

ESTTA Tracking number: **ESTTA195198**

Filing date: **02/27/2008**

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	Luster Products, Inc.
Granted to Date of previous extension	02/27/2008
Address	1104 West 43rd Street Chicago, IL 60609 UNITED STATES
Attorney information	Burton S. Ehrlich Ladas & Parry LLP 224 S. Michigan Avenue Suite 1600 Chicago, IL 60604 UNITED STATES CHIUSTM@LADAS.NET Phone:312-427-1300

Applicant Information

Application No	79020251	Publication date	10/30/2007
Opposition Filing Date	02/27/2008	Opposition Period Ends	02/27/2008
International Registration No.	0840372	International Registration Date	11/10/2004
Applicant	LORIS AZZARO B.V. Laan van Westenenk 64 NL-7336 AZ Apeldoorn NETHERLANDS		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Perfumes

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1503517	Application Date	11/28/1986
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Registration Date	09/13/1988	Foreign Priority Date	NONE
Word Mark	PINK PROTECTION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 HAIR CARE PRODUCTS, NAMELY, SHAMPOOS, CREAM RINSE, STRAIGHTENERS, MOISTURIZING OIL, COLOR RINSE, SETTING LOTION, TEXTURIZER, HORMONE TREATMENT, PERMANENT RELAXER, OIL SPRAY, AND CURL ACTIVATOR		

U.S. Registration No.	1511336	Application Date	11/28/1986
Registration Date	11/01/1988	Foreign Priority Date	NONE
Word Mark	PINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1986/11/17 First Use In Commerce: 1986/11/17 HAIR CONDITIONER		

U.S. Registration No.	1649218	Application Date	02/27/1989
Registration Date	07/02/1991	Foreign Priority Date	NONE
Word Mark	PINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1986/11/00 First Use In Commerce: 1986/11/00 COMBINATION HAIR CONDITIONER AND MOISTURIZER		

U.S. Registration No.	1864492	Application Date	11/24/1993
Registration Date	11/29/1994	Foreign Priority Date	NONE
Word Mark	PINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1986/11/00 First Use In Commerce: 1986/11/00 hair care preparations; namely, shampoos, conditioners, moisturizers, softening sprays, softening lotions, softening gels, hair dressings, cream lotions, styling lotions, hair setting preparations, hair relaxing preparations, hair straightening preparations, hair texturizing preparations, hair cleansers, hair sheens, sprays for holding the hair, sprays for moisturizing the hair, sprays and conditioners for enhancing sheen in the hair, hot oil treatments for moisturizing and conditioning hair, oil treatments, kits for softening and conditioning the hair, kits for relaxing the hair, kits for straightening the hair, and kits for texturizing the hair, all		

	containing a hair relaxer, rinsing and/or neutralizing shampoo and conditioner		
U.S. Registration No.	2764677	Application Date	03/27/2000
Registration Date	09/16/2003	Foreign Priority Date	NONE
Word Mark	PINK SMOOTH TOUCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2001/12/31 First Use In Commerce: 2001/12/31 HAIR CARE PREPARATIONS, NAMELY, HAIR RELAXERS		

U.S. Registration No.	2938183	Application Date	03/26/2004
Registration Date	04/05/2005	Foreign Priority Date	NONE
Word Mark	PINK PLUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/12/00 First Use In Commerce: 2002/12/00 Non-medicated hair care preparations		

Attachments	76010274#TMSN.gif (1 page)(bytes) 78391409#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (6 pages)(1169138 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	/bsehrlich/
Name	Burton S. Ehrlich
Date	02/27/2008

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

IN THE MATTER OF APPLICATION SERIAL NO. 79/020,251
PUBLISHED IN THE OFFICIAL GAZETTE ON OCTOBER 30, 2007

LUSTER PRODUCTS, INC.,)
) Opposition No.:
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) Opposer,
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) v.)
)
)
)
) LORIS AZZARO B.V.,)
)
)
) Applicant.)

NOTICE OF OPPOSITION

In the matter of the trademark application of LORIS AZZARO B.V., for the registration of the mark **PINK TONIC** for a personal care product specifically identified as "perfumes" in International Class 3, **Application Serial No. 79/020,251** filed on November 29, 2005 published in the Official Gazette of October 30, 2007;

Opposer LUSTER PRODUCTS, INC., an Illinois corporation with a principal place of business at 1104 West 43rd Street, Chicago, Illinois 60609, believes it will be damaged by the registration of the mark shown in the application and hereby opposes the referenced application.

The grounds for the opposition are:

1. Continuously since long prior to November 29, 2005, the Applicant's filing date for its application, the Opposer has

marketed, advertised and sold and continues to sell throughout the United States under the names and marks **PINK, PINK PROTECTION, PINK PLUS,** and **PINK SMOOTH TOUCH** for an extensive range of hair care and personal care products.

2. Opposer's products sold under the above names and trademarks **PINK, PINK PROTECTION, PINK PLUS,** and **PINK SMOOTH TOUCH** have been extensively promoted throughout the United States to the relevant trade and to the consuming public.

