

ESTTA Tracking number: **ESTTA694388**

Filing date: **09/08/2015**

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 | NIHC, Inc. |
| Granted to Date of previous extension | 09/06/2015 |
| Address | 701 SW BROADWAY, 4TH FLOOR PORTLAND, OR 97205-3398 UNITED STATES |

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| Attorney information | Lorraine Linford SEED IP LAW GROUP PLLC 701 FIFTH AVE, STE 5400 SEATTLE, WA 98104 UNITED STATES LorraineL@SeedIP.com, Litcal@SeedIP.com Phone:206-622-4900 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 86417781 | Publication date | 03/10/2015 |
| Opposition Filing Date | 09/08/2015 | Opposition Period Ends | 09/06/2015 |
| Applicant | Luna, Inc. 237 Main Street Pineville, NC 28134 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 035. First Use: 2013/12/07 First Use In Commerce: 2013/12/07
All goods and services in the class are opposed, namely: retail clothing stores

Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3866811 | Application Date | 02/23/2010 |
| Registration Date | 10/26/2010 | Foreign Priority Date | NONE |
| Word Mark | RACK | | |

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|---------------------|--|--|--|
| Design Mark | <h1>RACK</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 035. First use: First Use: 1990/00/00 First Use In Commerce: 1990/00/00 retail store services and mail order catalog services featuring apparel, footwear, fashion accessories and gifts | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3962979 | Application Date | 02/23/2010 |
| Registration Date | 05/17/2011 | Foreign Priority Date | NONE |
| Word Mark | THE RACK | | |
| Design Mark | <h1>THE RACK</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 035. First use: First Use: 1990/00/00 First Use In Commerce: 1990/00/00 retail store services, online retail store services and mail order catalog services featuring apparel, footwear, fashion accessories and gifts | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1409938 | Application Date | 01/31/1986 |
| Registration Date | 09/16/1986 | Foreign Priority Date | NONE |
| Word Mark | NORDSTROM RACK | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 042. First use: First Use: 1972/10/00 First Use In Commerce: 1972/10/00 RETAIL MEN'S AND WOMEN'S CLOTHING STORESERVICES | | |

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|-----------------------|---------|------------------|------------|
| U.S. Registration No. | 3893991 | Application Date | 05/27/2010 |
|-----------------------|---------|------------------|------------|

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|---------------------|---|-----------------------|------|
| Registration Date | 12/21/2010 | Foreign Priority Date | NONE |
| Word Mark | NORDSTROM RACK | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of the word "NORDSTROM" above the word "RACK". | | |
| Goods/Services | Class 035. First use: First Use: 2008/09/25 First Use In Commerce: 2008/09/25 Retail store services featuring apparel, footwear, fashion accessories and gifts | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2980055 | Application Date | 10/16/2002 |
| Registration Date | 07/26/2005 | Foreign Priority Date | NONE |
| Word Mark | NORDSTROM RACK NR | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 035. First use: First Use: 2001/04/00 First Use In Commerce: 2001/04/00 Retail store [and online retail] services, all in the field of apparel, footwear, small leather goods, eyewear, jewelry, and bath, body and personal care products; retail [and online retail] giftshop services | | |

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 4214297 | Application Date | 06/26/2009 |
| Registration Date | 09/25/2012 | Foreign Priority Date | NONE |
| Word Mark | DENIMRACK | | |

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|---------------------|---|
| Design Mark | <h1>denimrack</h1> |
| Description of Mark | NONE |
| Goods/Services | Class 035. First use: First Use: 2009/06/19 First Use In Commerce: 2009/06/19 On-line retail store services featuringdenim clothing; Retail apparel stores; Retail store services featuring denim clothing and accessories |

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| Attachments | 77942725#TMSN.png(bytes) 77942736#TMSN.png(bytes) 85049432#TMSN.png(bytes) 78976100#TMSN.png(bytes) 77769311#TMSN.png(bytes) Notice of Opposition LUNA RACK.pdf(124822 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.

| | |
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| Signature | /Lorraine Linford/ |
| Name | Lorraine Linford |
| Date | 09/08/2015 |

