

ESTTA Tracking number: **ESTTA445792**

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

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 parties oppose registration of the indicated application.

### Opposers Information

Name	David A. Kay
Granted to Date of previous extension	12/11/2011
Address	15 Arrowsmith Drive, Hoghton Preston Lancashire, PR50DT UNITED KINGDOM

Name	Christopher N. Cramer
Granted to Date of previous extension	12/11/2011
Address	5611 Rowan Road New Port Richey, FL 34653 UNITED STATES

Attorney information	BORIS UMANSKY LEYDIG VOIT & MAYER LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 N. STETSON CHICAGO, IL 60601 UNITED STATES bumansky@leydig.com Phone:312-616-5600
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### Applicant Information

Application No	85225969	Publication date	06/14/2011
Opposition Filing Date	12/12/2011	Opposition Period Ends	12/11/2011
Applicant	APOLLO SPRAYERS INTERNATIONAL, INC. 1030 JOSHUA WAY VISTA, CA 92081 UNITED STATES		

### Goods/Services Affected by Opposition

Class 007.

All goods and services in the class are opposed, namely: Sunless spray tanning equipment, namely, power-operated sprayers that deliver cosmetic and sunless tanning lotions, solutions and liquids to the skin

### 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. Application No.	85317895	Application Date	05/11/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MAXIMIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 007. First use: First Use: 2008/01/21 First Use In Commerce: 2008/01/21 Spray tanning machines; sprayers (machines) for applying sun tanning preparations		

Attachments	85317895#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition (Final).pdf ( 9 pages )(57224 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	/Boris Umansky/
Name	BORIS UMANSKY
Date	12/12/2011

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

DAVID A. KAY AND	)	
CHRISTOPHER N. CRAMER	)	
	)	Opposition No.
Opposers,	)	
	)	Mark: MAXIMIST
v.	)	
	)	Application Serial No. 85/225,969
APOLLO SPRAYERS	)	
INTERNATIONAL, INC.	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposers, David A. Kay, an individual and citizen of the United Kingdom and Christopher N. Cramer, an individual and citizen of the United States (hereinafter collectively referred to as “Opposers”), believe they will be damaged by registration of the mark shown in Application Serial No. 85/225,969 filed by Apollo Sprayers International, Inc. (hereinafter referred to as “Applicant”), which application was published in the Official Gazette on June 14, 2011, and hereby oppose the same.

As grounds for the opposition, Opposers allege as follows:

1. Applicant seeks to register “MAXIMIST” as a mark for the following goods:

Sunless spray tanning equipment, namely, power-operated sprayers that deliver cosmetic and sunless tanning lotions, solutions and liquids to the skin, in International Class 7,

as evidenced by the publication of the mark in the Official Gazette June 14, 2011 issue.

2. Applicant filed its application for the mark “MAXIMIST,” Serial No. 85/225,969, on January 25, 2011 based on intent-to-use under Section 1(b) of the Lanham Act (hereinafter “Applicant’s Mark”).

3. Opposers own a pending trademark application for the mark “MAXIMIST,” Serial No. 85/317,895, filed May 11, 2011 in connection with “Spray tanning machines; sprayers (machines) for applying sun tanning preparations,” in International Class 7 (hereinafter “Opposers’ Mark”). Opposers’ Mark was filed based on use in commerce under Section 1(a) of the Lanham Act, and claims a first use date in commerce of January 21, 2008. See Exhibit 1 attached hereto.

4. On August 28, 2011, the USPTO Examining Attorney assigned to Opposers’ Mark issued an Office Action citing the prior-filed Applicant’s Mark as a potential bar to registration under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

5. Opposers are likely to be damaged by the registration of Applicant’s Mark, as said mark is standing in the way of Opposers’ good faith attempt to register their mark “MAXIMIST.”

6. Applicant’s application for a mark identical to Opposers’ mark “MAXIMIST” identifies spray tanning equipment, goods identical and/or closely related and overlapping to the goods identified in Opposers’ Trademark Application Serial No. 85/317,895.

7. Opposer Christopher N. Cramer has been using the mark “MAXIMIST” in the United States in connection with spray tanning systems and products since at least as early as January 2008, a date prior to any priority date to which Applicant is entitled.

8. Opposer Christopher N. Cramer currently offers for sale through his company Tampa Bay Tan, LLC, as well as through third-party distributors, various types of spray tanning machines under the mark “MAXIMIST.”

9. Upon information and belief, Applicant has been aware of Opposer Christopher N. Cramer's use of the mark "MAXIMIST" in connection with spray tanning equipment since 2008.

10. Prior to January 25, 2011, the filing date for Applicant's Mark, Applicant never objected to Opposer Christopher N. Cramer's use of the "MAXIMIST" mark.

