

ESTTA Tracking number: **ESTTA52428**

Filing date: **11/08/2005**

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	Organizacion Miss America Latina, Inc.
Granted to Date of previous extension	11/12/2005
Address	10340 S.W. 42 Terrace Miami, FL 33165 UNITED STATES

Attorney information	Daniel S. Polley Daniel S. Polley, P.A. 1215 East Broward Boulevard Fort Lauderdale, FL 33301 UNITED STATES dan@danpolley.com Phone:954-234-2417
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Applicant Information

Application No	78314693	Publication date	09/13/2005
Opposition Filing Date	11/08/2005	Opposition Period Ends	11/12/2005
Applicant	Miss Universe L.P., LLLP 1370 Avenue of the Americas New York, NY 10019		

UNITED STATES

Goods/Services Affected by Opposition

Class 041.

All goods and services in the class are opposed, namely: ENTERTAINMENT SERVICES, NAMELY, BEAUTY PAGEANTS

Attachments	Notice of Opposition Electronic.pdf (8 pages)
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Signature	/Daniel S. Polley/
Name	Daniel S. Polley
Date	11/08/2005

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

In the Matter of Application Serial No. 78/314,693
For the Mark: MISS LATINA USA
Date of Publication: September 13, 2005

ORGANIZACION MISS AMERICA)	
LATINA, INC.)	
)	Opposition No. _____
Opposer,)	
vs.)	
)	
MISS UNIVERSE L.P., LLLP)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, Organizacion Miss America Latina, Inc. is a corporation organized and existing under the laws of the State of Florida, having a business address of 10340 S.W. 42nd Terrace, Miami, Florida 33165 (hereinafter referred to as “Opposer Organizacion”). To the best of Opposer Organizacion’s knowledge, the above-identified application is owned by Miss Universe L.P., LLLP a Limited Liability Limited Partnership organized under the laws of the State of Delaware with a business address of 110 Greene Street – Suite 700, New York, New York 10012 (herein referred to as “Applicant”). Opposer Organizacion believes that it will be damaged by the registration of the mark MISS LATINA USA as shown in the above-identified application, and hereby opposes the same.

The grounds for the opposition are as follows:

1. Opposer Organizacion produces the largest and longest running national Latina pageant in the United States. Opposer Organizacion’s President, Acirema Alayeto (“A.

Alayeto”), began organizing and producing Latin related pageants in Miami, Florida in 1981. Along with her sister Cheherezada Alayeto (“C. Alayeto”), the Alayetos individually and through Opposer Organizacion’s have invested significant amounts of time and resources in producing, promoting and protecting the names associated with their pageant.

2. Opposer has continuously promoted its pageant in the United States since 1981, at the local, state, national and international levels, through predecessor or related companies partially or fully owned by A. Alayeto, through related individual A. Alayeto, through related individual C. Alayeto and/or by Opposer Organizacion itself (all collectively referred to as “Opposer”; all of the below noted marks have been assigned to Opposer Organizacion).

3. Opposer’s pageant was first produced and promoted under the SENORITA AMISTAD LATINA mark in 1981. Shortly thereafter the mark changed or transformed to MISS AMERICA LATINA.

4. Opposer began using the mark MISS FLORIDA LATINA in 1983 and has continued to use such mark in commerce since its inception. Opposer has used and continues to use similar marks for all other states of the United States (i.e. MISS ARIZONA LATINA, MISS CALIFORNIA LATINA, etc.).

5. Opposer applied for registration of the mark MISS AMERICA LATINA in 1983 and received U.S. Registration No. 1,319,931 on the Principal Register for such mark. Pursuant to an agreement with Miss America Pageant in 1989, Opposer expressly cancelled the ‘931 Registration and refiled the same mark but only in the English version

(MISS LATIN AMERICA). Since the refiling, Opposer has continuously used both versions (Spanish and English) of the mark in commerce.

6. Opposer has received and owns U.S. Registration No. 1,652,554 (“the ‘554 Registration) for its mark MISS LATIN AMERICA, which is registered for the following services: promoting the sale of goods and services of others through the medium of periodic beauty contests conducted on a regional, national, and international basis. Since its inception, Opposer has continued to use the mark MISS LATIN AMERICA in commerce.

7. Opposer’s ‘554 Registration for the mark MISS LATIN AMERICA has obtained incontestable status.

8. Opposer began using the mark MISS ESTADOS UNIDOS LATINA in 1984 and continues to use such mark in commerce since its inception. The English translation for MISS ESTADOS UNIDOS LATINA is Miss Latin United States.

9. Applicant’s predecessor (Miss Universe, Inc.) contacted Opposer in 1989 regarding Opposer’s use of its MISS ESTADOS UNIDOS LATINA mark.

10. Disagreeing with Applicant’s position regarding Opposer’s use of MISS ESTADOS UNIDOS LATINA, Opposer continued to use the mark MISS ESTADOS UNIDOS LATINA and also began using the English equivalent mark MISS LATINA USA in connection with its pageants.

