

ESTTA Tracking number: **ESTTA574956**

Filing date: **12/05/2013**

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 & G HAMPTON SUN, LLC		
Entity	Limited Liability Company	Citizenship	New York
Address	123 WEST 18TH STREET, 8TH FLOOR NEW YORK, NY 10011 UNITED STATES		

Attorney information	Stephen M. Ankrom Powley & Gibson, PC 304 Hudson Street, 2nd Floor New York, NY 10013 UNITED STATES smankrom@powleygibson.com Phone:(212) 226-5054		
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**Applicant Information**

Application No	85952968	Publication date	11/05/2013
Opposition Filing Date	12/05/2013	Opposition Period Ends	12/05/2013
Applicant	Hampton Native, Inc. P.O. Box 62 East Quogue, NY 11947 NY		


**Goods/Services Affected by Opposition**

<p>Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bath soaps; Body lotions; Hand lotions; Handmade soap bars; Lip balm; Lotions for face and body care; Pet shampoo; Pet shampoo and conditioner; Sunscreen creams</p>
<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Babies' pants; Baby layettes for clothing; Belts; Bottoms; Cloth bibs; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Clothing, namely, base layers; Clothing, namely, crops; Clothing, namely, khakis; Clothing, namely, wrap-arounds; Collared shirts; Dress shirts; Hats; Hooded sweat shirts; Infant and toddler one piece clothing; Jackets; Jerseys; Knit shirts; Long-sleeved shirts; Night shirts; Open-necked shirts; Over shirts; Polo shirts; Shirts; Shirts for infants, babies, toddlers and children; Short sets; Swaddling clothes; Sweat shirts; T-shirts; T-shirts for men, women, youth and babies; Ties; Tops; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses</p>

**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.	3851704	Application Date	01/30/2004
Registration Date	09/21/2010	Foreign Priority Date	NONE
Word Mark	HAMPTON SUN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Tanning and sunscreen preparations; sunblock; sun care lotion; sun cream; sun tan gel; sun tan lotion; suntan oil; cosmetics and skin care products, namely, cream for face, after sun moisture, aftersun body cooling spray, sunless tanninggel, after sun cream for face and body, face and body moisturizers, skin lotion, and after sun lotion; hair and body care products, namely, body cream, and body lotion; cosmetic preparations for bodycare; facial cream; facial lotion; bathing products, namely, bath soaps, bath gels, fragrances for personal use; and room fragrances		

U.S. Application No.	85084860	Application Date	07/14/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HAMPTON SUN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 0 First Use In Commerce: 0 cosmetics and personal care products, namely, shampoo and hair conditioners; bath salts, bath scrubs; body exfoliating scrubs; aromatherapy body oils; cosmetickits comprised of cosmetics and cosmetic cases		

	<p>Class 004. First use: First Use: 0 First Use In Commerce: 0 candles</p> <p>Class 044. First use: First Use: 0 First Use In Commerce: 0 health spa services, namely, cosmetic body care services, cosmetic skin care services, aromatherapy, manicure and pedicure services, massage services; health spa services for the health and wellness of the body and spirit; providing nutrition counseling and health information</p>
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Attachments	<p>78360413#TMSN.jpeg( bytes ) 85084860#TMSN.jpeg( bytes ) Notice of Opposition.pdf(115631 bytes ) EXHIBIT A.pdf(161412 bytes ) EXHIBIT B.pdf(136980 bytes )</p>
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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	/Stephen M. Ankrom/
Name	Stephen M. Ankrom
Date	12/05/2013

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

In the matter of Application Serial No. 85/952,968  
For the Mark: HAMPTON NATIVE (and Design)  
Published in the Official Gazette on November 5, 2013

-----X  
: S&G Hampton Sun, LLC :  
: :  
: Opposer, :  
: :  
: -against- :  
: :  
: Hampton Native, Inc. :  
: :  
: Applicant. :  
: :  
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Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

S & G Hampton Sun, LLC (hereinafter “Opposer”) believes that it will be damaged by registration of the trademark HAMPTON NATIVE (and Design), as shown herein and in Application Serial No. 85/952,968<sup>1</sup> (“Applicant’s Proposed Mark”), filed June 6, 2013 and published for opposition on November 5, 2013, owned by Hampton Native, Inc. (“Applicant”), for the following goods:

“Bath soaps; body lotions; hand lotions; handmade soap bars; lip balm; lotions for face and body care; pet shampoo; pet shampoo and conditioner; [and] sunscreen creams” in International Class 3; and

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“Babies' pants; baby layettes for clothing; belts; bottoms; cloth bibs; clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; clothing, namely, base layers; clothing, namely, crops; clothing, namely, khakis; clothing, namely, wrap-arounds; collared shirts; dress shirts; hats; hooded sweat shirts; infant and toddler one piece clothing; jackets; jerseys; knit shirts; long-sleeved shirts; night shirts; open-necked shirts; over shirts; polo shirts; shirts; shirts for infants, babies, toddlers and children; short sets; swaddling clothes; sweat shirts; T-shirts; T-shirts for men, women, youth and babies; ties; tops; wearable garments and clothing, namely, shirts; [and] women's clothing, namely, shirts, dresses, skirts, blouses” in International Class 25 (“Applicant’s Goods”).

