

ESTTA Tracking number: **ESTTA51304**

Filing date: **11/01/2005**

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>	A.P. Deauville, LLC		
<b>Entity</b>	Limited Liability Company	<b>Citizenship</b>	New Jersey
<b>Address</b>	594 Jersey Avenue New Brunswick, NJ 08901 UNITED STATES		

<b>Attorney information</b>	Robert B. Golden One Chase Road Scarsdale, NY 10583 UNITED STATES rgolden@LSLLP.com, jrollings@LSLLP.com, nsaraco@LSLLP.com, glandau@LSLLP.com, haronson@LSLLP.com Phone:914-723-4300
-----------------------------	---

#### Applicant Information

<b>Application No</b>	78499714	<b>Publication date</b>	10/04/2005
<b>Opposition Filing Date</b>	11/01/2005	<b>Opposition Period Ends</b>	11/03/2005
<b>Applicant</b>	Trish McEvoy Ltd. 800A Fifth Avenue New York, NY 10021 UNITED STATES		

## Goods/Services Affected by Opposition

Class 003.

All goods and services in the class are opposed, namely: Cosmetic kits containing a variety of cosmetic products comprised of lip liner, lip gloss, foundation, blush, powder, eye liner, eye shadow, and under eye cover, sold together as a unit

Class 018.

All goods and services in the class are opposed, namely: Leather and imitations of leather sold in bulk and goods made of these materials and not included in other classes, namely, animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery; Cosmetic cases sold empty

Class 021.

All goods and services in the class are opposed, namely: Cosmetic brushes; empty tissue box holders

Class 035.

All goods and services in the class are opposed, namely: Retail store services featuring clothing, cosmetics, vanity cabinets, leather goods and accessories, namely handbags, wallets, purses, key cases, makeup cases sold empty, and satchels

<b>Attachments</b>	11.1 Notice of Opposition.pdf ( 11 pages )
--------------------	--

<b>Signature</b>	/Jeffrey M. Rollings/
<b>Name</b>	Jeffrey M. Rollings
<b>Date</b>	11/01/2005

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

**Application Serial No.:** 78/499,714  
**Mark:** POWER STRIP  
**International Class:** 3 / 18 / 21 / 35  
**Applicant:** Trish McEvoy Ltd.  
**Published in *Official Gazette*:** October 4, 2005

-----	X	
A. P. Deauville, LLC,	:	
	:	
<b>Opposer,</b>	:	<b>Opposition No.</b>
	:	
v.	:	
	:	
<b>Trish McEvoy Ltd.</b>	:	
	:	
<b>Applicant.</b>	:	
-----	X	

**NOTICE OF OPPOSITION**

A.P. Deauville, LLC, (“Opposer”), a limited liability company duly organized and existing under the laws of the state of New Jersey, with offices in New Brunswick, New Jersey, believes that it will be damaged by the registration of the trademark POWER STRIP by Trish McEvoy Ltd. (“Applicant”) as applied for in Application Serial Number 78/499,714 (the “Application”).

As grounds for opposition it is alleged that:

1. Opposer is a corporation duly organized and existing under the laws of the state of New Jersey, with offices in New Brunswick, New Jersey.
2. Opposer manufactures, promotes, distributes, and sells a wide variety of products utilizing an international family of “POWER STICK” trademarks, including primary and house mark POWER STICK, as a designation of the source of Opposer’s goods.

3. Opposer is the worldwide owner of the trademarks POWER STICK; POWERSTICK; POWERSTICK POWER STICK; POWERSTICK, POWER STICK; POWER STICK POWERSTICK; POWER STICK POWER STICK and LADY POWER STICK (“Opposer’s Trademarks”) for use in connection with a variety of goods, including, without limitation, condoms, personal deodorants, and antiperspirants (“Opposer’s Goods”).
4. Opposer and its predecessors in interest have used Opposer’s Trademarks openly and continually in interstate commerce since 1986.
5. As part of its normal business operations, Opposer actively seeks to expand its usage of Opposer’s Trademarks into new products and services, both in the United States and throughout the world.
6. Without limitation, Opposer is the owner of the following United States Trademark Registrations and Applications for Registration in connection with Opposer’s Trademarks:
  - a. Registration No. 1466857 for the mark POWER STICK in International Class 3, registered on December 1, 1987, in connection with personal deodorants and antiperspirants;
  - b. Registration No. 2865472 for the mark POWER STICK in International Class 10, registered on July 20, 2004, in connection with condoms; and
  - c. Application Serial No. 78/464,297 for the mark LADY POWER STICK in International Class 3, filed on August 9, 2004, and published for opposition on September 20, 2005, in connection with deodorants and antiperspirants for personal use.

