

ESTTA Tracking number: **ESTTA98569**

Filing date: **09/11/2006**

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	BC International Cosmetic & Image Services, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	14901 S. Orange Blossom Trail Orlando, FL 32837 UNITED STATES		

Attorney information	Robert A. Becker Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES rbecker@frosszelnick.com Phone:212-813-5900
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### Applicant Information

Application No	78550816	Publication date	08/22/2006
Opposition Filing Date	09/11/2006	Opposition Period Ends	09/21/2006
Applicant	Saint Marc, Linda 55 Continental Avenue Forest Hills Gardens, NY 11375 UNITED STATES		

### Goods/Services Affected by Opposition

Class 003.

All goods and services in the class are opposed, namely: Hair coloring; breath fresheners; non-medicated cosmetics, non-medicated personal care products and home fragrance products, namely, after-shave balm, after-shave emulsions, after-shave gels, after-shave lotions, age spot lightening creams, anti-cellulite creams and gels, antiperspirant, aromatherapy creams, aromatherapy lotions, aromatherapy oils, aromatherapy pillows comprising potpourri in fabric containers, aromatic shower steam creams, artificial fingernails, astringent for the face and skin for cosmetic purposes, bath beads, bath cream, bath cubes, bath fizzies, bath foam, bath grains, bath milk, bath oil, bath salts, beauty mask, blemish stick, blush, body balm, body bar soaps, body butter, body essence fragrance spray, body gel, body glitter, body luster spray lotion, body make-up powder, body mask, body mist, body oil, body paint, body powder, body scrub, body smoothing cream, body soap, body splash, body toner, body wash, bronzing cosmetics, bubble bath, buffing bar, cleansing skin gels, concealer, cosmetic preparations for skin renewal, creams and lotions for body, creams and lotions for cuticles, creams and lotions for eyes, creams and lotions for face, creams and lotions for feet, creams and lotions for hands, cream body wash, cream cleanser, cream highlighter, cream concealer, cuticle cream, cuticle cream stick, cuticle oil pen, deodorant, depilatories, eau de parfum, eau de toilette, effervescent bath tablets, emulsifying preparations for the skin, essential oils for personal use, exfoliators for the face, exfoliators for the feet, exfoliators for the skin, eye gels, eye makeup pencils, eye shadow, eyeliner, eye makeup remover, eyebrow pencils, eyebrow powders, eye cream, eye mask, non-medicated eye treatment preparations for use in removing wrinkles around the eyes, face

balm, face cleanser, face foundation, face gel, face highlighter, face make-up, facial mask, face mist, face moisturizer, face polisher, face powder, face scrub, face soap, face wash, face toner, firming lotions, firming creams, foam bath, foot powder, foot scrub, foot soak, foot spray, foundation make-up, fragrant body sprays, fragrant body splashes, fragrant body mist, fragrance gels, fragrance oil, gel face wash, glycerin soap, hair conditioner, hair detangler, hair dye, hair gel, hair glitter, hair inhibitor lotion, hair highlighter, hair lightening spray, hair mascara, hair mist, hair pomade, hair reconstructor; hair removing cream, hair repair mousse, hair rinse, hair shampoo, hair shine serum, hair spray, hair straightener, hair styling mousse, hair volumizer, hand balm, hand cleansing spray, hand cream, hand exfoliator, hand lotion, hand renewer cream, hand soap, hand wash, incense, leg bronzer, leg refreshing cream, line prevention concentrate, line prevention serum, wrinkle line prevention cream, wrinkle reducing serum, lip balm, lip cream, lip gloss, lip liner pencil, lip paint, lip protector cream, lip shine, lip stick, lip tint, lip treatment preparation, liquid makeup, lotions impregnated into a delivery device in the configuration of a glove intended to be worn for the purpose of delivering the creams and lotions, lotion colognes for body, face and hands, makeup remover, mascara, massage cream, massage lotion, massage oil, mineral bath salts, moisturizing body oil spray, moisturizing aloe skin gel, mood enhancing massage ointment, mood enhancing body mist, mood enhancing skin cream, muscle soak bath salts, nail cream, nail enamel, nail polish, nail polish remover, nail stencils, nail strengthener, night eye cream, night nourishing cream, non-medicated creams and ointments for the prevention and alleviation of sun burn, oils and oil sprays for hair conditioning, oil blotting sheets for the skin, perfume, penetrating skin rubbing cream, perfume oils, pillow mist, post-suntanning lotion for the body, potpourri, powder for the body, powder for the face, powder for the feet, pre-suntanning lotion for the body, pulse point body cream, pulse point therapy body oils, pumice stones for personal use, replenishing beauty masks, replenishing skin cream, refills for electric room fragrance dispensers, room fragrance gel and spray, rouge, sachets, salt scrubs for the skin, scented bath gels and crystals, sea salt exfoliator for the skin, self tanning preparation, shaving cream, shea butter hand cream, shea butter treatment stick for use on the skin, shower cream, shower foam, shower gel, shower scrub cream, skin bronzing cream, non-medicated skin care preparations, skin cleansing wipes, skin freshener, skin moisturizer, skin scrub cream, skin serum, smoothing body oil, soap, styling foam, sugar scrub for the skin, sun protecting hair spray, sunscreen, sun block for the body, sun block for the face, sunless tanning creams and lotions for the body and face, suntan lotion for the body, suntan lotion for the face, talcum powder, toners, patches containing sun screen and sun block for use on the skin and non-medicated ointments for the prevention and treatment of sunburn

