

ESTTA Tracking number: **ESTTA543935**

Filing date: **06/19/2013**

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	NYX, Los Angeles Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2230 S. Tubeway Ave. City of Commerce, CA 90040 UNITED STATES		

Attorney information	Patchen M. Haggerty DORSEY & WHITNEY LLP 701 Fifth Ave., Ste. 6100 Seattle, WA 98104 UNITED STATES ip.docket.se@dorsey.com, tmseattle@dorsey.com, haggerty.patchen@dorsey.com Phone:(206) 903-8839		
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**Applicant Information**

Application No	85862671	Publication date	06/11/2013
Opposition Filing Date	06/19/2013	Opposition Period Ends	07/11/2013
Applicant	Vivo Per Lei Inc. 20255 Corisco Street Chatsworth, CA 91311 UNITED STATES		

**Goods/Services Affected by Opposition**

<p>Class 003. All goods and services in the class are opposed, namely: After shave lotions; After-shave creams; After-shave lotions; Age spot reducing creams; Anti-aging cleanser; Anti-aging cream; Anti-aging creams; Anti-aging moisturizer; Anti-aging toner; Anti-wrinkle cream; Anti-wrinkle creams; Beauty creams; Beauty creams for body care; Beauty gels; Beauty lotions; Beauty masks; Beauty serums; Body butter; Body cream; Body creams; Body lotion; Body lotions; Body mask cream; Body mask lotion; Body scrub; Boot cream; Cleansing creams; Cosmetic creams; Cosmetic creams for skin care; Cosmetic masks; Cosmetic preparations, namely, firming creams; Cosmetic preparations, namely, firming lotions; Cosmetics in the form of milks, lotions and emulsions; Eye cream; Eye gels; Eye lotions; Face and body beauty creams; Face and body creams; Face and body lotions; Face creams; Face creams for cosmetic use; Face milk and lotions; Facial beauty masks; Facial cream; Facial creams; Facial lotion; Facial masks; Facial scrubs; Foot scrubs; Gel eye masks; Hand cream; Hand creams; Hand lotions; Hand scrubs; Make-up removing lotions; Make-up removing milk, gel, lotions and creams; Massage lotions; Moisturizing creams; Nail buffing preparations; Nail care preparations; Nail care preparations, namely, nail softeners; Night cream; Non-medicated anti-aging serum; Non-medicated foot cream; Non-medicated skin creams; Scented body lotions and creams; Shea butter for cosmetic purposes; Skin and body topical lotions, creams and oils for cosmetic use; Skin care products, namely, non-medicated skin serum; Skin cleansing cream; Skin cream; Skin creams; Skin masks; Skin moisturizer masks</p>
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## Applicant Information

Application No	85862710	Publication date	06/11/2013
Opposition Filing Date	06/19/2013	Opposition Period Ends	07/11/2013
Applicant	Vivo Per Lei Inc. 20255 Corisco Street Chatsworth, CA 91311 UNITED STATES		

## Goods/Services Affected by Opposition

<p>Class 003.</p> <p>All goods and services in the class are opposed, namely: After shave lotions; After-shave creams; After-shave lotions; Age spot reducing creams; Anti-aging cleanser; Anti-aging cream; Anti-aging creams; Anti-aging moisturizer; Anti-aging toner; Anti-wrinkle cream; Anti-wrinkle creams; Beauty creams; Beauty creams for body care; Beauty gels; Beauty lotions; Beauty masks; Beauty serums; Body butter; Body cream; Body creams; Body lotion; Body lotions; Body mask cream; Body mask lotion; Body scrub; Boot cream; Cleansing creams; Cosmetic creams; Cosmetic creams for skin care; Cosmetic masks; Cosmetic preparations, namely, firming creams; Cosmetic preparations, namely, firming lotions; Cosmetics in the form of milks, lotions and emulsions; Eye cream; Eye gels; Eye lotions; Face and body beauty creams; Face and body creams; Face and body lotions; Face creams; Face creams for cosmetic use; Face milk and lotions; Facial beauty masks; Facial cream; Facial creams; Facial lotion; Facial masks; Facial scrubs; Foot scrubs; Gel eye masks; Hand cream; Hand creams; Hand lotions; Hand scrubs; Make-up removing lotions; Make-up removing milk, gel, lotions and creams; Massage lotions; Moisturizing creams; Nail buffing preparations; Nail care preparations; Nail care preparations, namely, nail softeners; Night cream; Non-medicated anti-aging serum; Non-medicated foot cream; Non-medicated skin creams; Scented body lotions and creams; Shea butter for cosmetic purposes; Skin and body topical lotions, creams and oils for cosmetic use; Skin care products, namely, non-medicated skin serum; Skin cleansing cream; Skin cream; Skin creams; Skin masks; Skin moisturizer masks</p>
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## 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. Registration No.	3310409	Application Date	01/08/2007
Registration Date	10/16/2007	Foreign Priority Date	NONE
Word Mark	NYX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Liquid make up, compact powder, loose powder, powder blush, cream blush, eyebrow pencils, eyebrow powder, eye shadow, liquid eye liner, mascara, eye shadow pencil, eye liner pencil, gel and cream eye liner, pearl powder shadow, lipstick, lip liner pencil, jumbo lipstick pencil, body bronzer powder, body bronzer lotion, body bronzer cream, false eyelashes, nail polish, glue for false eyelashes, nail polish remover, cuticle cream, facial cleansing pads, facial mask sheets, eye cream, neck cream, shampoo, body lotion, shower gel, bath foam, massage cream		

