

ESTTA Tracking number: **ESTTA445200**

Filing date: **12/07/2011**

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	Keating Dental Arts, Inc.
Granted to Date of previous extension	12/31/2011
Address	16881 Hale Ave Irvine, CA 92606 UNITED STATES

Attorney information	J. Mark Holland J. Mark Holland & Associates 3 San Joaquin Plaza Suite 210 Newport Beach, CA 92660 UNITED STATES office@jmhlaw.com, mholland@jmhlaw.com, tgourdelaw@cox.net Phone:9497186750
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Applicant Information

Application No	85332886	Publication date	11/01/2011
Opposition Filing Date	12/07/2011	Opposition Period Ends	12/31/2011
Applicant	James R. Glidewell Dental Ceramics Inc. Professional Services 4141 MacArthur Blvd. Newport Beach, CA 92660 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2009/11/10 First Use In Commerce: 2009/11/10 All goods and services in the class are opposed, namely: Dental ceramics
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23
Other	Applicant has a previous registration for the same mark BruxZir, and Applicant is improperly asserting it to try to preclude Opposer and others from using the generic terms BRUX and BRUXER (based on BRUXISM, a dental condition that can be treated by these goods). Applicant also sued Opposer re this issue. Were

	Applicant to obtain an ADDITIONAL registration for BruxZir, Applicant presumably would use it in a similar manner, to even FURTHER harm Opposer and others. The PTO already has stayed a related opposition (wherein Applicant had opposed Opposer's mark KDZ BRUXER PLUS DESIGN), and should stay this one as well.
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85287029	Application Date	04/05/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KDZ BRUXER		
Design Mark			
Description of Mark	The mark consists of The letters "KDZ" in bold followed by the letters "BRUXER" in smaller font largely encircled by a stylized and elongated incomplete oval-shaped design element.		
Goods/Services	Class 010. First use: Dental prostheses		

Related Proceedings	ESTTA Proceedings: 91201389; James R. Glidewell Dental Ceramics, Inc. dba Glidewell Laboratories v. Keating Dental Arts, Inc., Case No. SACV11-10309-DOC(ANx) in the United States District Court for the Central District of California.
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Attachments	85287029#TMSN.jpeg (1 page)(bytes) KDA_Notice_of_Opposition.pdf (4 pages)(97302 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 Facsimile or email (by agreement only) on this date.

Signature	/J. Mark Holland/
Name	J. Mark Holland
Date	12/07/2011

Newport Beach, California 92660;

- c) Applicant's Mark is the subject matter of an application filed on May 27, 2011 under Section 1(a) of the Lanham Act, and published in the Official Gazette on November 1, 2011.

As grounds for the opposition, Opposer alleges that:

1. Opposer is the owner of all rights, title and interest to U.S. Trademark Application Serial No. 85/287,029 for the mark KDZ BRUXER PLUS DESIGN for use in connection with "dental prostheses" in International Class 010, filed on April 5, 2011.

2. On information and belief, Opposer has been using the KDZ BRUXER PLUS DESIGN mark (hereinafter "Opposer's Mark") in connection with all goods described above since prior to the effective filing date of the '886 application.

3. Applicant has a previous registration for the same mark BruxZir (U.S. Reg. No. 3,739,663), and Applicant already is improperly asserting THAT registration against Opposer and third parties. With respect to Opposer Keating, Glidewell ("Applicant") recently filed an Opposition and a lawsuit against Opposer Keating, based on the same alleged trademark rights (in Applicant's alleged trademark BruxZir). That previous Opposition is No. 91201389 against Opposer Keating's U.S. Trademark Application Serial No. 85/287,029 for the mark KDZ BRUXER PLUS DESIGN. On the SAME day that Applicant Glidewell filed that previous opposition (August 30, 2011), Applicant Glidewell filed the aforementioned lawsuit against Opposer, in the U.S. District Court, Central District of California (Case No. SACV11-01309-DOC(ANx)).

4. Although the parties are proceeding in that lawsuit, the TTAB recently suspended that related previous Opposition (in which the parties are in the reverse positions as in the present application). The present application by Glidewell is to FURTHER register that same trademark BruxZir (the mark that Glidewell already is asserting against

Keating). Such a further registration by Glidewell will damage Opposer Keating by providing an additional round of the same “ammunition” for Glidewell to use against Opposer Keating, in the pending lawsuit and otherwise. Perhaps as importantly, in view of Glidewell’s misuse of both Glidewell’s immediate application and existing registration for BruxZir (by asserting it against any competitor using any form of the generic word BRUX (relating to bruxism and its treatment within the dental industry), both Glidewell’s immediate application and existing registration should be amended to require Glidewell to DISCLAIM the word BRUX and its related terms such as BRUXER, BRUXISM, BRUXING, etc. To NOT require such a disclaimer will embolden Glidewell to continue its misuse of its registration(s) as against its competitors in the dental industry.

5. At the very least, to help ensure that it does not further misuse its existing and any further registration for BruxZir, Glidewell should be required to disclaim the term BRUX (and related terms BRUXER, BRUXING, BRUXISM, etc.), as those are generic within the dental industry. As the TTAB may be aware, (a) BRUXISM is a dental condition that can be treated by the goods sought to be registered, (b) the related terms BRUX, BRUXER, and BRUXING are generically used among dentists and the dental industry beginning with the first week or so of dental school, and (c) third parties PRIOR to Applicant have used and even registered their own “BRUX” marks. Examples include:

BRUX-EZE (U.S. Reg. 2,473,238; in use since 1985)

BRUXGUARD (U.S. Reg. 2,251,807; in use since 1999)

DR. BRUX (U.S. Reg. 3,775,126; in use since 2006)

6. As mentioned above, Applicant also sued Opposer re this issue. Were Applicant to obtain an ADDITIONAL registration for BruxZir, Applicant presumably would use it in a similar manner, to even FURTHER harm Opposer and others.

7. Contemporaneously with this filing, Opposer is filing a motion to stay this proceeding. The PTO already has stayed the aforementioned related opposition (wherein Applicant had opposed Opposer's mark KDZ BRUXER PLUS DESIGN), and should stay this one as well.

8. For the foregoing reasons, the subject application should be denied.

WHEREFORE, Opposer respectfully prays that U.S. Serial No. 85/332,886 for BruxZir be denied. Contemporaneously with this filing, Opposer is submitting the requisite \$300.00 filing fee.

Respectfully submitted,

Dated: December 7, 2011

/J. Mark Holland/

J. Mark Holland
J. MARK HOLLAND & ASSOCIATES
Attorney for Opposer KEATING DENTAL
ARTS, INC.