Class 004.

All goods and services in the class are opposed, namely: Candles, both plain and scented

Class 014.

All goods and services in the class are opposed, namely: Jewelry, namely, costume jewelry and jewelry made of precious and non-precious metals and stones; jewelry, namely, bracelets, brooches, buckles for watchstraps, charms, chains; clocks; cuff-links, earrings, jewelry cases and boxes of precious metal, jewelry containing cosmetics; necklaces, pendants, pins being jewelry, rings, tie tacks, watches; watchbands; watch cases, and wrist watches

Class 016.

All goods and services in the class are opposed, namely: Publications, namely, brochures, catalogs, guides, pamphlets, magazines, newsletters, and books containing advice and product information related to beauty care, makeup, fragrances, skin care, travel, global destinations and culture; posters, prints, decals, photos, postcards, greeting cards and stationery; paper and plastic gift bags, gift wrap paper; beauty care instructional manuals, notepads, agendas, calendars, pens and pencils

Class 018.

All goods and services in the class are opposed, namely: Articles of leather, imitation leather, fabric and plastic, namely all-purpose sport and athletic bags, beach bags, book bags, backpacks, shoulder bags, handbags, waist packs, tote bags, purses, clutches, evening bags, coin and change purses, cosmetic bags sold empty, vanity cases sold empty, toiletry cases sold empty, grooming cases sold empty, attaché cases and bags, briefcases, briefcase type portfolios, luggage, travel bags, suitcases, garment bags for travel, and travelers' shoe bags; wallets; leather key chains; umbrellas; key cases; business and credit card cases

Class 025.

All goods and services in the class are opposed, namely: Women's sport, leisure and casual wear, namely, lingerie, namely, pajamas, robes, and slippers; clothing, namely, bandanas, bathing suits, bath robes, bikinis, blazers, blouses, boots, brassieres, caftans, camisoles, capes, caps, cardigans,

coats, cover-ups, belts, dresses, ear muffs, evening gowns, fur and faux fur coats and jackets, girdles, gloves, halters tops, hats, hosiery, jackets, jeans, jogging shorts, jogging suits, leggings, mittens, mufflers, negligees, nightgowns, overcoats, pajamas, panties, pants, pantyhose, parkas, raincoats, robes, sandals, scarves, shawls, shoes, shorts, skirts, slippers, sneakers, socks, sport jackets, stockings, suits, suspenders, sweaters, sweat shirts, sweat pants, sweat swimwear, teddies, ties, tops, tunics, turbans tuxedos, t-shirts, underwear, vests, warm-up suits, and wraps

Attachments	060911-0502422-Notice of Opposition-cmw.pdf ( 13 pages )(248566 bytes )
Signature	/Robert Becker/
Name	Robert A. Becker
Date	09/11/2006

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

In the Matter of Application Serial No. 78/550,816  
Trademark: HOLIDAY SPA ESCAPE  
Opposer's Ref: BCI USA TC-05/02422

-----X	:	
BC INTERNATIONAL COSMETIC & IMAGE	:	
SERVICES, INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	Opposition No.
LINDA SAINT MARC,	:	
	:	
Applicant.	:	
	:	
-----X	:	