By and through its attorneys Powley & Gibson, P.C., Opposer hereby opposes registration of Applicant’s Proposed Mark on the following grounds:

1. Opposer is a limited liability company organized and existing under the laws of New York with a principal place of business at 123 West 18th Street, 8th Floor, New York, New York 10011.

2. Upon information and belief, Applicant is a corporation organized and existing under the laws of New York with a place of business located at P.O. Box 62, East Quogue, New York, 11947.

3. Opposer is the owner of U.S. Trademark Registration No. 3,851,704, filed January 30, 2004 and issued on September 21, 2010, for the mark HAMPTON SUN® in standard characters (“Opposer’s Mark”) in connection with the following goods:

“Tanning and sunscreen preparations; sun block; sun care lotion; sun cream; sun tan gel; sun tan lotion; suntan oil; cosmetics and skin care products, namely cream for face, after sun moisture, after sun body cooling spray, sunless tanning gel, after sun cream for face and body, face and body moisturizers, skin lotion, and after sun lotion; hair and body care products, namely body cream and body

lotion; cosmetic preparations for body care; facial cream; facial lotion; bathing products, namely bath soaps, bath gels, fragrances for personal use; and room fragrances” in International Class 3. (“Opposer’s Goods”)

4. Opposer is also the owner of the prior-filed pending Application Serial Number 85/084,860, filed July 14, 2010 and published for opposition on July 12, 2011 for the mark HAMPTON SUN™ (“Opposer’s Application”) in connection with:

“Cosmetics and personal care products, namely, shampoo and hair conditioners; bath salts, bath scrubs; body exfoliating scrubs; aromatherapy body oils; cosmetic kits comprised of cosmetics and cosmetic cases” in International Class 3;

“Candles” in International Class 4; and

“Health spa services, namely, cosmetic body care services, cosmetic skin care services, aromatherapy, manicure and pedicure services, massage services; health spa services for the health and wellness of the body and spirit; providing nutrition counseling and health information” in International Class 44.

5. A copy of records from the Trademark Application and Registration Retrieval (“TARR”) system of the United States Patent and Trademark Office (“USPTO”) showing registration of Opposer’s Mark is attached hereto as Exhibit A. A copy of records from the TARR system of the USPTO showing Opposer’s Application is attached hereto as Exhibit B.

6. Opposer’s Mark is valid and subsisting and is evidence of Opposer’s ownership of and exclusive right to use Opposer’s Mark in commerce in connection with Opposer’s Goods.

7. Opposer has used Opposer’s Mark in connection with the sale of Opposer’s Goods at least as early as May 1, 2005, has used Opposer’s Mark in connection with the sale of Opposer’s Goods in interstate commerce since at least as early as May 1, 2005, and such use has been continuous and is ongoing.

8. Opposer has expended substantial effort and expense in promoting Opposer’s Mark. As a result, Opposer has developed extensive goodwill with respect to Opposer’s Mark,

and consumers have come to know, rely upon, and recognize the source of Opposer's Goods as originating from a single source, that is, Opposer.

9. On June 6, 2013, Applicant filed Application Serial No. 85/952,968, in the USPTO under Section 1(b) of the United States Trademark Act, seeking to register Applicant's Proposed Mark on the Principal Register for Applicant's Goods.

10. Opposer's rights in Opposer's Mark predate and are superior to any rights Applicant has in its intent-to-use application for Applicant's Proposed Mark.

11. Applicant's Proposed Mark so resembles Opposer's Mark in appearance, sound, and commercial impression that, when applied to Applicant's Goods, would be likely to cause confusion, or to cause mistake, or to deceive consumers. Consumers would be likely to assume that Applicant's Goods are associated with, endorsed by, sponsored by, or otherwise connected to Opposer. Accordingly, Applicant's Proposed Mark is not entitled to registration pursuant to the United States Trademark Act, 15 U.S.C. § 1052(d).

12. Applicant's Proposed Mark is confusingly similar to Opposer's Mark, because both marks contain the term "Hampton" and they create confusingly similar commercial impressions.

13. Applicant's Goods in Class 3 are identical, similar and/or closely related to Opposer's Goods. Applicant's Goods in Class 25 are related to Opposer's Goods.

14. Applicant's Goods travel (or will travel) in the same channels of trade and are marketed to the same consumers as Opposer's Goods.

