

ESTTA Tracking number: **ESTTA299565**

Filing date: **08/06/2009**

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	ClearChoice Holdings, LLC		
Entity	LLC	Citizenship	Colorado
Address	East Crescent Parkway Suite 100 Greenwood Village, CO 80111 UNITED STATES		

Attorney information	G. Roxanne Elings Greenberg Traurig, LLP 200 Park Avenue New York, NY 10166 UNITED STATES elingsr@gtlaw.com, comptonk@gtlaw.com, dallavala@gtlaw.com, biancoc@gtlaw.com, falbyo@gtlaw.com
----------------------	---

Applicant Information

Application No	77685491	Publication date	07/07/2009
Opposition Filing Date	08/06/2009	Opposition Period Ends	08/06/2009
Applicant	Dale D. Goldschlag, D.D.S., P.C. 240 Riverside Boulevard, Apt. 17B New York, NY 10069 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. First Use: 2009/03/06 First Use In Commerce: 2009/03/06
All goods and services in the class are opposed, namely: Dental implant services

Grounds for Opposition

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.	3225921	Application Date	08/17/2005
Registration Date	04/03/2007	Foreign Priority Date	NONE
Word Mark	CLEARCHOICE DENTAL IMPLANTS		

Design Mark	CLEARCHOICE DENTAL IMPLANTS		
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 Dental services, namely dental implant services		

U.S. Registration No.	3181966	Application Date	08/17/2005
Registration Date	12/05/2006	Foreign Priority Date	NONE
Word Mark	CLEARCHOICE		
Design Mark	CLEARCHOICE		
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 Dental services, namely dental implant services		

U.S. Registration No.	3553219	Application Date	03/17/2008
Registration Date	12/30/2008	Foreign Priority Date	NONE
Word Mark	CLEARCHOICE DENTAL IMPLANT CENTER		

Design Mark	CLEARCHOICE DENTAL IMPLANT CENTER
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2006/12/17 First Use In Commerce: 2007/12/01 Dental services, namely, dental implant services

U.S. Application No.	77686189	Application Date	03/09/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLEARCHOICE		
Design Mark			
Description of Mark	The mark consists of the term "CLEARCHOICE" and a depiction of a shooting star design.		
Goods/Services	Class 044. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 Dental services, namely, dental implant services		

Attachments	78694876#TMSN.jpeg (1 page)(bytes) 78694863#TMSN.jpeg (1 page)(bytes) 77423988#TMSN.jpeg (1 page)(bytes) 77686189#TMSN.jpeg (1 page)(bytes) CLEAR CHOICE.pdf (5 pages)(19217 bytes)
-------------	--

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	/GRE/
Name	G. Roxanne Elings

Date	08/06/2009
------	------------

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

In re: U.S. Application Serial No. 77/685,491
Mark: RIGHTCHOICE
Published: July 7, 2009

-----x

ClearChoice Holdings LLC.

Opposer,

NOTICE OF OPPOSITION

-against-

Dale D. Goldschlag, D.D.S., P.C.

Applicant.

-----x

SIRS:

Opposer, Clear Choice Holdings LLC (hereinafter, “Opposer” or “Clear Choice”) believes that it will be damaged by the registration of the above-identified trademark and hereby opposes the registration thereof and alleges as follows:

FACTS

1. Upon information and belief, Applicant Dale D. Goldschlag, D.D.S., P.C., (hereinafter, “Applicant”) is a Professional Corporation, organized and existing under the laws of the state of New York, with a place of business at 240 Riverside Boulevard, Apt. 17B, New York, NY 10069.

2. On or about March 6, 2009, Applicant filed Trademark Application Serial No. 77/685,491 (the “Application”), for the RIGHTCHOICE trademark (“Applicant’s Mark”), in International Class 44 for use in connection with “Dental Implant Services”, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a).

3. On or about July 7, 2009 Applicant’s Mark was published for opposition in the Official Gazette of the United States Patent and Trademark Office.

4. Upon information and belief, Applicant commenced use of Applicant's Mark in commerce at least as early as March 6, 2006.

5. Applicant's actual use of Applicant's Mark in the context of its promotional materials incorporates a "shooting star design" as is evidenced by the specimen of use submitted by Applicant with the Application in support of its use in commerce claim.

6. Opposer is a Limited Liability Company, organized and existing under the laws of the state of Colorado, with a place of business at East Crescent Parkway, Suite 100, Greenwood Village, Colorado.

7. Opposer is the owner of a network of specialty dental treatment centers providing innovative and quality dental implant care to patients across the United States.

8. Opposer's services are marketed and sold under a its primary trademark CLEARCHOICE ("Opposer's Mark").

9. Opposer is the owner of the following valid and subsisting United States Trademark registrations and applications for the CLEAR CHOICE trademarks:

TRADEMARK	APP/REG. NO.	SERVICES
CLEARCHOICE DENTAL IMPLANTS	3,225,921	Dental services, namely dental implant services
CLEARCHOICE	3,181,966	Dental services, namely dental implant services
CLEARCHOICE DENTAL IMPLANT CENTER	3,553,219	Dental services, namely dental implant services
	77686189	Dental services, namely dental implant services

10. Opposer has continuously and substantially exclusively used the CLEAR CHOICE trademarks in commerce since at least as early as 2005.

11. Opposer has made a substantial investment in advertising and promoting Opposer's services in a wide variety of media.

12. Opposer's long-term, prominent usage of its CLEAR CHOICE Trademarks has generated goodwill and widespread consumer recognition for these marks as identifying exclusively Opposer and its services.

13. Opposer use of a shooting star design as is evidenced by the specimen of use submitted by Applicant with the Application in support of its use in commerce claim is almost identical to the shooting star design that comprises the applied-for mark in Opposer's application Ser. No. 77686189.

14. Opposer use of a shooting star design similar to Opposer's shooting star design is evidence of Applicant's intent to trade upon the goodwill established in Opposer's Mark.

COUNT I
LIKELIHOOD OF CONFUSION

15. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 13 herein.

16. Opposer's Mark is famous in the United States.

17. Applicant's Mark is similar to Opposer's Mark in sight, sound, connotation and overall commercial impression.

18. The services identified in the Application are identical and or similar to the services with which Opposer is using Opposer's Mark.

19. The services identified in the Application are identical and or similar to the services with which Opposer's Mark is registered.

20. Applicant's services will travel in the same general market, and rendered in the same channels of trade as the services offered by Opposer under Opposer's Mark.

21. Registration of Applicant's Mark is likely to cause confusion, mistake, or

Certificate of Service

I hereby certify on this 6th day of August, 2009 that a copy of the foregoing Notice of Opposition was served upon Applicant via as first-class mail, postage paid, in an envelope addressed to the following counsel of record:

ADAM B. KAUFMAN
585 STEWART AVE STE 302
GARDEN CITY, NY 11530-4701

_____/OAF/
Orrin A. Falby