

ESTTA Tracking number: **ESTTA140883**

Filing date: **05/16/2007**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Admar International, Inc.
Granted to Date of previous extension	05/16/2007
Address	3030 Aurora Avenue Monroe, LA 71201 UNITED STATES

Name	Luv n' care
Granted to Date of previous extension	05/16/2007
Address	3030 Aurora Avenue Monroe, LA 71201 UNITED STATES

Attorney information	Morris E. Cohen Law Office of Morris E. Cohen, P.C. 1122 Coney Island Avenue, Suites 216-217 Brooklyn, NY 11230 UNITED STATES mcohen@ipcases.com Phone:718-859-8009
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Applicant Information

Application No	78399751	Publication date	01/16/2007
Opposition Filing Date	05/16/2007	Opposition Period Ends	05/16/2007
Applicants	Ashworth, Eric N. 75 Upland Road Kentfield, CA 94904 UNITED STATES Ashworth, Trisha L. 75 Upland Road Kentfield, CA 94904 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: PROVIDING ON-LINE BOOKS, CATALOGS, BROCHURES AND PAMPHLETS IN THE FIELDS OF HEALTH, PREGNANCY, PARENTING AND CHILD CARE; PROVIDING ONLINE PUBLICATIONS IN THE NATURE OF
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NEWSLETTERS AND INFORMATIONAL SHEETS RELATING TO HEALTH, PREGNANCY, PARENTING AND CHILD CARE; INFORMATION SERVICES IN THE NATURE OF A NEWSLETTER IN THE FIELDS OF HEALTH, PREGNANCY, PARENTING AND CHILD CARE DELIVERED ON A COMPUTER NETWORK BY EMAIL

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2335700	Application Date	04/20/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	NUBY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1998/01/01 First Use In Commerce: 1998/01/01 Infant Pacifier(s)		

Related Proceedings	91175772
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Attachments	75687481#TMSN.gif (1 page)(bytes) Notice of Opposition (4009 047 502) (filed 5-16-07).pdf (4 pages)(33279 bytes)
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Signature	/morris cohen/
Name	Morris E. Cohen
Date	05/16/2007

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

ADMAR INTERNATIONAL, INC., and
LUV N' CARE, LTD.

Opposers,

v.

ERIC N. ASHWORTH AND TRISHA
L. ASHWORTH

Applicants.

Opposition No. _____

Serial No. 78/399,751

Attorney Docket No. 4009.047.502

NOTICE OF OPPOSITION

Opposers Admar International, Inc. (“Admar”) and Luv n’ care, Ltd. (“Luv n’ care”) (collectively “Opposers”) believe that they will be damaged by the registration of the mark NEWBIE, shown in U.S. Trademark Application No. 78/399,751, and therefore oppose Applicants’ registration of that mark.

The grounds for this Opposition are as follows:

1. U.S. Trademark Application No. 78/399,751 was filed by Eric N. Ashworth and Trisha L. Ashworth (“Applicants”) in International Class 41 on April 9, 2004, and was published for opposition on January 16, 2007. Opposers have requested and received extensions of time in which to oppose the application, such that the present Notice of Opposition is timely filed.
2. Opposer Admar International Inc. (“Admar”) is a corporation of the State of Delaware with a place of business at 3030 Aurora Avenue, Monroe, Louisiana 71201.
3. Admar is the owner of U.S. Trademark Registration No. 2,335,700 (“the ‘700 registration”) for the trademark NUBY. The application resulting in the ‘700 registration was

filed on April 20, 1999 for infant pacifiers in class 10, and was registered on March 28, 2000. The '700 registration remains in good standing and effect, with filings under Sections 8 and 15 (a Statement of Use and Declaration of Incontestability) all having been timely made.

4. Opposer Luv n' care, Ltd. ("Luv n' care") is a corporation of the State of Louisiana with a place of business at 3030 Aurora Avenue, Monroe, Louisiana 71201.

5. Luv n' care sells goods under the NUBY mark throughout the United States under rights from Admar, and has a direct and personal stake in the outcome of this proceeding.

6. Opposers have used the NUBY trademark on a wide variety of children's and infants' products sold in interstate commerce, including, but not limited to, infant pacifiers, baby bottles, plush toys and dolls, children's no-spill drinking cups, and so forth.

7. Since commencing use of the NUBY mark, Opposers have generated, and continue to generate, millions of dollars in revenue from the sale of goods under their mark in the United States.

8. Substantial sums of money, time, and effort have also been expended in promoting and popularizing Opposers' NUBY brand goods.

9. As a result of Opposers' use of the NUBY mark and the promotion of goods sold in connection therewith, the NUBY mark has become well known in the United States and is recognized as identifying Opposers' high-quality products and services. The NUBY mark and its associated goodwill are valuable assets of Opposers.

10. NUBY is a famous mark for childrens' and infants' products.

11. In the present trademark application, Applicants have applied to register the mark NEWBIE for online books, catalogs, brochures and pamphlets in the fields of health, pregnancy,

parenting and child care, and online publications and information services relating to the same, in Class 41.

12. Opposers' trademark (NUBY) is coined word which is pronounced by some as "NEWBIE" (and by others as "NUBBIE"). Thus, Applicants' mark (NEWBIE) is pronounced in the same way as one of the pronunciations of Opposers' mark (NUBY).

13. The purchasers and users of Opposers' and Applicant's goods are also the same.

14. The mark described in Applicants' trademark application and their proposed goods (for pregnancy, parenting and child care) are so closely related to Opposers' mark and their goods (for babies and young children) such that confusion is likely between those two marks.

15. Applicants' mark so resembles Opposers' mark previously registered in the Office and used by Opposers throughout the United States, as to be likely to cause confusion, or to cause mistake, or to deceive, when used on or in connection with the goods of Applicants.

16. The trade and purchasing public are likely to be misled into believing that goods marketed under Applicants' proposed NEWBIE trademark originate with or are otherwise authorized by, sponsored by, licensed by, or associated with Opposers.

17. Registration of NEWBIE for the goods described in Applicants' application is also likely to dilute the distinctive quality of Opposers' famous NUBY mark.

18. By reason of all of the foregoing, Opposers would be greatly damaged by registration of the mark NEWBIE to Applicants.

WHEREFORE, Opposers pray that this Opposition be sustained, and that Applicants' mark be refused registration.

Please direct all correspondence to Opposers' attorney listed below.

Dated: May 16, 2007

Respectfully submitted,

/morris cohen/

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