15. Opposer will be damaged by registration of Applicant's Proposed Mark because such registration will give Applicant prima facie ownership of and the exclusive right to use

Applicant's Proposed Mark, which is confusingly similar to Opposer's Mark, in derogation of Opposer's superior rights in Opposer's Mark.

16. This Opposition is timely filed and accompanied by the appropriate filing fee.

**WHEREFORE**, Opposer respectfully requests that the registration sought by Applicant be refused, that the Notice of Opposition be sustained, and that the Trademark Trial and Appeal Board grant such other relief as it deems just and proper.

The required fee of \$300.00 for Opposition against the subject application is enclosed herewith.

Dated: December 5, 2013

Respectfully submitted,

/s/ Stephen M. Ankrom

Robert L. Powley

James M. Gibson

Stephen M. Ankrom

Powley & Gibson, P.C.

304 Hudson Street, 2<sup>nd</sup> Floor

New York, New York 10013

Tel. (212) 226-5054

Fax. (212) 226-5085

Attorneys for Opposer



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

In the matter of Application Serial No. 85/952,968  
For the Mark: HAMPTON NATIVE (and Design)  
Published in the Official Gazette on November 5, 2013

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: S&G Hampton Sun, LLC :  
: :  
: Opposer, :  
: :  
: -against- :  
: :  
: Hampton Native, Inc. :  
: :  
: Applicant. :  
: :  
-----X

Opposition No. \_\_\_\_\_

**CERTIFICATE OF SERVICE UNDER 37 C.F.R §2.119**

I hereby certify that on this 5th day of December, 2013, a true and correct copy of the foregoing Notice of Opposition was served on counsel of record for the Applicant by United States Postal Service first class mail, postage prepaid, at Applicant's attorney's correspondence address on record in the United States Patent and Trademark Office:

Kalpana Nagampalli Esq.  
Feldman Law Group, PC  
220 East 42nd Street Suite 3304  
New York New York 10017

/s/ Stephen M. Ankrom  
Stephen M. Ankrom

# EXHIBIT A



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# HAMPTON SUN

**Word Mark** HAMPTON SUN

**Goods and Services** IC 003. US 001 004 006 050 051 052. G & S: Tanning and sunscreen preparations; sun block; sun care lotion; sun cream; sun tan gel; sun tan lotion; suntan oil; cosmetics and skin care products, namely, cream for face, after sun moisture, after sun body cooling spray, sunless tanning gel, after sun cream for face and body, face and body moisturizers, skin lotion, and after sun lotion; hair and body care products, namely, body cream, and body lotion; cosmetic preparations for body care; facial cream; facial lotion; bathing products, namely, bath soaps, bath gels, fragrances for personal use; and room fragrances. FIRST USE: 20050501. FIRST USE IN COMMERCE: 20050501

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Trademark Search Facility Classification Code** SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons

**Serial Number** 78360413

**Filing Date** January 30, 2004

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** December 6, 2005

**Registration Number** 3851704

**Registration Date** September 21, 2010

**Owner** (REGISTRANT) Wilfley, Grant S. INDIVIDUAL UNITED STATES 112 McGregor Drive Southhampton NEW YORK 11968

(REGISTRANT) Piazzolla, Salvatore R. INDIVIDUAL UNITED STATES 161 North 7th Street Lindenhurst NEW YORK 11757

(LAST LISTED OWNER) S & G HAMPTON SUN, LLC LIMITED LIABILITY COMPANY NEW YORK 123 WEST 18TH STREET, 8TH FLOOR NEW YORK NEW YORK 10011

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Robert L. Powley

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# EXHIBIT B



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# HAMPTON SUN

**Word Mark** HAMPTON SUN

**Goods and Services** IC 003. US 001 004 006 050 051 052. G & S: cosmetics and personal care products, namely, shampoo and hair conditioners; bath salts, bath scrubs; body exfoliating scrubs; aromatherapy body oils; cosmetic kits comprised of cosmetics and cosmetic cases

IC 004. US 001 006 015. G & S: candles

IC 044. US 100 101. G & S: health spa services, namely, cosmetic body care services, cosmetic skin care services, aromatherapy, manicure and pedicure services, massage services; health spa services for the health and wellness of the body and spirit; providing nutrition counseling and health information

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 85084860

**Filing Date** July 14, 2010

**Current Basis** 1B

**Original Filing Basis** 1B

**Published for Opposition** July 12, 2011

**Owner** (APPLICANT) S & G Hampton Sun, LLC LIMITED LIABILITY COMPANY NEW YORK 123 West 18th Street 8th Fl. New York NEW YORK 10011

**Attorney of Record**      Robert L. Powley  
**Type of Mark**      TRADEMARK, SERVICE MARK  
**Register**          PRINCIPAL  
**Live/Dead Indicator**      LIVE

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