

# KLIMA LAW OFFICES, P.L.L.C.

A PROFESSIONAL LIMITED LIABILITY COMPANY

*Patent, Trademark & Copyright Law*

2046-C JEFFERSON DAVIS HIGHWAY

STAFFORD, VA 22554

PHONE: (540) 657-9344

FAX: (540) 657-9343

e-mail: commcenter@acupat.com

AFFILIATION

ACUPAT L.L.C.  
STAFFORD, VA

WILLIAM L. KLIMA \*

WALTER F. KLIMA, JR., Ph.D., Chemistry  
Technical Consultant

\* ADMITTED IN PENNSYLVANIA ONLY.

TTAB

December 13, 2006

Trademark Trial and Appeal Board  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

Re: Opposition No.: \_\_\_\_\_  
Notice of Opposition  
Mark: TALLY WEIJL  
Serial No.: 79/011,561  
Filing Date: March 24, 2005  
Opposer: C. Rhyane Davis

Sir:

The following documents are forwarded herewith for appropriate action by the U.S. Patent and Trademark Office:

1. Notice of Opposition
2. Copy of Certificate of Service
3. Check No. 1264 in the amount of \$300.00

It is respectfully requested that the attached post card be stamped with the filing date of these documents and returned to our courier.

The Commissioner is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 11-1243. A duplicate copy of this letter is enclosed.

Respectfully submitted,

KLIMA LAW OFFICES, P.L.L.C.



William L. Klima  
Attorney for Applicant  
Registration No. 32,422

Attachments



12-13-2006

U.S. Patent & TMO/TM Mail Rcpt Dt. #34





as clothing, namely shirts, T-shirts, sweat shirts, jerseys, tops, pants, sweat pants, sleep shirts, pajamas, shoes, socks, hats, baseball hats, caps, belts, [belt buckles], [buttons, ties], underwear, shorts, boxer shorts, jackets and coats, as filed in International Class 25.

3. Opposer's Application Serial No. 76/624,142 for the mark TALLYWHACKERS was filed on December 13, 2004.

4. Applicant filed a Notice of Opposition (Opposition No. 91172393) against Opposer's Application Serial No. 76/624,142 for the mark TALLYWHACKERS on August 16, 2006, claiming Opposer's mark TALLYWHACKERS is confusingly similar to Applicant's mark TALLEY WEIJL being pursued in Applicant's Application Serial No. 79/011,561 filed on March 24, 2005.

5. There exists no likelihood of confusion between Opposer's mark TALLYWHACKERS and Applicant's mark TALLEY WEIJL, and in particular there is no likelihood of confusion between the pending marks covered by Opposer's Application Serial No. 76/624,142 for the mark TALLYWHACKERS and Applicant's Application Serial No. 79/011,561 for the mark TALLEY WEIJL. In particular, Opposer's mark and Applicant's mark are phonetically and visually dissimilar. Further, Opposer's mark TALLYWHACKERS is a fanciful and humorous word mark similar to a well-known slang word Tallywacker in the English language dissimilar and unlike Applicant's word mark TALLEY WEIJL, which is based on an assumed person's name, in particular TALLY WEIJL, which is the publicly-known name of Ravital Elfassi, the president and

designer of fashion brands for Applicant TALLY WEIJL HOLDING AG precluding any likelihood of confusion. Accordingly, Applicant's mark for TALLY WEIJL does not so resemble Opposer's mark for TALLYWHACKERS as to be likely, when used in conjunction with the goods and services of the Applicant, as to cause confusion, to cause mistake, and to deceive.

6. In addition to the dissimilarity between the marks themselves, only one class of goods recited in Applicant's application for the mark TALLEY WEIJL is identical to the only class (International Class 25) selected in Opposer's application for TALLYWHACKERS. Further, the identification of goods recited in Opposer's mark for TALLYWHACHERS is clothing and not the accessory items (Classes 14, 18 and 25) and personal cleaning or care products (Class 3) recited in the identification of goods set forth in Applicant's mark for TALLEY WEIJL. It is important to note that only one (1) good (i.e. belts) in International Class 25 is common to Opposer's application for the mark TALLYWHACKERS and Applicant's application for the mark TALLEY WEIJL.

7. Opposer's mark to TALLYWHACKERS is registerable even though similar to the slang English word Tallywacker, and is not immoral, deceptive, and scandalous matter, and would not be perceived by members of the public as derogatory, offensive, shocking, indecent, and disreputable in a manner or of a type so as to preclude registration thereof by the United States Patent and Trademark Office. In particular,

there exists numerous examples of similar slang word marks registered by the United States Patent and Trademark Office, and Opposer requests judicial notice of such similar type of registered marks.