7. Without limitation, Opposer's Registrations and Application for Registration in the United States cover International Classes 3 and 10.
8. Without limitation, Opposer is the owner of the following International Registrations and Applications for Registration in connection with Opposer's Trademark "POWER STICK":

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Argentina	3	1,942,209	7/23/2003
Argentina	5	1.942.210	7/23/2003
Aruba	3	19004	2/20/1998
Canada		339,802	4/29/1988
People's Republic of China	3	556429	6/30/1991
People's Republic of China	5	626134	1/20/1993
Colombia	3	150.093	11/30/1993
Germany	3	1 182 710	3/21/1990
Guatemala	5	64,083	5/3/1991
Guatemala	3	64,082	5/1/1991
Jamaica	3	23,909	10/19/1989
Japan	3	4804308	9/17/2004
Japan	3, 5	2471449	10/30/1992
Mexico	3	772010	2/11/2002
Nicaragua	3	23,062 CC	4/14/1993
Nicaragua	5	20027	7/7/1991
Panama	3	60916	6/9/1994
Paraguay	3	255965	4/7/2003
Paraguay	5	255964	4/7/2003
Peru	3	86470	8/6/1990
Peru	5	95533	1/2/1992
Puerto Rico	3	57,328	2/19/2002
South Africa	5	90/3762	5/15/1990
South Africa	3	90/3761	5/15/1990
South Korea	12	228025	12/12/1991
Thailand	3	KOR23833	2/24/1994
Uruguay	5	347.314	5/20/1993
Uruguay	3	345.660	2/17/1993

<u>Country of</u>	<u>International Class</u>	<u>Application #</u>	<u>Application Date</u>
-------------------	----------------------------	----------------------	-------------------------

Application

Costa Rica            3                            2003-3477            6/6/2003

9. Without limitation, Opposer is the owner of the following International Registrations and Applications for Registration in connection with Opposer's Trademark "POWERSTICK POWER STICK:"

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Australia	3	534514	5/18/1990
Hong Kong	3	5224/92	5/11/1990
Hong Kong	5	5223/90	5/11/1990
India	3	531610	6/18/1990
Kenya	3	38104	5/17/1990
Kenya	5	38105	5/17/1990
Malawi	5	149/90	5/21/1990
Malawi	3	148/90	5/21/1990
New Zealand	5	B202023	5/22/1990
New Zealand	3	B202022	5/22/1990
Singapore	3	B3365/90	5/11/1990
Tanzania Republic	3	21229	5/14/1990
Tanzania Republic	5	21227	5/14/1990
Uganda	3	17192	5/30/1990
Uganda	5	17192	5/30/1990

10. Without limitation, Opposer is the owner of the following International Registrations and Applications for Registration in connection with Opposer's Trademark "POWERSTICK, POWER STICK:"

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Australia	5	534513	5/18/1990

11. Without limitation, Opposer is the owner of the following International Registrations and Applications for Registration in connection with Opposer's Trademark "POWER STICK POWERSTICK:"

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Belize	3, 5	8424	2/1/1999
Cayman Islands	3, 5	1425911	4/20/1990
Saint-Lucia	3	TM/1998/000 340	4/6/1998
Singapore	5	B3366/90	5/11/1990
United Kingdom	3, 5	B1425911	11/6/1992

12. Without limitation, Opposer is the owner of the following International Registrations and Applications for Registration in connection with Opposer's Trademark

"POWERSTICK":

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Bermuda	3	29598	3/25/1998
Trinidad and Tobago	48	19293	9/12/1990
Turkey	3, 5, 21	144646	8/4/1993

13. Without limitation, Opposer is the owner of the following International Registrations and Applications for Registration in connection with Opposer's Trademark "POWER STICK POWER STICK":

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Trinidad and Tobago	2	19231	8/30/1990

14. Without limitation, Opposer is the owner of the following International Registrations and Applications for Registration in connection with Opposer's Trademark "LADY POWER STICK":

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Puerto Rico	3	57,331	2/19/2002

15. Opposer has further acquired, via assignment, and now owns the following International Registrations and Applications for Registration, in connection with Opposer's Trademark "POWER STICK POWERSTICK:"

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Anguilla	3	2980	5/25/1998
Antigua and Barbuda	3, 5	1950	10/13/1998
Bangladesh	5	30806	6/2/1990
Grenada	3, 5	65/1998	4/20/1998
Saint Vincent and the Grenadines	3, 5	172/1997	4/20/1990

16. Opposer has also acquired, via assignment, and now owns the following International Registrations and Applications for Registration, in connection with Opposer's Trademark "POWER STICK:"

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Antigua and Barbuda	48	3110	3/7/1990
Bahamas	48	20,437	3/18/1998
Barbados	3	81/9969	12/9/1999
Barbados	3	81/6000	6/26/1997
Sri Lanka	3	81804	1/22/1997

17. Opposer has also acquired, via assignment, and now owns the following International Registrations and Applications for Registration, in connection with Opposer's Trademark "POWER STICK:"

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Brazil	3	815.653.107	8/25/1992
El Salvador	5	20 FOL: 65 BK:7	2/6/1992
Guyana	3	13,030A	9/29/1989
Venezuela	3	F-167.637	8/19/1994
Venezuela	3	F-158.979	5/24/1994

Chile	5	161844	10/4/1990
El Salvador	3	1441/90	7/11/1990
Honduras	5	2744/90	5/22/1990
Honduras	3	2747/90	5/22/1990

