

ESTTA Tracking number: **ESTTA415367**

Filing date: **06/20/2011**

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	Rwachsberg Holdings Inc.
Granted to Date of previous extension	06/18/2011
Address	20 Graniteridge Road Concord, Ontario, L4K5M8 CANADA
Correspondence information	Stephen R. Baird Winthrop & Weinstine, P.A. 225 South Sixth Street Capella Tower, Suite 3500 Minneapolis, MN 55402 UNITED STATES sbaird@winthrop.com, sperera@winthrop.com, jrezac@winthrop.com, trademark@winthrop.com

Applicant Information

Application No	79084579	Publication date	04/19/2011
Opposition Filing Date	06/20/2011	Opposition Period Ends	06/18/2011
International Registration No.	1044001	International Registration Date	05/19/2010
Applicant	Prince Aurora Pty Ltd 2 Acland Street ST Kilda VIC 3182 AUSTRALIA		

Goods/Services Affected by Opposition

<p>Class 003. All goods and services in the class are opposed, namely: Non-medicated cleansers, namely, skin cleansers for the face, body, hands and cosmetic skin acne cleansers; bath products, namely, bath foam, bath beads, bath crystals, bath gels, bath lotion, bath oils, nonmedicated bath preparations, bath lotions, bath soaps, bath powders, and non-medicated bubble bath preparations; lipstick, lip gloss, lip balm, lip liner, and non-medicated lip care preparations; hair care preparations, namely, shampoo, hair lotions, conditioner, hair oils, hair masks, and hair creams; soaps; essential oils, namely, cosmetic oils for skin care; non-medicated skin care preparations; body care preparations, namely, body scrubs, deodorants, body lotions, body creams, body sprays and cosmetics; cosmetics; nail care preparations; perfumery; beauty preparations, namely, beauty creams, beauty gels, beauty serums</p>

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. Registration No.	3966597	Application Date	08/30/2007
Registration Date	05/24/2011	Foreign Priority Date	NONE
Word Mark	AURORA		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 2007/09/10 First Use In Commerce: 2007/10/31 Non-medicated personal care products, namely, shampoos and hair conditioners, skin moisturizers, human body conditioning and skin treatment lotions, human body conditioning and skin treatment creams, anti-aging and stretch mark creams, non-medicated lotions and creams for hands, nails, skin, face, hair, varicose veins, foot and leg muscles and joints all with cosmetic effect only, depilatory lotions and creams, shaving lotions and creams, non-medicated skin care preparations, namely, lotions and creams for treating dry and damaged skin, anti-aging, firming, anti-wrinkle, stretch marks, under eye and eyelid firming; gels, namely, depilatory gels, shaving gels, shower gels, moisturizing and anti-aging gels, stretch mark gels, oils, namely, bath oils, body oils, cosmetic oils, and nutritional oils for cosmetic purposes, non-medicated human body serums, petroleum jelly for cosmetic purposes, soaps, liquid soaps, bar soaps, anti-bacterial liquid soaps, anti-bacterial bar soaps, hand sanitizers, human body sprays, refresher body sprays, body washing soaps, bubble bath, body and facial scrubs, masks, namely, beauty masks, facial masks, body masks, gel eye masks, skin masks, and skin moisturizer masks, face peels, non-medicated skin care preparations, and wrinkle removing skin care preparations, cosmetic sun protection creams and lotions, sun creams and lotions with or without SPF, sun block, sunless tanning creams and lotions, talcum powders; personal deodorants; all purpose cleaners; floor cleaning preparation; glass cleaners; laundry bleach; fabric softener; laundry detergents and soaps; dish detergents and soaps; pre-moistened sheets, sponges and towelettes impregnated with dishwashing detergent; cleaning solvents</p> <p>Class 005. First use: First Use: 2007/09/10 First Use In Commerce: 2007/10/31 Bars for human consumption, namely, meal replacement bars, vitamins and minerals formed and packaged as bars; powders for human consumption, namely, powdered nutritional supplement drink mixes, meal replacement powders; shakes for human consumption, namely, meal replacement shakes, vitamins for human consumption, nutritional supplements for human consumption for anti-aging, anti-wrinkles, skin conditioning, skin firming, weight loss and weight maintenance, namely, capsules, gel caps and tablets; dietary supplements for human consumption for anti-aging, anti-wrinkles, skin conditioning, skin firming, weight loss and weight maintenance, namely, pills, capsules, gel caps and tablets; nutraceuticals for human use for anti-aging, anti-</p>		