8. Upon information and belief, there is no likelihood of confusion or other issues between Opposer's mark TALLYWHACKERS and Applicant's mark TALLEY WEIJL, that the filing of Opposition No. 91172393 was improper and without merit, and that Opposition No. 91172393 was filed to gain unfair advantage over and interfere with the registration of Opposer's mark earlier filed in and earlier allowed by the United States Patent and Trademark Office verses Applicant's mark resulting in suspension of prosecution of Opposer's mark TALLEYWHACKERS while Applicant continued active prosecution of Applicant's mark TALLEY WEIJL to seek registration thereof ahead of registration of Opposer's mark.

9. Thus, if Applicant is permitted to gain registration of its mark for its goods at this time by the United States Patent and Trademark Office, prior to a decision or resolution of the likelihood of confusion issue and other issues in the earlier filed copending Opposition No. 91172393, Opposer will be unfairly prejudiced and disadvantaged by Opposer's mark TALLY WHACKERS being held up or suspended due to the pending Opposition No. 91172393 while Applicant's mark TALLEY WEIJL would be first registered prior to decsion or resolution of the earlier filed Opposition No. 91172393. In particular, the decision or outcome of the earlier filed copending Opposition No. 91172393 is necessary to provide adequate discovery and procedure to

develop and obtain the facts, circumstances, issues and decision by the United States Patent and Trademark Office, or otherwise outcome of the earlier filed copending Opposition No. 91172393 prior to registration of Applicant' Application Serial No. 79/011,561 and prior to consideration of this later filed Opposition, thus requiring immediate suspension of Applicant's application Serial No. 79/011,561.

WHEREFORE, Opposer respectfully requests that the said Application Serial No. 79/011,561 be refused to allow to mature to registration, that registration of the mark shown for the goods therein be denied, and that this opposition be sustained in favor of Opposer.

Opposer hereby appoints William L. Klima, member of the Bar of the State of Pennsylvania and KLIMA LAW OFFICE, P.L.L.C., 2046-C Jefferson Davis Highway, Stafford, Virginia 22554 to act as attorney for Opposer herein, with full power to prosecute said opposition, to transact relevant business with the United States Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this opposition.

Please address all correspondence to:

William L. Klima  
Klima Law Offices, P.L.L.C.  
2046-C Jefferson Davis Highway  
Stafford, Virginia 22554

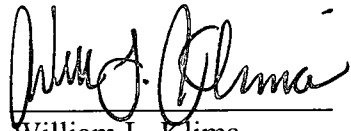
Opposer hereby gives notice that after hearing and in any appeal on this opposition proceeding, it will rely on its application as evidence in support of this Notice of Opposition.

Respectfully submitted,

C. Rhyane Davis

Dated: December 13, 2006

By:



William L. Klima  
Registration No. 32,422  
Klima Law Offices, P.L.L.C.  
2046-C Jefferson Davis Hwy.  
Stafford, Virginia 22554  
(540) 657-9344  
Attorney for Opposer

# KLIMA LAW OFFICES, P.L.L.C.

A PROFESSIONAL LIMITED LIABILITY COMPANY

*Patent, Trademark & Copyright Law*

2046-C JEFFERSON DAVIS HIGHWAY

STAFFORD, VA 22554

PHONE: (540) 657-9344

FAX: (540) 657-9343

e-mail: commcenter@acupat.com

AFFILIATION

ACUPAT L.L.C.  
STAFFORD, VA

WILLIAM L. KLIMA \*

WALTER F. KLIMA, JR., Ph.D., Chemistry  
Technical Consultant

\* ADMITTED IN PENNSYLVANIA ONLY.

December 13, 2006

## CERTIFICATE OF SERVICE

Daniel A. Scola, Jr.  
HOFFMAN & BARON, LLP  
1055 Parsippany Boulevard  
Parsippany, New Jersey 07054-1272

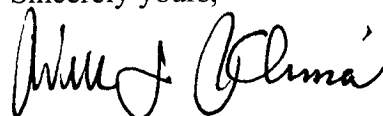
*Via Facsimile and First Class Mail*  
*(973) 331-1717*

Re: Opposition No.: \_\_\_\_\_  
Notice of Opposition  
Mark: TALLY WEIJL  
Serial No.: 79/011,561  
Filing Date: March 24, 2005  
Opposer: C. Rhyane Davis

Dear Mr. Scola:

We are hereby serving notice of the Opposer's filing of a Notice of Opposition in connection with the above-identified Opposition on December 13, 2006, in the United States Patent and Trademark Office. Please find enclosed a copy for your information and files.

Sincerely yours,



William L. Klima

Enclosure  
WLK:cac