11. Applicant again contacted Opposer, this time in 2000 regarding Opposer’s use of MISS LATINA USA.

12. After an exchange of correspondence between Opposer and Applicant, Opposer insignificantly changed its mark from MISS LATINA USA to MISS LATINA US and has continuously used the MISS LATINA US in commerce since its inception.

13. Opposer has always used its above-identified marks in commerce in connection with beauty pageants or beauty contests.

14. Through its long use in commerce, Opposer's above-identified marks have developed great value and substantial goodwill.

15. Through Opposer's long and substantial nationwide use of its above-noted marks, such marks have become well known and famous within the above-noted pageant industry well before the filing date of Applicant's application for the MISS LATINA USA.

16. The terms "US", "USA", "America" and "Estados Unidos" are equivalent in meaning and are commonly used and known to the public as various ways of referring to the United States of America.

17. Applicant, seeks to register the mark MISS LATINA USA (hereinafter "Applicant's mark"), as a service mark for entertainment services, namely, beauty pageants, as evidenced by the publication of the mark on September 13, 2005, Official Gazette. Applicant's application was filed on October 16, 2003 as an "intent-to-use" application. In contrast, Opposer's use of all of its above-noted marks began long before Opposer's filing date.

18. Opposer's common law rights to its above-identified marks were established long before the filing date of Applicant's application and provide further basis for sustaining this Opposition and refusing registration to Applicant.

19. The services listed in Applicant's application are of the same type of services offered by Opposer under its above-identified marks.

20. Due to the identical, nearly identical or highly similar nature of Applicant's Mark when compared to Opposer's above-identified marks and the identical services of the respective parties, consumers and purchasers (including, but not limited to, viewers, attendees and sponsors of the pageant and advertisers for the pageant), are likely to believe, and would be justified in believing, that the Applicant's services originate from the Opposer or an entity in some way associated with the Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

21. Applicant's mark so resembles one or more of Opposer's above-identified marks as to be likely, when applied to the services of Applicant, to cause confusion or mistake or to deceive consumers as to the source, sponsorship, endorsement, authorization or approval of Applicant's services, thereby resulting in irreparable damage and detriment to Opposer and its reputation in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

22. Registration of Applicant's Mark would be a source of damage and injury to Opposer and a source of confusion to Opposer's many customers who rely upon the reputation of the Opposer, the high quality of Opposer's service as reflected by Opposer's above-identified marks and because consumers are likely to attribute the source or sponsorship of Applicant's services to Opposer, all in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

23. Registration of Applicant's Mark would also dilute the distinctive quality of Opposer's service mark rights in violation of 15 U.S.C. §1125(c) (1).

24. At the time of filing its application (October 16, 2003), Applicant and its counsel were well aware of Opposer's use in commerce of its above-identified marks in connection with beauty pageants or beauty contests.

25. At the time of filing its application (October 16, 2003), Applicant and its counsel were well aware of the prior and continued use in commerce of at least one of Opposer's marks in connection with beauty pageants or beauty contests.

26. At the time of filing its application (October 16, 2003), Applicant and its counsel were well aware of the prior and continued use in commerce of Opposer's MISS LATINA USA mark in connection with beauty pageants or beauty contests.

27. At the time of filing its application (October 16, 2003), Applicant and its counsel were well aware of the prior and continued use in commerce of Opposer's MISS LATINA US mark in connection with beauty pageants or beauty contests.

28. Despite having actual knowledge of Opposer's prior and continuous use in commerce of at least one of Opposer's marks in connection with beauty pageants or beauty contests, Applicant, under the penalty of perjury (18 U.S.C. 1001) stated in its application that:

"The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the

goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”
(Emphasis Added).

29. Given Applicant’s actual notice of Opposer’s prior and continued use in commerce of at least one of Opposer’s marks in connection with beauty pageants or beauty contests, upon information and belief, Applicant made at least one material misrepresentation in its application at the time it submitted its service mark application to the United States Patent and Trademark Office (“PTO”).

30. Given Applicant’s actual notice referenced above, upon information and belief, Applicant’s at least one material misrepresentation in its application, was intentionally made.

31. In view of Applicant’s at least one material misrepresentation, Applicant is seeking to procure registration by virtue of one or more fraudulent misrepresentations submitted to the PTO for the purpose of and with the effect of inducing the PTO to issue such registration.

32. As a result of the foregoing at least one misrepresentation by Applicant, Applicant’s application is invalid and should be abandoned.

33. During the prosecution of Applicant’s application with the Examining Attorney, Opposer’s MISS LATIN AMERICA mark was cited by the Examining Attorney in the Examining Attorney’s Office Action. When responding to the Office Action, Applicant continued to fail to inform the PTO or the Examining Attorney of Applicant’s actual knowledge of Opposer and Opposer’s marks.

34. Opposer will be damaged by Applicant's above-noted at least one false and fraudulent statement if the mark sought for registration in Applicant's application is permitted to be registered.

WHEREFORE, Opposer believes that it will be harmed by the registration of Applicant's mark and prays that the present opposition be sustained and that the registration sought by Applicant be refused, and for such other and further relief in the premises as may be deemed just and proper.

Respectfully submitted,

Attorneys for Opposer

/Daniel S. Polley/

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