

ESTTA Tracking number: **ESTTA80784**

Filing date: **05/15/2006**

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	Sahara Club LLC		
Entity	limited liability company	Citizenship	New York
Address	350 - 5th Avenue New York, NY 10018 UNITED STATES		

Attorney information	Michael A. Grow Arent Fox PLLC 1050 Connecticut Avenue, NW Washington, DC 20036 UNITED STATES henrye@arentfox.com Phone:202 857 6389
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Applicant Information

Application No	78681260	Publication date	04/18/2006
Opposition Filing Date	05/15/2006	Opposition Period Ends	05/18/2006
Applicant	Sahara Sam's Oasis, LLC 1650 Hylton Road Pennsauken, NJ 08110 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, shirts, shorts, hats, bathing wear, and jackets
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Attachments	sahara.pdf (5 pages)(159460 bytes)
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Signature	/michael a. grow/
Name	Michael A. Grow
Date	05/15/2006

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

In re Application No. 78/681260 for the mark SAHARA SAM'S OASIS INDOOR WATER
PARK & Design published on April 18, 2006

SAHARA CLUB LLC :
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Opposer :
:
v. : Opp. No. _____
:
SAHARA SAM'S OASIS, LLC :
:
Applicant :

NOTICE OF OPPOSITION

Opposer Sahara Club LLC (“Opposer”) believes that it will be damaged by the registration of the above identified mark and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges that:

1. Opposer is the owner of all rights, title and interest in and to the mark SAHARA CLUB (the "Mark") which has been used extensively on clothing.
2. The Patent and Trademark Office has recognized Opposer’s exclusive rights by issuing Registration No. 1294472 for clothing.
3. The registration for Opposer’s Mark is valid, subsisting and incontestable. Accordingly, it provides conclusive evidence of Opposer’s ownership of the Mark, and of its exclusive right to use the Mark in commerce.
4. Since long prior to the filing date of Applicant’s application, Opposer has extensively used its Mark in interstate commerce in connection with clothing.
5. Because of said use, the Mark has become strong and famous, and is entitled to a broad scope of protection.

6. Opposer's Mark has been used in commerce since at least as early as 1980 in connection with clothing.

7. Notwithstanding Opposer's prior established rights in its Mark, Applicant is seeking registration of the Mark SAHARA SAM'S OASIS INDOOR WATER PARK & Design for clothing.

8. The dominant feature of Applicant's Mark is the word SAHARA.

9. Upon information and belief, Applicant made no use of its alleged mark in connection with the sale of any articles of clothing prior to the filing date of its application, and Applicant was aware of Opposer's Mark when Applicant applied to register its alleged Mark.

Likelihood of Confusion - §2(d)

9. The Mark which Applicant seeks to register is identical to or so resembles Opposer's Mark that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's goods and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Mark.

10. The goods of Applicant are so closely related to the goods of Opposer that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer, or that Applicant has been licensed by Opposer to use the mark sought to be registered, or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer.

11. Likelihood of confusion is enhanced in this case by the fame of Opposer's Mark and by the fact that consumers associate the Mark with goods sold, approved or endorsed by Opposer.

12. Likelihood of confusion may be presumed in this case in light of the fact that Applicant obviously adopted an imitation of Opposer's Mark with prior knowledge of Opposer's Mark and with an intent to cause confusion and to capitalize on the popularity of Opposer's Mark.

13. Likelihood of confusion is enhanced by the fact that Applicant's goods are related to or suggestive of features of Opposer's goods.

Deception/ False Suggestion of Connection - §2(a)

14. Applicant's Mark so closely resemble Opposer's Mark that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that the Mark misdescribes the nature or origin of the goods, purchasers are likely to believe that the misdescription actually describes the nature or origin of the goods, and this is likely to materially alter purchasers' decisions to acquire Applicant's goods.

15. Applicant's alleged Mark so closely resembles Opposer's Mark that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged mark points uniquely to Opposer, and purchasers will assume that goods sold under Applicant's alleged Mark are connected with Opposer.

16. When Applicant's alleged mark is used on goods of the type described in its application, Applicant's alleged mark will cause purchasers to mistakenly assume that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's goods by permitting the alleged mark to be used on such goods.

17. Applicant's mark is deceptive in that it falsely suggests a connection with, or approval by, Opposer.

18. Use and registration of the Mark SAHARA SAM'S OASIS INDOOR WATER

PARK by Applicant will deprive Opposer of the ability to protect its reputation, persona and goodwill.

19. Likelihood of damage to Opposer's goodwill is enhanced by the fact that prospective customers who encounter defects in the quality of Applicant's goods will attribute those defects to Opposer and this will injure Opposer's reputation and goodwill.

Lack Of Intent To Use As Trademark

20. Applicant lacks any bona fide intent to use Applicant's alleged mark as a trademark for the goods listed in the application.

21. Applicant's alleged mark is intended for use as mere ornamentation on the goods listed in the Application.

22. Applicant's alleged mark is the name of an oasis and indoor water park owned or operated by Applicant or others.

23 Applicant's alleged mark is intended to be used solely to advertise Applicant's indoor water park, not to identify and distinguish the goods sold by Applicant from the goods of others.

Failure To Disclaim

24. Applicant has no exclusive right to use the generic or merely descriptive terms "oasis" or "indoor water park."

25. Applicant has not acquired any secondary meaning in the terms "oasis" or "indoor water park."

26. The terms “oasis” and “indoor water park” are incapable of distinguishing Applicant’s goods from those sold by others who operate and “oasis” or “indoor water park.”

27. Applicant has no right to claim the exclusive right to use “oasis” or “indoor water park.”

28. Applicant has not disclaimed the exclusive right to use “oasis” or “indoor water park.”

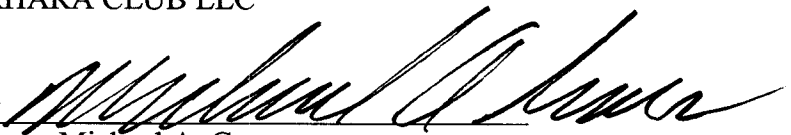
29. Opposer also has the right to use the terms “oasis” or “indoor water park.”

30. By reason of the foregoing, Opposer will be damaged by the registration of Applicant’s alleged mark and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

SAHARA CLUB LLC

By



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