

ESTTA Tracking number: **ESTTA927331**

Filing date: **10/09/2018**

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	Shawn Lipscomb		
Entity	Individual	Citizenship	UNITED STATES
Address	605 Louisiana Ave. Apt. 6H Brooklyn, NY 11239 UNITED STATES		

Attorney information	Amos Ahaji Ahaji Amos PLLC 555 Fayetteville Street, Ste. 201 Raleigh, NC 27601 UNITED STATES ahaji@ahajiamos.com, trademarksbyamos@gmail.com 6303523855		
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Applicant Information

Application No	87859833	Publication date	09/11/2018
Opposition Filing Date	10/09/2018	Opposition Period Ends	10/11/2018
Applicant	Jeffrey Robuste 358 Remsen Ave Brooklyn, NY 11212 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: shirts, hats, hoodies, pants, shoes
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Applicant not rightful owner of mark for identified goods or services	Trademark Act Section 1
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Marks Cited by Opposer as Basis for Opposition

U.S. Application	88063976	Application Date	08/03/2018
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of Brown paper bag folded at the top.		
Goods/Services	Class 025. First use: First Use: 2016/03/01 First Use In Commerce: 2017/04/01 Hats; Headwear; Hoodies; Knit tops; Pants; Shirts; Sweaters; Sweatshirts; T-shirts; Woven tops		
U.S. Application No.	87520872	Application Date	07/09/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BROWN PAPER BAG		

Design Mark	
Description of Mark	The mark consists of It's a Brown paperBag with the writing "Brown Paper Bag".
Goods/Services	Class 025. First use: First Use: 2017/01/01 First Use In Commerce: 2017/01/01 Ready-made linings being parts of clothing

Attachments	88063976#TMSN.png(bytes) 87520872#TMSN.png(bytes) Notice of Opposition.pdf(138972 bytes)
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Signature	/Ahaji Amos/
Name	Amos Ahaji
Date	10/09/2018

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

Shawn Lipscomb

Opposer,

v.

Jeffrey Robuste,

Applicant.

Reg. No. 87859833

Filed: April 2, 2018

Basis: Intent to Use

Mark:



NOTICE OF OPPOSITION

Opposer, Shawn Lipscomb, an individual residing at 605 Louisiana Ave, Apt. 6H, Brooklyn, NY 11239, believes that he will be damaged by the registration of the U.S. Federal Trademark Application Serial No. 87859833, for the above-identified mark (hereinafter "Opposed Mark"), filed by Jeffrey Robuste ("Applicant"), and hereby opposes registration of Opposed Mark by submitting this Notice of Opposition by and through its Counsel, Ahaji Amos, Esq.

As grounds for opposition, it is alleged that:

1. Upon information and belief, Applicant filed U.S. Federal Trademark Application Serial No. 87859833 seeking a federal trademark registration for the Opposed Mark on April 2, 2018 in international class 025 for use with shirts, hats, hoodies, pants and shoes.
2. The Opposed Mark was published for Opposition on September 11, 2018.
3. Upon information and belief, Applicant resides at 358 Remsen Ave., Brooklyn, NC 11212.
4. Applicant has not used the Opposed Mark in commerce.
5. Applicant had not used the Opposed Mark in commerce on or prior to April 2, 2018.

6. Opposer is an individual residing at 605 Louisiana Ave, Apt. 6H, Brooklyn, NY 11239.

7. Opposer owns all interest and title to the Opposed Mark.

8. Opposer has valid and enforceable trademark rights in the Opposed Mark.

9. Opposer hired a graphic designer as early as 2016 to design Opposed Mark and Opposer's Mark in exchange for financial consideration paid to the designer.

10. The paid designer transferred all rights to Opposed Mark and Opposer's Mark to Opposer as early as 2016.

11. Opposer has trademark rights in the Opposed Mark and Opposer's Mark dating back until at least as early as 2016.

12. Opposer is a known clothing designer.

13. Opposer used and promoted the Opposed Mark in a way that the public associates and associated the Opposed Mark exclusively with Opposer's goods.


14. Opposer filed U.S. Federal Trademark Application Serial No.87520872 (hereinafter, the "Prior Application") on July 9, 2017.

15. The Prior Application sought federal trademark registration for the Opposed Mark in international class 025 for ready-made linings being part of clothing, and claimed a date of first use of January 1, 2017.

