

ESTTA Tracking number: **ESTTA1031940**

Filing date: **01/28/2020**

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	The Glad Products Company
Granted to Date of previous extension	02/05/2020
Address	1221 BROADWAY OAKLAND, CA 94612 UNITED STATES

Attorney information	PAMELA K. FULMER TACTICAL LAW GROUP LLP FOUR EMBARCADERO CENTER SUITE 1400 SAN FRANCISCO, CA 94111 UNITED STATES pam@tacticalawgroup.com 415-766-3509
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Applicant Information

Application No	88458373	Publication date	10/08/2019
Opposition Filing Date	01/28/2020	Opposition Period Ends	02/05/2020
Applicant	Prestige Sales and Consulting Inc. Apt 403 1180 Gulf Boulevard Clearwater, FL 337672756 UNITED STATES		

Goods/Services Affected by Opposition


Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Garbage bags of paper; Garbage bags of plastic; Trash bags; Trash can liners; Garbage bags of paper; Garbage bags of paper or of plastics; Garbage bags of plastics; Lawn and leaf disposal bags; Leaf disposal bags; Paper garbage bags; Paper refuse bags; Plastic garbage bags; Plastic trash bags; Plastic trash compactor bags; Rubbish bags (made of paper or plastic materials) all of the above for human refuse and trash, not for animal waste


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)


False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	738875	Application Date	03/23/1962
Registration Date	10/09/1962	Foreign Priority Date	NONE
Word Mark	GLAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1962/03/14 First Use In Commerce: 1962/03/14 Plastic Bags		

U.S. Registration No.	1979836	Application Date	07/27/1995
Registration Date	06/11/1996	Foreign Priority Date	NONE
Word Mark	GLAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1970/01/01 First Use In Commerce: 1970/01/01 plastic wrap		

U.S. Registration No.	1981233	Application Date	08/02/1995
Registration Date	06/18/1996	Foreign Priority Date	NONE
Word Mark	GLAD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1971/08/04 First Use In Commerce: 1971/08/04 plastic bags, namely trash and garbage bags, sandwich bags, food storage bags for household use, general purpose bags

U.S. Registration No.	3938630	Application Date	08/28/2009
Registration Date	03/29/2011	Foreign Priority Date	NONE

Word Mark	GLAD
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Design Mark	
Description of Mark	The mark consists of a red, wavy banner with a border along the bottom that is yellow and orange.
Goods/Services	Class 016. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Sandwich bags; Trash bags

U.S. Registration No.	3620543	Application Date	03/10/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE

Word Mark	GLAD-LOCK
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Design Mark	GLAD-LOCK
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 2008/07/07 First Use In Commerce: 2008/07/07 Plastic bags for packaging

U.S. Registration No.	3920775	Application Date	10/09/2009
Registration Date	02/15/2011	Foreign Priority Date	NONE

Word Mark	GLAD
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Design Mark	
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Description of Mark	The mark consists of a red, wavy banner with a border along the bottom that is yellow and orange. The wording "GLAD" appears in white.
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Goods/Services	Class 016. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Plastic wrap; plastic bags, namely, food storage bags for household use, freezer bags, garbage bags, and general purpose bags Class 021. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Rigid plastic containers for food; plastic oven ware for use in conventional and microwave ovens, and in refrigerators
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U.S. Registration No.	4979810	Application Date	07/09/2015
Registration Date	06/14/2016	Foreign Priority Date	NONE

Word Mark	GLAD
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Design Mark			
Description of Mark	The mark consists of a red, wavy banner with a border along the bottom that is yellow and orange. The wording "GLAD" appears in white with yellow outlining.		
Goods/Services	Class 021. First use: First Use: 2016/03/08 First Use In Commerce: 2016/03/08 trash cans; cutting boards for the kitchen; dinnerware namely, plates, bowls; bakeware; cookware, namely, pots, pans		

U.S. Registration No.	5115048	Application Date	11/18/2014
Registration Date	01/03/2017	Foreign Priority Date	NONE

Word Mark	GLAD
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Design Mark			
Description of Mark	The mark consists of a red, wavy banner with a border along the bottom that is yellow and orange. The word "GLAD" appears in white outlined in yellow.		
Goods/Services	Class 016. First use: First Use: 2016/08/31 First Use In Commerce: 2016/08/31 pet waste bags; portable pet waste bag dispensers		