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

| | | |
|-------------|---|----------------------------------|
| NIHC, Inc., |) | |
| |) | Opposition No. _____ |
| Opposer, |) | |
| |) | Serial No. 86/417781 |
| v. |) | |
| |) | |
| Luna, Inc., |) | |
| |) | Attorney Docket No. 690097.80175 |
| Applicant. |) | |
| _____ |) | |

Notice of Opposition

NIHC, Inc. (“NIHC”), having an address at 701 Southwest Broadway, Fourth Floor, Portland, Oregon 97205 believes it will be damaged by registration of the mark LUNA RACK as shown in U.S. Trademark Application Serial No. 86/417781 (“the ’781 Application”) which was filed October 8, 2014 in class 35 for “retail clothing stores” and published for opposition on March 10, 2015. Opposer requested and received extensions of time to September 6, 2015.

The grounds for this Opposition are as follows:

1. Opposer, through its commonly owned and controlled licensee Nordstrom, Inc. (“Nordstrom”), operates retail clothing stores and online retail stores and is engaged in the marketing and sale of a wide variety of apparel in interstate commerce.
2. Since at least as early as 1990, Nordstrom adopted and has used the marks RACK, THE RACK and variants thereof (“RACK Marks”) in interstate commerce in the United States in connection with retail clothing store services.
3. Nordstrom applied for and received U.S. Trademark Registration Nos. 3,866,811, 3,962,979, 1,409,938, 3,893,991, 2,980,055 and 4,214,297 and for the marks RACK, THE RACK, NORDSTROM RACK, NORDSTROM RACK (stylized), NORDSTROM RACK NR and Design and DENIMRACK, and all of which predate the present application. These

registrations have been assigned by Nordstrom to NIHC, which has exclusively licensed the marks shown in the registrations to Nordstrom.

4. Since commencing use of its RACK Marks as described above, Opposer and its licensee Nordstrom have generated substantial revenue from its retail services in connection with the marks in the United States. Additionally, Opposer and its licensee Nordstrom have expended substantial sums of money, time and effort in maintaining, advertising, promoting and popularizing its RACK Marks in the United States.

5. As a result of such use of the RACK Marks, and the advertising and promotion of its RACK retail store services, Opposer's RACK Marks have become well known in the United States and are recognized as identifying the high-quality services and goods of Opposer and its licensee Nordstrom. Thus, its RACK Marks and the associated goodwill are valuable assets of Opposer.

6. Applicant has applied to register the LUNA RACK mark shown in the '781 Application in International Class 35 for the following goods and services, "retail clothing stores".

7. Applicant's mark LUNA RACK for the goods described in the '781 Application is confusingly and deceptively similar to Opposer's RACK Marks, such that the trade and purchasing public will be confused by and deceived into believing that Applicant's goods originate with Opposer and its licensee Nordstrom, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Opposer.

8. Upon information and belief, Applicant has not made use of LUNA RACK in commerce in or into the United States as a trademark in connection with the goods listed in the '781 Application or any other goods or services prior to the claimed first use date of December 7, 2013.

9. By reason of the foregoing, Opposer would be greatly damaged by the registration of the mark LUNA RACK to Applicant.

WHEREFORE, Opposer prays that this Opposition be sustained, Applicant's application be denied and the mark refused registration.

Correspondence Address

Please direct all communications to:

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SEED IP Law Group PLLC
701 Fifth Avenue, Suite 5400
Seattle, Washington 98104

DATED this 8th day of September, 2015.

Respectfully submitted,
SEED IP Law Group PLLC

/Lorraine Linford/
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Attorneys for Opposer NIHC, Inc.

Certificate of Service

I hereby certify that on this 8th day of September, 2015, the foregoing **Notice of Opposition** was served upon Applicant's counsel by United States first-class mail, postage-prepaid, addressed as follows:

J. Bennett Mullinax
J. Bennett Mullinax, LLC
P.O. Box 26029
Greenville, SC 29616-1029

/Anne Calico /
Anne Calico