

ESTTA Tracking number: **ESTTA22280**

Filing date: **12/29/2004**

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>	Fountain of Youth Properties, Inc.
<b>Granted to Date of previous extension</b>	12/29/2004
<b>Address</b>	11 Magnolia Avenue St. Augustine, FL 32084 UNITED STATES

<b>Correspondence information</b>	Richard S. Vermut Attorney for Opposer Rogers Towers, P.A. 1301 Riverplace Boulevard Suite 1500 Jacksonville, FL 32207 UNITED STATES RVermut@rtlaw.com Phone: RVermut@rtlaw.com
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#### Applicant Information

<b>Application No</b>	78211990	<b>Publication date</b>	08/31/2004
<b>Opposition Filing Date</b>	12/29/2004	<b>Opposition Period Ends</b>	12/29/2004
<b>Applicant</b>	Golden Springs, LLC 12200 San Servando Ave.		

North Port, FL 34287 UNITED STATES
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**Goods/Services Affected by Opposition**

Class 032. First Use: 19570101 First Use In Commerce: 19570101 All goods and services in the class are opposed, namely: mineral water
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<b>Attachments</b>	temp.pdf ( 5 pages )
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<b>Signature</b>	/Richard S. Vermut/
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<b>Name</b>	Richard S. Vermut
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<b>Date</b>	12/29/2004
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FOUNTAIN OF YOUTH PROPERTIES, INC.,	)	
a Florida corporation,	)	Opposition No.: _____
	)	
Opposer,	)	
	)	Mark: ORIGINAL FOUNTAIN OF
	)	YOUTH
v.	)	
	)	
GOLDEN SPRINGS, LLC,	)	App. S/N: 78/211,990
a Florida limited liability company,	)	
	)	Pub. Date: August 31, 2004
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Opposer, FOUNTAIN OF YOUTH PROPERTIES, INC., believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same. The grounds for opposition are as follows:

1. Opposer, FOUNTAIN OF YOUTH PROPERTIES, INC., is a Florida corporation having a business office located at 11 Magnolia Avenue, St. Augustine, Florida 32084.

2. Applicant, GOLDEN SPRINGS, LLC, is a Florida limited liability corporation having an office located at 1220 San Servando Avenue, North Port, Florida 34287.

3. Opposer is the owner and operator of *PONCE DE LEON'S FOUNTAIN OF YOUTH*, an archeological, historical, educational and amusement park (the "Park") located in St. Augustine, Florida in the geographic proximity of the landing place of the

explorer Juan Ponce De Leon. The Park possesses significant archeological and historical value. Tourists from around the world visit the Park every year.

4. Since as early as 1868, the Park's predecessor owners discovered and maintained a spring at the Park. Opposer acquired the Park from its former owner and has likewise maintained that spring for public display and water consumption. Throughout the centuries, the spring was referred to as both *THE FOUNTAIN OF YOUTH* and *PONCE DE LEON'S FOUNTAIN OF YOUTH*. Visitors to the Park were provided with the opportunity to drink water from the spring. The spring water has also been available for purchase in pre-packaged containers. Opposer maintains the Park and spring today and continues to offer the water for sale under the marks *FOUNTAIN OF YOUTH* and *PONCE DE LEON'S FOUNTAIN OF YOUTH*.

5. Applicant is the owner of record of application serial number 78/211,990 for the mark "ORIGINAL FOUNTAIN OF YOUTH" (the "Applicant's Mark") filed on February 6, 2003, seeking registration on the Principal Register of the United States Patent and Trademark Office (the "Application"). The Application seeks registration of that mark in connection with mineral water.

6. On August 31, 2004, the Application was published for opposition. Opposer, through its undersigned counsel, timely filed a Request for Extension of Time to Oppose the Application. The USPTO Trademark Trial and Appeal Board granted that extension. This Notice of Opposition, filed prior to the expiration of the extension period, is timely.

7. Long prior to Applicant's filing of its Application or its first use of Applicant's Mark, Opposer has established significant goodwill in connection with its longstanding and continuous use, and its predecessors' use, of Opposer's marks in connection with the identical services listed in the Applicant's Application.

8. The Applicant's Mark is so similar to Opposer's marks that Applicant's Mark is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods, services and commercial activities by Opposer, thereby causing damage to Opposer.

9. On January 13, 2004, Opposer filed a trademark application with the United States Patent and Trademark Office for registration on the Principal Register for the mark *PONCE DE LEON'S FOUNTAIN OF YOUTH* in connection with "water, namely drinking, spring, distilled, purified, well, flavored and carbonated water" in International Class 032. The application was assigned serial number 78/351,381. On August 4, 2004, the examiner assigned to that application refused the application's registration and cited the Applicant's Application as a basis for the refusal and asserted that a likelihood of confusion under section 2(d) of the Trademark Act exists between Opposer's applied-for mark and the Applicant's Mark depicted in Applicant's Application. Applicant's Application is thereby causing damage to Opposer.

WHEREFORE, FOUNTAIN OF YOUTH PROPERTIES, INC. asks that this Notice of Opposition be sustained and that application serial number 78/211,990 be completely and forever abandoned and barred from maturing into a registration.

**CORRESPONDENCE**

Please direct all correspondence to:

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Suite 1500  
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(904) 396-0663 (fax)  
[Rvermut@Rtlaw.com](mailto:Rvermut@Rtlaw.com)

**APPOINTMENT OF ATTORNEYS**

Opposer herein appoints: Richard S. Vermut, Reg. No. 41,362 and Thomas C. Saitta, Reg. No. 32,102 of the firm of Rogers Towers, P.A. as its attorneys to transact all business in the United States Patent and Trademark Office relating to this matter with full power of substitution.

**PAYMENT OF FEES**

The Commissioner is authorized to charge the \$300.00 filing fee for this Notice of Opposition for (1) application in (1) class to the following deposit account:

DEPOSIT ACCOUNT NUMBER:                   502260

DEPOSIT ACCOUNT NAME:                   Rogers Towers, P.A.

The Commissioner is further authorized to charge any excess fees for or credit overpayments to the above-identified deposit account. In the event the undersigned miscalculated the fees or authorized the payment of fees for less than every class listed in

the Application, the Commissioner is authorized to charge the above-identified deposit account for any and all additional fees to effectuate a Notice of Opposition against every class listed in the Application and this Notice for Opposition should be treated as an opposition of the same.

Respectfully submitted,

Date: December 29, 2004

By: \_\_\_\_\_



Richard S. Vermut  
Reg. No.: 41,362

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**Certificate of Transmission**

I hereby certify that this correspondence is being transmitted by electronic mail or on-line to the United States Patent and Trademark Office on the date shown below.

Date of Transmission: December 29, 2004



Richard S. Vermut  
Reg. # 41,362

ATTORNEY FOR OPPOSER FOUNTAIN  
OF YOUTH PROPERTIES, INC.