

ESTTA Tracking number: **ESTTA80482**

Filing date: **05/12/2006**

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	Sexy Hair Concepts, LLC
Granted to Date of previous extension	05/14/2006
Address	9232 Eton Avenue Chatsworth, CA 91311 UNITED STATES

Attorney information	Roberta Jacobs-Meadway Ballard Spahr Andrews & Ingersoll, LLP 1735 Market Street, 51st Floor Philadelphia, PA 19103 UNITED STATES jacobsmeadwayr@ballardspahr.com Phone:215-864-8500
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### Applicant Information

Application No	78573653	Publication date	11/15/2005
Opposition Filing Date	05/12/2006	Opposition Period Ends	05/14/2006
Applicant	Perfect Plus, Inc. Suite 601 9595 Wilsire Boulevard Beverly Hills, CA 90212 UNITED STATES		

### Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Hair care products, namely, shampoo, conditioners, hair spray, styling gels, and mousse
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Attachments	Notice of Opposition.PDF ( 9 pages )(231173 bytes )
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Signature	/Roberta Jacobs-Meadway/
Name	Roberta Jacobs-Meadway
Date	05/12/2006

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

By: *[Signature]*

DATE: 5-12-06

**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. _____
	:	
PERFECT PLUS, INC.	:	
	:	
Applicant.	:	

**NOTICE OF OPPOSITION**

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

In the matter of Trademark Application Serial No. 78/573,653 for the mark SEXY ‘N SASSY filed February 23, 2005 and published for opposition in the Official Gazette on November 15, 2005.

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. Perfect Plus, Inc., a California corporation (“Applicant”), seeks to register SEXY ‘N SASSY as a trademark for use in connection with hair care products, namely shampoo, conditioners, hair spray, styling gels and mousse, as evidenced by the publication of said mark in the Official Gazette on November 15, 2005.

2. The application herein opposed was filed February 23, 2005 and the basis is intent to use. Applicant claims no date earlier than February 23, 2005 for the purpose of claiming priority.

3. Opposer is and has been engaged in the development, manufacture and sale of hair care 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" and "SEXY HAIR" as the dominant element of its names and marks for hair care preparations, including shampoo, conditioner, hair sprays, styling gels and mousse. Since at least as early as December 21, 1998, Opposer has used such names and marks in commerce in the United States for such goods.

5. The nature and extent of Opposer's use of its "SEXY" and "SEXY HAIR" names and marks can be seen at its website, [www.sexyhairconcepts.com](http://www.sexyhairconcepts.com).

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 hair care preparations as identified therein. Registration No. 2,403,396 is valid and subsisting. The Section 8 and 15 Declaration was filed March 24, 2006. A copy of the pertinent information about such registration from the PTO database is attached as Exhibit A.

7. Since 1998, Opposer has taken steps to develop a family of "SEXY" marks for hair care preparations, including: "SEXY HAIR CONCEPTS," "HEALTHY SEXY HAIR," "BIG SEXY HAIR," "CURLY SEXY HAIR," "SHORT SEXY HAIR," and "SEXY HAIR (Design)," among others.

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

9. Opposer has since prior to February 23, 2005 used “Sexy Hair Concepts” and “Sexy Hair” as trade names as well as marks in connection with its business.

10. Opposer’s registered trademark “SEXY HAIR,” 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.

11. By virtue of Opposer’s continuous use in commerce of its registered “SEXY HAIR” trademark and its family of “SEXY” marks and the “Sexy Hair” and “Sexy Hair Concepts” names in connection with such goods and business, such goods and business have become favorably known to the relevant trade and public under such marks and names.

12. As Opposer is the owner of a U.S. trademark registration for “SEXY HAIR,” priority is not in issue.

13. 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.

14. Applicant’s mark for hair care products is confusingly similar to Opposer’s registered “SEXY HAIR” trademarks and also to the family of “SEXY” marks established by Opposer, and to Opposer’s “Sexy Hair” and “Sexy Hair Concepts” trade names.

15. Each of Opposer’s marks and names, and Applicant’s mark, employ the identical term—“SEXY,” as the dominant or a dominant element.

