

ESTTA Tracking number: **ESTTA407365**

Filing date: **05/05/2011**

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	Cosmetic Warriors Limited		
Entity	Corporation	Citizenship	United Kingdom
Address	29 High Street Poole, Dorset, BH15 1NF UNITED KINGDOM		
Attorney information	John A. Clifford Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES jclifford@merchantgould.com, dockmpls@merchantgould.com		

Applicant Information

Application No	85179353	Publication date	04/05/2011
Opposition Filing Date	05/05/2011	Opposition Period Ends	05/05/2011
Applicant	Hatch Beauty, LLC 1715 18th Street Santa Monica, CA 90404 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 003. All goods and services in the class are opposed, namely: 3-in-1 hair conditioners; 3-in-1 hair shampoos; Baby hair conditioner; Cosmetic hair dressing preparations; Cosmetic preparations for the hair and scalp; Exfoliants for HAIR; Gel for HAIR; Hair care lotions; Hair cleaning preparations; Hair color removers; Hair colorants; Hair coloring preparations; Hair colourants; Hair colouring; Hair colouring preparations; Hair conditioner; Hair conditioners; Hair conditioners for babies; Hair curling preparations; Hair dressings for men; Hair dressings for women; Hair fixers; Hair gel; Hair gel and hair mousse; Hair gels; Hair glaze; Hair lacquers; Hair masks; Hair mousse; Hair mousses; Hair nourishers; Hair oils; Hair pomades; Hair products, namely, thickening control creams; Hair relaxers; Hair rinses; Hair shampoo; Hair shampoos and conditioners; Hair sheen spray; Hair spray; Hair sprays; Hair sprays and hair gels; Hair styling gel; Hair styling preparations; Hair styling spray; Japanese hair fixing oil (bintsuke-abura); Non-medicated hair serums; Non-medicated hair treatment preparations for cosmetic purposes; Non-medicated preparations all for the care of skin, hair and scalp; Non-medicated serums for use on HAIR; Oils for hair conditioning; Preparations for setting hair; Styling foam for hair; Styling paste for hair</p>

Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2853483	Application Date	11/25/2002
Registration Date	06/15/2004	Foreign Priority Date	08/14/2002
Word Mark	LUSH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: bringing together, for the benefit of others, of a variety of goods enabling customers to conveniently view and purchase those goods in a retail cosmetics and toiletries store; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a mail order catalogue, or from an Internet web site, specializing in the marketing of cosmetics and toiletries		

U.S. Registration No.	3001303	Application Date	04/27/2004
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	LUSH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1996/05/00 First Use In Commerce: 1996/06/00 Catalogues listing and illustrating cosmetics and toiletry products; printed product lists featuring cosmetic products and toiletry products; printed point of sales display in the nature of signs and display boards; and paper bags		

U.S. Registration No.	2282428	Application Date	02/25/1997
Registration Date	10/05/1999	Foreign Priority Date	NONE
Word Mark	LUSH		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1995/04/10 First Use In Commerce: 1996/06/00 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] Class 005. First use: First Use: 1995/04/10 First Use In Commerce: 1996/06/00 [medicated hair care, skin care, teeth care and nail care preparations]

U.S. Registration No.	3102767	Application Date	01/06/2005
Registration Date	06/13/2006	Foreign Priority Date	NONE

Word Mark	LUSH FRESH HANDMADE COSMETICS
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 003. First use: First Use: 1996/06/00 First Use In Commerce: 2002/12/00 Perfumes; non-medicated toilet and cosmetic preparations, namely lotions, powders and creams for use on the skin; preparations for cleansing and care of the skin; bath oils in solid and liquid form; personal deodorants; hair care preparations; oil based massage bars that melt on contact with the skin; solid moisturizers and skin conditioners in the form of a paste or face mask; bath bars that melt on contact with hot water to produce a soapy or oily suspension; soaps; and essential oils for personal use
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U.S. Registration No.	3008685	Application Date	04/27/2004
Registration Date	10/25/2005	Foreign Priority Date	NONE
Word Mark	LUSH		

