

ESTTA Tracking number: **ESTTA18798**

Filing date: **11/08/2004**

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

<b>Name</b>	Avon Products, Inc.
<b>Granted to Date of previous extension</b>	11/07/2004
<b>Address</b>	1251 Avenue of the Americas New York, NY 10020-1104 UNITED STATES

<b>Attorney information</b>	Michelle M. Graham, Esq. Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178 UNITED STATES mgraham@kelleydrye.com Phone:212-808-5127
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#### Applicant Information

<b>Application No</b>	78262108	<b>Publication date</b>	05/11/2004
<b>Opposition Filing Date</b>	11/08/2004	<b>Opposition Period Ends</b>	11/07/2004
<b>Applicant</b>	TAMSOL, INC. 21411 Prairie Street Chatsworth, CA 91311		

UNITED STATES
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**Goods/Services Affected by Opposition**

Class 005.

All goods and services in the class are opposed, namely: Dietary Supplements

<b>Attachments</b>	Scanned_.pdf ( 4 pages )
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<b>Signature</b>	/Michelle M. Graham/
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<b>Name</b>	Michelle M. Graham, Esq.
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<b>Date</b>	11/08/2004
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**NOTICE OF OPPOSITION**

**In the Matter of Application  
Serial No. 78/262,108 Published  
in the Official Gazette of May 11, 2004**

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AVON PRODUCTS, INC.,	:	
Opposer,	:	
v.	:	
TAMSOL, INC.,	:	<b>Opposition No.</b>
Applicant.	:	
	:	
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TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

AVON PRODUCTS, INC., a New York corporation with a place of business at 1251 Avenue of the Americas, New York, New York 10020-1104 (hereinafter "Opposer") believes that it will be damaged by registration of the designation ON DUTY for "Dietary supplements" in International Class 5 shown in application Serial No. 78/262,108 filed by Tamsol, Inc. (hereinafter "Applicant") and hereby opposes the same.

As grounds therefor, it is alleged that:

1. Opposer is now and for many years past has, among other things, been engaged in distributorship and direct sales services, door-to-door retail merchandising, telephone shop at home services, mail order catalog sales, and interactive retail sales rendered by means of a global computer information network, all in the fields of beauty care, salon and spa services, housewares, clothing, toiletries, cosmetics, jewelry, gift items, collectibles, toys, personal care

products, dietary supplements and wellness products, pre-recorded videos, audio tapes and compact discs throughout the United States and the world.

2. Since at least as early as 1975, and long prior to the filing date of the application herein opposed, Opposer adopted, has used and is using the trademark ON DUTY 24 for personal care products.

3. Since at least as early as 1998, and long prior to the filing date of the application herein opposed, Opposer adopted, has used and is using the trademark ON DUTY for personal care products.

4. Opposer has prior use in interstate commerce of the ON DUTY and ON DUTY 24 trademarks for the foregoing goods and since the adoption and first use of the ON DUTY and ON DUTY 24 trademarks as aforesaid, Opposer has continuously used the ON DUTY and ON DUTY 24 trademarks on and in connection with the production, advertising, promotion, distribution and sale of its personal care products in interstate commerce in the United States.

5. Opposer's ON DUTY and ON DUTY 24 trademarks are now and ever since their first use as aforesaid have been applied to products, package materials, advertisements and product literature for the aforesaid personal care products. Products and materials so marked are now and for many years have been advertised and promoted, and widely shipped, distributed and sold in interstate commerce in the United States. The ON DUTY and ON DUTY 24 trademarks have come to be and are famous and favorably known, and of great value to Opposer, and in the mind of the trade and public, identify Opposer's goods and distinguish them from the goods and services of others.

6. Opposer is the owner, in the United States Patent and Trademark Office ("PTO"), of Registration No. 1,256,516 for the mark ON DUTY 24 for "Personal deodorants,

deodorant toilet soaps, anti-perspirants” in International Class 3 issued November 8, 1983 and Registration No. 2,396,433 for the mark ON DUTY for “Shaving cream, after shave conditioner, body wash, and toilet soap” in International Class 3 issued October 17, 2000. Said registrations are valid and subsisting, unrevoked and uncanceled, and in full force and effect. Opposer owns said registrations and the trademarks shown thereby and all the business and goodwill symbolized thereby and associated therewith in the United States.

7. Opposer also is the owner in the PTO of application Serial No. 76/559,208 for the mark ON DUTY 24 for “Personal deodorant” filed on November 12, 2003 based on a date of first use of at least as early as February 1975. That application was published for opposition on August 24, 2004 and is expected to register.

8. By the application herein opposed, Applicant seeks to register the designation ON DUTY for “Dietary supplements” in International Class 5.

9. Applicant’s designation ON DUTY in application Serial No. 78/262,108 so resembles Opposer’s previously used and registered ON DUTY and ON DUTY 24 trademarks as to be likely, when used on and in connection with Applicant’s goods, to cause confusion, to cause mistake and to deceive with consequent injury to Opposer and the public.

10. Additionally, Applicant’s designation ON DUTY in application Serial No. 78/262,108 so resembles Opposer’s famous ON DUTY and ON DUTY 24 marks as to be likely, when used on and in connection with Applicant’s goods, to cause or result in dilution of Opposer’s trademarks.

11. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant’s mark and would give to Applicant color of exclusive statutory rights to such designation in violation and derogation of the prior and superior rights of Opposer.

12. Registration of application Serial No. 78/262,108 should also be refused on the grounds that Opposer will be damaged by the registration sought by Applicant because such registration will dilute the distinctive and famous quality of Opposer's ON DUTY and ON DUTY 24 trademarks.

WHEREFORE, Opposer believes that it would be damaged by registration of Applicant's mark and prays that it be denied.

Please recognize as attorneys for Opposer William R. Golden, Jr. and Michelle M. Graham (members of the Bar of the State of New York) and the firm of Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178. Please address all communications to Michelle M. Graham, Esq. of said firm and address.

Dated: New York, New York  
November 8, 2004

KELLEY DRYE & WARREN LLP  
Attorneys for Opposer  
AVON PRODUCTS, INC.

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