

ESTTA Tracking number: **ESTTA341002**

Filing date: **04/06/2010**

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	Bliss World LLC		
Entity	LLC	Citizenship	Delaware
Address	75 Varick St. New York, NY 10013 UNITED STATES		

Attorney information	David Ehrlich Fross Zelnick 866 UN Plaza New York, NY 10017 UNITED STATES ehrllich-docket@fzlj.com Phone:212 813-5900
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Applicant Information

Application No	77836807	Publication date	03/09/2010
Opposition Filing Date	04/06/2010	Opposition Period Ends	04/08/2010
Applicant	Doerfler, Austin, Anthony 235 North Central Avenue Umatilla, FL 32784 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 003. First Use: 2009/01/11 First Use In Commerce: 2009/02/07 All goods and services in the class are opposed, namely: After shave lotions; Anti-wrinkle cream; Aromatherapy body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream; Aromatherapy evaporating shower balls; Bath and shower gels and salts not for medical purposes; Bath fizzies; Bath oils and bath salts; Body lotions; Body scrub; Eye cream; Fabric softeners for laundry use; Facial scrubs; Foot scrubs; Laundry detergents; Massage creams; Massage oils; Natural cocoa butter based personal care products, namely, body lotion, shower gel, soap, body polish, body and foot scrub and non-medicated skin creams; Self-tanning preparations; Shaving creams; Sun screen; Sun-tanning oils and lotions; Wrinkle-minimizing cosmetic preparations for topical facial use</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	invalidity due to lack of use

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2913434	Application Date	01/29/1998
Registration Date	12/21/2004	Foreign Priority Date	NONE
Word Mark	BLISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/06/00 First Use In Commerce: 2003/09/00 SKIN MOISTURIZER, BODY SCRUBS, SKIN SOAP, SHOWER GEL, BODY FIRING GELS AND LOTIONS, SKIN MASKS, MAKEUP, HAND CREAM, FACIAL CLEANSERS, SKIN TONERS, EXFOLIATING BODY SCRUBS, PERSONAL DEODORANTS		

U.S. Registration No.	2116892	Application Date	05/01/1996
Registration Date	11/25/1997	Foreign Priority Date	NONE
Word Mark	BLISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1996/08/01 First Use In Commerce: 1996/08/01 health spa services		

Attachments	Notice of Opposition v. Serial No. 77836807 (F0605924).PDF (4 pages) (716575 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	/dwe/
Name	David Ehrlich
Date	04/06/2010

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

In the Matter of Serial No. 77/836,807

Filing Date: September 29, 2009

-----X	:	
BLISS WORLD LLC,	:	
	:	Opposition No.
Opposer,	:	
	:	
- against -	:	
	:	
DOEFLER, AUSTIN, ANTHONY,	:	
	:	
Applicant.	:	
-----X	:	

NOTICE OF OPPOSITION

Opposer, Bliss World LLC (“Opposer” or “Bliss”), a limited liability company organized and existing under the laws of Delaware, believes that it will be damaged by registration of the mark *Sim-bliss-ity*, etc., as shown in the above-referenced application, and hereby opposes same.

As grounds for the opposition, Opposer, through its attorneys, Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

COUNT I – Section 2(d)

1. Opposer owns and operates a highly successful chain of day spas under the mark BLISS and also makes and sells skin care products and other cosmetic and toiletry products bearing the mark “bliss” (the mark is printed in all lowercase letters on products). Opposer operates BLISS day spas in New York, Chicago, Los Angeles, San Francisco, Scottsdale, Dallas, Atlanta, and London. Opposer’s BLISS cosmetics and toiletries lines are sold at high-end retail stores, as well as in BLISS spas. Opposer also sells the “bliss” cosmetics and toiletries through its mail-order and ecommerce business at www.blissworld.com. All of these uses by Opposer pre-date the January 11, 2009 claimed first use date in the opposed application.

2. Opposer owns U.S. Reg. No. 2,913,434 for BLISS for “skin moisturizer, body scrubs, skin soap, shower gel, body firming gels and lotions, skin masks, makeup, hand cream, facial cleansers, skin toners, exfoliating body scrubs, personal deodorants”; and Reg. No. 2,116,892 for BLISS for “health spa services,” among other applications and registrations. Opposer’s BLISS mark is well known.

3. In addition to using the mark BLISS, Opposer has long used marks consisting of puns or plays on words. Sometimes these puns are based on the word “bliss,” such as the “blissage 75” massage offered at Opposer’s spas and the phrase “customer serbliss” instead of “customer service” on its website. Sometimes the puns are on common phrases, such as “bliss tan for all seasons” self tanning foam (a pun on “man for all seasons”) and “bliss peeling groovy” exfoliating liquid for skin (a pun on “feeling groovy”). Opposer’s customers are accustomed to Opposer’s extensive use of puns or plays on words and are, therefore, likely to view another pun or play on words mark, which incorporates the mark of Opposer, as indicating origin in Opposer. The dominant element of Applicant’s mark is the play on words “sim-*bliss*-ity,” in which the word “bliss” is highlighted. This term is a pun on the word “simplicity.”

4. The opposed application was filed on September 29, 2009 and claims a first use of January 11, 2009. Upon information and belief, Applicant has no basis to claim an earlier priority date than January 11, 2009 in the U.S.

5. Applicant’s mark so resembles Opposer’s BLISS or “bliss” mark as to be likely, when applied to the goods of Applicant, to cause confusion, or to cause mistake, or to deceive.

6. Opposer would be injured by the granting to Applicant of a Certificate of Registration for its mark because this would tend to damage Opposer’s goodwill in its marks.

7. By reason of the foregoing, Applicant is not entitled to register the mark in the application herein opposed.

COUNT II – Fraud and Invalidity

8. On information and belief, although this application is based entirely on Section 1(a) use, the Applicant was not using this mark for each and every one of the dozens of diverse products claimed in the application on the application filing date, September 29, 2009.

9. For this reason, as to all products on which there was no use on the filing date, the application is invalid.

10. On information and belief, the Applicant (who filed the application himself) was aware of the fact that he was not using the mark on all the claimed goods and filed the application for the broad list of goods anyway in order to broaden the coverage.

11. On that basis, the Applicant committed fraud on the USPTO, which makes the application entirely invalid, even if the Applicant, as a layman, was unaware of the legal ramifications of such overclaiming on goods.

WHEREFORE, Opposer respectfully prays that this opposition be sustained and that the application be denied.

Dated: New York, New York
April 6, 2010

Respectfully submitted,

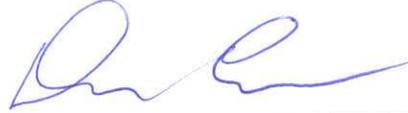
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

David Ehrlich
Attorney for Opposer
866 United Nations Plaza
New York, New York 10017
(212) 813-5900
Opposer's Ref: BLSW USA TC-10/02924

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail on the Applicant, Austin Anthony Doefler, 235 North Central Avenue, Umatilla, FL 32784, on April 6, 2010.



David Ehrlich