Design Mark	LUSH
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1995/04/10 First Use In Commerce: 1996/06/00 Perfumes; non-medicated toilet and cosmetic preparations, namely lotions, powders and creams for use on the skin; preparations for cleansing and care of the skin; bath oils in solid and liquid form; personal deodorants; hair care preparations; oil based massage bars that melt on contact with the skin; solid skin moisturizers and skin conditioners in the form of a paste or face mask; bath bars that melt on contact with hot water to produce a soapy or oily suspension; soaps; and essential oils for personal use

U.S. Application No.	78747180	Application Date	11/04/2005
Registration Date	NONE	Foreign Priority Date	06/21/2005

Word Mark	LUSH
Design Mark	LUSH
Description of Mark	NONE
Goods/Services	Class 044. First use: 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

Attachments	78408741#TMSN.jpeg (1 page)(bytes) 75247408#TMSN.gif (1 page)(bytes) 76627078#TMSN.jpeg (1 page)(bytes) 78408752#TMSN.jpeg (1 page)(bytes) 78747180#TMSN.jpeg (1 page)(bytes) NOTICE OF OPPOSITION 05 05 2011.PDF (8 pages)(357278 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	/John A. Clifford/
Name	John A. Clifford
Date	05/05/2011

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

Cosmetic Warriors Limited <div style="text-align: right;">Opposer,</div>)	Opposition No. _____
v.)	
Hatch Beauty, LLC. <div style="text-align: right;">Applicant.</div>)	Serial No.: 85/179,353 Mark : LUSH LOCKS

NOTICE OF OPPOSITION

To The Assistant Commissioner for
Trademarks
ATTN: BOX TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Cosmetic Warriors Limited, 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, believes that it will be damaged by the registration of the LUSH LOCKS mark shown in Application Serial No. 85/179,353, filed November 17, 2010 by Hatch Beauty, LLC, with a mailing address 1715 18th Street, Santa Monica, California 90404, and hereby opposes registration of the mark. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the trademark LUSH LOCKS, in part, for:

International Class 3: 3-in-1 hair conditioners; 3-in-1 hair shampoos; Baby hair conditioner; Cosmetic hair dressing preparations; Cosmetic preparations for

the hair and scalp; Exfoliants for HAIR; Gel for HAIR; Hair care lotions; Hair cleaning preparations; Hair color removers; Hair colorants; Hair coloring preparations; Hair colourants; Hair colouring; Hair colouring preparations; Hair conditioner; Hair conditioners; Hair conditioners for babies; Hair curling preparations; Hair dressings for men; Hair dressings for women; Hair fixers; Hair gel; Hair gel and hair mousse; Hair gels; Hair glaze; Hair lacquers; Hair masks; Hair mousse; Hair mousses; Hair nourishers; Hair oils; Hair pomades; Hair products, namely, thickening control creams; Hair relaxers; Hair rinses; Hair shampoo; Hair shampoos and conditioners; Hair sheen spray; Hair spray; Hair sprays; Hair sprays and hair gels; Hair styling gel; Hair styling preparations; Hair styling spray; Japanese hair fixing oil (bintsuke-abura); Non-medicated hair serums; Non-medicated hair treatment preparations for cosmetic purposes; Non-medicated preparations all for the care of skin, hair and scalp; Non-medicated serums for use on HAIR; Oils for hair conditioning; Preparations for setting hair; Styling foam for hair; Styling paste for hair

This application (Serial No. 85/179,353) is based on Applicant's intention to use the mark in commerce.

