

ESTTA Tracking number: **ESTTA546483**

Filing date: **07/02/2013**

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 party opposes registration of the indicated application.

Opposer Information

Name	Indigo Wild, LLC
Granted to Date of previous extension	07/10/2013
Address	3125 Wyandotte Street Kansas City, MO 64111 UNITED STATES
Attorney information	Glenn K. Robbins II SPENCER FANE BRITT & BROWNE LLP 1 North Brentwood Blvd., Suite 1000 St.. Louis, MO 63105 UNITED STATES sfbbaction@spencerfane.com Phone:314-863-7733

Applicant Information

Application No	85739791	Publication date	03/12/2013
Opposition Filing Date	07/02/2013	Opposition Period Ends	07/10/2013
Applicant	SUMZUM LLC 2029 Wyandotte, Suite 303 Kansas City, MO 64108 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: membership service provider offering discounts on others' merchandise and services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2279380	Application Date	08/21/1998
Registration Date	09/21/1999	Foreign Priority Date	NONE
Word Mark	ZUM BAR		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 003. First use: First Use: 1996/05/01 First Use In Commerce: 1996/05/01 Skin soap

U.S. Registration No.	2782019	Application Date	12/05/2002
Registration Date	11/11/2003	Foreign Priority Date	NONE
Word Mark	ZUM BODY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/10/08 First Use In Commerce: 2002/10/08 SKIN LOTION		

U.S. Registration No.	2782020	Application Date	12/05/2002
Registration Date	11/11/2003	Foreign Priority Date	NONE
Word Mark	ZUM RUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/08/09 First Use In Commerce: 2000/08/09 SKIN MOISTURIZER		

U.S. Registration No.	2784388	Application Date	12/05/2002
Registration Date	11/18/2003	Foreign Priority Date	NONE
Word Mark	ZUM GLOW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 1999/10/00 First Use In Commerce: 1999/10/00 CANDLES		

U.S. Registration No.	2788886	Application Date	12/05/2002
Registration Date	12/02/2003	Foreign Priority Date	NONE
Word Mark	ZUM TUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/09/06 First Use In Commerce: 2002/09/06 Non-medicated bath salts		

U.S. Registration No.	2791350	Application Date	12/05/2002
-----------------------	---------	------------------	------------

Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	ZUM KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/10/00 First Use In Commerce: 2000/10/00 NON-MEDICATED LIP BALM		

U.S. Registration No.	2791351	Application Date	12/05/2002
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	ZUM MIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/03/08 First Use In Commerce: 2002/03/08 SCENTED ROOM SPRAYS, BODY SPRAYS AND SCENTED LINEN SPRAYS		

U.S. Registration No.	3375700	Application Date	05/30/2007
Registration Date	01/29/2008	Foreign Priority Date	NONE
Word Mark	ZUM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1996/05/01 First Use In Commerce: 1996/05/01 Bath salts; Liquid soap; Skin soap; Lip balm; Skin lotion; Eye shadow; Blush; Face powder; Laundry detergent; Skin moisturizer; Body sprays; Scented linen sprays; Scented room sprays		

U.S. Registration No.	3536733	Application Date	04/15/2008
Registration Date	11/25/2008	Foreign Priority Date	NONE
Word Mark	ZUM BUM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2007/01/01 First Use In Commerce: 2007/01/01 Body sprays		

U.S. Registration No.	3536734	Application Date	04/15/2008
Registration Date	11/25/2008	Foreign Priority Date	NONE
Word Mark	ZUM CLEAN		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2007/08/01 First Use In Commerce: 2007/08/01 Laundry soap; Cleaning preparations

U.S. Registration No.	3536735	Application Date	04/15/2008
Registration Date	11/25/2008	Foreign Priority Date	NONE
Word Mark	ZUM WASH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2004/06/01 First Use In Commerce: 2004/06/01 Liquid soap		

Attachments	SUMZUM NOTICE OF OPPOSITION.pdf(188825 bytes)
-------------	--

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	/Glenn K. Robbins II/
Name	Glenn K. Robbins II
Date	07/02/2013

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

INDIGO WILD, L.L.C.)	
)	Opposition No.
Opposer,)	
)	
v.)	Mark: SUMZUM
)	
SUMZUM LLC)	
)	Serial No. 85/739,791
Applicant.)	

NOTICE OF OPPOSITION

Indigo Wild, L.L.C. (“Opposer”), a Missouri limited liability company having a place of business at 3125 Wyandotte Street, Kansas City, Missouri 64111, believes that it would be damaged by the registration of the mark SUMZUM, shown in U.S. Trademark Application Serial No. 85/739,791 (“SUMZUM Application”) to SumZum LLC (“Applicant”) and hereby opposes same.

Opposer alleges upon personal knowledge for its own acts and upon information and belief with respect to all other matters, as follows:

1. Opposer is engaged in the manufacture, marketing, distribution, and sale of a wide variety of bath, body, and household products.
2. Opposer’s products are widely distributed through a variety of marketing channels.
3. Opposer adopted the trademark “ZUM” in 1996 which it has used since that time, and continues to use, in connection with its bath, body, and household products.

4. Opposer has developed and used a family of marks under the ZUM designation in connection with its aforesaid products in commerce in the United States.