U.S. Registration No.	5709793	Application Date	08/21/2018
Registration Date	03/26/2019	Foreign Priority Date	NONE

Word Mark	GLAD PROJECT PRO
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Design Mark	<h1>GLAD PROJECT PRO</h1>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2018/05/23 First Use In Commerce: 2018/05/23 trash bags		

U.S. Registration No.	5846867	Application Date	08/14/2018
Registration Date	08/27/2019	Foreign Priority Date	NONE
Word Mark	GLAD PROTECTION SERIES		
Design Mark	<h1>GLAD PROTECTION SERIES</h1>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2018/10/31 First Use In Commerce: 2018/10/31 plastic trash bags for household use		

Attachments	72140598#TMSN.png(bytes) 74706926#TMSN.png(bytes) 74710118#TMSN.png(bytes) 77815189#TMSN.png(bytes) 77418067#TMSN.png(bytes) 77845256#TMSN.png(bytes) 86688821#TMSN.png(bytes) 86457409#TMSN.png(bytes) 88087020#TMSN.png(bytes) 88077914#TMSN.png(bytes) 2020-01-28 Final Glad Opposition to Gladiator Mark.pdf(137361 bytes)
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Signature	/Pamela K. Fulmer/
Name	PAMELA K. FULMER
Date	01/28/2020

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

In re

application of:

Prestige Sales
& Consulting
Inc.

For: GLADIATOR

Serial No.: 88/458373

Filed: June 4, 2019

Published: October 8, 2019

NOTICE OF OPPOSITION

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

Sir or Madam:

Because The Glad Products Company ("Opposer" or "Glad") will be damaged by the registration of the Gladiator mark that is the subject of Application Serial No. 88/458,373, filed on June 4, 2019, by Prestige Sales & Consulting, Inc. ("Applicant" or "Prestige Sales"), Glad opposes such registration.

Glad is a Delaware corporation with its headquarters at 1221 Broadway, Oakland, California 94612. Prestige Sales is, upon information and belief, a Florida Corporation, with a place of business at Apartment 403, 1180 Gulf Boulevard, Clearwater, Florida, 33767. This Notice of Opposition has been timely filed. As grounds of opposition, Glad alleges as follows:

1. As illustrated in the Official Gazette published on October 8, 2019, Applicant seeks to register the mark Gladiator in International Class 16 for “Garbage bags of paper; Garbage bags of plastic; Trash bags; Trash can liners; Garbage bags of paper; Garbage bags of paper or of plastics; Garbage bags of plastics; Lawn and leaf disposal bags; Leaf disposal bags; Paper garbage bags; Paperrefuse bags; Plastic garbage bags; Plastic trash bags; Plastic trash compactor bags; Rubbish bags (made of paper or plastic materials) all of the above for human refuse and trash, not for animal waste.” Applicant filed for registration on June 4, 2019 claiming an intent to use.



2. On November 6, 2019 Glad filed a timely extension of time to oppose the Gladiator application. On December 3, 2019 Glad timely filed a further 60-day extension to oppose.

3. Registration of the proposed mark would be a source of damage and injury to Glad and the public, and would be contrary to the principles of registration set out in 15 U.S.C. §§ 1051 *et seq.* If Applicant is permitted to register the Gladiator mark, Applicant’s corresponding right to use the Gladiator mark in interstate commerce will conflict with Glad’s lawful and exclusive right to use the GLAD trademarks nationwide in connection with Glad’s goods.

4. In 1962, Glad, through its predecessor, began making plastic wrap and plastic bags for household use, and shortly thereafter launched food storage bags for household use, general purpose bags, household trash bags, and oven ware. Glad's plastic bags quickly became the company's best-selling product, as it remains today.