16. The Prior Application sought federal registration of a mark that is identical to the Opposed Mark.

17. Opposer filed U.S. Federal Trademark Application Serial No. 88063976 (hereinafter, "Opposer's Application") on August 3, 2018 based on a first date of use in commerce of April 1, 2017.

18. Opposer's Application sought a federal trademark registration (hereinafter,

“Opposer’s Mark”) for , a mark that is essentially identical to the Opposed Mark in international class 025 for hats, headwear, hoodies, knit tops, pants, shirts, sweaters, sweatshirts, T-shirts and woven tops.

19. Opposer’s Mark is nearly identical to the Opposed Mark.

20. The only difference between Opposer’s Mark and the Opposed Mark are the words, “BROWN PAPER BAG.”

21. The Opposed Mark is essentially identical in commercial impression to Opposer’s Mark, and is being used for goods that are identical and/or closely related to the goods in named in the Prior Application.

22. Based on the identical nature in goods and the overall commercial impression between Opposer’s Mark and the Opposed Mark, the relevant public is likely to be confused into believing that Applicant’s clothing is authorized, licensed, endorsed or sponsored by Opposer.

23. Opposer used Opposer’s Mark as early as 2017 in interstate commerce and has continually used it in connection with apparel including hats, headwear, hoodies, knit tops, pants, shirts, sweaters, sweatshirts, T-shirts and woven tops.

24. Opposer used the Opposed Mark as early as 2017 in interstate commerce and has continually used it in connection with apparel including hats, headwear, hoodies, knit tops, pants, shirts, sweaters, sweatshirts, T-shirts and woven tops.

25. None of Applicant’s goods are sponsored, endorsed, licensed or authorized by Opposer.

26. Based on the nearly identical nature of Opposer’s Mark and the Opposed Mark, and the nearly identical nature of the goods, the relevant public is likely to be confused into believing that Applicant’s clothing emanates from Opposer, or are authorized, licensed,

endorsed, or sponsored by, or associated with Opposer.

27. Registration of the Opposed Mark on the Principal Register thus would be inconsistent with Opposer's prior rights in Opposer's Mark.

28. Opposer has not abandoned use of the Opposed Mark or Opposer's mark and has regularly and continually used the mark since as early as 2017.

29. Opposer and the goodwill and reputation symbolized by Opposer's Mark will be damaged by the registration of the Opposed Mark because it so resembles Opposer's Mark as to be likely, when used in connection with the services identified in the subject application, to cause confusion, or to cause mistake, or to deceive in violation of Section 2(d) of the Lanham Act, 15 U.S.C. 1052.

30. Applicant is not affiliated or connected with, or endorsed or sponsored by, Opposer, nor has Opposer approved any of the services offered by Applicant under the Opposed Mark.

31. Use and registration of the Opposed Mark by Applicant will deprive Opposer of its ability to protect its reputation and goodwill.

32. Applicant had either actual or constructive knowledge that he was not the owner of the Opposed Mark at the time U.S. Federal Trademark Application Serial No. 87859833 was filed.

33. Applicant signed U.S. Federal Trademark Application Serial No. 87859833.

34. Applicant knew or should have known that Opposer was the true owner of the Opposed Mark when U.S. Federal Trademark Application Serial No. 87859833 was filed.

35. Applicant misrepresented the true ownership of the Opposed Mark to the U.S. Patent and Trademark Office.

36. Applicant sought to deceive the U.S. Patent and Trademark Office when it filed

U.S. Federal Trademark Application Serial No. 87859833.

37. Opposer used the Opposed Mark in interstate commerce prior to Applicant.

38. By reason of the foregoing, Opposer will be damaged by the registration of the Opposed Mark, and registration should be refused.

WHEREFORE, Opposer requests that this Opposition be sustained in its favor and that U.S. Federal Registration Serial Number be refused in its entirety.

Dated this October 9, 2018.

/Ahaji Amos/
Ahaji Amos, Esq.
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ENTRY

Applicant hereby appoints Ahaji Amos, Esq., a member of firm:

Ahaji Amos, Esq.
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Attorney for Opposer

to act as attorneys in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in the United States courts connected with the opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Notice of Opposition has been served on the following by delivering said copy on October 9, 2018, via email to:

Abraham Lichy
The Lichy Law Firm, P.C.
222 East 68th Street
New York, New York, 10065
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Attorney for Applicant

By: /Ahaji Amos/

Ahaji Amos, Esq.