

ESTTA Tracking number: **ESTTA354428**

Filing date: **06/23/2010**

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	S&S Brands, Inc.
Granted to Date of previous extension	06/23/2010
Address	1007 Orange Street Wilmington, DE 19801 UNITED STATES

Attorney information	Michael A. Doctrow McNees Wallace & Nurick 100 Pine Street Harrisburg, PA 17108 UNITED STATES trademarks@mwn.com Phone:717-232-8000
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**Applicant Information**

Application No	77814369	Publication date	02/23/2010
Opposition Filing Date	06/23/2010	Opposition Period Ends	06/23/2010
Applicant	Tints of Green Limited Liability Company 610 Winthrop Road Teaneck, NJ 07666 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 2008/03/31 First Use In Commerce: 2008/05/31 All goods and services in the class are opposed, namely: Infant's and children's organic cotton clothing namely, one piece play suits, t-shirts, shirts, pants, dresses, skirts, sweaters, hats, pajamas, converter gowns, booties, mittens and leggings
Class 035. First Use: 2006/01/14 First Use In Commerce: 2006/01/14 All goods and services in the class are opposed, namely: Online retail store services in the field of infants' and childrens' organic cotton clothing

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2379640	Application Date	10/18/1999
Registration Date	08/22/2000	Foreign Priority	NONE

		Date	
Word Mark	COTTONTAILS		
Design Mark	<b>COTTONTAILS</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1993/00/00 First Use In Commerce: 1993/00/00 pre-moistened baby wipes		

U.S. Registration No.	2999245	Application Date	04/28/2004
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	COTTONTAILS		
Design Mark	<b>COTTONTAILS</b>		
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 2004/09/01 First Use In Commerce: 2004/09/01 Baby shampoo, baby skin and body lotion, baby body wash, baby oil, baby powder, baby wipes, non-medicated diaper rash ointment and lotion, all-purpose cotton swabs for personal use</p> <p>Class 005. First use: First Use: 2004/09/01 First Use In Commerce: 2004/09/01 Medicated diaper rash ointment and lotion</p> <p>Class 010. First use: First Use: 2004/09/07 First Use In Commerce: 2004/09/07 Disposable baby bottles, thermometers for medical use</p> <p>Class 016. First use: First Use: 2003/04/21 First Use In Commerce: 2003/04/21 Disposable diapers</p>		

Attachments	75825828#TMSN.gif ( 1 page )( bytes ) 78409172#TMSN.jpeg ( 1 page )( bytes ) A2029301.PDF ( 10 pages )(276641 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	/Rebecca A. Finkenbinder/
Name	Rebecca A. Finkenbinder
Date	06/23/2010

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

In re Application of  
Tints of Green LLC

Serial No. : 77/814,369  
Mark : ORGANIC COTTONTAIL  
Goods : International Classes 25 and 35  
Filing Date : August 27, 2009  
Published : Official Gazette  
February 23, 2010

S&S BRANDS, INC.,	:	
Opposer	:	
	:	
v.	:	Opposition No.
	:	
TINTS OF GREEN LLC,	:	Filed Electronically
Applicant	:	

BOX TTAB FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

1. S&S Brands, Inc. ("S&S"), a Delaware corporation having a principal place of business at 1007 Orange Street, Wilmington, Delaware 19801, believes and alleges that it will be damaged by registration of the mark shown in Serial No. 77/814,369 and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

2. On August 27, 2009, Tints of Green LLC ("Applicant"), a New Jersey limited liability company with a place of business at 610 Winthrop Road, Teaneck, New Jersey 07666, filed a use-based application, Serial No. 77/814,369, to register the mark ORGANIC COTTONTAIL for use in connection with "infant's and children's organic cotton clothing namely, one piece play suits, t-shirts, shirts, pants, dresses, skirts, sweaters, hats, pajamas, converter gowns, booties, mittens and leggings" in International Class 25 and "online retail store services in the field of infants' and childrens' organic cotton clothing" in International Class 35 (the "Application").

3. S&S is the owner of the following U.S. trademark registrations ("COTTONTAILS Marks"), see Exhibit A:

Trademark	Reg. No.	Reg. Date	International Class - Goods
COTTONTAILS	2,379,640	August 22, 2000	03 – pre-moistened baby wipes
COTTONTAILS	2,999,245	September 20, 2005	03 – baby shampoo, baby skin and body lotion, baby body wash, baby oil, baby powder, baby wipes, non-medicated diaper rash ointment and lotion, all-purpose cotton swabs for personal use  05 – medicated diaper rash ointment and lotion  10 – disposable baby bottles, thermometers for medical use  16 – disposable diapers

4. COTTONTAILS mark, Reg. No. 2,379,640, is incontestable as a matter of law under 15 U.S.C. §1065.

5. S&S's ownership in the COTTONTAILS mark, Reg. No. 2,379,640, results from the following chain of title:

Assignment Type	Names
Assignment of Entire Interest	From Rockline Industries, Inc. to S&S Brands, Inc. (recorded at Reel 2766/Frame 0615)

6. Since at least as early as 1993, S&S, through its predecessors and corporate affiliates (collectively, "Opposer"), has been, and is now, using the COTTONTAILS mark throughout the United States in connection with baby wipes.

7. In 2003 and 2004, Opposer expanded the product line sold under the COTTONTAILS mark to include a variety of baby products.

