

ESTTA Tracking number: **ESTTA97700**

Filing date: **09/05/2006**

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	Shiseido Company, Ltd.		
Entity	Corporation	Citizenship	Japan
Address	7-5-5 Ginza Chuo-ku Tokyo, 104-8010 JAPAN		

Attorney information	Howard N. Aronson Lackebach Siegel LLP One Chase Road Lackebach Siegel Building Scarsdale, NY 10583 UNITED STATES haronson@LSLLP.com, nsaraco@LSLLP.com, tmefs@LSLLP.com Phone:914-723-4300
----------------------	---

**Applicant Information**

Application No	78770770	Publication date	08/08/2006
Opposition Filing Date	09/05/2006	Opposition Period Ends	09/07/2006
Applicant	Evey, David S. Suite 421 9190 West Olympic Blvd. Beverly Hills, CA 90212 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. All goods and sevices in the class are opposed, namely: Personal care products, namely, shower and bath gel, hand and body and face lotion, hand and body face soap, and bath salts
---

Attachments	Notice of Opposition.pdf ( 6 pages )(402722 bytes )
-------------	---

Signature	/howard n. aronson/
Name	Howard N. Aronson
Date	09/05/2006

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

**Application Serial No.:** 78/770,770  
**Mark:** ZENSUAL & Design  
**International Class:** 3  
**Applicant:** David S. Evey  
**Published:** August 8, 2006

SHISEIDO COMPANY, LTD.,	X	
	:	
Opposer,	:	OPPOSITION NO.
	:	
v.	:	
	:	
DAVID S. EVEY,	:	
	:	
Applicant.	:	
	X	

**NOTICE OF OPPOSITION**

Shiseido Company, Ltd. (“Opposer”), a corporation organized and existing under the laws of Japan, believes that it will be damaged by registration of the ZENSUAL & Design mark shown in Application Serial No. 78/770,770 as applied for by David S. Evey (“Applicant”) in International Class 3.

As grounds for Opposition, Opposer alleges:

1. Opposer is a corporation organized and existing under the laws of Japan.
2. Opposer is in the business of manufacturing, having manufactured, distributing, promoting, advertising, offering for sale, and selling a wide variety of cosmetic, fragrance, and hair and body care products, including, without limitation, makeup

foundation, lipstick, nail polish, hand and skin moisturizing creams and lotions, perfumes, and hair conditioning oils (“Opposer’s Goods”).

3. In connection with Opposer’s Goods, Opposer is the owner the ZEN trademark (“Opposer’s Mark”).
4. Opposer has used Opposer’s Mark openly, notoriously and continuously in interstate commerce in connection with Opposer’s Goods since long prior to Applicant’s date of application.
5. In connection with Opposer’s Mark, Opposer is the owner of United States Trademark Registration No. 867,259 (“Opposer’s First Registration”), for ZEN, registered on March 25, 1969, for “makeup foundation, face powder, rouge, eye shadow, eye liner, mascara, lipstick, nail enamel and polish, hand and skin moisturizing creams and lotions, skin cleansing creams and lotions, lubricating night creams and lotions, perfumes, eau de cologne, bath oils, dusting powder, hair grooming oils, hair and scalp conditioning oils, permanent wave solutions, hair dyes, hair lacquer, hair rinse, depilatories, hair bleaches, personal deodorants, dentifrices, and toilet soaps,” in International Classes 3 and 5.
6. Opposer’s First Registration is valid and subsisting, and has become incontestable.
7. In connection with Opposer’s Mark, Opposer also is the owner of United States Trademark Registration No. 2,700,904 (“Opposer’s Second Registration”), for ZEN (stylized), registered on March 25, 2003, for “perfumeries and cosmetics, namely, skin soaps, deodorant soaps, shower gel, perfume, cologne, lipstick,

blush, rouge and makeup; skin and body care preparations, namely, skin creams, skin conditioners, body mask creams, body oils and body powder; hair care preparations, namely, shampoo and conditioner” in International Class 3.

