ESTTA Tracking number: **ESTTA46494**
Filing date: **09/28/2005**

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

| | |
|---|---|
| **Name** | Sexy Hair Concepts, LLC |
| **Granted to Date of previous extension** | 10/19/2005 |
| **Address** | 9232 Eton Avenue<br>Chatsworth, CA 91311<br>UNITED STATES |

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| **Attorney information** | Roberta Jacobs-Meadway, Esq.<br>Ballard Spahr Andrews & Ingersoll, L.L.P.<br>1735 Market Street, 51st Floor<br>Philadelphia, PA 19103<br>UNITED STATES<br>jacobsmeadwayr@ballardspahr.com Phone:215-864-8779 |

## Applicant Information

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|---|---|---|---|
| **Application No** | 78422467 | **Publication date** | 06/21/2005 |
| **Opposition Filing Date** | 09/28/2005 | **Opposition Period Ends** | 10/19/2005 |
| **Applicant** | WTFN, Inc.<br>20950 Lassen Street<br>Chatsworth, CA 91311 | | |

| | |
|---|---|
| | UNITED STATES |

**Goods/Services Affected by Opposition**

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| Class 003.<br>All goods and sevices in the class are opposed, namely: Flavored Body Preparation, namely, Flavored Body Foam, used to aid sexual relations |

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|---|---|
| **Attachments** | NOO - SEXY BODY FOAM.PDF ( 5 pages ) |

| | |
|---|---|
| **Signature** | /Roberta Jacobs-Meadway/ |
| **Name** | Roberta Jacobs-Meadway, Esq. |
| **Date** | 09/28/2005 |

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED ELECTRONICALLY TO THE COMMISSIONER FOR TRADEMARKS - http://estta.uspto.gov/filing-type.jsp

By: Valerie L. Norman

DATE: 9/28/05

**BOX TTAB FEE**

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

| | | |
|---|---|---|
| SEXY HAIR CONCEPTS LLC, | : | |
| Opposer, | : | |
| v. | : | Opposition No. _____ |
| WTFN, INC. | : | |
| Applicant. | : | |

**NOTICE OF OPPOSITION**

Honorable Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Madam:

In the matter of Trademark Application Serial No. 78/422,467 for the mark "SEXY BODY FOAM" filed May 20, 2004 and published for opposition in the Official Gazette on June 21, 2005 at page TM 284.

Sexy Hair Concepts LLC, a California limited liability company having a place of business at 9232 Eton Avenue, Chatsworth, California 91311 ("Opposer"), believes that it will be damaged by the registration of the mark shown in the above-identified application and hereby opposes the same. The grounds for opposition are as follows:

1. WTFN, Inc., a California corporation ("Applicant"), seeks to register "SEXY BODY FOAM" as a trademark for use in connection with flavored body preparation, namely flavored body foam used to aid sexual relations, as evidenced by the publication of said mark in the Official Gazette on June 21, 2005 at page TM 284.

2. The application herein opposed was filed May 20, 2004 on the basis of intent to use. Applicant claims no date earlier than May 20, 2004 for the purpose of claiming priority.

3. Opposer is and has been engaged in the development, manufacture and sale of hair care products, and bath and body products, and has built a successful business in connection therewith.

4. Since at least as early as June 15, 1998, Opposer, itself and through its predecessor in interest (collectively, "Opposer"), has used "SEXY" as the dominant element of its names and marks for hair care preparations, and bath and body products including skin care products. Since at least as early as December 21, 1998, Opposer has used such names and marks in commerce in the United States.

5. Since at least as early as June 15, 1998, Opposer has continuously used "SEXY HAIR" as the dominant element of names and marks for hair care preparations and related products, including skin care products.

6. Opposer has taken steps to protect the "SEXY HAIR" mark and has secured U.S. Trademark Registration No. 2,403,396 for such mark for the goods identified therein. Registration No. 2,403,396 is valid and subsisting.

7. Since 1998, Opposer has taken steps to develop a family of "SEXY" marks for hair care preparations, and bath and body products, including: "SEXY HAIR CONCEPTS," "BIG SEXY HAIR," and "SEXY BATH & BODY" among others.

8. Opposer has secured U.S. Reg. No. 2,823,999 for the mark "SEXY BATH & BODY."

9. Use of the "SEXY" and "SEXY HAIR" names and marks by Opposer has been continuous and commercially significant since 1998.

10. Opposer has since prior to May 20, 2004 used "Sexy Hair Concepts" and "Sexy Hair" as trade names as well as marks in connection with its business, which includes skin care products such as liquid body wash and moisturizing lotions, in addition to hair care products.

11. Opposer's registered trademarks "SEXY HAIR" and "SEXY BATH & BODY," Opposer's family of "SEXY" marks, and the "Sexy Hair" and "Sexy Hair Concepts" names are inherently distinctive as applied to Opposer's products and business.

12. By virtue of Opposer's continuous use in commerce of its marks and names in connection with its goods and business, such goods and business have become favorably known to the relevant trade and public under such marks and names.

13. As Opposer is the owner of U.S. trademark registrations for "SEXY HAIR" and "SEXY BATH & BODY," priority is not in issue.

14. In the application herein opposed, there are no restrictions on trade channels, so it must be assumed that the goods identified in the application will travel through all trade channels appropriate for goods of that type.

15. Applicant's mark is confusingly similar to Opposer's registered trademarks and also to the family of "SEXY" marks established by Opposer, and to Opposer's "Sexy Hair" and "Sexy Hair Concepts" trade names.

16. Each of Opposer's marks and names, and Applicant's mark, employ the identical term—"SEXY," as the dominant or a dominant element. Opposer's "SEXY BATH & BODY" mark and Applicant's "SEXY BODY FOAM" mark are even more similar, each beginning with the distinctive term "SEXY" and having after the descriptive term "BODY" and differing only in the addition of non-distinctive wording: FOAM, which is generic, and BATH.

17. The goods of Opposer and the goods of Applicant are closely related.

18. Hair care products, skin care products, and body care products are customarily marketed through the same and overlapping channels of trade.

19. The products marketed and sold under Opposer's registered trademarks, Opposer's family of "SEXY" marks, and through Opposer's "Sexy Hair" and "Sexy Hair Concepts" business, and the products intended to be sold under Applicant's "SEXY BODY FOAM" mark, are such as would be sold to the same and to overlapping classes of purchasers.

20. Applicant's "SEXY BODY FOAM" trademark as applied to the goods identified in the application herein opposed so resembles Opposer's registered trademarks, Opposer's family of "SEXY" marks as applied to Opposer's products, and Opposer's "Sexy Hair" and "Sexy Hair Concepts" names as used in connection with Opposer's business, that it is likely to cause confusion, mistake, and/or deception.

21. If Applicant is permitted to register "SEXY BODY FOAM" for the goods set forth in the application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer.

22. On seeing Applicant's "SEXY BODY FOAM" mark used in connection with Applicant's body care preparations, purchasers and potential purchasers are likely to believe in error that such goods are offered by or in association with or under license from Opposer or that Opposer and Applicant are affiliated.

23. Any defect, objection to, or fault found with Applicant's body care preparations sold under its mark "SEXY BODY FOAM" would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods and business.

24. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark for the goods identified in the registration. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Sexy Hair Concepts LLC prays that registration of the mark of Application Serial No. 78/422,467 be refused and that this opposition be sustained.

A duplicate copy of this Notice of Opposition is enclosed herewith.

The required fee of $300 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

Respectfully submitted,

Dated: 9/28/05

By: Roberta Jacobs-Meadway

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ATTORNEYS FOR OPPOSER