

ESTTA Tracking number: **ESTTA97481**

Filing date: **09/01/2006**

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	JackieWadell
Granted to Date of previous extension	09/02/2006
Address	c/o Sky Sport & Spa 8500 Wilshire Boulevard Penthouse Beverly Hills, CA 90211 UNITED STATES

Attorney information	Ellie Schwimmer Keats McFarland & Wilson LLP 9720 Wilshire Boulevard Penthouse Beverly Hills, CA 90212 UNITED STATES eschwimmer@kmwlaw.com Phone:(310) 248-3830
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Applicant Information

Application No	78763613	Publication date	07/04/2006
Opposition Filing Date	09/01/2006	Opposition Period Ends	09/02/2006
Applicant	Wagnon, Jay Suite 608 54 West 21st Street New York, NY 10010 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Providing fitness and exercise facilities
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Related Proceedings	Serial No. 78/738,098
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Attachments	Opposition-logo.pdf (5 pages)(131797 bytes)
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Signature	/ES/
Name	Ellie Schwimmer
Date	09/01/2006

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

In the Matter of Application Serial No. 78/763,613
Published in the *Official Gazette* of July 4, 2006

Jackie Wadell,)	
)	Opposition No. _____
Opposer,)	
)	
v.)	Notice of Opposition
)	
)	
Jay Wagnon,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Jackie Wadell (“Opposer”) believes she is being damaged, and will be damaged, by the registration of the mark SKY FITNESS AND WELLBEING shown in Application Serial No. 78/763,613, and hereby opposes the same.

As grounds for the opposition, Opposer alleges that:

1. Opposer operates a business called Sky Sport & Spa, which is a physical fitness facility located in Beverly Hills, California, that provides physical fitness consultation services and other medical therapy services.
2. Since at least as early as October 1, 2002, Opposer has used her mark SKY SPORT & SPA continuously in commerce connection with the services provided by her Sky Sport & Spa business.
3. Opposer has clients throughout the United States, who recognize Opposer as the source of the SKY SPORT & SPA name and mark.

4. On December 2, 2005, Opposer filed a Section 1(a) used-based Application Serial No. 78/765,836, for the SKY SPORT & SPA mark in connection with physical fitness consultation services.

5. Opposer owns a website located at www.skysportspa.com through which she has advertised and promoted her Sky Sport & Spa business since 2003.

6. The SKY SPORT & SPA name and mark is an important element of Opposer's business and she has spent thousands of dollars advertising and promoting her business through her website and otherwise.

7. Opposer is the central figure in a reality-based television program entitled "Work Out", which is produced and aired by the Bravo Network. Opposer's SKY SPORT & SPA mark is featured during each and every episode of this television program, which began to air during Summer 2006.

8. Since the premiere of the television program, Opposer has developed a large base of fans throughout the United States who discuss Opposer, the television program and Opposer's Sky Sport & Spa business on numerous message boards found on Bravo's website located at www.bravotv.com/Work_Out//index.shtml.

9. On June 6, 2006, the PTO issued an Office Action, citing Applicant's Application Serial No. 78/738,098 against Opposer's Application Serial No. 78/765,836, stating that the SKY FITNESS & WELLBEING and SKY SPORT & SPA marks are confusingly similar.

10. On information and belief, Applicant is an individual located in Omaha, Nebraska.

11. On information and belief, Applicant has not yet begun to use the SKY FITNESS & WELLBEING mark, as indicated by a lack of a Statement of Use in the record for his application.

12. On April 26, 2006, the PTO approved Application Serial No. 78/763,613, and the SKY FITNESS & WELLBEING mark was published in the Official Gazette on July 4, 2006.

13. On information and belief, Applicant is the owner of intent-to-use Application Serial No. 78/763,613, filed on October 21, 2005, for the mark SKY FITNESS & WELLBEING, in connection with providing fitness and exercise facilities.

14. Applicant's SKY FITNESS & WELLBEING mark so resembles Opposer's SKY SPORT & SPA name and mark as to be likely, when used in connection with Applicant's services, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer and to the public.

15. The registration of Applicant's SKY FITNESS & WELLBEING mark will dilute the distinctiveness of Opposer's SKY SPORT & SPA mark, with consequent injury to Opposer and to the public.

16. Because of the similarity of the marks and the related and identical nature of the services of the respective parties, Applicant's future use of the SKY FITNESS & WELLBEING mark for his proposed services will likely result in consumer confusion as to source, affiliation, connection or association with those of Opposer.


17. If Applicant were granted the registration herein opposed, he would thereby obtain at least a *prima facie* exclusive right to the use of his mark. Such registration would be a source of damage and injury to Opposer.

18. The registration of Applicant's Application herein, would give color of exclusive statutory rights to Applicant in violation and derogation of the prior, superior and exclusive rights of Opposer, and would support and assist Applicant in the confusing and misleading the purchasing public.

WHEREFORE, Opposer believes she is being damaged, and will be damaged, by the registration of the mark shown in Application Serial No. 78/763,613, and requests that the opposition be sustained, and the registration to Applicant be refused.

Please charge any deficiency in the fee to our Deposit Account No. 500986.

Respectfully submitted,



Dated: September 1, 2006

Ellie Schwimmer
Keats McFarland & Wilson
Attorney for Opposer Jackie Wadell
9720 Wilshire Blvd., Penthouse Suite
Beverly Hills, CA 90212
Telephone: (310) 248-3830
Facsimile: (310) 860-0363

CERTIFICATE OF MAILING BY FEDERAL EXPRESS

I hereby certify that the attached NOTICE OF OPPOSITION is being sent by Federal Express in an envelope addressed to Craig S. Hilliard, Stark & Stark, 993 Lenox Drive, Lawrenceville, New Jersey 08543-5315, on this 1st day of September, 2006.


JANICE L. TRAYES