

ESTTA Tracking number: **ESTTA228559**

Filing date: **08/05/2008**

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	Zazou
Granted to Date of previous extension	08/06/2008
Address	2249 Fifth Street Berkeley, CA 94708 UNITED STATES

Attorney information	Megan E. Gray Gray Matters 2017 Kalorama Road NW # 3 Washington, DC 20009 UNITED STATES mg@megangray.com Phone:202-265-2738
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Applicant Information

Application No	77245292	Publication date	04/08/2008
Opposition Filing Date	08/05/2008	Opposition Period Ends	08/06/2008
Applicant	za za zsu 1918 Perry Street Durham, NC 27705 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2005/08/00 First Use In Commerce: 2005/12/17 All goods and services in the class are opposed, namely: Retail store services featuring women's clothing, jewelry, handbags, and accessories

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	ZAZOU and/or ZAZOULUXE and/or ZAZOUSAC
Goods/Services	women's scarves, bags, and accessories

Attachments	Opposition.pdf (7 pages)(37778 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.

Signature	/meg/
Name	Megan E. Gray
Date	08/05/2008

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

In the matter of Application Serial No. 77/245292

Filed August 5, 2008

For the mark ZA ZA ZSU

Published in the Official Gazette on April 8, 2008, with an extension of time to oppose until August 6, 2008

S. CLAUDIA KOCH, DBA ZAZOU

Opposer,

v.

ZA ZA ZSU

Applicant.

OPPOSITION NO. _____

NOTICE OF OPPOSITION

S. Claudia Koch is an individual residing in Berkeley, California. Koch is the owner of a solo proprietorship doing business under the name "Zazou." Zazou is organized and existing under the laws of the State of California, with its principal place of business at 2249 5th Street, Berkeley, CA 94710. Zazou is in the business of designing, manufacturing, and selling scarves, bags, and other women's accessories. The above-identified Opposer ("Zazou") believes it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

General Allegations

1. For over two decades, Zazou has continuously engaged in the manufacture and sale of scarves, bags, and other women's accessories. Its annual sales are well in excess of a million dollars, with its collective sales in the United States over the course of its existence many times this amount.

2. Zazou is domestically and internationally renowned for its sophisticated, stylish scarves, bags, and other accessories. Zazou has regularly exhibited twice a year at the famous *Pret a Porter* fashion show in Paris, as part of the "Groupe des Halles." Zazou's products are sold extensively in the major art museums of the United States and Europe, such as the Museum of Art in New York, the Smithsonian in Washington, DC, and the Louvre in Paris. Zazou also exhibits at major domestic trade shows in the United States, and Zazou's accounts in the fashion world have included national retailers such as Bebe, Anna Sui, Nordstrom, Rampage, Sundance, Territory Ahead, Spiegel, J.Jill, and Winterthur. Zazou also has a well-developed and popular internet website, selling its products directly to consumers. Zazou's products have been featured on the cover of Accessories Magazine, the leading publication for the accessories trade. Zazou products have also prominently appeared on the covers of Seventeen magazine and BBW magazine, and in Lucky, the "magazine about shopping." Victoria magazine and Hamilton Place Now magazine have also embellished their models and settings with Zazou products.

3. Zazou manufactures and sells its women's scarves, bags, and accessories domestically and worldwide, under the ZAZOU, ZAZOUZOO, ZAZOULUXE, and ZAZOUSAC marks ("ZAZOU Branded Products").

4. Continuously for more than 20 years before Applicant began business, Zazou has advertised, promoted, and sold substantial quantities of ZAZOU Branded Products in interstate

commerce throughout the United States, as well as in foreign and intrastate commerce, thereby acquiring extensive common law trademark rights. For example, in the last 5 years alone, Zazou has sold more than \$175,000 of ZAZOU Branded Products in North Carolina, the home state of Applicant, as well as in Applicant's home city. Indeed, considering North Carolina as well as the surrounding states of Kentucky, South Carolina, Tennessee, Virginia, Zazou has sold almost \$500,000 of its ZAZOU Branded Products in the last five years alone.

5. By virtue of the aforesaid advertising, promotion, and sales, and by virtue of the excellence of its products and reputation, Opposer's brands have come to represent exceedingly valuable goodwill owned by Opposer.

6. Zazou was the owner of the following trademark registrations on the principal register in the United States Patent and Trademark Office, which were inadvertently cancelled for failure to make certain timely filings:

<u>Reg. #</u>	<u>Mark</u>	<u>Goods or Services</u>
2,081,114	ZAZOU	"women's scarves" – class 25
2,081,233	ZAZOULUXE	"women's scarves" – class 25
2,473,536	ZAZOUSAC	"handbags, purses, totes, backpacks, and carryalls" – class 18

7. Zazou's common law trademark rights in the ZAZOU, ZAZOUSAC, and ZAZOULUXE marks on women's scarves, bags, and accessories arose prior to any use made by Applicant of ZA ZA ZSU on or in connection with any goods or services. Zazou's failure to maintain the trademark registrations has no impact on the merit of this case, as the evidentiary presumptions provided by the registrations can be easily established through other means.

