

ESTTA Tracking number: **ESTTA675400**

Filing date: **06/01/2015**

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	Sears Brands, LLC
Granted to Date of previous extension	05/31/2015
Address	3333 Beverly Drive Hoffman Estates, IL 60179 UNITED STATES
Attorney information	Joshua Aldort McAndrews, Held & Malloy 34th Floor 500 W Madison Chicago, IL 60661 UNITED STATES jaldort@mcandrews-ip.com, trademarks@mcandrews-ip.com

**Applicant Information**

Application No	86316469	Publication date	12/02/2014
Opposition Filing Date	06/01/2015	Opposition Period Ends	05/31/2015
Applicant	Willingham, Rashawn 4 Elias Lane Milton, MA 02186 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 2014/05/01 First Use In Commerce: 2014/05/01 All goods and services in the class are opposed, namely: Bottoms; Hats; Hoods; Jackets; Pants; Shirts; Socks; Sweaters; Tops
--

**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.	4685367	Application Date	05/06/2013
Registration Date	02/10/2015	Foreign Priority Date	NONE
Word Mark	STRUCTURE		

Design Mark	<b>STRUCTURE</b>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2005/03/00 First Use In Commerce: 2005/03/00 Footwear

U.S. Registration No.	1673086	Application Date	02/12/1990
Registration Date	01/21/1992	Foreign Priority Date	NONE
Word Mark	STRUCTURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1989/10/10 First Use In Commerce: 1989/10/10 retail clothing store services		

U.S. Registration No.	1567276	Application Date	03/24/1989
Registration Date	11/21/1989	Foreign Priority Date	NONE
Word Mark	STRUCTURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1989/02/01 First Use In Commerce: 1989/02/01 [ WOMEN'S PANTS AND TOPS AND ] MEN'S SHIRTS, SHORTS, PANTS AND TOPS		

Attachments	85924102#TMSN.png( bytes ) Notice of Opposition - STR UXUR.pdf(88223 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	/Joshua Aldort/
Name	Joshua Aldort

Date	06/01/2015
------	------------

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

In the matter of:

Trademark Application No. 86316469  
Filing Date: June 20, 2014  
Mark: STR UXUR  
Publication Date: December 2, 2014

SEARS BRANDS, LLC

Opposer,

v.

RASHAWN WILLINGHAM,

Applicant.

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

Opposer SEARS BRANDS, LLC (“Opposer”) believes that it will be damaged by the registration of the trademark STR UXUR as set forth in U.S. Application Serial No. 86316469 (the “Application”) filed by RASHAWN WILLINGHAM (“Applicant”). Accordingly, Opposer hereby opposes registration of Applicant’s Mark pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds for this Opposition, Opposer states:

1. Opposer is a limited liability company organized and existing under the laws of the State of Illinois, with a principal office located at 3333 Beverly Road, Hoffman Estates, Illinois 60179, and is a subsidiary of Sears Holdings Corporation.

Opposer, along with any affiliated licensees of Opposer's Marks (defined below), predecessors-in-interest to Opposer's Marks, and their respective affiliated licensees of Opposer's Marks, are all referred to herein collectively as "Sears."

2. Opposer has adopted and is using the trademark STRUCTURE for use on or in connection with footwear, men's shirts, shorts, pants and tops, and in connection with retail clothing store services.

3. To protect its rights, Opposer owns (a) U.S. Trademark Registration No. 4685367 for use of the mark STRUCTURE on or in connection with "Footwear" in Class 25; (b) U.S. Trademark Registration No. 1673086 for use of the mark STRUCTURE on or in connection with "retail clothing store services" in Class 42; and (c) U.S. Trademark Registration No. 1567276 for use of the mark STRUCTURE on or in connection with "Women's pants and tops and men's shirts, shorts, pants and tops" in Class 25. Copies of the foregoing registrations are attached as Exhibits A-C.

4. Opposer has been continuously using the mark STRUCTURE on or in connection with "footwear" as early as March 2005.

5. Opposer has been continuously using the mark STRUCTURE on or in connection with "retail clothing store services" as early as October 10, 1989.

6. Opposer has been continuously using the mark STRUCTURE on or in connection with "men's shirts, shorts, pants and tops" as early as February 1, 1989.