2. Applicant's Mark published for opposition on April 5, 2011. This Notice of Opposition is timely filed.
3. Opposer is the owner of the following U.S. Trademark Registrations and pending application(s):

LUSH, U.S. Reg. No. 2,853,483, used in connection with bringing together, for the benefit of others, of a variety of goods enabling customers to conveniently view and purchase those goods in a retail cosmetics and toiletries store; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a mail order catalogue, or from an Internet web site, specializing in the marketing of cosmetics and toiletries, in International Class 35. Said registration was registered on the Principal Register on June 15, 2004 and was based on a foreign registration filed in the United Kingdom on August 14, 2002, which is a date prior to the date of filing of Applicant's application.

LUSH, U.S. Reg. No. 3,001,303, used in connection with catalogues listing and illustrating cosmetics and toiletry products; printed product lists featuring cosmetic products and toiletry products; printed point of sales display in the nature of signs and display boards; and paper bags, in International Class 16. Said registration registered on the Principal Register on September 27, 2005 and was based on an application filed in

the U.S. Patent and Trademark Office on April 27, 2004 alleging a date of first use of May 1996, which is a date prior to the date of filing of Applicant's application.

LUSH, U.S. Reg. No. 2,282,428, used 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, in International Class 3. Said registration was registered on the Principal Register on October 5, 1999 and was based on an application filed in the U.S. Patent and Trademark Office on February 25, 1997 alleging a date of first use of April 10, 1995, which is a date prior to the date of filing of Applicant's application. This registration is also incontestable.



, U.S. Reg. No. 3,102,767, used in connection with perfumes; non-medicated toilet and cosmetic preparations, namely lotions, powders and creams for use on the skin; preparations for cleansing and care of the skin; bath oils in solid and liquid form; personal deodorants; hair care preparations; oil based massage bars that melt on contact with the skin; solid moisturizers and skin conditioners in the form of a paste or face mask; bath bars that melt on contact with hot water to produce a soapy or oily suspension; soaps; and essential oils for personal use, in International Class 3. Said registration registered on the Principal Register on June 13, 2006 and was based on an application filed in the U.S. Patent and Trademark Office on January 6, 2005 alleging a date of first use of June 1996, which is a date prior to the date of filing of Applicant's application.

LUSH, U.S. Reg. No. 3,008,685, used in connection with perfumes; non-medicated toilet and cosmetic preparations, namely lotions, powders and creams for use on the skin; preparations for cleansing and care of the skin; bath oils in solid and liquid form; personal deodorants; hair care preparations; oil based massage bars that melt on contact with the skin; solid skin moisturizers and skin conditioners in the form of a paste or face mask; bath bars that melt on contact with hot water to produce a soapy or oily suspension; soaps; and essential oils for personal use, in International Class 3. Said registration registered on the Principal Register on October 25, 2005 and was based on an application filed in the U.S. Patent and Trademark Office on April 27, 2004 alleging a date of first use of April 10, 1995, which is a date prior to the date of filing of Applicant's application.

LUSH, U.S. Application Serial No. 78/747180, intended to be used on 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, in International Class 44. Said application is based on Opposer's intention to use the mark in U.S. commerce and was filed on November 4, 2005, which is a date prior to the date of filing of Applicant's application.

Opposer also uses the LUSH mark in connection with online customer forums and blogs, publications featuring news/beauty articles and product information, candles, charitable services geared towards housing, among other products and services.

4. Opposer's registered marks are valid and subsisting, and are prima facie evidence of Opposer's exclusive right to use said mark in commerce on the goods and services specified in each registration. In addition, Reg. Nos. 2,853,483 and 2,282,428, are incontestable under §15 of the Lanham Act (15 U.S.C. §1065), and are therefore conclusive evidence of the validity of the registered marks, of registration of the marks, of Opposer's ownership of the marks, and of Opposer's exclusive right to use the marks in commerce under §33(b) of the Lanham Act (15 U.S.C. §1115(b)).
5. Since at least as early as April 10, 1995, Opposer has used the LUSH mark in the United States. Said use has been continuous since the date of first use and has not been abandoned.

