

ESTTA Tracking number: **ESTTA51731**

Filing date: **11/03/2005**

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

<b>Name</b>	Sara Lee Corporation
<b>Granted to Date of previous extension</b>	11/06/2005
<b>Address</b>	1000 East Hanes Mill Road Winston-Salem, NC 27105 UNITED STATES

<b>Correspondence information</b>	Bruce O. Bradford Assistant Counsel-Intellectual Property Sara Lee Corporation 1000 East Hanes Mill Road Winston-Salem, NC 27105 UNITED STATES bbradford@saralee.com,lesa.tillery@saralee.com Phone:336.519.7072
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#### Applicant Information

<b>Application No</b>	76507963	<b>Publication date</b>	05/10/2005
<b>Opposition Filing Date</b>	11/03/2005	<b>Opposition Period Ends</b>	11/06/2005
<b>Applicant</b>	Abdul, Paula c/o Pryor Cashman Sherman & Flynn LLP 410 Park Avenue		

New York, NY 10022 UNITED STATES
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### **Goods/Services Affected by Opposition**

Class 025.

All goods and services in the class are opposed, namely: Clothing, namely, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, jerseys, uniforms, athletic uniforms, pants, trousers, slacks, jeans, denim jeans, overalls, coveralls, jumpers, jump suits, shorts, boxer shorts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, wraps, warm-up suits, jogging suits, blouses, skirts, dresses, sweaters, vests, fleece vests, pullovers, snow suits, parkas, anoraks, ponchos, jackets, reversible jackets, coats, blazers, suits, turtlenecks, ski bibs, swimwear, beachwear, infantwear, baby bibs not of paper, caps, berets, beanies, hats, visors, headbands, wrist bands, sweat bands, headwear, ear muffs, aprons, scarves, bandanas, belts, suspenders, neckwear, neckties, ties, underwear, briefs, swimming and bathing trunks, bras, sports bras, brassieres, bustiers, corsets, panties, garters and garter belts, teddies, girdles, foundation garments, singlets, socks, loungewear, robes, bathrobes, underclothes, pajamas, sleepwear, night gowns, lingerie, camisoles, negligees, slippers, sarongs, leg warmers, hosiery, knee highs, leggings, tights, leotards, body suits, unitards, body shapers, gloves, mittens, footwear, shoes, sneakers, boots, galoshes, sandals, zori, slippers and rainwear

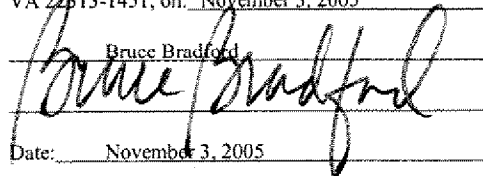
<b>Attachments</b>	INNERGY.PDF ( 5 pages )
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<b>Signature</b>	/bruce bradford/
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<b>Name</b>	Bruce O. Bradford
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<b>Date</b>	11/03/2005
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I hereby certify that this correspondence is being  
Filed by electronic means (ESTTA) with the:  
Trademark Trial and Appeal Board, U.S. Patent and  
Trademark Office, P.O. Box 1451 Alexandria,  
VA 22313-1451, on: November 3, 2005

Bruce Bradford  
  
Date: November 3, 2005

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

In the Matter of Application Serial No. 76/507,963

Published on May 10, 2005

Mark: INNERGY

Sara Lee Corporation, )  
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Opposer, )  
)  
v. )  
)  
)  
Paul Abdul, )  
)  
Applicant. )  
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NOTICE OF  
OPPOSITION

Opposer Sara Lee Corporation, a Maryland corporation having a principal place of business at 1000 East Hanes Mill Road, Winston-Salem, North Carolina 27105 ("opposer"), believes it will be damaged by registration of the mark INNERGY, published in the Official Gazette on May 10, 2005, for "Clothing, namely, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, jerseys, uniforms, athletic uniforms, pants, trousers, slacks, jeans, denim jeans, overalls, coveralls, jumpers, jump suits, shorts, boxer shorts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, wraps, warm-up suits, jogging suits, blouses, skirts, dresses, sweaters, vests, fleece vests, pullovers, snow suits, parkas, anoraks, ponchos, jackets,

reversible jackets, coats, blazers, suits, turtlenecks, ski bibs, swimwear, beachwear, infantwear, baby bibs not of paper, caps, berets, beanies, hats, visors, headbands, wrist bands, sweat bands, headwear, ear muffs, aprons, scarves, bandanas, belts, suspenders, neckwear, neckties, ties, underwear, briefs, swimming and bathing trunks, bras, sports bras, brassieres, bustiers, corsets, panties, garters and garter belts, teddies, girdles, foundation garments, singlets, socks, loungewear, robes, bathrobes, underclothes, pajamas, sleepwear, night gowns, lingerie, camisoles, negligees, slips, sarongs, leg warmers, hosiery, knee highs, leggings, tights, leotards, body suits, unitards, body shapers, gloves, mittens, footwear, shoes, sneakers, boots, galoshes, sandals, zori, slippers and rainwear” (International Class 25), and hereby opposes same. As grounds for the opposition, it is alleged that:

1. Opposer is now, and its predecessors in interest have been, engaged in the manufacture, distribution, and sale in interstate commerce of a wide variety of clothing products, including without limitation, hosiery, pantyhose, socks, lingerie, and shapewear.