7. Applicant seeks registration of the trademark STR UXUR for use on or in connection with "bottoms; hats; hoods; jackets; pants; shirts; socks; sweaters; tops" in Class 25.

8. On June 20, 2014, Applicant filed his application to register the STR

UXUR trademark. The Applicant claims that he first began using the STR UXUR mark as early as May 1, 2014. The Application was published for opposition on November 12, 2014.

9. On information and belief, Applicant had not commenced use of the STR UXUR mark in the United States prior to Opposer's respective 1989 and 2005 dates of first use of the STRUCTURE mark in Classes 25 and 42.

10. On information and belief, Applicant had not commenced use of the STR UXUR mark in the United States prior to the May 6, 2013, filing date of the application that matured in to Opposer's Reg. No. 4685367.

11. On information and belief, Applicant had not commenced use of the STR UXUR mark in the United States prior to the February 12, 1990, filing date of the application that matured in to Opposer's Reg. No. 1673086.

12. On information and belief, Applicant had not commenced use of the STR UXUR mark in the United States prior to the March 24, 1989, filing date of the application that matured in to Opposer's Reg. No. 1567276.

13. There is no issue of priority, as Opposer enjoys prior rights.

14. Opposer is a global retailer of, among other goods and services, clothing.

15. Opposer has extensively advertised products identified by the STRUCTURE trademarks to the general public, customers, and prospective customers in various media, including national print publications and the Internet.

16. By virtue of its extensive sales and promotion, Opposer's STRUCTURE mark has become well-known to the general public indicating source in the Opposer.

17. Applicant's STR UXUR mark is nearly identical to Opposer's STRUCTURE mark in appearance, sound, and commercial impression.

18. The goods in connection with which Opposer uses and has registered the STRUCTURE trademarks and the goods covered by Application Ser. No. 86316469 for STR UXUR overlap.

19. The goods in connection with which Opposer uses and has registered the STRUCTURE trademarks and the goods covered by Application Ser. No. 86316469 for STR UXUR are highly related.

20. The goods in connection with which Opposer uses and has registered the STRUCTURE trademarks and the goods covered by Application Ser. No. 86316469 for STR UXUR are complementary.

21. The goods in connection with which Opposer uses and has registered the STRUCTURE trademarks and the goods covered by Application Ser. No. 86316469 for STR UXUR are likely to be sold through the same channels of trade.

22. The goods in connection with which Opposer uses and has registered the STRUCTURE trademarks and the goods covered by Application Ser. No. 86316469 for STR UXUR are likely to be sold to the same class of consumers.

23. The use and registration by Applicant of the STR UXUR mark for the goods covered by Application Ser. No. 86316469 is likely to cause confusion, mistake, or deception by having the public and prospective purchasers erroneously assume or believe that Applicant's goods emanate from Opposer, or are in some way endorsed, sponsored, or otherwise associated or connected with Opposer and Opposer's prior used and registered STRUCTURE trademarks all to the public's and Opposer's

irreparable damage.

For the reasons set forth above, Opposer believes and avers that it will be damaged by registration of Application Ser. No. 86316469 for use of the STR UXUR mark on the goods identified in Class 25. Accordingly, Opposer prays that this opposition be sustained and that Applicant be refused registration of the STR UXUR mark for the goods set forth in Application Serial No. 86316469.

This Notice of Opposition is submitted with the requisite filing fee. Should additional fees be required, please charge them to the deposit account of Opposer's counsel, No. 13-0017.

Respectfully submitted,

Date: June 1, 2015

By: \_\_\_\_\_

Joshua A. Aldort  
McAndrews, Held & Malloy, Ltd.  
34th Floor  
500 West Madison Street  
Chicago, Illinois 60661  
Telephone: (312) 775-8000

*Attorneys for Opposer  
Sears Brands LLC.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated below, a copy of the foregoing NOTICE OF OPPOSITION was served upon Applicant's counsel by depositing same with the United States Postal Service as First Class Mail in an envelope addressed as follows:

Willingham, Rashawn  
4 Elias Lane  
Milton, Massachusetts 02186

Date: June 1, 2015

By: \_\_\_\_\_