5. Opposer owns the following trademark registrations issued by the United States Patent and Trademark Office for its family of marks under the ZUM designation (the “ZUM Family Marks”):

Mark	Registration No.	Goods Identified	First Use in Commerce and Registration Dates
ZUM BAR	2,279,380	“skin soap”	First Use in Commerce: May 1, 1996; Registration Date: September 21, 1999
ZUM BODY	2,782,019	“skin lotion”	First Use in Commerce: October 8, 2002; Registration Date: November 11, 2003
ZUM RUB	2,782,020	“skin moisturizer”	First Use in Commerce: August 9, 2000 Registration Date: November 11, 2003
ZUM GLOW	2,784,388	“candles”	First Use in Commerce: October 1999; Registration Date: November 18, 2003
ZUM TUB	2,788,886	“non-medicated bath salts”	First Use in Commerce: September 6, 2002 Registration Date: December 2, 2003
ZUM KISS	2,791,350	“non-medicated lip balm”	First Use in Commerce: October 2000; Registration Date:

			December 9, 2003
ZUM MIST	2,791,351	“scented room sprays, body sprays and scented linen sprays”	First Use in Commerce: March 8, 2002 Registration Date: December 9, 2003
ZUM	3,375,700	“bath salts, liquid soap, skin soap, lip balm, skin lotion, eye shadow, laundry detergent, skin moisturizer, body sprays, scented linen sprays, scented room sprays”	First Use in Commerce: May 1, 1996 Registration Date: November 13, 2007
ZUM BUM	3,536,733	“body sprays”	First Use in Commerce: January 1, 2007; Registration Date: November 25, 2008
ZUM CLEAN	3,536,734	“laundry soap, cleaning preparations”	First Use in Commerce: August 1, 2007 Registration Date: November 25, 2008
ZUM WASH	3,536,735	“liquid soap”	First Use in Commerce: June 1, 2004 Registration Date: November 25, 2008

6. Since the adoption of the ZUM Family Marks, Opposer has continuously used said marks in connection with the goods set forth in the registrations.

7. Opposer has sold millions of dollars’ worth of its aforesaid products under the ZUM Family Marks throughout the United States and in foreign countries.

8. Opposer has spent significant sums advertising and promoting its aforesaid products under the ZUM Family Marks throughout the United States.

9. Opposer’s products marketed under the ZUM Family Marks have achieved widespread recognition in the media. Opposer’s ZUM products have received noteworthy

acclamation, having received exposure in nationally-distributed magazines such as Ladies Home Journal, Country Living, Woman's Day, W Magazine, Maxim, Oprah Magazine and Shape. Petitioner's ZUM products have also been featured on NBC's The Today Show.

10. As a result of the continuous and extensive use of the ZUM Family Marks, along with the favorable acclaim gained from Opposer's national exposure, said marks have become famous and function as a valuable business and marketing asset of Opposer, and serve to indicate to the trade and consuming public the goods originating from Opposer and the goodwill which is associated with those goods.

11. Applicant's mark SUMZUM is formed with the identical word "ZUM", and the services are described in the SUMZUM Application as "membership service provider offering discounts on others' merchandise and services" (Class 35).

12. Applicant filed its application on September 27, 2012, alleging an intent to use, long after the use dates of Opposer's ZUM Family Marks.

13. The SUMZUM Application was filed long after the registration dates of Opposer's ZUM Family Marks.

14. Applicant's SUMZUM mark, when used in connection with the broad description of services set forth in the SUMZUM Application, is confusingly similar to Opposer's ZUM Family Marks, and registration of Applicant's mark and continued use by it with its services is likely to cause confusion, mistake and deception. Customers are likely to mistakenly believe that when Applicant offers discounts on others merchandise under the SUMZUM mark, that the discounts may be provided for Opposer's products or otherwise associated with Opposer's ZUM

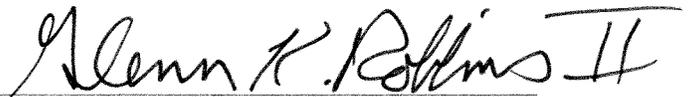
Family Marks. Applicant's use of its mark interferes with Opposer's use of its ZUM Family Marks, and continued use or registration of Applicant's mark will damage Opposer.

15. The registration of Applicant's SUMZUM mark would grant Applicant rights to which it is not entitled, and would be inconsistent with the prior and established rights of Opposer in its ZUM Family of Marks under common law and in the registrations therefor.

By reason of the foregoing, Opposer will be damaged by the registration of the SUMZUM mark to Applicant.

WHEREFORE, Opposer respectfully requests that the Notice of Opposition be sustained and the registration of Applicant's SUMZUM mark be refused.

Respectfully submitted,
SPENCER FANE BRITT & BROWNE LLP

By 

Glenn K. Robbins II
One North Brentwood Blvd., Suite 1000
St. Louis, Missouri 63105
Telephone: (314) 863-7733
Facsimile: (314) 862-4656

Attorneys for Opposer
Indigo Wild, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, via first-class mail, postage prepaid, this 2ND day of July, 2013, to the following:

Adam C. Rehm
SNR Denton US LLP
P.O. Box 61080
Chicago, IL 60606

