

ESTTA Tracking number: **ESTTA180337**

Filing date: **12/12/2007**

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 party opposes registration of the indicated application.

Opposer Information

Name	Jason Natural Products, Inc.
Granted to Date of previous extension	12/12/2007
Address	3515 Eastham Drive Culver City, CA 90232 UNITED STATES

Attorney information	Robert W. Smith McCarter & English, LLP 100 Mulberry Street, Four Gateway Center Newark, NJ 07101 UNITED STATES rsmith@mccarter.com, kknoll@mccarter.com, dpopovic@mccarter.com Phone:973-622-4444
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Applicant Information

Application No	78922447	Publication date	08/14/2007
Opposition Filing Date	12/12/2007	Opposition Period Ends	12/12/2007
Applicant	Noskin, Kenneth, M 217 E 86th Street- Suite 345 New York, NY 10028 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 003. All goods and services in the class are opposed, namely: Cosmetics and skin care products, namely, creams, lotions, soaps, skin cleansers, body and skin moisturizers, body cream, hand cream, body lotion, hand lotion, eye cream, eye gel, body scrub, body spray, body milk, exfoliants for skin, foot cream, foot lotion, foot scrub; bath additives, namely, bath beads, bath crystals, bath gels, non-medicated bath salts, shower gel, shower soap, body wash, body soap, hand salve, namely, non-medicated skin salve, skin masks, skin toner, lip gloss, lip color, lip balms, lipstick, face and body powder, foundation, blushers, mascara, eye shadow, eyeliner, nail color, namely, nail polish, hair shampoo, hair conditioner, hair styling preparations, personal deodorant; suntanning preparations, namely, suntan lotion, after-sun lotion, self tanning lotion, non-medicated skin care preparations and cosmetic body care preparations gift sets; shaving preparations, namely, shaving lotion, shaving cream, shaving balm, shaving foam, shaving gel, after-shave; fragrances, namely, perfume, cologne, eau de toilette and scented room fragrances</p>
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	LIPS BEE HEALTHIER		
Goods/Services	lip care products		

Attachments	BEE HEALTHY Notice of Opposition.pdf (5 pages)(129791 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/robertwsmith/
Name	Robert W. Smith
Date	12/12/2007

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

JASON NATURAL PRODUCTS, INC. :

Opposer, :

-vs- :

KENNETH M. NOSKIN, :

Applicant. :

Mark: BEE HEALTHY
Serial No. 78/922,447

NOTICE OF OPPOSITION

In the matter of the application of Kenneth M. Noskin (hereinafter "Applicant") for the registration of the mark BEE HEALTHY on the Principal Register of the United States Patent and Trademark Office, Application Serial No. 78/922,447, published in the Official Gazette on August 14, 2007 at TM 500, Jason Natural Products, Inc., a corporation of the State of California with its principal place of business at 3515 Eastham Drive, Culver City, California 90232 (hereinafter "Opposer" or "Jason") believes it would be damaged by the registration of the mark shown in the above-referenced application and hereby opposes same under the provisions of Section 13 of the Trademark Act of July 5, 1946 (15 U.S.C. § 1063). The grounds for the opposition are as follows:

1. Opposer is a corporation which has been engaged since at least as early as 1962 in the manufacture and sale in the U.S. of natural skin, body, and hair care products, cosmetics, and oral health products.

2. Opposer since at least as early as June 2004, long prior to July 5, 2006, the date of first use upon which Applicant may rely, has adopted and continuously used LIPS BEE HEALTHIER (the “LIPS BEE HEALTHIER Mark” or “Opposer’s Mark”) trademark for lip care products (“Opposer’s Goods”) and sold such goods in retail stores throughout the United States.

3. By reason of the extensive promotion, advertising, and provision of high-quality products manufactured and distributed by Opposer in conjunction with the LIPS BEE HEALTHIER Mark since long prior to the July 5, 2006 filing date of the application herein opposed, the LIPS BEE HEALTHIER Mark has become famous, and the public and the trade industry have come to recognize the products offered in conjunction with the LIPS BEE HEALTHIER Mark as signifying Opposer and the Opposer’s Goods. Opposer’s use of its LIPS BEE HEALTHIER Mark has been continuous since its date of first use and the mark has not been abandoned.

