

ESTTA Tracking number: **ESTTA959150**

Filing date: **03/08/2019**

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	Jana Media LLC
Granted to Date of previous extension	03/17/2019
Address	1621 Central Ave Cheyenne, WY 82001 UNITED STATES

Attorney information	Amanda Milgrom Milgrom Law, P.C. 2000 Little Raven Street #802 Denver, CO 80202 UNITED STATES jon.milgrom@milgromlaw.com, paola.garcia@milgromlaw.com, alex.kimata@milgromlaw.com, charles.luce@moyewwhite.com, amanda.milgrom@milgromlaw.com 303-900-3804
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Applicant Information

Application No	87621440	Publication date	09/18/2018
Opposition Filing Date	03/08/2019	Opposition Period Ends	03/17/2019
Applicant	GSI Outdoors, Inc 1023 South Pines Road Spokane Valley, WA 99206 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. First Use: 1997/06/30 First Use In Commerce: 1997/06/30 All goods and services in the class are opposed, namely: Household and kitchen utensils, containers, and bottles, namely, non-electric coffee maker for preparing, serving, containing, and drinking coffee for indoor and outdoor activities

Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
The mark is not inherently distinctive and has not acquired distinctiveness	Trademark Act Sections 1, 2 and 45; and Section 2(f)

Related Proceedings	Serial No. 87520101
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Attachments	Notice of Opposition FINAL 3.8.2019.pdf(533257 bytes)
Signature	/Amanda Milgrom/
Name	Amanda Milgrom
Date	03/08/2019

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

Serial No. 87/621,440

	X	
Jana Media LLC, a Wyoming limited liability company	:	
	:	Opposition No.
Opposer,	:	
	:	
v.	:	
	:	
GSI Outdoors, Inc., a Washington corporation	:	
	:	
Applicant.	:	
	X	

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

IN THE MATTER of Trademark Application Serial No. 87/621,440 filed by Applicant, GSI Outdoors Inc., for JAVA PRESS (“Applicant’s Mark”) in International Class 021 for “household kitchen utensils, containers, and bottles, namely, non-electric coffee maker for preparing, servicing, containing, and drinking coffee for indoor and outdoor activities,” published for opposition in the Official Gazette on

September 18, 2018, this Notice of Opposition is filed by Jana Media LLC (“Opposer”), a limited liability company organized and existing under the laws of Wyoming with a principal place of business at 1621 Central Avenue, Cheyenne, Wyoming 82001, which will be damaged by the registration of Applicant’s Mark under 15 U.S.C. §§ 1052(e)(1) and (f) (Section 2 of the Lanham Act). As grounds for opposition, Opposer alleges as follows:

1. Applicant claims to have used “Java Press” substantially exclusively and continuously in commerce for the five years immediately preceding its application.

2. Long before the filing date of the opposed application, and as early as 2015, Opposer was, and continues to be, in the business of marketing and selling coffee-related products, including coffee presses, coffee grinders, coffee filters, coffee beans, coffee subscriptions, and educational podcasts, and has built a large and profitable business in connection therewith, under the mark JAVAPRESSE (“Opposer’s Mark”).

3. As a result of Opposer’s continuous use of the JAVAPRESSE mark and its extensive promotional efforts undertaken in the United States, the relevant public has come to recognize JAVAPRESSE as identifying Opposer and its goods and services. The JAVAPRESSE mark represents substantial goodwill of Opposer. Through Opposer’s efforts, JAVAPRESSE has acquired secondary meaning identifying Opposer and its goods and services.

4. As a result, Opposer is the owner of common law rights in the mark JAVAPRESSE.

5. Opposer is also the owner of the following U.S. Trademark Registration:

MARK	Serial / Reg Nos.	Goods/Services
JAVAPRESSE	87767432 5535813	Educational and Entertainment Services

6. Opposer has created substantial goodwill and reputation in connection with JAVAPRESSE, which will be jeopardized by the registration of “Java Press” by Applicant for the goods identified in the

application.

7. Opposer applied to register its JAVAPRESSE mark on the Principal Register (Serial No. 87301158) on January 13, 2017. This application was refused under § 2(d) based on Applicant's registration of JAVA PRESS on the Supplemental Register, Serial No. 76712252.

8. Subsequently, Applicant filed the opposed application to register JAVA PRESS on the Principal Register, alleging substantially exclusive and continuous use in commerce for the five years immediately preceding its application.

9. It is within the discretion of the Director to determine whether an allegation of substantially exclusive use for the preceding five years, without actual evidence of acquired distinctiveness, is sufficient to support registration of an otherwise merely descriptive mark on the Principal Register.

10. Because of Opposer's intervening use of JAVAPRESSE, Applicant cannot establish acquired distinctiveness for JAVA PRESS.

11. Opposer will be injured if Applicant's Mark is registered on the Principal Register because Opposer has a broad array of coffee products that it markets, promotes, and sells under its widely-recognized JAVAPRESSE mark.

12. "Java Press" for coffee presses is, if not generic, merely descriptive, such that even could Applicant establish substantially exclusive use for the five years immediately preceding its application, it would still have to prove secondary meaning, which it cannot do.

13. Opposer has created substantial goodwill and reputation in connection with the JAVAPRESSE mark throughout the United States, which will be jeopardized by the registration and use of JAVA PRESS by Applicant for the goods identified in the application.

FIRST GROUND FOR OPPOSITION
(FAILURE TO ESTABLISH SUBSTANTIALLY EXCLUSIVE USE)

14. The other allegations of this Notice of Opposition are incorporated herein by reference.

15. "Java Press" has not become distinctive of the Applicant's goods and services because it is

merely descriptive as applied to Applicant's goods and services and was not used substantially exclusively by Applicant for the five years immediately preceding its application.

16. Applicant has provided no evidence that JAVA PRESS has acquired actual secondary meaning.

17. Opposer's extensive intervening use of the mark JAVAPRESSE in connection with extremely similar goods and services rebuts Applicant's unsubstantiated allegation of substantially exclusive use.

SECOND GROUND FOR OPPOSITION
(MERE DESCRIPTIVENESS)

18. The other allegations of this Notice of Opposition are incorporated herein by reference.

19. The appellation "Java Press" is merely descriptive of Applicant's coffee press.

20. Applicant has not shown and cannot establish that "Java Press" has acquired distinctiveness.

21. Opposer has developed secondary meaning in its JAVAPRESSE mark as applied to its goods and services for which the mark is not descriptive, including coffee beans, coffee subscriptions, and the podcast STAY GROUNDED®.

22. "Java Press" is highly descriptive, has not acquired distinctiveness, and does not distinguish Applicant's coffee presses from those sold by Opposer and others in the coffee industry.

23. By claiming exclusive rights in the name "Java Press", Applicant seeks to prevent Opposer and others from using the descriptive phrase "Java Press" and "JavaPress" for coffee presses.

24. Therefore, Opposer will be injured by the registration sought by Applicant for the descriptive "Java Press", which would give Applicant the right to exclude Opposer and others in the industry from using descriptive terminology to describe their coffee presses and other goods and services.

25. Based on the foregoing, registration of "Java Press" exceeds the scope of permissible registration under 15 U.S.C. § 1052(e)(1), which prohibits registration of merely descriptive terms without proof of acquired distinctiveness.

WHEREFORE, Opposer respectfully requests that its opposition be sustained and that U.S. Application Serial No. 87621440 be denied.

Dated: March 8, 2019

Denver, Colorado

Respectfully submitted,
Milgrom & Daskam

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