	wrinkles, skin conditioning, skin firming, weight loss and weight maintenance, namely, pills, capsules, gel caps and tablets; and skin treatments for human use for anti-aging, anti-wrinkles, skin conditioning and skin firming, namely, daytime and nighttime pills, capsules, gel caps and tablets; all purpose disinfectants; air deodorizers; room deodorizers; room freshener sprays
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Attachments	77267964#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (13 pages)(554813 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 Overnight Courier on this date.

Signature	/SAP/
Name	Susan A. Perera
Date	06/20/2011

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

In the matter of Application Serial No.: 79/084,579
Filed: May 19, 2010
For the mark: AURORA SPA RITUALS
Published in the Trademark Official Gazette on April 19, 2011

Rwachsberg Holdings Inc.,

Opposer,

v.

Opposition No. _____

Prince Aurora Pty Ltd.,

Applicant.

NOTICE OF OPPOSITION

Rwachsberg Holdings Inc. (“Opposer”) believes that it will be damaged by the registration of the AURORA SPA RITUALS mark shown in Application Serial No. 79/084,579 (“Applicant’s Application”) in International Class 3 and hereby opposes the same.

The grounds for opposition are as follows:

1. On May 19, 2010, Prince Aurora Pty Ltd. (“Applicant”) filed Applicant’s Application under § 66(a) to register AURORA SPA RITUALS (“Applicant’s Mark”) as a trademark for “Non-medicated cleansers, namely, skin cleansers for the face, body, hands and cosmetic skin acne cleansers; bath products, namely, bath foam, bath beads, bath crystals, bath gels, bath lotion, bath oils, nonmedicated bath preparations, bath lotions, bath soaps, bath powders, and non-medicated bubble bath preparations; lipstick, lip gloss, lip balm, lip liner, and non-medicated lip care preparations; hair care preparations, namely, shampoo, hair lotions, conditioner, hair oils, hair masks, and hair

creams; soaps; essential oils, namely, cosmetic oils for skin care; non-medicated skin care preparations; body care preparations, namely, body scrubs, deodorants, body lotions, body creams, body sprays and cosmetics; cosmetics; nail care preparations; perfumery; beauty preparations, namely, beauty creams, beauty gels, beauty serums” (“Applicant’s Goods”).

2. Applicant’s Mark was published for opposition in the Trademark Official Gazette on April 19, 2011. On April 19, 2011, Opposer filed a Request for Extension of Time to oppose the registration of Applicant’s Mark in connection with Applicant’s Goods. The Trademark Trial and Appeal Board (the “Board”) granted Opposer’s extension request, extending the time to oppose the registration of Applicant’s Mark up to and including June 18, 2011.

3. Upon information and belief, Applicant cannot claim a date of first use in United States commerce for Applicant’s Mark prior to May 19, 2010.

4. On August 30, 2007, Opposer filed a trademark application for AURORA, Serial No. 77/267,964 (“Opposer’s Application”), for use with “Non-medicated personal care products, namely, shampoos and hair conditioners, skin moisturizers, human body conditioning and skin treatment lotions, human body conditioning and skin treatment creams, anti-aging and stretch mark creams, non-medicated lotions and creams for hands, nails, skin, face, hair, varicose veins, foot and leg muscles and joints all with cosmetic effect only, depilatory lotions and creams, shaving lotions and creams, non-medicated skin care preparations, namely, lotions and creams for treating dry and damaged skin, anti-aging, firming, anti-wrinkle, stretch marks, under eye and eyelid firming; gels, namely, depilatory gels, shaving gels, shower gels, moisturizing and anti-aging gels, stretch mark gels, oils, namely, bath oils, body oils, cosmetic oils, and nutritional oils for