16. The goods of Opposer and the goods of Applicant are essentially the same (hair care products), or otherwise closely related.

17. Hair care products such as are sold by Opposer and as are identified in the application herein opposed are customarily marketed through the same and overlapping channels of trade.

18. The products marketed and sold under Opposer's registered "SEXY HAIR," trademark, Opposer's family of "SEXY" marks, and through Opposer's "Sexy Hair" and "Sexy Hair Concepts" business, and the hair care products intended to be sold under Applicant's SEXY 'N SASSY mark, are such as would be sold to the same and to overlapping classes of purchasers.

19. Applicant's SEXY 'N SASSY trademark as applied to the goods identified in the application herein opposed so resembles Opposer's registered "SEXY HAIR" trademark, 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.

20. Applicant has in fact taken steps to aggravate the likelihood of confusion, demonstrating its bad faith in the selection of the SEXY 'N SASSY mark. Specifically, applicant has adopted a trade dress for its SEXY 'N SASSY hair care products that is strikingly similar to Opposer's trade dress for its "SHORT SEXY HAIR" product line, including the silver cylindrical container with red lettering to stand out in contrast to the other black lettering on the package. On applicant's package, SEXY 'N SASSY stands out in red. On Opposer's previously used package, SEXY is the mark that stands out in red.

21. If Applicant is permitted to register SEXY 'N SASSY for the hair care products 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 'N SASSY mark used in connection with Applicant's hair care products, 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 hair care products sold under its mark SEXY 'N SASSY 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.

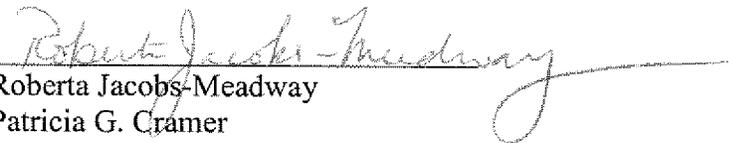
WHEREFORE, Sexy Hair Concepts LLC prays that registration of the mark of Application Serial No. 78/573,653 be refused and that this opposition be sustained.

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

The required fee of \$300.00 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

Respectfully submitted,

Dated: May 12, 2006

By:   
Roberta Jacobs-Meadway  
Patricia G. Cramer  
Troy E. Larson  
BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
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ATTORNEYS FOR OPPOSER

# **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2006-05-12 16:23:06 ET**

**Serial Number:** 75634213 Assignment Information

**Registration Number:** 2403396 Assignment Information

**Mark (words only):** SEXY HAIR

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2000-11-14

**Filing Date:** 1999-02-05

**Transformed into a National Application:** No

**Registration Date:** 2000-11-14

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 104

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 830 -Post Registration

**Date In Location:** 2006-04-06

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Ecoly International, Inc.

**Address:**

Ecoly International, Inc.  
9232 Eton Avenue  
Chatsworth, CA 91311  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** California

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**GOODS AND/OR SERVICES**

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**International Class:** 003

**Class Status:** Active

Hair care products for men, women and children, namely hair shampoos, hair conditioners, hair lotions, hair cremes, hair gels, hair sprays, hair color, hair dyes, hair rinses, hair mousse

**Basis:** 1(a)

**First Use Date:** 1998-06-15

**First Use in Commerce Date:** 1998-12-21

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### ADDITIONAL INFORMATION

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**Disclaimer:** "HAIR"

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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2006-03-24 - Section 8 (6-year) and Section 15 Filed  
2006-03-24 - TEAS Section 8 & 15 Received  
2000-11-14 - Registered - Principal Register  
2000-08-22 - Published for opposition  
2000-07-21 - Notice of publication  
2000-06-03 - Approved for Pub - Principal Register (Initial exam)  
1999-12-14 - Letter of suspension mailed  
1999-10-18 - Communication received from applicant  
1999-08-17 - Non-final action mailed  
1999-08-04 - Case file assigned to examining attorney  
1999-07-30 - Case file assigned to examining attorney

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### CORRESPONDENCE INFORMATION

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**Correspondent**

Roberta Jacobs-Meadway (Attorney of record)

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