5. Glad is the owner of the distinctive and famous GLAD® trademark (the “GLAD® Mark”), which appear on its plastic trash, refuse and yard bags, storage bags and

plastic food storage containers. Glad owns the following U.S. trademark registrations for its
GLAD® Mark:

Trademark	Reg. No/ Date	Goods	Date of First Use
	738,875 10/09/1962	Plastic Bags	03/14/1962
	1,979,836 06/11/1996	Plastic wrap	01/01/1970
	1,981,233 06/18/1996	Plastic bags, namely trash and garbage bags, sandwich bags, food storage bags for household use, general purpose bags	08/04/1971
	3,938,630 03/29/2011	Sandwich bags; Trash bags	12/31/2007
<u>GLAD-LOCK</u>	3,620,543 05/12/2009	Plastic bags for packaging	07/07/2008
	3,920,775 02/15/2011	Plastic wrap; plastic bags, namely, food storage bags for household use, freezer bags, garbage bags, and general purpose bags	12/31/2007
	4,979,810 06/14/2016	Trash cans; cutting boards for the kitchen; dinnerware namely, plates, bowls; bakeware; cookware, namely, pots, pans.	03/08/2016
	5,115,048 01/03/2017	Pet waste bags; portable pet waste bag dispensers.	08/31/2016

GLAD PROJECT PRO	5,709,793 03/26/2019	G & S: trash bags.	05/23/2018
GLAD PROTECTION SERIES	5,846,867 08/27/2019	G & S: plastic trash bags for household use.	10/31/2018

These and other registrations for the GLAD® Mark are in full force and effect. Many of the above registrations and other U.S registrations for the GLAD® trademark have become incontestable under 15 U.S.C. § 1065. Glad also owns a number of pending trademark applications for the GLAD® mark.

6. Since at least as early as 1962, Glad (or its predecessor) continuously has used its GLAD® Mark on a variety of goods, including on trash and yard bags, food storage bags and plastic food storage containers. Glad's dates of adoption and first use of its GLAD® Mark precede any first use of Applicant's mark in the United States.

7. Since adoption and first use of its GLAD® Mark, Glad continuously has marketed and is presently marketing goods bearing the mark nationwide. Glad has expended and continues to expend substantial time, money, and effort in promoting its GLAD® products and using the mark to identify Glad as the source of those products. As a result, Glad's goods are identified as originating from Glad through the display of the GLAD® Mark, and the public recognizes Glad as the source of goods displaying the GLAD® Mark. GLAD® brand products are marketed in grocery, big box, club, hardware, online and a variety of other channels for garbage, trash, refuse and yard bags, as well as *inter alia*, plastic wrap, plastic food containers, and plastic utensils. Consumer associations with the brand and company are continually reinforced and strengthened, when consumers shop in those channels (even if they are not searching for garbage bags) and they see the point of sales

displays and assortment of Glad's products on shelves. As a result, and by virtue of its long use and promotion of the GLAD® Mark, Glad has gained a valuable reputation for the mark and has developed valuable goodwill in the mark. Moreover, Glad's garbage, refuse, trash and yard bags sold under the GLAD® Mark have developed a reputation among the consuming public for their high quality, durability and reliability and are widely recognized by consumers as the top garbage bag brand across the United States.

8. Based on long use, inherent strength and distinctiveness of the mark, and Glad's enormous sales and advertising of GLAD® branded products, the GLAD® trademark is distinctive and famous within the meaning of 15 U.S.C. § 1125(c). GLAD's Mark became famous prior to the filing date of the opposed application or any other priority date on which the Applicant may rely. Therefore, registration of Applicant's mark may be refused under 15 U.S.C. §§ 1052 and 1063(a).

9. Applicant filed U.S. Trademark Application Serial Number 88/458,373, which is the subject of this Opposition, on June 4, 2019 for the mark GLADIATOR for these products in International Class 16 as amended for: "Garbage bags of paper; Garbage bags of plastic; Trash bags; Trash can liners; Garbage bags of paper; Garbage bags of paper or of plastics; Garbage bags of plastics; Lawn and leaf disposal bags; Leaf disposal bags; Paper garbage bags; Paper refuse bags; Plastic garbage bags; Plastic trash bags; Plastic trash compactor bags; Rubbish bags (made of paper or plastic materials) all of the above for human refuse and trash, not for animal waste". Glad's registrations and applications for its GLAD® trademark are prior to Applicant's application, which was filed on an intent to use basis.