cosmetic purposes, non-medicated human body serums, petroleum jelly for cosmetic purposes, soaps, liquid soaps, bar soaps, anti-bacterial liquid soaps, anti-bacterial bar soaps, hand sanitizers, human body sprays, refresher body sprays, body washing soaps, bubble bath, body and facial scrubs, masks, namely, beauty masks, facial masks, body masks, gel eye masks, skin masks, and skin moisturizer masks, face peels, non-medicated skin care preparations, and wrinkle removing skin care preparations, cosmetic sun protection creams and lotions, sun creams and lotions with or without SPF, sun block, sunless tanning creams and lotions, talcum powders; personal deodorants; all purpose cleaners; floor cleaning preparation; glass cleaners; laundry bleach; fabric softener; laundry detergents and soaps; dish detergents and soaps; pre-moistened sheets, sponges and towelettes impregnated with dishwashing detergent; cleaning solvents” in International Class 13 and “Bars for human consumption, namely, meal replacement bars, vitamins and minerals formed and packaged as bars; powders for human consumption, namely, powdered nutritional supplement drink mixes, meal replacement powders; shakes for human consumption, namely, meal replacement shakes, vitamins for human consumption, nutritional supplements for human consumption for anti-aging, anti-wrinkles, skin conditioning, skin firming, weight loss and weight maintenance, namely, capsules, gel caps and tablets; dietary supplements for human consumption for anti-aging, anti-wrinkles, skin conditioning, skin firming, weight loss and weight maintenance, namely, pills, capsules, gel caps and tablets; nutraceuticals for human use for anti-aging, anti-wrinkles, skin conditioning, skin firming, weight loss and weight maintenance, namely, pills, capsules, gel caps and tablets; and skin treatments for human use for anti-aging, anti-wrinkles, skin conditioning and skin firming, namely, daytime and nighttime pills, capsules, gel caps and tablets; all purpose disinfectants; air

deodorizers; room deodorizers; room freshener sprays” in International Class 5 (“Opposer’s Goods”).

5. On May 24, 2011, Opposer’s Application matured into Registration No. 3,966,597 (the “AURORA® Mark”). Two true and correct copies of the Certificate of Registration for the AURORA® Mark obtained from the United States Patent and Trademark Office’s TDR online database are enclosed as Exhibit A

6. Opposer has adopted and continuously used the AURORA® Mark in United States commerce in connection with Opposer’s Goods since at least as early as October 31, 2007.

7. Opposer used the AURORA® Mark for over two years prior to Applicant’s filing date for Applicant’s Mark.

8. Opposer owns prior common law rights in the AURORA® Mark.

9. Opposer has expended considerable time, effort, and expense in promoting, advertising, and popularizing its distinctive AURORA® Mark.

10. Upon information and belief, consumers have come to know, rely upon, and recognize the AURORA® Mark as a strong indicator of the source of Opposer’s goods.

11. Applicant’s Goods are essentially identical and/or closely related to Opposer’s Goods.

12. Applicant’s Mark incorporates Opposer’s AURORA® Mark in its entirety.

13. The remainder of Applicant’s Mark, “SPA RITUALS,” is a known term in the industry and is descriptive of Applicant’s Goods.

14. Upon information and belief, Applicant’s Mark contains no distinctive elements to differentiate it from Opposer’s Mark.

15. The recitation of goods description in Applicant's Application is unrestricted as to the type of consumer of Applicant's Goods.

16. Upon information and belief, Applicant's Goods and Opposer's Goods are likely to be sold to identical or similar consumers.

17. The recitation of goods description in Applicant's Application is unrestricted as to the channels of trade for Applicant's Goods.

18. Upon information and belief, Applicant's Goods and Opposer's Goods are likely to travel in the same channels of trade.

19. Applicant's Mark is confusingly similar in sight, sound, and meaning to Opposer's AURORA® Mark.

20. Applicant's Mark is confusingly similar in commercial impression to Opposer's AURORA® Mark.

21. Because Applicant's Mark is confusingly similar to Opposer's AURORA® Mark, and because Applicant's Goods and Opposer's Goods are identical, consumers are likely to mistakenly believe that Applicant's Goods and Opposer's Goods emanate from the same source.

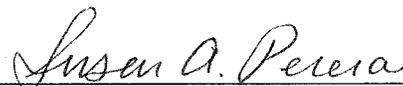
22. Applicant's Mark so resembles Opposer's AURORA® Mark, that purchasers and prospective purchasers are likely to mistakenly believe that Applicant's Goods offered under Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some other way affiliated, connected, or associated with Opposer, all to the detriment of Opposer.

