

ESTTA Tracking number: **ESTTA345299**

Filing date: **05/03/2010**

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	Blunt Wrap U.S.A., Inc.		
Entity	Corporation	Citizenship	Louisiana
Address	594 Asbury Drive Suite C Mandeville, LA 70471 UNITED STATES		

Attorney information	Brett A. North Garvey, Smith, Nehrbass & North, L.L.C. 3838 N. Causeway Blvd. Suite 3290 Metairie, LA 70002 UNITED STATES BrettNorth@gsnn.us Phone:5048352000
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Applicant Information

Application No	76700557	Publication date	04/27/2010
Opposition Filing Date	05/03/2010	Opposition Period Ends	05/27/2010
Applicant	Akum Alrahib 7407 N. 82 nd Lane Glendale, AZ 85303 UNITED STATES		

Goods/Services Affected by Opposition


Class 034. All goods and services in the class are opposed, namely: TOBACCO PRODUCTS, NAMELY, FLAVORED TOBACCO, CIGARS, CIGAR WRAPS AND CIGARETTES

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3099180	Application Date	08/02/2004
Registration Date	05/30/2006	Foreign Priority Date	NONE
Word Mark	KUSH		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2006/02/01 First Use In Commerce: 2006/02/01 Tobacco products and accessories, namely, cigarettes, cigars, rolling papers made out of paper and/or tobacco for cigarettes and cigars, and rolling tobacco for cigarettes and cigars

Attachments	78460539#TMSN.jpeg (1 page)(bytes) PURPLEKUSHOPPOSITION.pdf (26 pages)(849796 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	/Brett A. North #42040/
Name	Brett A. North
Date	05/03/2010

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

Blunt Wrap U.S.A., Inc.	*	
	*	
Opposer,	*	Opposition No. ____
	*	
vs.	*	
	*	
Akrum Alrahib	*	
	*	
Applicant	*	

NOTICE OF OPPOSITION

Blunt Wrap U.S.A., Inc., a Louisiana company, having its principal place of business at 594 Asbury Drive, Suite C, Mandeville, Louisiana 70471 (“Opposer”), opposes Application Serial Number 76/700,557, filed by Akrum Alrahib, a person of the age of majority with address located at 7407 N. 82nd Lane, Glendale, Arizona 85303. Opposer believes that it is or will be damaged by Application Serial Number 76/700,557 and the registration of the mark applied for therein, and alleges the following for opposition of same:

LIKELIHOOD OF CONFUSION

1. Since well prior to November 27, 2009, Applicant’s constructive first use date, Opposer and/or its licenses have used the mark KUSH, in connection with tobacco products and accessories, namely , cigarettes, cigars, rolling papers made out of paper and/or tobacco for cigarette and cigars, and rolling tobacco for cigarettes and cigars.

2. Opposer owns United States federal registration number 3,099,180 for KUSH for “tobacco products and accessories, namely , cigarettes, cigars, rolling papers made out of paper and/or tobacco for cigarette and cigars, and rolling tobacco for cigarettes and cigars.”

3. On November 27, 2009, Applicant filed the Application, based on an intent to use, to register Applicant's Mark in connection with "TOBACCO PRODUCTS, NAMELY, FLAVORED TOBACCO, CIGARS, CIGAR WRAPS AND CIGARETTES."

4. Upon information and belief, Applicant did not use Applicant's Mark in United States commerce for the goods covered in the Application prior to his constructive first use date of November 27, 2009.

5. The goods covered by the Application are identical and/or closely related to the goods offered in connection with Opposer's KUSH mark and registration number 3,099,180.

6. Applicant's Mark so resembles Opposer's KUSH Mark as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods gave their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

7. Opposer would be further injured by the granting of a certificate of registration to Applicant because Applicant's Mark would falsely suggest a connection between Applicant and Opposer.

INJUNCTION FOR KUSH

8. This is not the first time Applicant has attempted to violate the rights of Opposer in its "KUSH" mark.

9. On March 15, 2007, the United States District Court for the Eastern District of Louisiana signed a Consent Decree (Exhibit A) which, in pertinent part, ordered:

- C. DaBomb Products, Inc., and each of their respective owners, shareholders, directors, officers, employees, manufacturers, agents, legal representatives, heirs, successors, and all others in privity or acting in concert therewith, are HEREBY PERMANENTLY ENJOINED during the term of United States Trademark Registration No. 3,099,180, registered May 30, 2006, for the trademark “KUSH” from infringing Blunt Wrap’s trademark registration by using the trademark “KUSH” for tobacco products and accessories, i.e., cigarettes, cigars, rolling papers made of paper and/or tobacco for cigarettes, and cigars, and rolling tobacco for cigarettes and cigars and/or by using any other mark that is confusingly similar thereto.

10. Opposer contends that such injunction applies to Applicant as the alter ego of DaBomb Products, Inc. In Opposer’s patent infringement suit (for the product in which the “KUSH” mark was affixed), Applicant was found by the United States District Court for the Eastern District of Louisiana signed a Consent Decree to be the “alter ego” of DaBomb Products, Inc. (Exhibit B - - Order and Reasons, pg. 17) finding that Mr. Alrahib was the creator, president, statutory agent, and sole director and shareholder of Da Bomb (along with a second company Sunrise Tobacco).

11. Adding the adjective term “purple” to the “KUSH” mark still uses the “KUSH” mark and violates the injunction beyond any likelihood of confusion.

12. Allowing Applicant to register the mark would violate and/or assist Applicant in violating the terms of the injunction and further damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant’s Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorney for this for Opposer in this proceeding Brett A. North of the firm Garvey, Smith, Nehrbass & North, L.L.C., 3838 North Causeway Boulevard, Suite 3290, Metairie, Louisiana 70002.

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