications, she would obtain ownership rights and legal presumptions flowing from such registrations, including at least the *prima facie* exclusive right to use the mark THE SILHOUETTES, resulting in damage to the Opposers. Because Opposers are the owners of THE SILHOUETTES mark, registration must be refused under Section 1(a) of the Trademark Act.

23. Upon information and belief, on the filing date of The Silhouettes Applications, Applicant knew or should have known that she was not the owner of the marks in The Silhouettes Applications.

24. Upon information and belief, on the filing date of The Silhouettes Applications, to the best of Applicant's knowledge, she did *not* believe that no other person, firm, corporation or association had the right to use the marks in The Silhouettes Applications and that The Silhouettes Applications should have been filed in the name of LFC or including Brownell and Couch.

25. Upon information and belief, these false statements were made by an authorized agent of the Applicant with the knowledge and belief that said statements were false and made with at the behest of Applicant with the intent to induce the United States Patent and Trademark Office to grant registration to Applicant marks owned by Opposers.

26. As a result of these false statements made by Applicant through an authorized agent, The Silhouettes Applications are invalid. The Silhouettes Applications were filed fraudulently when Applicant, through her authorized representative, made false material representations with the intent to deceive the United States Patent and Trademark Office, declaring under oath pursuant 18 U.S.C. § 1001 for each of The Silhouettes Applications, Serial Nos. 85/639133, 85/639140, 85/639143 that (1) she believed she was the owner of the marks sought to be registered in The Silhouettes Applications and that (2) to the best of her knowledge and belief, no other person, firm, corporation, or association had the right to use the marks in The Silhouettes Applications in commerce, either in the identical forms thereof or in such near resemblance thereto as to be likely, when used on or in connection with the services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true; and all statements made on information and belief are believed to be true. When Applicant filed The Silhouettes Applications, Applicant knew or should have known

that Opposers to be the owners of marks contained in The Silhouettes Applications and that the Opposers have the right to use the marks contained in The Silhouettes Applications.

27. Applicant has committed fraud on the United States Patent and Trademark Office by filing The Silhouettes Applications knowing that she is not the true owner of the marks in The Silhouettes Applications.

28. Opposers will be damaged by registration of The Silhouettes Applications. This damage includes Applicant obtaining ownership rights and presumptions flowing from such registrations to the Applicant which could prevent Opposers from operating a business and obtaining performance contracts under the mark THE SILHOUETTES.

29. Prior to Applicant's filing date of The Silhouettes Applications and claimed first use dates, LFC's member and manager Brownell began using THE COLORADO SILHOUETTES at least as early as March 2009 in connection with providing children's shadow dance performances, and LFC's members and managers Brownell and Couch began holding performances operating under the service marks THE SILHOUETTES, SILHOUETTES and ROCKY MOUNTAIN SILHOUETTES at least as early as October 2010 as a result of the combined effort of Brownell and Couch, who were responsible for the business aspects of the performances and Applicant, who was responsible for the dance choreography.

30. LFC and its members and managers Brownell and Couch have devoted substantial time, money and effort in establishing and creating the business that operates under the marks contained in The Silhouettes Applications, and thus Opposers have developed substantial goodwill in these marks.

31. The marks in The Silhouettes Applications are confusingly similar to the marks used by Opposers, all of which predominantly use the word SILHOUETTE in connection with identical services.

32. Applicant's use and registration of the marks in The Silhouettes Applications results in a likelihood of confusion with marks owned and used by Opposers.

33. If Applicant is permitted to register the marks contained in The Silhouettes Applications for "entertainment services in the nature of children's shadow dance performances" despite this likelihood of confusion, Opposers' rights to use of its marks will be impaired, and Opposers will be damaged.

34. WHEREFORE, Opposers prays that this Opposition be sustained and that the registration of U.S. Trademark Application Serial Nos. 85/639133, 85/639140, 85/639143 for THE ORIGINAL SILHOUTTES & Design, LYNNE WAGGONER-PATTON SILHOUTTES & Design and THE SILHOUETTES & Design be denied and refused. The filing fee of \$2700.00 (\$300 per Opposer x three applications) is being submitted herewith. If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 19-1970.

Respectfully submitted,
SHERIDAN ROSS P.C.

Date: _____

3-27-13



Sarah J. Schneider, Esq.
Sabrina C. Stavish, Esq.
Attorneys for Opposers
1560 Broadway, Suite 1200
Denver, CO 80202-5141
Phone: (303) 863-9700
Fax: (303) 863-0223

CERTIFICATE OF SERVICE

I, Jessica Foda, do hereby certify that a copy of the foregoing JOINT & CONSOLIDATED NOTICE OF OPPOSITION was served by first class mail, postage prepaid, on the 27th day of March 2013, upon the attorney/domestic representative for the Applicant:

A handwritten signature in cursive script that reads "Jessica Foda". The signature is written in black ink and is positioned above a horizontal line.

Cheryl L. Anderson
CR MILES P.C.
405 Mason Court, Suite 119
Fort Collins, COLORADO 80524

Phone: 970-492-0000
Fax: 970-492-0003