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

Proceeding	91165828
Party	Defendant LUXINE, INC. LUXINE, INC. 4980 LATIGO CANYON ROAD MALIBU, CA 90265
Correspondence Address	CAROL DESMOND TRADEMARKS TO GO, INC. SUITE 4C 10 COTTAGE PLACE WHITE PLAINS, NY 10601
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Date	08/20/2005
Attachments	ANSWER TO NOTICE OF OPPOSITION Electrolux LUXINEPOWER.pdf (6 pages)

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

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Aktiebolaget Electrolux,	:	
	:	
Opposer,	:	
	:	
v.	:	Cancellation No. 91165828
	:	
Luxine, Inc.	:	
	:	
Applicant.	:	Serial No. 78/413,171
-----X	:	

EXPRESS MAIL

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I hereby certify that this correspondence is being deposited with the United States Postal Service Express Mail Post Office to Addressee service under C.F.R. 1.10 on the date indicated above and is addressed to: U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, Madison East, Concourse Level, Room C55, 600 Dulany Street, Alexandria, VA 22314.

[Name]

[Signature]

ANSWER TO NOTICE OF OPPOSITION

Sir:

The Applicant, Luxine, Inc., by its attorney, in response and in answer to the Notice of Opposition of Aktiebolaget Electrolux denies and alleges as follows:

Preamble Paragraph Of Petition to Cancel:

Applicant, Luxine, Inc., denies each and every allegation and averment of the Notice of Opposition, except as expressly admitted or otherwise denied as set forth herein below; and regarding the preamble paragraph of the Opposition denies that Opposer is and will continue to be damaged by pending Serial No. 78/413,171 as filed on May 4, 2004 for the mark, **LUXINEPOWER**.

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1. Applicant is without knowledge or information sufficient to form a basis as to the truth of the allegation contained in Paragraph #1, and therefore denies same.

2. Applicant is without knowledge or information sufficient to form a basis as to the truth of the allegation contained in Paragraph #2, and therefore denies same.

3. Applicant is without knowledge or information sufficient to form a basis as to the truth of the allegation contained in Paragraph #3, and therefore denies same.

4. Applicant is without knowledge or information sufficient to form a basis as to the truth of the allegation contained in Paragraph #4, and therefore denies same.

5. Applicant is without knowledge or information sufficient to form a basis as to the truth of the allegation contained in Paragraph #5, and therefore denies same.

6. Applicant admits to filing the above-identified pending Serial No. 78/413,171 for registration of the mark **LUXINEPOWER** on May 4, 2004 in International Class 11 with respect to the following goods:

electric and non-electric kitchen appliances and equipment, namely, commercial and domestic kitchen countertop work surfaces consisting of single or multiple induction heating elements, and ovens with a cook surface consisting of single or multiple induction heating elements for induction cooking and integral parts therefor; induction heaters designed as food warmers

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7. As to paragraph #7, Applicant is without sufficient knowledge and information to form a basis therein, and thus, denies the allegations contained therein, leaving the Opposer to its strict proof at the trial of this cause.

The Opposer alleges that the Applicant's trademark, **LUXINEPOWER**, is *confusingly similar* to Opposer's **ELECTROLUX** and **LUX** trademarks, and its family of **LUX** formulative trademarks in relation to the goods as identified in International Class 11. There is no *likelihood of confusion*, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are dissimilar. The United States Patent and Trademark Office and the assigned Examining Attorney during the prosecution of said Application, by virtue of its actions, did **not** consider the mark to be *confusingly similar*.

Applicant's recitation of goods is restricted to *induction heating* technology. The marks of the registrations cited by Opposer do not relate to such technology, but relate to *vacuum cleaners, refrigerators, gas and electric ranges, dishwashing machines, air conditioners, freezers, air purifiers, microwave ovens and electric rug and carpet shampooers and parts thereof*.

Applicant's mark and the cited **ELECTROLUX** and **LUX** marks are dissimilar and do **not** present a *likelihood of confusion* to the purchasing public.

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Applicant's channels of trade are dissimilar to Opposer's pleaded marketplace.

Applicant manufactures goods that are sold under the OEM product name and identify the distinction of *induction heating* technology. The ultimate consumer is dissimilar in sophistication, knowledge, expertise and degree in care of selection.

Applicant and Opposer have co-existed and concurrently used their respective marks in the marketplace to date without actual confusion.

8. Applicant admits that issuance of a registration will give certain statutory rights in accordance with 15 U.S.C. 10576[b], but denies the allegations of paragraph #8 of the Notice of Opposition that such registration would be a source of damage and injury to the Opposer.

AFFIRMATIVE DEFENSES

First Defense:

The Opposer has waived its rights, if any, to seek opposition of Applicant's pending Serial No. 78/413,171 due to laches, acquiescence and estoppel in **not** filing oppositions against the more than two hundred fifty three (253) formulative **LUX** marks sitting side-by-side on the Federal Registry owned by third-party entities. The Opposer knew of, consented to and acquiesced to use of formulative **LUX** marks in business for a continued and unreasonable period of time before asserting rights to a *likelihood of confusion*. Any similarity, if at all, between the

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Applicant's mark and the pleaded marks of Opposer, is in the term **LUX** which, upon said information and belief, has been used and registered by numerous third parties in the relevant Classes. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant on the term **LUX**, and Opposer is barred from opposing the registration of the instant mark by laches, estoppel and acquiescence.

Second Defense:

Luxine, Inc., owner of **LUXINE**, has used the above-referenced mark on or in connection with goods with respect to International Class 11 and has invested in the continued commercial use and economic promotion of the mark over a prolonged period of time.

In view of the foregoing, Applicant contends that this Opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designations of the Opposer. Applicant requests that the Notice of Opposition be dismissed and the Applicant be granted rightful registration of its trademark.

Respectfully submitted,

By:
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Attorney for Applicant

Dated: August 20th, 2005

CERTIFICATE OF SERVICE

The person whose signature appears below confirms that the attached document, **ANSWER TO NOTICE OF OPPOSITION**, has been transmitted by Express Mail to:

BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
Attention: William D. Jackson, Esq.
Thomas M. Williams, Esq.

on this 20th Day of August 2005.