23. For all the reasons stated above, Applicant's Mark is likely to cause consumer confusion. Therefore, registration of Applicant's Mark should be refused under 15 U.S.C. § 1052(d) and 1063.

WHEREFORE, Opposer respectfully requests that the Board sustain its opposition refuse registration of Applicant's Mark displayed in Application Serial No. 79/084,579.

WINTHROP & WEINSTINE, P.A.

Dated: June 20, 2011



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Attorneys for Rwachsberg Holdings,
Inc.

6063640v1

Exhibit A

United States of America

United States Patent and Trademark Office

AURORA

Reg. No. 3,966,597

Registered May 24, 2011

Int. Cls.: 3 and 5

TRADEMARK

PRINCIPAL REGISTER

RWACHSBERG HOLDINGS INC. (CANADA CORPORATION)
20 GRANITERIDGE ROAD
CONCORD, CANADA L4K5M8

FOR: NON-MEDICATED PERSONAL CARE PRODUCTS, NAMELY, SHAMPOOS AND HAIR CONDITIONERS, SKIN MOISTURIZERS, HUMAN BODY CONDITIONING AND SKIN TREATMENT LOTIONS, HUMAN BODY CONDITIONING AND SKIN TREATMENT CREAMS, ANTI-AGING AND STRETCH MARK CREAMS, NON-MEDICATED LOTIONS AND CREAMS FOR HANDS, NAILS, SKIN, FACE, HAIR, VARICOSE VEINS, FOOT AND LEG MUSCLES AND JOINTS ALL WITH COSMETIC EFFECT ONLY, DEPILATORY LOTIONS AND CREAMS, SHAVING LOTIONS AND CREAMS, NON-MEDICATED SKIN CARE PREPARATIONS, NAMELY, LOTIONS AND CREAMS FOR TREATING DRY AND DAMAGED SKIN, ANTI-AGING, FIRMING, ANTI-WRINKLE, STRETCH MARKS, UNDER EYE AND EYELID FIRMING; GELS, NAMELY, DEPILATORY GELS, SHAVING GELS, SHOWER GELS, MOISTURIZING AND ANTI-AGING GELS, STRETCH MARK GELS, OILS, NAMELY, BATH OILS, BODY OILS, COSMETIC OILS, AND NUTRITIONAL OILS FOR COSMETIC PURPOSES, NON-MEDICATED HUMAN BODY SERUMS, PETROLEUM JELLY FOR COSMETIC PURPOSES, SOAPS, LIQUID SOAPS, BAR SOAPS, ANTI-BACTERIAL LIQUID SOAPS, ANTI-BACTERIAL BAR SOAPS, HAND SANITIZERS, HUMAN BODY SPRAYS, REFRESHER BODY SPRAYS, BODY WASHING SOAPS, BUBBLE BATH, BODY AND FACIAL SCRUBS, MASKS, NAMELY, BEAUTY MASKS, FACIAL MASKS, BODY MASKS, GEL EYE MASKS, SKIN MASKS, AND SKIN MOISTURIZER MASKS, FACE PEELS, NON-MEDICATED SKIN CARE PREPARATIONS, AND WRINKLE REMOVING SKIN CARE PREPARATIONS, COSMETIC SUN PROTECTION CREAMS AND LOTIONS, SUN CREAMS AND LOTIONS WITH OR WITHOUT SPF, SUN BLOCK, SUNLESS TANNING CREAMS AND LOTIONS, TALCUM POWDERS; PERSONAL DEODORANTS; ALL PURPOSE CLEANERS; FLOOR CLEANING PREPARATION; GLASS CLEANERS; LAUNDRY BLEACH; FABRIC SOFTENER; LAUNDRY DETERGENTS AND SOAPS; DISH DETERGENTS AND SOAPS; PRE-MOISTENED SHEETS, SPONGES AND TOWELETTES IMPREGNATED WITH DISHWASHING DETERGENT; CLEANING SOLVENTS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 9-10-2007; IN COMMERCE 10-31-2007.

