

ESTTA Tracking number: **ESTTA174453**

Filing date: **11/13/2007**

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

Proceeding	91179491
Party	Defendant Cosmetic Warriors Limited
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Date	11/13/2007
Attachments	lushbust_20071113173144.pdf ( 6 pages )(185986 bytes )



3. Applicant admits that it is a corporation duly organized and existing under the laws of the United Kingdom, with a mailing address of 29 High Street, Poole, Dorset BH15 1AB, United Kingdom.

4. Applicant admits that the U.S. Patent and Trademark Office's database (via TARR web server) contains a report that Cygen Cosmeceuticals Inc. has a pending U.S. Trademark Application for the stylized mark LUSHBUST, Application Serial No. 78/846213, for "topical herbal cream for firming and enhancing breasts" in international class 3, which was filed with the Trademark Office on March 26, 2006. Applicant further admits that Application Serial No. 78/846213 is the subject of Opposition No. 91178356.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition and, therefore, denies same and leaves Opposer to its proof.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition and, therefore, denies same and leaves Opposer to its proof.

7. Applicant denies the allegations contained in Paragraph 7 of the Notice of Opposition.

8. Applicant admits that it filed U.S. Application No. 78/747180 for the mark LUSH on November 4, 2005 in connection with hair dressing services; hair coloring services; beauty therapy services; beauty salon services; beauty demonstrations; aromatherapy; skin care services; massage services; beauty treatments; nail care and manicure services; cosmetic treatments; trichology services; counseling, advisory and

information services, all relating to the aforesaid. Applicant further admits that Application Serial No. 78/747180 published for opposition on August 14, 2007 for the mark LUSH in connection with “hair salon services, namely, hair styling, coloring, washing, shampooing, conditioning, applying hair masks, head massages, and scalp massages; beauty salon therapy services, namely, cleansing of the skin, applying face masks, applying back pack masks, skin peelers, steam treatments, toning, shaving, exfoliation treatments, treatments using creams and lotions against problem skin or older skin, and facial and body treatments consisting of a combination of creams/lotions and massage; beauty salon services; aromatherapy services; skin care salon services; massage services; nail care and manicure services; trichology services, namely, providing advice and consultancy relating to hair disorders in the nature of greasy hair, lank hair, dry hair, dandruff and split hairs; counseling, advisory and information services in the field of beauty and cosmetics, and providing information about beauty by way of beauty demonstrations.”

9. Applicant denies the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant admits that the Notice of Opposition, No. 91178356, alleges a likelihood of confusion between Applicant’s family of LUSH marks [including U.S. Reg. Nos. 2,282,428 (LUSH), 2,853,483 (LUSH), 3,102,767 (LUSH), 3,001,303 (LUSH), 3,008,685 (LUSH) and U.S. Application No. 78/747180 (LUSH)], and Opposer’s LUSHBUST mark, Serial No. 78/846213.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in Paragraph 14 of the Notice of Opposition.

**AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief can be granted.

2. Opposer is the owner of U.S. Reg. No. 2,282,428 for the mark LUSH in connection with perfumes; non-medicated toilet and cosmetic preparations, namely, lotions, powders and creams for use on the skin, dentifrices, cosmetic depilatory creams, personal deodorants, preparations for the care of the hair, shampoos, soaps, and essential oils for personal use. Said mark is registered on the Principal Register and is incontestable.

3. Opposer, unlike Applicant, has not suffered nor is likely to suffer any injury or harm to its business or property by reason of the registration of the mark LUSH in connection with the services listed in Application Serial No. 78/747180 due to Applicant's ownership of incontestable U.S. Reg. No. 2,282,428 for the mark LUSH registered on the Principal Register.

**WHEREFORE**, Applicant requests that Opposer's claims be dismissed, with prejudice.

It is believed that no fee is required for filing this paper. In the event that any fee is required, the Commissioner of Trademarks is authorized to charge any fees in connection herewith to Deposit Account No. 13-2725.

Please direct all correspondence to:

John A. Clifford  
MERCHANT & GOULD P.C.  
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Minneapolis, MN 55402  
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Applicant herein appoints Danielle Mattessich, Scott Oslick, Christopher Schulte, Andrew Ehard, Brian Batzli, Scott Johnston, Gregory Golla, Brent Routman, Charles Golla and others, to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

COSMETIC WARRIORS LIMITED

By its attorneys,

Nov. 13, 2007  
Date

  
John A. Clifford  
Danielle I. Mattessich  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ANSWER TO THE NOTICE OF OPPOSITION was served, via first-class mail (with a copy via e-mail), postage prepaid to Michael Santucci, at Silveman Santucci LLP, 500 West Cypress Creek Road Suite 500, For Lauderdale, FL 33309 (mis@500law.com) this 13<sup>th</sup> day of November 2007.

  
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Danielle I. Mattessich