

ESTTA Tracking number: **ESTTA22673**

Filing date: **01/05/2005**

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>	DAVINCI DENTAL STUDIOS, INC.
<b>Granted to Date of previous extension</b>	01/05/2005
<b>Address</b>	22135 Roscoe Boulevard West Hills, CA 91304 UNITED STATES

<b>Correspondence information</b>	Theresa W.Middlebrook, Esq. HOLLAND & KNIGHT 633 West Fifth Street Suite 2100 Los Angeles, CA 90071-2040 UNITED STATES ptdocketing@hklaw.com Phone:213 896-2586
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#### Applicant Information

<b>Application No</b>	75796383	<b>Publication date</b>	09/07/2004
<b>Opposition Filing Date</b>	01/05/2005	<b>Opposition Period Ends</b>	01/05/2005
<b>Applicant</b>	Contessa da Vinci s.r.l. Via Casagrande 50 00153 Rome,		

ITALY
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**Goods/Services Affected by Opposition**

Class 003.

All goods and services in the class are opposed, namely: After shave lotions, antiperspirants, bath salts, not for medical use, beauty masks, cakes of toilet soaps, cleansing milk for toilet purposes, cosmetic creams, dentifrices, deodorant soap, deodorants for personal use, essential oils for personal use, eyebrow pencils, hair spray, hair lotions, hair colorants, sachets for perfuming linen, lipsticks, lotions for cosmetic purposes, make-up, make-up powder, mascara, perfumes, oils for cosmetic purposes, oils for toilet purposes, rouge, scented water, shampoos, shaving soaps, toilet soap, sun tanning preparations, talcum powder, tissues impregnated with cosmetic lotions, nail varnish, nail polish, varnish removing preparations

<b>Attachments</b>	0105170403[1].TIF ( 4 pages )
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<b>Signature</b>	/Theresa W. Middlebrook/
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<b>Name</b>	Theresa W.Middlebrook, Esq.
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<b>Date</b>	01/05/2005
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DAVINCI DENTAL STUDIOS, INC.,	)	
	)	
Opposer	)	
	)	
v.	)	Opp. No. _____
	)	
CONTESSA DA VINCI s.r.l.,	)	(Serial No. 75/796383)
	)	
Applicant	)	
	)	

**NOTICE OF OPPOSITION**

DAVINCI DENTAL STUDIOS, INC. ("Opposer"), a corporation organized and existing under the laws of the State of California, with its principal place of business located at 22135 Roscoe Blvd., West Hills CA 91304 and believes that it will be damaged by the registration of the ALEXANDRA DA VINCI mark in Class 003 claimed in Application Serial No. 75/796383 (the "383 Application") filed by CONTESSA DA VINCI s.r.l., an Italian limited liability company, located at Via Casagrande 50, 00153 Rome, Italy, filed on September 10, 1999, and published in the Official Gazette of September 7, 2004, and hereby opposes registration the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title, and interest in and to the mark DA VINCI ("DA VINCI Mark"), which Opposer has used in connection with various goods and services relating to improvement of personal appearance, since at least as early as September, 1970.
2. Opposer's rights in the DA VINCI Mark have been recognized by the Patent and Trademark Office, which issued Registration No. 2,061,195, for the mark DA VINCI DENTAL STUDIOS on May 13, 1997, to DANIEL MATERDOMINI, which has been used by Opposer and/or owned by Opposer since the mark was first adopted.
3. Opposer's DA VINCI Mark has been used, advertised and promoted in interstate commerce from a date long prior to the filing date of Applicant's application for ALEXANDRA DA VINCI, which is based upon an intent to use and/or foreign rights, filed in the United States on September 10, 1999, in turn also based upon an earliest Italian registration filing date of June 25, 1999. Therefore, Opposer clearly holds priority to the DA VINCI Mark in the United States.

4. As a result of said use, advertising, and promotion, Opposer's DA VINCI Mark has become well-known and famous as a distinctive indicator of the origin of Opposer's goods and services, and the Opposer's DA VINCI Mark has acquired a highly favorable reputation among members of the purchasing public and become a valuable symbol of Opposer's goodwill.