8. Opposer’s Second Registration is valid and subsisting.
9. Throughout the years, Opposer has expended substantial amounts of money, time and effort in advertising, promoting and popularizing Opposer’s Mark.
10. The trade, industry and public have throughout the years used, associated and attributed usage of Opposer’s Mark with Opposer and Opposer alone, so that the trade in general and the purchasing public in particular have come to know and recognize Opposer’s Mark and that Opposer’s Goods originate from and belong solely to Opposer.
11. Opposer’s Mark is a strong trademark and is famous in the United States and throughout the world, and has developed goodwill and a good reputation exclusive to Opposer.
12. Upon information and belief, Applicant is an individual citizen of the United States, with an address of 9190 West Olympic Blvd., Suite 421, Beverly Hills, California 90212.
13. The purported ZENSUAL & Design trademark applied for in Applicant’s application is confusingly and deceptively similar to Opposer’s Mark, which Opposer has been using long prior to Applicant’s application; hence, Applicant is not entitled to adopt, use or seek registration of the purported ZENSUAL &

Design trademark in connection with the goods identified in Applicant's application.

14. The goods identified in Applicant's application in International Class 3 are "personal care products, namely, shower and bath gel, hand and body and face lotion, hand and body face soap, and bath salts." ("Applicant's Goods").
15. Applicant's Goods in Class 3 are identical, nearly identical, and/or closely related to Opposer's Goods sold under Opposer's Mark.
16. Applicant's Goods are of the type distributed and sold through the same channels of trade as Opposer's Goods, to the same class of purchasers 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.
17. Opposer's Mark and Applicant's purported mark in Class 3 are nearly identical in appearance, connotation and pronunciation, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake and/or deception among the trade and consumers.
18. "ZEN" is the first and most dominant term of Applicant's purported mark ZENSUAL & Design, and is also the whole of Opposer's Mark ZEN.
19. Because of the strength and fame of Opposer's Mark and because Applicant's purported mark is nearly identical 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.

20. The contemporaneous use by Applicant of ZENSUAL & Design will dilute Opposer's rights and will eventually result in a lack of designation or indication or origin and a loss of distinctiveness and exclusivity in Opposer's Mark if Applicant is allowed to register its purported mark.
21. Opposer has superior and paramount rights as compared to Applicant and Opposer has used Opposer's Mark in commerce continuously and from a time prior to any date claimed by or available to Applicant. Consequently, Opposer avers that confusion, mistake, deception, dilution, and blurring in the trade and in the minds of the purchasers as between Opposer's Mark and Applicant's purported mark, and as to the origin of their respective goods, will be likely and bound to occur with resulting damage to Opposer, within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052 (d).

**WHEREFORE**, Opposer respectfully requests that the Opposition be sustained and the registration of ZENSUAL & Design to Applicant be refused in connection with Class 3.

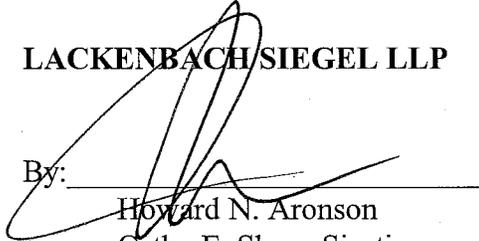
As this Notice of Opposition is being filed electronically via the Electronic System for Trademark Trials and Appeals, Opposer has assumed that the requirement of 37 C.F.R. §2.104 that it be filed in duplicate is waived.

**The Commissioner is hereby authorized to charge Opposer's Attorneys' Deposit Account No. 100100 for the requisite opposition filing fee of \$300.00, 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: 

Howard N. Aronson  
Cathy E. Shore-Sirotnin  
Attorneys for Opposer  
One Chase Road  
Scarsdale, New York 10583  
(914) 723-4300

Dated: Westchester, New York  
September 5, 2006