U.S. Registration No.	4044027	Application Date	09/10/2010
Registration Date	10/25/2011	Foreign Priority Date	NONE
Word Mark	NYX		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Cosmetics and make-up, liquid make up, solid powder for compacts, loose face powder, powder blush, cream blush, eyebrow pencils, eyebrow powder, eye shadow, liquid eye liner, mascara, eye shadow pencil, eye liner pencil, gel and cream eye liner, pearl powder shadow, lipstick, lip liner pencil, jumbo lipstick pencil, body bronzer powder, body bronzer lotion, body bronzer cream, false eyelashes, nail polish, glue for false eyelashes, nail polish remover, cuticle cream, facial beauty mask sheets, eye cream, neck cream, shampoo, body lotion, shower gel, bath foam, massage cream, cosmetic soap</p> <p>Class 018. First use: First Use: 2006/12/08 First Use In Commerce: 2006/12/08 Cosmetic bags, cosmetic cases, cosmetic carrying cases all sold empty</p> <p>Class 021. First use: First Use: 2005/07/05 First Use In Commerce: 2005/07/05 Make-up brushes</p> <p>Class 025. First use: First Use: 2002/04/30 First Use In Commerce: 2002/07/01 Clothing, namely, t-shirts, aprons, polo shirts, pants, tank tops, long-sleeved shirts</p> <p>Class 035. First use: First Use: 2004/04/01 First Use In Commerce: 2004/04/01 Online retail store services featuring cosmetics, make-up, cosmetic bags, cosmetic cases, cosmetic carrying cases, make-up brush holders and make-up brushes</p>		

U.S. Application No.	85920794	Application Date	05/01/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NYX		
Design Mark			
Description of Mark	The mark consists of the stylized word "NYX".		
Goods/Services	<p>Class 018. First use: First Use: 2006/12/08 First Use In Commerce: 2006/12/08 Cosmetic bags, cosmetic cases, cosmetic carrying cases all sold empty</p> <p>Class 021. First use: First Use: 2005/07/05 First Use In Commerce: 2005/07/05 Make-up brushes</p> <p>Class 025. First use: First Use: 2002/04/30 First Use In Commerce: 2002/07/01 Clothing, namely, t-shirts, aprons, polo shirts, pants, tank tops, long-sleeved shirts</p> <p>Class 035. First use: First Use: 2004/04/01 First Use In Commerce: 2004/04/01 Online retail store services featuring cosmetics, make-up, cosmetic bags, cosmetic cases, cosmetic carrying cases, make-up brush holders and make-up brushes</p>		

U.S. Application	85848189	Application Date	02/12/2013
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NYX PROFESSIONAL MAKEUP		
Design Mark			
Description of Mark	The mark consists of the stylized word "NYX", above a heart design, above the wording "PROFESSIONAL MAKEUP".		
Goods/Services	<p>Class 003. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Cosmetics and make-up, liquid make up, solid powder for compacts, loose face powder, powder blush, cream blush, eyebrow pencils, eyebrow powder, eye shadow, liquid eye liner, mascara, eye shadow pencil, eye liner pencil, gel and cream eye liner, pearl powder shadow, lipstick, lip liner pencil, jumbo lipstick pencil, body bronzer powder, body bronzer lotion, body bronzer cream, false eyelashes, nail polish, glue for false eyelashes</p> <p>Class 018. First use: First Use: 2006/12/08 First Use In Commerce: 2006/12/08 Cosmetic bags, cosmetic cases, cosmetic carrying cases all sold empty</p> <p>Class 021. First use: First Use: 2005/06/05 First Use In Commerce: 2005/06/05 Make-up brushes</p> <p>Class 035. First use: First Use: 2004/04/01 First Use In Commerce: 2004/04/01 Online retail store services featuring cosmetics, make-up, cosmetic bags, cosmetic cases, cosmetic carrying cases, make-up brush holders and make-up brushes</p>		

U.S. Application No.	85768074	Application Date	10/31/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NATURAL NATUREL NYX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: Eyeshadows		

U.S. Application No.	85768100	Application Date	10/31/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SMOKEY FUMÃ# NYX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: Eyeshadows		

U.S. Application No.	85932107	Application Date	05/14/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ADORABLE ADORABLE NYX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: Eyeshadows

U.S. Application No.	85932111	Application Date	05/14/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SEX BOMB FEMME FATALE NYX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: Eyeshadows		

Attachments	Notice of Opposition - BIONYX.pdf(227179 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	/Patchen M. Haggerty/
Name	Patchen M. Haggerty
Date	06/19/2013