3. By reason of Opposer's aforesaid extensive promotion and sale of its products, Opposer's names and trademarks **PINK, PINK PROTECTION, PINK PLUS,** and **PINK SMOOTH TOUCH** have acquired great recognition and renown, and the relevant trade and public have come to recognize the names and trademarks **PINK, PINK PROTECTION, PINK PLUS,** and **PINK SMOOTH TOUCH** as signifying Opposer exclusively.

4. Opposer has duly registered in the United States Patent and Trademark Office and owns the following registrations:

<u>REGISTRATION NUMBER</u>	<u>TRADEMARK</u>
1,503,517	PINK PROTECTION
1,511,336	PINK
1,649,218	PINK
1,864,492	PINK
2,764,677	PINK SMOOTH TOUCH

REGISTRATION NUMBER

2,938,183

TRADEMARK

PINK PLUS

5. Each of the registrations referenced in paragraph No. 4 for the above marks are valid subsisting registrations in full force and effect. Furthermore, Registration Nos. 1503517; 1649218; and 1864492 have each achieved "**incontestable**" registration status thereby constituting conclusive prima facie evidence of Opposer's exclusive right to use said marks in commerce.

6. Applicant's claimed trademark **PINK TONIC**, as proposed for use in connection with the personal care product set forth in the application, is so similar to Opposer's names and trademarks **PINK**, **PINK PROTECTION**, **PINK PLUS**, and **PINK SMOOTH TOUCH** used for a wide range of hair care and personal care products, as to be likely to create confusion, mistake or deception, all to the damage of Opposer, and to the damage of Opposer's rights in its names and trademarks, which names and marks have been in use long prior to the filing of the Applicant's trademark application.

7. Based upon information and belief the goods identified in the Applicant's application for the trademark **PINK TONIC** and those products sold under the Opposer's names and marks could be sold to the same potential consumers or end-users as the Opposer's products.

8. Based upon information and belief the goods identified in the Applicant's application for the trademark **PINK TONIC** and those products sold under the Opposer's names and marks could move through the same channels of distribution and be sold in the same stores or in stores selling competing items.

9. Opposer holds rights in a family of trademarks which include the name and mark **PINK** as a name and mark, or as part of an overall name and mark with said marks often promoted together. The Applicant's mark **PINK TONIC** is thereby confusingly similar to the Opposer's rights in its family of marks.

10. The Applicant filed the underlying application, on information and belief, with actual knowledge of the Opposer's name and mark **PINK**.

11. Use by the Applicant of the trademark **PINK TONIC**, for which registration is sought in the application opposed herein, is without Opposer's consent or permission.

12. Applicant's registration of the trademark **PINK TONIC** will result in damage and in the diminishment in sales and the loss of the value of the Opposer's names and marks.

13. Applicant, based upon information and belief, has not used the mark **PINK TONIC**. Applicant's earliest available possible priority date for the mark **PINK TONIC** is the filing date for its application, specifically November 29, 2005.

14. Applicant's registration of the trademark **PINK TONIC** will result in damage, dilution, and in the diminishment in sales

and the loss of the value of the Opposer's famous names and marks.

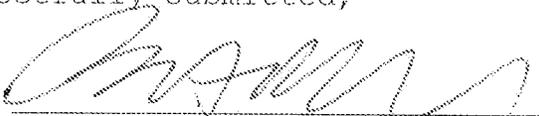
WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 79/020,251 and prays that this Opposition be sustained and that the Applicant's registration be denied.

This Notice of Opposition is being filed electronically with the TTAB and **please charge the required fee of \$300.00 to our deposit Account No. 120400.** Also, please charge any additional costs to our Deposit Account No. 120400.

Please address all correspondence to Burton S. Ehrlich, Ladas & Parry, 224 South Michigan Avenue, Suite 1600, Chicago, IL 60604, telephone (312) 427-1300.

Respectfully submitted,

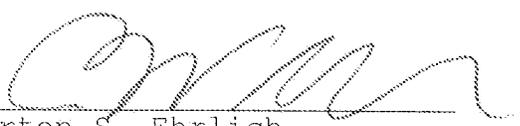
By:


One of Opposer's attorneys

Burton S. Ehrlich
Ladas & Parry
224 South Michigan Avenue
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(312) 427-1300

CERTIFICATE OF ELECTRONIC FILING

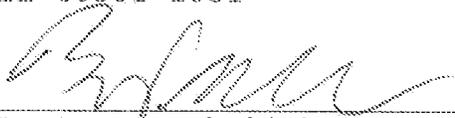
I hereby certify that this paper is being electronically filed with the United States Patent and Trademark Office on this 27th day of February, 2008.


Burton S. Ehrlich

CERTIFICATE OF SERVICE

The undersigned, one of Opposer's attorneys, hereby certifies that on February 27, 2008, he caused a true and correct copies of the foregoing NOTICE OF OPPOSITION to be served upon Applicant by First Class mail, postage pre-paid, at the following address:

Mary Catherine Merz
Merz & Associates, P.C.
1140 Lake Street
Suite 304
Oak Park, IL 60301-1051



Burton S. Ehrlich