8. Opposer's corporate affiliate, Peapod, LLC, is the largest online grocery delivery service provider, and sells Opposer's COTTONTAILS baby products online.

9. Opposer's use of the COTTONTAILS Marks has been valid and continuous since their respective dates of first use.

10. Opposer's COTTONTAILS Marks are symbolic of extensive goodwill established by Opposer, have acquired a high degree of recognition and fame through continued use and expenditures of time, effort and money in advertising and promotion, and serve as a unique identifier of the goods offered by Opposer.

11. Opposer's use of the COTTONTAILS Marks predates Applicant's filing date of the Application.

12. Applicant's ORGANIC COTTONTAIL mark is substantially similar in sound, appearance, meaning, and overall commercial impression to the COTTONTAILS Marks.

13. Applicant's baby clothing and online retail store services featuring such baby clothing are related to Opposer's baby products.

14. Upon information and belief, the goods with which Applicant uses the ORGANIC COTTONTAIL mark, as claimed in the Application, and the products with which Opposer uses the COTTONTAILS Marks are or will be offered for sale and sold through the same channels of trade and offered and sold to the same customers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

15. Opposer hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1 through 14.

16. The dates of first use and registration dates of the COTTONTAILS Marks are prior to the date of filing of, and dates of first use claimed in the Application.

17. COTTONTAILS mark, Reg. No. 2,379,640, is valid and subsisting and is *prima facie* evidence of Opposer's exclusive right to use the COTTONTAILS mark in commerce on the goods specified in such registration.

18. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, Applicant's ORGANIC COTTONTAIL mark so resembles Opposer's COTTONTAILS Marks, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

19. Opposer is, or will be, damaged by the registration of Applicant's ORGANIC COTTONTAIL mark, since, by virtue of such registration, (1) Applicant's use of the mark is likely to cause confusion, to cause mistake or to deceive the consuming public as to the source, sponsorship or affiliation of Applicant's goods; (2) Applicant's use of the mark will dilute the strength and distinctive quality of Opposer's famous COTTONTAILS Marks and its rights therein; and (3) doubts would be raised as to the exclusive right of Opposer to use the COTTONTAILS Marks.

**WHEREFORE**, Opposer S&S Brands, Inc. respectfully requests that this opposition be sustained against the Application, and that the U.S. Patent & Trademark Office refuse to register Applicant's ORGANIC COTTONTAIL mark.

A duplicate copy of this Consolidated Notice of Opposition and the fee required by §2.6(a)(17) are enclosed herewith.

McNEES WALLACE & NURICK LLC

By 

Michael A. Doctrow  
Harvey Freedenberg  
Rebecca A. Finkenbinder  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000

Attorneys for Opposer  
S&S Brands, Inc.

Dated: June 23, 2010



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a true and correct copy of the  
**Notice of Opposition** was mailed via First Class Mail, postage prepaid, to:

Michael F. Brown, Esquire  
Brown & Michaels, PC  
400 M&T Bank Building  
118 N Tioga Street  
Ithaca, NY 14850



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Rebecca A. Finkenbinder  
Of Counsel for Opposer  
S&S Brands, Inc.

Dated: June 23, 2010

# EXHIBIT A


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### Typed Drawing

<b>Word Mark</b>	COTTONTAILS
<b>Goods and Services</b>	IC 003. US 001 004 006 050 051 052. G & S: pre-moistened baby wipes. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19930000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75825828
<b>Filing Date</b>	October 18, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 30, 2000
<b>Registration Number</b>	2379640
<b>Registration Date</b>	August 22, 2000
<b>Owner</b>	(REGISTRANT) Rockline Industries, Inc. CORPORATION WISCONSIN 1113 Maryland Avenue Sheboygan WISCONSIN 53081  (LAST LISTED OWNER) S&S BRANDS, INC. CORPORATION DELAWARE NEMOURS BUILDING, SUITE 1410 1007 ORANGE STREET WILMINGTON DELAWARE 19801
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Michael A. Doctrow
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20090911.
<b>Renewal</b>	1ST RENEWAL 20090911
<b>Live/Dead Indicator</b>	LIVE



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# COTTONTAILS

<b>Word Mark</b>	COTTONTAILS
<b>Goods and Services</b>	IC 003. US 001 004 006 050 051 052. G & S: Baby shampoo, baby skin and body lotion, baby body wash, baby oil, baby powder, baby wipes, non-medicated diaper rash ointment and lotion, all-purpose cotton swabs for personal use. FIRST USE: 20040901. FIRST USE IN COMMERCE: 20040901
	IC 005. US 006 018 044 046 051 052. G & S: Medicated diaper rash ointment and lotion. FIRST USE: 20040901. FIRST USE IN COMMERCE: 20040901
	IC 010. US 026 039 044. G & S: Disposable baby bottles, thermometers for medical use. FIRST USE: 20040907. FIRST USE IN COMMERCE: 20040907
	IC 016. US 002 005 022 023 029 037 038 050. G & S: Disposable diapers. FIRST USE: 20030421. FIRST USE IN COMMERCE: 20030421
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78409172
<b>Filing Date</b>	April 28, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	February 22, 2005

**Registration Number** 2999245  
**Registration Date** September 20, 2005  
**Owner** (REGISTRANT) S&S Brands, Inc. CORPORATION DELAWARE Nemours Building, Suite 1410  
1007 Orange Street Wilmington DELAWARE 19801  
**Attorney of Record** Michael A. Doctrow  
**Prior Registrations** 2379640  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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