

ESTTA Tracking number: **ESTTA513025**

Filing date: **12/26/2012**

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	Guthy-Renker LLC
Granted to Date of previous extension	12/26/2012
Address	41-550 Eclectic Street, Suite 200 Palm Desert, CA 92260 UNITED STATES

Attorney information	Daniel M. Cislo Cislo & Thomas LLP 1333 2nd Street, Suite 500 Santa Monica, CA 90401 UNITED STATES dlarson@cislo.com, ttab@cislo.com, lkeane@cislo.com Phone:310-451-0647
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Applicant Information

Application No	85557438	Publication date	08/28/2012
Opposition Filing Date	12/26/2012	Opposition Period Ends	12/26/2012
Applicant	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, OH 45202 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2012/02/05 First Use In Commerce: 2012/02/05 All goods and services in the class are opposed, namely: Providing an interactive website for users with specific informed recommendations of skin care products that are best suited to particular individuals based on skin analysis results
Class 044. First Use: 2012/02/05 First Use In Commerce: 2012/02/05 All goods and services in the class are opposed, namely: Cosmetic skin analysis services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	PROACTIV
Goods/Services	For a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products.

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PROACTIV SOLUTION		
Goods/Services	For a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products.		

Attachments	Opposition.pdf (6 pages)(258120 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	/DanielMCislo/
Name	Daniel M. Cislo
Date	12/26/2012

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

**IN THE MATTER OF APPLICATION SERIAL NO. 85/557,438—PRO X
PUBLISHED IN THE OFFICIAL GAZETTE ON AUGUST 28, 2012**

GUTHY-RENKER LLC, a Delaware limited liability company,)) OPPOSITION NO. _____
)	
OPPOSER,)	
vs.)) NOTICE OF OPPOSITION
)	
THE PROCTER & GAMBLE COMPANY, an Ohio corporation,)	
)	
APPLICANT.)	
)	

Opposer, GUTHY-RENKER LLC, a Delaware limited liability company, having offices at 41-550 Eclectic Street, Suite 200, Palm Desert, California 92260 (“Guthy-Renker”), believes that it will be damaged by registration of the mark shown in Application Serial No. 85/557,438 by THE PROCTER & GAMBLE COMPANY, an Ohio corporation, having a listed business address of One Procter & Gamble Plaza, Cincinnati, Ohio 45202, and hereby opposes the same and requests that the registration to the application be refused.

The grounds for opposition are as follows:

1. Applicant seeks to register a mark that consists of the term “PRO X” for use in connection with Providing an interactive website for users with specific informed recommendations of skin care products that are best suited to particular individuals based on

skin analysis results in International Class 035 and Cosmetic skin analysis services in International Class 044 (hereinafter “Applicant’s Mark”). Applicant’s Mark is a use based application under 15 U.S.C. §1051 et seq.

2. Opposer has obtained the necessary extension of time in which to file this Notice of Opposition.

3. Since as early as 1991, Opposer, its predecessors, or its related companies have continuously used the terms “PROACTIV” and “PROACTIV SOLUTION” (“Opposer’s Marks”) in interstate commerce as trademarks for a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products (“Opposer’s Goods”). Opposer’s Marks have also continuously appeared in substantial advertising and promotion of Opposer’s skin care and cosmetic products, such that the Marks are closely identified with Opposer’s Goods and have gained very valuable public recognition. Opposer has established an outstanding reputation as to the quality of its products sold under the “PROACTIV” and “PROACTIV SOLUTION” Marks.

4. Opposer has continuously used its Marks in interstate commerce since long prior to any date upon which Applicant can rely. By virtue of its sales of high-quality products bearing Opposer’s Marks in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Marks and a valuable reputation.

5. Opposer’s trademark rights for the PROACTIV and PROACTIV SOLUTION Marks have priority over Applicant’s Mark, inasmuch as Opposer has continuously used its

Marks since it commenced use of its Marks, and Applicant's application lists a date of first use of February 5, 2012.

6. Applicant's Mark so resembles Opposer's Marks that have been and are currently used, as to be likely to cause confusion, or cause mistake, or to deceive, in violation of Section 2(d) of The Trademark Act, 15 U.S.C. §1052(d), when used on or in connection with Applicant's Goods.

7. Under the circumstances, registration of Applicant's Mark will injure Opposer by causing the trade and/or purchasing public to be confused, and/or deceived into believing that Applicant's Goods are those of Opposer, or are sponsored by Opposer, to Opposer's damage and will place a cloud over Opposer's title to its PROACTIV and PROACTIV SOLUTION Marks, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d).

8. Opposer's PROACTIV and PROACTIV SOLUTION Marks were well established and famous long before the filing date of Applicant's subject application, and at the time that Applicant filed the subject application. Registration of Applicant's Mark would diminish and dilute the distinctive quality of Opposer's rights in its famous PROACTIV and PROACTIV SOLUTION Marks in violation of 15 U.S.C. §1125(c). Moreover, registration of Applicant's Mark would diminish the advertising value of Opposer's Marks, and such registration would, in the event of any quality problems involving the goods offered by Applicant, tarnish the distinctiveness of Opposer's Marks.

9. Opposer's Marks are distinctive and famous such that the public would associate Opposer's Marks with Opposer when encountering Opposer's Marks apart from Opposer's Goods.

10. Applicant's Mark is the same as, or substantially the same as Opposer's Marks, including in visual appearance and in pronunciation.

11. Applicant's Mark is likely to and/or has diluted and lessened the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

12. Applicant's Mark so resembles Opposer's continuously used, famous and well-known Marks as to be likely, when used in connection with the goods as set forth in Applicant's application, to lessen the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

13. The subject application should be refused because Opposer's rights of continuing its present use of its Marks in commerce are, or would be, threatened by Applicant's registration of Applicant's Mark for Applicant's Goods, and because Opposer's business would otherwise be damaged by Applicant's registration of Applicant's Mark for Applicant's Goods.

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WHEREFORE, the Opposer prays that Application Serial No. 85/557,438 be rejected, and that the Mark sought for the goods therein to be specified in International Classes 035 and 044 be denied and refused.

The required fee for the class of goods, and any additional fees, may be charged to Opposer's representative's deposit account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP



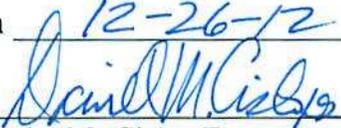
Daniel M. Cislo, Esq.

Reg. No. 32,973

Dated: December 26, 2012

ELECTRONIC MAILING CERTIFICATE

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") on the date shown below.

on 12-26-12

Daniel M. Cislo, Esq. 12-26-12
Date

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

The Procter & Gamble Company
One Procter & Gamble Plaza
Cincinnati, Ohio 45202

Emily M. Judge, Esq.
The Procter & Gamble Company
299 E. 6th Street
Cincinnati, Ohio 45202

Dated: 12-26-12 By: 
Daniel M. Cislo, Esq.

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