5. Notwithstanding Opposer's prior rights in the DA VINCI Mark, on September 10, 1999, Applicant filed an intent-to-use application (the '383 Application) with the United States Patent and Trademark Office to register the mark ALEXANDRA DA VINCI & design for the following goods in International Class 003:

After shave lotions, antiperspirants, bath salts, not for medical use, beauty masks, cakes of toilet soaps, cleansing milk for toilet purposes, cosmetic creams, dentifrices, deodorant soap, deodorants for personal use, essential oils for personal use, eyebrow pencils, hair spray, hair lotions, hair colorants, sachets for perfuming linen, lipsticks, lotions for cosmetic purposes, make-up, make-up powder, mascara, perfumes, oils for cosmetic purposes, oils for toilet purposes, rouge, scented water, shampoos, shaving soaps, toilet soap, sun tanning preparations, talcum powder, tissues impregnated with cosmetic lotions, nail varnish, nail polish, varnish removing preparations

(collectively "Applicant's Goods").

6. On information and belief, Applicant made no use of its ALEXANDRA DA VINCI mark in the United States prior to the filing date of its application, and has no claim of priority based upon international treaty that can precede June 25, 1999.

#### COUNT I

#### Likelihood of Confusion - §2(d)

7. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 6, above, as if set forth in their entirety herein.

8. The mark which Applicant seeks to register is identical to or so closely resembles Opposer's DA VINCI Mark in appearance, sound and/or meaning that the use and registration thereof by Applicant is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's Goods and will injure and damage Opposer and the goodwill and reputation symbolized by the Opposer's DA VINCI Mark.

9. Applicant's Goods offered by reference to Applicant's ALEXANDRA DA VINCI mark are either identical in nature or are so closely related to Opposer's Goods offered by reference to Opposer's DA VINCI Mark that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer or that Applicant is in some way connected with or sponsored by or affiliated with Opposer, all to Opposer's irreparable damage and injury.

10. Likelihood of confusion and deception is enhanced by the fact that the parties' goods are sold or intended for sale through the same trade channels to the same classes of prospective purchasers.

11. Under the circumstances, registration and use of Applicant's ALEXANDRA DA VINCI mark is likely to cause Opposer to lose control over the good and valuable reputation represented by and derived from Opposer's DA VINCI Mark.

12. Registration of Applicant's ALEXANDRA DA VINCI mark in light of the prior rights of Opposer in its DA VINCI Mark is therefore likely to cause confusion, mistake and/or deception among members of the relevant purchasing public resulting in damage and injury to Opposer in violation of the provisions of Section 2(d) of the Trademark Act. 15 U.S.C. §1052(d).

COUNT II  
Dilution - §43(d)

13. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 12, above, as if set forth in their entirety herein.

14. Opposer's DA VINCI Mark is arbitrary and inherently strong as applied to Opposer's goods and Opposer's DA VINCI Mark has been widely used and extensively advertised in the United States and, therefore, the Opposer's DA VINCI Mark has become well known and famous as a distinctive symbol of Opposer's goodwill.

15. Opposer's DA VINCI Mark became well known and famous before Applicant made any use of its alleged mark.

16. Registration of Applicant's alleged mark will cause dilution of the distinctive quality of Opposer's DA VINCI Mark. Use or registration of Applicant's alleged mark will lessen the capacity of Opposer's famous DA VINCI Mark to identify and distinguish Opposer's goods and services. Use and registration of the mark ALEXANDRA DA VINCI by Applicant will deprive Opposer of the ability to protect its reputation, persona, and goodwill.

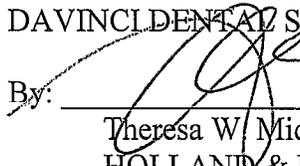
17. Likelihood of damage to Opposer's goodwill is enhanced by the fact that prospective customers who encounter defects in the quality of Applicant's goods will attribute those defects to Opposer, and this will dilute Opposer's reputation and goodwill.

18. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's alleged mark and registration should be refused pursuant to the provisions of Section 43(c) of the Trademark Act. 15 U.S.C. §1125(c).

The required fee of \$300.00, as well any additional charges, should be made to the Deposit Account of Holland & Knight LLP, Account No. 50-1542.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied to the '383 Application.

DAVINCENTAL STUDIOS, INC.

By: 

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