18. Opposer has also acquired, via assignment, and now owns the following International Registrations and Applications for Registration, in connection with Opposer's Trademark "POWERSTICK POWER STICK":

<u>Country of Registration</u>	<u>International Class</u>	<u>Registration #</u>	<u>Registration Date</u>
Malaysia	3	90/03422	5/29/1990

19. Through the years, Opposer and its predecessors-in-interest have expended substantial amounts of money, time and effort in advertising, promoting and popularizing Opposer's Trademarks; the trade, industry, and public have throughout the years associated and attributed usage of Opposer's Trademarks to a single source of origin alone, so that the trade in general and the purchasing public in particular have come to know and recognize Opposer's Trademarks and products and to know that the same originate with and belong to Opposer and its predecessors-in-interest.
20. Opposer and its predecessors-in-interest have used Opposer's Trademarks in interstate commerce and worldwide openly, notoriously and continuously since the dates of first use of Opposer's Trademarks.
21. Opposer's Trademarks are strong trademarks and are famous throughout the United States and the world and have developed goodwill and a good reputation exclusive to Opposer.
22. Upon information and belief, Applicant is a New York corporation, with offices in New York, New York.

23. The purported "POWER STRIP" mark applied for in Applicant's application is confusingly and deceptively similar to Opposer's Trademarks, which Opposer has been using long prior to the filing of Applicant's application; hence, Applicant is not entitled to adopt, use, or seek registration of the purported "POWER STRIP" mark in connection with the goods identified in Applicant's application.
24. The goods identified in Applicant's application are identical, nearly identical, and/or closely related to Opposer's Goods sold under Opposer's Trademarks, and/or to goods likely to be distributed and sold by Opposer, allowing for Opposer's normal and foreseeable expansion of use of Opposer's Trademarks.
25. The goods covered by Applicant's application are of the type, or confusingly similar to the type distributed and sold by Opposer, or allowing for Opposer's normal and foreseeable expansion of use likely to be distributed and sold, by Opposer, through the same channels of trade and to the same class of customers as Opposer's goods. Such goods would reasonably be expected by the trade and purchasing public to emanate from or be sponsored by the same source.
26. Opposer's Trademarks and Applicant's purported mark are nearly identical in appearance, connotation and pronunciation, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake or deception among the trade and consumers.
27. Because of the strength and fame of Opposer's Trademarks and because Applicant's purported mark is nearly identical and confusingly similar thereto, any faults or imperfections in the goods of Applicant will reflect adversely on Opposer and its

established goodwill and reputation, all to the detriment of Opposer unless this opposition is sustained.

28. The simultaneous use and/or registration by Applicant of the mark "POWER STRIP" will dilute and tarnish Opposer's rights and will eventually result in a lack of designation or indication of origin and a loss of distinctiveness and exclusivity in Opposer's Trademarks if Applicant is allowed to register its purported mark.
29. The Opposer clearly has superior and paramount rights as compared to Applicant and Opposer and its predecessors-in-interest have used Opposer's Trademark in commerce continuously, since 1986, a date prior to any date claimed by or available to Applicant. Consequently, Opposer avers that confusion, mistake, deception, dilution and tarnishment in the trade and in the minds of the purchasers as between Opposer's and Applicant's marks and as to the origin of their respective goods will be likely and bound to occur with resulting damage to Opposer.

**WHEREFORE**, Opposer respectfully requests that the Opposition be sustained and that registration of POWER STRIP to Applicant be refused.

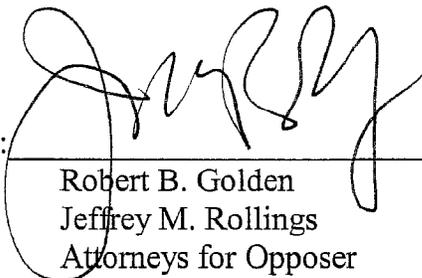
As this Notice of Opposition is being filed electronically via the Electronic System for Trademark Trials and Appeals, Petitioner has assumed that the requirement of 37 C.F.R. § 2.104 that it be filed in duplicate is waived.

**The Commissioner is hereby authorized to charge Opposer's Attorneys' Deposit Account No. 100100 for the requisite opposition filing fee of \$1,200.00 (\$300 per class opposed, for four (4) classes), required by 37 C.F.R. §§ 2.101 and 2.6, and to charge any**

additional fees which may be required or to credit any overpayments to the same deposit account.

Respectfully submitted,

**LACKENBACH SIEGEL, LLP**



By:

Robert B. Golden  
Jeffrey M. Rollings  
Attorneys for Opposer  
One Chase Road  
Scarsdale, New York 10583  
(914) 723-4300  
(914) 723-4301 fax

Dated: Scarsdale, New York  
November 1, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the enclosed **NOTICE OF OPPOSITION** was served on Applicant on November 1, 2005, via U.S. 1<sup>st</sup> Class Mail, addressed to Applicant as follows:

Trish McEvoy, Ltd.  
Attn.: CEO or Managing Partner  
800A Fifth Avenue  
New York, New York 10021

Dated: Scarsdale, New York  
November 1, 2005

  
Nicole Saraco