8. Zazou opposes Applicant's application to register the mark ZA ZA ZSU for "retail store services featuring women's clothing, jewelry, handbags, and accessories." The

application for registration of the mark ZA ZA ZSU was filed on August 7, 2007 by an alleged corporate entity named “Za Za Zsu,” located at 1918 Perry St., Durham, NC 27705-4810, which purports to be a limited liability company, but which does not comply with the legally mandated requirements for business operation.

9. Zazou’s Opposition is based on its priority rights in ZAZOU, ZAZOULUX, and ZAZASAC, one or all of which are confusing similar to ZA ZA ZSU, particularly given the overlap in the applicable goods and services.

10. A retail store selling women’s handbags and accessories, including scarves, is a closely related service with the goods themselves. Stores selling and offering for sale women’s scarves, bags, and accessories travel in the same and/or substantially similar channels of trade as the products themselves.

11. Opposer’s products are marketed to retail stores and the description of services in Applicant’s ZA ZA ZSU application, if registered, would similarly cover products and services sold and offered through the same channels of trade and to the same class of purchasers.

12. Opposer’s mark and Applicant’s mark are confusingly and substantially similar, particularly in light of the level of scrutiny that consumers would apply when encountering the brands in the marketplace and on the internet. Indeed, Applicant’s mark is practically identical to Opposer’s mark with the sole exception of an additional, duplicative “za” sound.

13. Use by Applicant of Applicant’s mark will likely cause confusion, mistake, or deception with Opposer’s mark, and result in the belief that Applicant or Applicant’s goods or services are in some way legitimately connected with, sponsored by, or approved by Opposer, resulting in damage and injury to Opposer. Any such confusion in trade would inevitably result in loss of sales to Opposer and damage to its brand value. Furthermore, any defect, objection, or

fault found with Applicant's products or services marketed under Applicant's mark would necessarily reflect upon and seriously injure the reputation that Opposer has established for its products merchandised under Opposer's brands.

14. Any use Applicant has made or may make of Applicant's mark is and will be without Opposer's consent or permission.

15. The Opposition also asserts a claim of fraud against Applicant for its statement, under penalty of perjury, that it has used the ZA ZA ZSU as a trademark on retail store services in interstate commerce. Opposer has a good faith belief that Applicant has only a single, small boutique without any online sales or website. As a result, Applicant has fraudulently and falsely claimed to have used the mark in interstate commerce when, in fact, Applicant's sales have only been in North Carolina.

16. Opposer attempted to resolve this dispute prior to commencing TTAB litigation, by writing, calling, and emailing Applicant. Applicant ignored the letter and refused to respond to any phone calls, only making uninformed, cursory and conclusory statements by email, refusing to consider any alternative to litigation. Polite requests for a conversation were rejected out of hand. Moreover, Applicant refused to hire competent trademark counsel, or any attorney at all, to represent it in this matter.

Opposer's First Claim for Relief

17. Opposer repeats and realleges the prior paragraphs of this Notice of Opposition with the same force and effect as if each was set forth in full at this point.

18. On information and belief, the applied-for mark comprises a mark which so resembles Opposer's ZAZOU, ZAZOULUXE, and ZAZOUSAC marks – at least one of which has been used in the United States for at least two decades and none of which have been

abandoned – as to be likely, when used on or in connection with Applicant’s products, to cause confusion, to cause mistake or to deceive as to Applicant’s affiliation, connection, association or origin with, or sponsorship or approval by, Opposer.

Opposer’s Second Claim of Relief

19. Opposer repeats and realleges the prior paragraphs of this Notice of Opposition with the same force and effect as if each was set forth in full at this point.

20. On information and belief, Applicant filed the at-issue application with full knowledge that it did not provide services in interstate commerce, and therefore committed fraud on the United States Patent and Trademark Office, as well as committed perjury.

Opposer’s Third Claim of Relief

21. Opposer repeats and realleges the prior paragraphs of this Notice of Opposition with the same force and effect as if each was set forth in full at this point.

22. On information and belief, Applicant filed the at-issue application without having provided services in interstate commerce, and therefore the application is void ab initio.

WHEREFORE, Opposer requests that this Opposition be sustained and that the requested registration of Applicant’s ZA ZA ZSU mark in application Serial No. 77/245292 be refused.

Dated: Washington, DC
August 5, 2008

GRAY MATTERS

By _____/s/_____
Megan E. Gray
2017 Kalorama Road NW # 3
Washington, DC 20009
202-265-2738
202-280-1225 (fax)
E-mail: mg@megangray.com

Attorney for Opposer
S. Claudia Koch, DBA Zazou

Certificate of Service

S. Claudia Koch vs. Za Za Zsu, Opposition No.: _____

I hereby certify that the attached:

NOTICE OF OPPOSITION

was served on the following parties by the method indicated above each name on the below date.

<u>By Fax and First Class US Mail</u>
Lynda Lewis Za Za Zsu 1918 Perry St. Durham, NC 27705-4810 Fax: 866-215-2966

August 5, 2008
Date

_____/s/
Megan E. Gray