4. Notwithstanding Opposers’ extensive prior rights in the LIPS BEE HEALTHIER Mark, Applicant on July 5, 2006 filed an application for registration of its BEE HEALTHY mark (the “Applicant’s Mark”), namely, Application No. 78/922,447, for “Cosmetics and skin care products, namely, creams, lotions, soaps, skin cleansers, body and skin moisturizers, body cream, hand cream, body lotion, hand lotion, eye cream, eye gel, body scrub, body spray, body milk, exfoliants for skin, foot cream, foot lotion, foot scrub; bath additives, namely, bath beads, bath crystals, bath gels, non-medicated bath salts, shower gel, shower soap, body wash, body soap, hand salve, namely, non-medicated skin salve, skin masks, skin toner, lip gloss, lip color, lip balms, lipstick, face and body powder, foundation, blushers, mascara, eye

shadow, eyeliner, nail color, namely, nail polish, hair shampoo, hair conditioner, hair styling preparations, personal deodorant; suntanning preparations, namely, suntan lotion, after-sun lotion, self tanning lotion, non-medicated skin care preparations and cosmetic body care preparations gift sets; shaving preparations, namely, shaving lotion, shaving cream, shaving balm, shaving foam, shaving gel, after-shave; fragrances, namely, perfume, cologne, eau de toilette and scented room fragrances,” in International Class 3. Applicant’s BEE HEALTHY mark was published for opposition in the Official Gazette on August 14, 2007 at TM 500.

5. There is no issue as to priority. Applicant’s July 5, 2006 filing date of the instant application in the United States is long after the date when the Opposer first used the LIPS BEE HEALTHIER Mark.

6. Applicant’s BEE HEALTHY mark proposed for registration is nearly identical in appearance, sound and commercial impression to Opposer’s LIPS BEE HEALTHIER Mark, and is used on and in connection with goods that are identical to those of Opposer. Accordingly, the Applicant’s BEE HEALTHY mark so closely resembles Opposer’s LIPS BEE HEALTHIER Mark as to be likely to be confused therewith and mistaken therefor. In addition, Applicant’s BEE HEALTHY mark is deceptively similar to Opposer’s LIPS BEE HEALTHIER Mark so as to cause confusion and lead to deception as to the origin of Applicant’s goods bearing Applicant’s BEE HEALTHY mark. Applicant’s BEE HEALTHY mark will also cause dilution and tarnishment of Opposer’s famous and distinctive LIPS BEE HEALTHIER Mark.

7. If Applicant is permitted to use and register its BEE HEALTHY mark for its goods in Class 3 as specified in the application herein opposed, confusion in the trade

resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between Applicant's BEE HEALTHY Mark and the Opposer's LIPS BEE HEALTHIER Mark. Accordingly, consumers will associate Applicant's goods with those of Opposer, and think that such goods are provided or endorsed by, or otherwise affiliated with, Opposer.

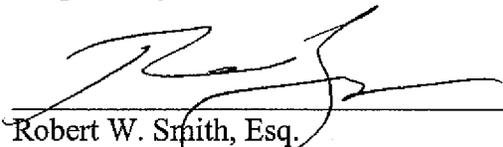
8. If Applicant is granted a registration in Class 3 herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its BEE HEALTHY mark. Such registration would be a source of damage and injury to the Opposer.

WHEREFORE, the Opposer prays that this Opposition be sustained and that Application Serial No.78/922,447 for the BEE HEALTHY mark be refused registration in Class 3, and for such other relief as may be deemed just and proper.

Dated: December 12, 2007

Respectfully Submitted,

By:


Robert W. Smith, Esq.
MCCARTER & ENGLISH, LLP
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100 Mulberry Street
Newark, NJ 07102-4096
(973) 622-4444

Attorneys for Opposer,
Jason Natural Products, Inc.

CERTIFICATE OF SERVICE UNDER 37 CFR §§ 2.111

I hereby certify that the foregoing Notice of Opposition to Application Serial No. 78/922,447 has been served via regular mail upon the Applicant at his correspondence address on December 12, 2007, as follows:

Kenneth M. Noskin
217 E 86th Street- Suite 345
New York, NY 10028


Deborah A. Popovic

Date: December 12, 2007