**NOTICE OF OPPOSITION**

Opposer, BC International Cosmetic & Image Services, Inc., a corporation organized and existing under the laws of Delaware, located and doing business at 14901 South Orange Blossom Trail, Orlando, FL 32837, believes that it will be damaged by registration of the mark HOLIDAY SPA ESCAPE, which is the subject of Application Serial No. 78/550,816, published in the Official Gazette of August 22, 2006, and hereby opposes same.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer is the owner of the trademarks SPA ESCAPE and SPA ESCAPE AT WORK used in connection with conducting conferences and seminars and arranging meetings in the field of cosmetics and skin care products and services. These trademarks have been used in commerce by the Opposer's related company, BeautiControl, Inc., since at least as early as March 2003 and August 2004, respectively. Opposer is also the owner of the trademarks ESCAPE: THE BEAUTICONTROL SPA EXPERIENCE and TIME TO ESCAPE: THE BEAUTICONTROL SPA EXPERIENCE used in connection with videos concerning spa treatments and products and in connection with the services with which opposer's SPA ESCAPE

and SPA ESCAPE AT WORK marks are used. The ESCAPE: THE BEAUTICONTROL SPA EXPERIENCE and TIME TO ESCAPE: THE BEAUTICONTROL SPA EXPERIENCE marks have been used in commerce by BeautiControl, Inc., since at least as early as February 2003 and September 2003, respectively.

2. Opposer is the owner of the following registrations on the Principal Register in the U.S. Patent and Trademark Office:

<u>REG. NO.</u>	<u>MARK</u>	<u>GOODS</u>	<u>REG. DATE</u>	<u>FILING DATE</u>	<u>FIRST USE IN COMMERCE DATE</u>
2,997,506	SPA ESCAPE	“educational services, namely, conducting conferences and seminars in the field of cosmetics and skin care products and services and arranging meetings in the field of cosmetics and skin care products and services” in Class 41	9/20/05	5/7/04	3/03
3,034,429	SPA ESCAPE AT WORK	“educational services, namely, conducting conferences and seminars in the field of cosmetics and skin care products and services and arranging meetings in the field of cosmetics and skin care products and services” in Class 41	12/27/05	4/6/04	8/04

2,851,058	ESCAPE: THE BEAUTICONTROL SPA EXPERIENCE	“videos featuring information on spa treatments and the use of spa products” in class 9; “conducting in-home health spa services, namely, cosmetic body and facial care services” in Class 44	6/8/04	8/6/03	2/03
2,944,828	TIME TO ESCAPE: THE BEAUTICONTROL SPA EXPERIENCE	“videos featuring information on spa treatments and the use of spa products” in class 9; “conducting in-home health spa services, namely, cosmetic body and facial care services” in Class 44	4/26/05	9/27/02	9/03

Printouts of these registrations from the TESS database are attached as Exhibit A. These registrations are valid and subsisting.

3. On January 20, 2005, Applicant filed Application Ser. No. 78/550,816 to register the mark HOLIDAY SPA ESCAPE for a wide variety of cosmetics, skin care products, facial care products, publications relating to beauty care and skin care, and other products on the basis of intent to use the mark for the aforesaid goods.

4. Upon information and belief, no use of the mark HOLIDAY SPA ESCAPE was made by Applicant prior to January 20, 2005, Applicant’s filing date.

5. The mark HOLIDAY SPA ESCAPE sought to be registered by Applicant for the above goods is made up of Opposer’s trademark SPA ESCAPE preceded by the descriptive word HOLIDAY, and is confusingly similar to Opposer’s other three trademarks set forth above. Like Opposer’s mark, Applicant’s mark is to be used in connection with cosmetic products, skin care products, facial care products, and other products often utilized at spas or in spa treatments. Applicant’s mark is therefore likely to cause confusion with Opposer’s marks and goods and

services or to cause mistake or to deceive, particularly since Opposer has already expended its brand from SPA ESCAPE to SPA ESCAPE AT WORK.

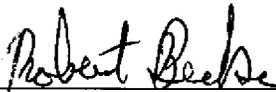
6. Use of the mark sought to be registered by Applicant is likely to cause confusion or to cause mistake or to deceive the purchasing public by reason of Opposer's previously used marks, by creating the mistaken belief that Applicant's goods are approved, endorsed, or sponsored by Opposer, or that Opposer is the source of Applicant's goods, or that the goods of Applicant are in some other way associated with Opposer, all to Opposer's grave injury and harm.