6. Opposer has advertised and promoted its LUSH mark extensively. Opposer has also made substantial sales under said mark. As a result of such use and promotion, Opposer's LUSH mark has developed and represents valuable goodwill inuring to the benefit of Opposer. Opposer sells a wide variety of cosmetic products for personal care, including skin care, hair care, facial care, and hand/body care products under the LUSH brand. Opposer also owns a publication under the LUSH name, operates an online forum/blog, and manufactures and markets LUSH candles. Opposer operates over 105 brick-and-mortar retail stores in at least 33 states under its LUSH trademark in the United States, and will soon open more stores. Opposer also makes substantial sales of its products through its online retail store at www.lushusa.com.
7. Opposer has priority with respect to the mark at issue in this opposition. Opposer has had priority of use of the LUSH mark long before the March 9, 2010 filing date of Applicant's application.
8. Applicant's LUSH LOCKS mark is confusingly similar to Opposer's LUSH marks. The marks have an overall confusingly similar appearance, sound, meaning and commercial impression. Applicant's goods are highly related to Opposer's goods and services.
9. Applicant's mark is deceptively similar to Opposer's marks. The marks have a confusingly similar appearance, sound, meaning and commercial impression. Consumers will mistakenly believe that Applicant's goods are offered by, affiliated with and/or sponsored by Opposer when the same is not true.

10. Due to the highly similar nature of Applicant's mark and Opposer's marks, the closely related nature of the goods provided by the respective parties, consumers and potential consumers are likely to believe that Applicant's services originate from Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.
11. Upon information and belief, the goods provided by Opposer under its LUSH marks and the goods intended to be provided by Applicant under its LUSH LOCKS mark will be promoted and sold in the same channels of trade to the same consumers or class of consumers.
12. The use and registration by Applicant of the mark LUSH LOCKS for Applicant's goods is likely to cause confusion or to cause mistake or deception among consumers and potential consumers, with Opposer's previously used LUSH marks, again resulting in damage to Opposer.
13. Because of the highly related nature of the goods and services, and the highly similar nature of the marks in overall appearance, sound, meaning and commercial impression, use and registration of the term LUSH LOCKS by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer causing further damage to Opposer.
14. The word LOCKS is merely descriptive and describes what Applicant's goods will be used on, namely hair. Opposer has the right to use the word LOCKS and is damaged by inclusion of the word LOCKS in this application without a disclaimer.

15. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

16. Registration of the mark shown in Application Serial No. 85/179,353 will result in damage to Opposer under the provisions of §2 (a) and §2 (d) of the U.S. Trademark Act, 15 U.S.C. § 1052, §1125 pursuant to the allegations stated above.

WHEREFORE, Opposer asks that its opposition to this application be sustained and that the registration of the proposed mark LUSH LOCKS set forth therein be refused. Please direct all correspondence to the attention of:

John A. Clifford
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
Tel: 612-336-4616 Fax: 612-332-9081

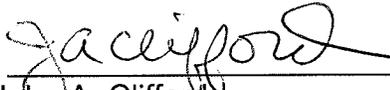
Opposer hereby appoints: John A. Clifford; Danielle I. Mattessich; Heather Kliebenstein, Scott M. Oslick; Brian H. Batzli; Gregory C. Golla; Scott W. Johnston; D. Randall King; Andrew S. Ehard; Christopher J. Schulte; and Brent Routman as its attorneys with the full power to represent the Opposer in connection with this proceeding.

Respectfully submitted,

COSMETIC WARRIORS LIMITED,

By its attorneys,

Date: 5-5-11



John A. Clifford
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
Tel. 612.336.4616
Fax 612.332.9081

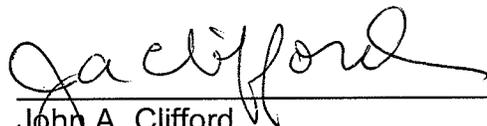
JAC/aja

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served, via first-class mail, postage prepaid on Hatch Beauty, LLC this 5 day of May 2011.

Hatch Beauty, LLC
1715 18th Street
Santa Monica, CA 90404

Date: 5-5-11



John A. Clifford