

ESTTA Tracking number: **ESTTA69814**

Filing date: **03/08/2006**

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	FKA DISTRIBUTING CO. d/b/a HOMEDICS, INC.
Granted to Date of previous extension	03/15/2006
Address	3000 Pontiac Trail Commerce Township, MI 48390 UNITED STATES
Attorney information	MATTHEW R. MOWERS BROOKS KUSHMAN P.C. 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075 UNITED STATES sgibbons@brookskushman.com, mmowers@brookskushman.com Phone: 248-358-4400

Applicant Information

Application No	78586097	Publication date	11/15/2005
Opposition Filing Date	03/08/2006	Opposition Period Ends	03/15/2006
Applicant	Lockard, Kenneth G. 7148 Demedici Circle Delray Beach, FL 33446 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2003/05/01 First Use In Commerce: 2003/05/01
All goods and services in the class are opposed, namely: footwear

Attachments	therasho.pdf (5 pages)
Signature	/matthew r. mowers/
Name	MATTHEW R. MOWERS
Date	03/08/2006

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

In re Trademark Application

Serial No.: 78/586,097

Filed: March 13, 2005

Trademark: THERASHOE

Atty. Docket No.: HOME 1069 OC

Published in the Official Gazette on November 15, 2005 on page TM 646

HoMedics, Inc.)	
)	
Opposer,)	
)	
v.)	
)	Opposition No. _____
Kenneth G. Lockard)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Opposer, HoMedics, Inc. ("HoMedics"), a Michigan corporation, having its principal place of business at 3000 Pontiac Trail, Commerce Township, Michigan 48390, believes that it will be damaged by the registration of the mark THERASHOE shown in Application Serial No. 78/586,097, published in the *Official Gazette* at TM 646 on November 15, 2005, and hereby opposes registration of the same.

As grounds of opposition, it is alleged that:

1. HoMedics is a world-famous manufacturer and provider of personal health and wellness products and solutions, including massagers, spa products, blood pressure monitors, thermometers, scales and body fat analyzers.

2. Upon information and belief, Applicant Kenneth G. Lockard (“Applicant”) filed an application for the mark THERASHOE on March 13, 2005. Applicant asserts a first use date of May 1, 2003 in his application. As published, that application covers “footwear” in International Class 25.

3. Upon information and belief, Applicant’s application has been assigned Serial No. 78/586,097.

4. Opposer, HoMedics, has used the marks THERA P in block form and stylized form since at least as early as April 1, 1994 in connection with, among other goods, shoe insoles for therapeutic use.

5. HoMedics owns U.S. Registration No. 2,424,906 for the mark THERA P in stylized form and U.S. Registration No. 2,424,907 for the mark THERA P in block form for “bandages for skin wounds and adhesive bandages for therapeutic use” in International Class 5, “products for therapeutic use, namely, hot/cold compression wraps, magnetic wraps, magnetic wrap kits, compression bandages containing magnets” in International Class 10 and “shoe insoles for therapeutic use” in International Class 25.

6. U.S. Registration Nos. 2,424,906 and 2,424,907 are valid and subsisting, and constitute prima facie evidence of the validity of the registrations, of HoMedics' ownership of and exclusive right to use the marks in commerce, and provides constructive notice of ownership thereof by HoMedics.

7. HoMedics has expended considerable effort and expense in promoting its use of the THERA P trademarks and the goods associated with the marks, with the result that the purchasing public has come to know and recognize the products bearing the marks as those associated with HoMedics. HoMedics has exceedingly valuable goodwill established in the THERA P marks.

8. There is no issue as to priority. Upon information and belief, the Applicant's date of first use is subsequent to HoMedics' first use of the marks on International Class 5, 10 and 25 goods.

9. Upon information and belief, at the time Applicant filed its trademark application to register THERASHOE, Applicant had full knowledge that HoMedics owned Registration Nos. 2,424,906 and 2,424,907.

10. The goods identified by Applicant's THERASHOE mark are confusingly similar to the products and accessories protected by HoMedics' THERA P registrations.

11. Applicant's mark so resembles HoMedics' marks as to be likely, when used in connection with Applicant's goods, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d). Applicant's confusingly similar mark will likely result in damage and injury to HoMedics. Persons familiar with HoMedics' marks would be likely to purchase Applicant's goods bearing the mark THERASHOE in the belief that the Applicant's goods originate from, are sponsored or approved by HoMedics.

12. If Applicant is granted the registration herein opposed, it would obtain at least a prima facie exclusive right to use of the THERASHOE mark, and such registration would be a source of damage and injury to HoMedics.

13. Applicant's use of the THERASHOE mark is likely to cause, and will cause, dilution of the distinctive value of HoMedics' THERA P marks under Section 43(c) of the Lanham Act of 1946, as amended, 15 U.S.C. §1125(c).

14. For the foregoing reasons, HoMedics will be damaged by the registration of the mark THERASHOE.

WHEREFORE, HoMedics requests that registration of the mark THERASHOE, Application Serial No. 78/586,097, be refused and this opposition be sustained.

The Commissioner is hereby authorized to charge the fee to Deposit Account No. 02-3978.

Respectfully submitted,

By 
Mark A. Cantor
Matthew R. Mowers
Attorneys/Agents for Opposer

Date: March 8, 2006

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