WHEREFORE, Opposer respectfully requests that its opposition be sustained and the application to register the mark HOLIDAY SPA ESCAPE, Serial No. 78/550,816, be denied.

Dated: New York, New York  
September 11, 2006

Respectfully submitted,

**FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.**

By:  \_\_\_\_\_

Robert A. Becker  
Attorneys for Opposer  
866 United Nations Plaza  
New York, New York 10017  
(212) 813-5900

# **EXHIBIT A**



**United States Patent and Trademark Office**

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## SPA ESCAPE

<b>Word Mark</b>	<b>SPA ESCAPE</b>
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Educational services, namely, conducting conferences and seminars in the field of cosmetics and skin care products and services and arranging meetings in the field of cosmetics and skin care products and services. FIRST USE: 20030300. FIRST USE IN COMMERCE: 20030300
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78415140
<b>Filing Date</b>	May 7, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	June 28, 2005
<b>Registration Number</b>	2997506
<b>Registration Date</b>	September 20, 2005

**Owner** (REGISTRANT) BC International Cosmetic & Image Services, Inc. CORPORATION DELAWARE  
14901 S. Orange Blossom Trail Orlando FLORIDA 32837

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Susan Upton Douglass

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPA" APART FROM THE MARK AS SHOWN

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# SPA ESCAPE AT WORK

<b>Word Mark</b>	<b>SPA ESCAPE AT WORK</b>
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Educational services, namely, conducting conferences and seminars in the field of cosmetics and skin care products and services and arranging meetings in the field of cosmetics and skin care products and services. FIRST USE: 20040800. FIRST USE IN COMMERCE: 20040800
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78397296
<b>Filing Date</b>	April 6, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	October 4, 2005
<b>Registration Number</b>	3034429
<b>Registration Date</b>	December 27, 2005

**Owner** (REGISTRANT) BC International Cosmetic & Image Services, Inc. CORPORATION DELAWARE  
14901 S. Orange Blossom Trail Orlando FLORIDA 32837

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Susan Upton Douglass

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Typed Drawing**

<b>Word Mark</b>	<b>ESCAPE THE BEAUTICONTROL SPA EXPERIENCE</b>
<b>Goods and Services</b>	IC 009. US 021 023 026 036 038. G & S: videos featuring information on spa treatments and the use of spa products. FIRST USE: 20030200. FIRST USE IN COMMERCE: 20030200
	IC 044. US 100 101. G & S: conducting in-home health spa services, namely, cosmetic body and facial care services. FIRST USE: 20030200. FIRST USE IN COMMERCE: 20030200
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Design Search Code</b>	
<b>Serial Number</b>	78284066
<b>Filing Date</b>	August 6, 2003
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	March 16, 2004
<b>Registration Number</b>	2851058
<b>Registration Date</b>	June 8, 2004
<b>Owner</b>	(REGISTRANT) BC International Cosmetic & Image Services, Inc. CORPORATION DELAWARE 14901 South Orange Blossom Trail Orlando FLORIDA 32837
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Susan Upton Douglass
<b>Prior Registrations</b>	0853350;1856494;AND OTHERS

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPA" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**Typed Drawing**

**Word Mark**                    TIME TO ESCAPE: THE BEAUTICONTROL SPA EXPERIENCE

**Goods and Services**        IC 009. US 021 023 026 036 038. G & S: videos featuring information on spa treatments and the use of spa products. FIRST USE: 20030900. FIRST USE IN COMMERCE: 20030900

   IC 044. US 100 101. G & S: conducting in-home health spa services, namely, cosmetic body and facial care services. FIRST USE: 20030900. FIRST USE IN COMMERCE: 20030900

**Mark Drawing Code**        (1) TYPED DRAWING

**Design Search Code**

**Serial Number**                78168660

**Filing Date**                    September 27, 2002

**Current Filing Basis**        1A

**Original Filing Basis**        1B

**Published for Opposition**    April 22, 2003

**Registration Number**        2944828

**Registration Date**            April 26, 2005

**Owner**                            (REGISTRANT) BC International Cosmetic & Image Services, Inc. CORPORATION  
 DELAWARE 14901 S. Orange Blossom Trail Orlando FLORIDA 32837

**Assignment Recorded**        ASSIGNMENT RECORDED

**Attorney of Record**            Susan Upton Douglass

**Prior Registrations**            0853350;1856494;AND OTHERS

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPA" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK, SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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