FOR: BARS FOR HUMAN CONSUMPTION, NAMELY, MEAL REPLACEMENT BARS, VITAMINS AND MINERALS FORMED AND PACKAGED AS BARS; POWDERS FOR HUMAN CONSUMPTION, NAMELY, POWDERED NUTRITIONAL SUPPLEMENT DRINK MIXES, MEAL REPLACEMENT POWDERS; SHAKES FOR HUMAN CONSUMPTION, NAMELY, MEAL REPLACEMENT SHAKES, VITAMINS FOR HUMAN CONSUMPTION, NUTRITIONAL SUPPLEMENTS FOR HUMAN CONSUMPTION FOR ANTI-AGING, ANTI-WRINKLES, SKIN CONDITIONING, SKIN FIRMING, WEIGHT LOSS AND WEIGHT MAINTENANCE, NAMELY, CAPSULES, GEL CAPS AND TABLETS; DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION FOR ANTI-AGING, ANTI-WRINKLES, SKIN CONDITIONING, SKIN FIRMING,



David J. Kappas

Director of the United States Patent and Trademark Office

Reg. No. 3,966,597 WEIGHT LOSS AND WEIGHT MAINTENANCE, NAMELY, PILLS, CAPSULES, GEL CAPS AND TABLETS; NUTRACEUTICALS FOR HUMAN USE FOR ANTI-AGING, ANTI-WRINKLES, SKIN CONDITIONING, SKIN FIRING, WEIGHT LOSS AND WEIGHT MAINTENANCE, NAMELY, PILLS, CAPSULES, GEL CAPS AND TABLETS; AND SKIN TREATMENTS FOR HUMAN USE FOR ANTI-AGING, ANTI-WRINKLES, SKIN CONDITIONING AND SKIN FIRING, NAMELY, DAYTIME AND NIGHTTIME PILLS, CAPSULES, GEL CAPS AND TABLETS; ALL PURPOSE DISINFECTANTS; AIR DEODORIZERS; ROOM DEODORIZERS; ROOM FRESHENER SPRAYS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 9-10-2007; IN COMMERCE 10-31-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-267,964, FILED 8-30-2007.

CHERYL CLAYTON, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

AURORA

Reg. No. 3,966,597

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David J. Kappas

Director of the United States Patent and Trademark Office

Reg. No. 3,966,597 WEIGHT LOSS AND WEIGHT MAINTENANCE, NAMELY, PILLS, CAPSULES, GEL CAPS AND TABLETS; NUTRACEUTICALS FOR HUMAN USE FOR ANTI-AGING, ANTI-WRINKLES, SKIN CONDITIONING, SKIN FIRING, WEIGHT LOSS AND WEIGHT MAINTENANCE, NAMELY, PILLS, CAPSULES, GEL CAPS AND TABLETS; AND SKIN TREATMENTS FOR HUMAN USE FOR ANTI-AGING, ANTI-WRINKLES, SKIN CONDITIONING AND SKIN FIRING, NAMELY, DAYTIME AND NIGHTTIME PILLS, CAPSULES, GEL CAPS AND TABLETS; ALL PURPOSE DISINFECTANTS; AIR DEODORIZERS; ROOM DEODORIZERS; ROOM FRESHENER SPRAYS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

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Rwachsberg Holdings Inc.,

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Prince Aurora Pty Ltd.,

Applicant.

CERTIFICATE OF SERVICE BY COURIER

Jennifer E. Rezac declares that on the 20th day of June, 2011, she mailed by courier, a true and correct copy of:

1. Notice of Opposition

in the above-captioned action to the last known address displayed on the United States Patent and Trademark Office TARR database, to-wit:

McIntoshIP
Attn: Daniel McIntosh
P.O. Box 45
Northcote VIC 3070
AUSTRALIA



Jennifer E. Rezac

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CERTIFICATE OF SERVICE BY MAIL

Jennifer E. Rezac declares that on the 20th day of June, 2011, she mailed by United States mail, first class postage thereon prepaid, a true and correct copy of:

1. Notice of Opposition

in the above-captioned action to the last known address, to-wit:

John Alunit
Patel & Alunit, P.C.
16830 Ventura Boulevard, Suite 360
Encino, CA 91436



Jennifer E. Rezac