2. For many years, and long prior to applicant’s priority date, opposer has used and is using the mark SHEER ENERGY alone and in conjunction with other words and designs (hereinafter collectively referred to as the “SHEER ENERGY Trademarks”) in interstate commerce on and in connection with the sale of hosiery and pantyhose.

3. Opposer is the owner of the following registrations for the SHEER ENERGY Trademarks:

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods</u>
SHEER ENERGY	978,180	February 5, 1974	Ladies’ hosiery and Pantyhose
SHEER ENERGY	1,478,786	March 1, 1988	Gloves

SHEER ENERGY

1,523,620

February 7, 1989

Slippers

The aforesaid registrations are valid and subsisting, unrevoked, and uncanceled, and opposer is the owner of them and the marks shown thereby and all of the business and goodwill represented thereby. All three registrations have become incontestable pursuant to 15 U.S.C. § 1065.

4. Ever since the adoption and use of the SHEER ENERGY Trademarks as aforesaid, opposer has widely and extensively advertised and sold goods bearing said SHEER ENERGY Trademarks. As a consequence of the inherent distinctiveness of the SHEER ENERGY Trademarks, as well as the aforementioned extensive advertising and sales, the consuming public and trade have come to recognize and do recognize the SHEER ENERGY Trademarks as being used by opposer or by a single source, and to associate and identify said mark and name with opposer, or with a single source, and opposer derives substantial goodwill and value from the aforesaid identification by the consuming public and trade.

5. Opposer has spent hundreds of millions of dollars in marketing, advertising, and promoting the sale of ladies' hosiery and pantyhose under the SHEER ENERGY Trademarks, and has sold billions of dollars worth of such products as marked.

6. SHEER ENERGY is a brand of hosiery and pantyhose extremely well known among the relevant purchasing public.

#### GROUND I – LIKELIHOOD OF CONFUSION

7. Opposer incorporates by reference the allegations set forth above.

8. By the application herein opposed, applicant seeks to register INNERGY for “Clothing, namely, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, jerseys,

uniforms, athletic uniforms, pants, trousers, slacks, jeans, denim jeans, overalls, coveralls, jumpers, jump suits, shorts, boxer shorts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, wraps, warm-up suits, jogging suits, blouses, skirts, dresses, sweaters, vests, fleece vests, pullovers, snow suits, parkas, anoraks, ponchos, jackets, reversible jackets, coats, blazers, suits, turtlenecks, ski bibs, swimwear, beachwear, infantwear, baby bibs not of paper, caps, berets, beanies, hats, visors, headbands, wrist bands, sweat bands, headwear, ear muffs, aprons, scarves, bandanas, belts, suspenders, neckwear, neckties, ties, underwear, briefs, swimming and bathing trunks, bras, sports bras, brassieres, bustiers, corsets, panties, garters and garter belts, teddies, girdles, foundation garments, singlets, socks, loungewear, robes, bathrobes, underclothes, pajamas, sleepwear, night gowns, lingerie, camisoles, negligees, slippers, sarongs, leg warmers, hosiery, knee highs, leggings, tights, leotards, body suits, unitards, body shapers, gloves, mittens, footwear, shoes, sneakers, boots, galoshes, sandals, zori, slippers and rainwear” (International Class 25).

9. Applicant’s mark INNERGY is confusingly similar to opposer's SHEER ENERGY Trademarks in sight, sound, and meaning.

10. Applicant’s mark opposed herein, when applied to the identified goods, is likely to cause confusion and mistake and to deceive, with consequent injury to opposer, the consuming public and the trade.

11. Opposer will be damaged by the registration sought by applicant because such registration will support and assist applicant in the confusing and misleading use of applicant’s mark sought to be registered, and will give color and exclusive right to applicant in violation and derogation of prior and superior rights of opposer.

GROUND II – DILUTION

12. Opposer incorporates by reference the allegations set forth above.

13. Because of the high degree of inherent and acquired distinctiveness of the SHEER ENERGY Trademarks, the length of time and extent to which opposer has used the SHEER ENERGY Trademarks, the vast advertising and publicity the SHEER ENERGY Trademarks have received, the nationwide trading area in which the SHEER ENERGY Trademarks are used, and the high degree of consumer recognition of the SHEER ENERGY Trademarks, the SHEER ENERGY Trademarks are famous trademarks pursuant to 15 U.S.C. § 1125(c)(1).

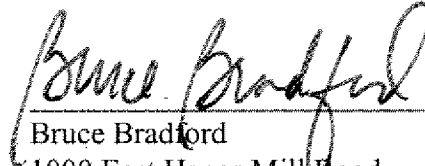
14. Applicant's INNERGY would lessen the capacity of opposer's famous SHEER ENERGY Trademarks to identify and distinguish opposer's goods sold thereunder and, as such, would cause dilution of the SHEER ENERGY Trademarks in violation of 15 U.S.C. § 1125(c).

15. Opposer will be damaged by the registration sought by applicant because such registration will support and assist applicant in diluting the distinctive quality of opposer's famous SHEER ENERGY Trademarks.

WHEREFORE, opposer believes it will be damaged by registration of applicant's mark and prays that it not be allowed.

Dated: November 3, 2005

SARA LEE CORPORATION



Bruce Bradford  
1000 East Hanes Mill Road  
Winston-Salem, NC 27105  
Telephone: 336.519.7072  
Attorney for Opposer