11. Prior to January 25, 2011, the filing date for Applicant's Mark, Applicant never expressed a desire to use and/or register the "MAXIMIST" mark in connection with spray tanning equipment.

12. Upon information and belief, Applicant has not yet commenced offering any goods or services under the mark "MAXIMIST."

13. Opposers' use of the mark "MAXIMIST" has been valid and continuous since the date of first use and has not been abandoned. Opposers' mark is symbolic of extensive goodwill and consumer recognition built up by Opposers through substantial amounts of time and effort in advertising and promotion. In view of the fact that the parties' respective marks are identical and the goods covered by their respective trademark applications are identical and/or closely related and overlapping, it is alleged that Applicant's mark so resembles Opposers' mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

14. Given the identical nature of the marks and the overlapping identification of goods in both parties' applications, Opposers believe it quite likely that the USPTO will refuse their pending trademark application for the mark "MAXIMIST," Serial No. 85/317,895, based on Applicant's Mark, if and when the latter registers.

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

16. In view of the above, Applicant is not entitled to federal registration of its alleged mark "MAXIMIST" as Opposers have priority of use of the identical "MAXIMIST" mark in commerce in connection with identical and/or closely related and overlapping goods.

17. By reason of all the foregoing, Opposers will be gravely damaged by the registration of Applicant's Mark.

WHEREFORE, by their undersigned attorneys, Opposers, David A. Kay and Christopher N. Cramer, respectfully request that this Notice of Opposition be sustained and that registration of the mark "MAXIMIST," Serial No. 85/225,969, be refused.

Please charge the filing fee of \$600, and any deficiencies, to USPTO deposit account No. 12-1216.

Respectfully submitted,



Date: December 12, 2011

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Boris Umansky  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
180 North Stetson  
Chicago, Illinois 60601  
(312) 616-5600  
Attorneys for Opposer

**CERTIFICATE OF FILING AND SERVICE**

This Notice of Opposition is being filed electronically through the ESTTA system. The fee of \$600.00 required in §2.6(a)(17) is being paid concurrently herewith. The Commissioner is authorized to charge payment of any additional fees associated with this filing or credit any overpayment to Deposit Account No. 12-1216. Opposers' Notice of Opposition is being served by certified mail, return receipt requested on Applicant's counsel of record as shown in the correspondence record in the Office, as follows:

Walter A. Hackler, Ph.D.  
Patent Law Office  
2372 S.E. Bristol St., Ste. B  
Newport Beach, CA 92660



Dated: December 12, 2011

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# EXHIBIT 1

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2011-12-12 12:55:19 ET

Serial Number: [85317895 Assignment Information](#)      [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

# MAXIMIST

(words only): [MAXIMIST](#)

Standard Character claim: [Yes](#)

**Current Status:** [A non-final Office action has been sent \(issued\) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.](#)

**Date of Status:** [2011-08-28](#)

**Filing Date:** [2011-05-11](#)

**Transformed into a National Application:** [No](#)

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** [Principal](#)

**Law Office Assigned:** [LAW OFFICE 107](#)

**Attorney Assigned:**  
[DE JONGE KATHLEEN RUSSELL](#)

**Current Location:** [L7X -TMEG Law Office 107 - Examining Attorney Assigned](#)

**Date In Location:** [2011-08-28](#)

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## LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. [Cramer, Christopher Neil](#)

**Address:**  
[Cramer, Christopher Neil](#)  
[5611 Rowan Road](#)

[New Port Richey, FL 34653](#)

[United States](#)

**Legal Entity Type:** [Individual](#)

**Country of Citizenship:** [United States](#)

2. [Kay, David Andrew](#)

**Address:**

[Kay, David Andrew](#)

[15 Arrowsmith Drive Hoghton](#)

[Preston, Lancashire PR50DT](#)

[United Kingdom](#)

**Legal Entity Type:** [Individual](#)

**Country of Citizenship:** [United Kingdom](#)

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**GOODS AND/OR SERVICES**

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**International Class:** [007](#)

**Class Status:** [Active](#)

[Spray tanning machines; sprayers \(machines\) for applying sun tanning preparations](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [2008-01-21](#)

**First Use in Commerce Date:** [2008-01-21](#)

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

[2011-08-28 - Notification Of Non-Final Action E-Mailed](#)

[2011-08-28 - Non-final action e-mailed](#)

[2011-08-28 - Non-Final Action Written](#)

[2011-08-26 - Assigned To Examiner](#)

[2011-05-16 - New Application Office Supplied Data Entered In Tram](#)

[2011-05-14 - New Application Entered In Tram](#)

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## ATTORNEY/CORRESPONDENT INFORMATION

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### **Attorney of Record**

Boris Umansky

### **Correspondent**

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