10. Applicant's goods are identical and/or closely related to the products identified

in Glad's registrations and applications for its GLAD® trademark, in connection with which Glad has been using and continues to use that mark.

11. Glad will be damaged by Applicant's goods displaying the Gladiator mark as consumers may believe that the goods are or have been, authorized, sponsored, or licensed by Glad. Registration of Applicant's proposed mark is therefore contrary to the provisions of 15 U.S.C. § 1052(a) and will cause damage to Glad and the public. Applicant's Opposed Goods are highly related to goods marketed and sold by Opposer under Opposer's well know GLAD® Mark and for which Opposer owns registrations.

12. Applicant's mark is deceptively similar to the GLAD® Mark and creates the same, or essentially the same commercial impression as Opposer's GLAD® Mark, so as to cause likely consumer confusion, or to cause mistake or to deceive the public as to the origin of Applicant's goods, causing harm and damage to Glad and the public. For example, as GLAD is the prefix of Gladiator, the GLAD® Mark is wholly encompassed and subsumed in "Gladiator", and because Glad owns a family of GLAD and GLAD-formative marks, the potential use of the Gladiator mark may cause confusion or mistake among the consuming public as to the source, sponsorship, or affiliation of Applicant's products with those of Glad. Therefore, registration of Applicant's mark is prohibited by 15 U.S.C. § 1052(d).

13. Applicant's goods will be offered for sale in identical or similar channels of trade as Glad's goods and would be purchased by the same or similar consumers.

14. Registration of Applicant's proposed mark would constitute prima facie evidence of the validity of such registration, Applicant's ownership of the mark, and Applicant's exclusive right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b).

Glad and the public would be harmed as a result.

15. Glad's Opposition to the Gladiator mark is timely.

FIRST GROUND FOR OPPOSITION: LIKLIHOOD OF CONFUSION

16. The proposed mark is barred from registration because it consists of or comprises a mark which so resembles Opposer's previously used and registered GLAD® Mark as to be likely, when used in connection with the alleged goods of Applicant, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

SECOND GROUND FOR OPPOSITION: DILUTION

17. Glad's Mark is distinctive and is a "famous mark" within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

18. Glad's Mark became distinctive and famous prior to the filing date of the application or any other date on which Applicant may seek to rely for purposes of priority.

19. Registration by Applicant of the proposed mark for Applicant's proposed goods would be likely to impair the distinctiveness, and cause dilution by blurring, of Opposer's famous GLAD® Mark in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed mark is not entitled to registration

20. Registration by Applicant of the proposed mark for Applicant's proposed goods would be likely to tarnish the reputation, and cause dilution by tarnishment, of Opposer's famous GLAD® Mark in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed mark is not entitled to registration.

THIRD GROUND FOR OPPOSITION: TRADEMARK ACT §2(A)

21. Applicant has applied to register its mark for garbage and refuse bags, among other goods. Glad is not connected with Applicant or its goods, but if Applicant is permitted

to register its mark, a connection with Glad would be presumed because of the recognition and reputation of Glad. Registration of Applicant's mark would lead the public to invoke, incorrectly, Glad's identity and its right to avoid any false suggestions of a connection between Glad and the proposed mark. Issuance of any registration to Applicant for the proposed mark is therefore contrary to the provisions of 15 U.S.C. § 1052(a) and would result in damage to Glad and the public. Accordingly, registration of Applicant's mark is prohibited by 15 U.S.C. § 1052(a).

22. By reason of the foregoing Glad will be damaged by the registration of the Gladiator mark by Applicant.

WHEREFORE, Glad prays that this Opposition be sustained, and that registration to Prestige Consulting for GLADIATOR covered by Application Serial No. 88/458373 be denied.

Please direct all notices, pleadings and process regarding this matter to:

Pamela K. Fulmer
Tactical Law Group
LLP
4 Embarcadero Center,
Suite 1400
San Francisco, CA 94111
Email: pam@tacticallawgroup.com
Telephone: (415) 766-3509
Facsimile: (415) 271-1652

DATED: January 28, 2020

Respectfully submitted,

TACTICAL LAW GROUP LLP

By: /Pamela K. Fulmer/
PAMELA K. FULMER

Attorneys for Opposer
THE GLAD PRODUCTS COMPANY