

ESTTA Tracking number: **ESTTA559829**

Filing date: **09/17/2013**

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	The House of Terence Pty. Ltd
Granted to Date of previous extension	09/18/2013
Address	Level 7/486 Albert Street East Melbourne, Victoria, 3002 AUSTRALIA

Correspondence information	Dean R. Karau, Cynthia A. Moyer Attorneys Fredrikson & Byron, P.A. 200 South Sixth Street Suite 4000 Minneapolis, MN 55402-1425 UNITED STATES ip@fredlaw.com, dkarau@fredlaw.com, cmoyer@fredlaw.com Phone:6124927178
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Applicant Information

Application No	85794800	Publication date	05/21/2013
Opposition Filing Date	09/17/2013	Opposition Period Ends	09/18/2013
Applicants	Craig Andrew Delmo as trustee for The IRS Holdings Unit Trust c/- 22 Rocklea Drive Port Melbourne, AUSTRALIA Margaret Mirsalina Clayton as trustee for The IRS Holdings Unit Trust 160 Weatherall Road Cheltenham, AUSTRALIA		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Shampoos; hair mousse, hair spray and hair wax; hair styling waxes; conditioners for use on the hair; bleaches for use on the hair; color rinses for the hair; creams for the hair; dyes for the hair; gels for use on the hair; hair cleaning preparations; hair colors; hair finishing rinses; hair fixers; hair gel; hair grooming preparations; hair lacquer; hair lotions; hair moisturizers; hair oil; hair setting lotion; hair tints; wax treatments for the hair
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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/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	INSTANT ROCK STAR		
Goods/Services	hair care products		

Attachments	INSTANT ROCKSTAR Notice of Opposition.pdf(14350 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	/Dean R. Karau/
Name	Dean R. Karau, Cynthia A. Moyer
Date	09/17/2013

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

In the Matter of Trademark Serial No. 85794800
For the Mark: INSTANT ROCKSTAR
Filed: December 5, 2012
Published: May 21, 2013

The House of Terence Pty. Ltd,

Opposer,

Opposition No. _____

v.

Craig Andrew Delmo as trustee for The IRS Holdings Unit Trust and
Margaret Mirsalina Clayton as trustee for The IRS Holdings Unit Trust,

Applicant.

NOTICE OF OPPOSITION

This opposition is made to the application of Applicant, Craig Andrew Delmo as trustee for The IRS Holdings Unit Trust and Margaret Mirsalina Clayton as trustee for The IRS Holdings Unit Trust, for registration of the mark INSTANT ROCKSTAR, Application Serial No. 85794800, published on May 21, 2013. Opposer, The House of Terence Pty. Ltd, has obtained one extension of time to oppose, expiring on September 18, 2013.

Opposer believes it will be damaged by the registration of the mark shown in the application, and hereby opposes the same. As grounds for its opposition, Opposer states and alleges as follows:

1. Opposer is a Pty. Ltd, organized under the laws of Australia, with its principal place of business located at Level 7/486 Albert Street, East, Melbourne, Victoria, 3002, Australia.
2. On information and belief, Applicant is a trust organized under the laws of Australia

with addresses of record of (Craig Andrew Delmo) c/- 22 Rocklea Drive, Port Melbourne, Australia and (Margaret Mirsalina Clayton) 160 Weatherall Road, Cheltenham, Australia.

3. For a number of years Opposer has used the trademark INSTANT ROCK STAR in the United States in connection with hair products.

4. On December 5, 2012, Applicant filed an intent-to-use application to register the mark INSTANT ROCKSTAR, Application Serial No. 85794800, the goods in the application were subsequently amended to “shampoos; hair mousse, hair spray and hair wax; hair styling waxes; conditioners for use on the hair; bleaches for use on the hair; color rinses for the hair; creams for the hair; dyes for the hair; gels for use on the hair; hair cleaning preparations; hair colors; hair finishing rinses; hair fixers; hair gel; hair grooming preparations; hair lacquer; hair lotions; hair moisturizers; hair oil; hair setting lotion; hair tints; wax treatments for the hair” in International Class 003, and the application was published for opposition.

5. Opposer has used the trademark INSTANT ROCK STAR in the United States in connection with hair products in commerce, validly, continuously, and exclusively, without abandonment, for a number of years in connection hair care products, long before any date of use or constructive date of use by Applicant of the trademark INSTANT ROCKSTAR.

6. Opposer has developed goodwill through its use of the trademark INSTANT ROCK STAR. By reason of advertising, promotion and widespread use, the consuming public recognizes the trademark INSTANT ROCK STAR and associates it exclusively with Opposer and its hair care products.

7. Use by Applicant of the trademark INSTANT ROCKSTAR for which registration is sought in the application opposed herein is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Applicant’s goods in that purchasers or others are likely

to believe that Applicant's goods are Opposer's goods, or are in some way legitimately connected with, licensed by, or approved by Opposer. Use by Applicant of the trademark INSTANT ROCKSTAR for which registration is sought in the application opposed herein has lessened, and will continue to lessen, the capacity of the trademark INSTANT ROCK STAR to identify and distinguish goods made by Opposer.

8. Use by Applicant of the trademark INSTANT ROCKSTAR for which registration is sought in the application opposed herein, is without Opposer's consent or permission.

Please address all communications to Dean R. Karau and Cynthia A. Moyer, Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402-1425.

WHEREFORE, registration by Applicant of the aforesaid trademark for the aforesaid goods would be damaging to Opposer.

THEREFORE, Opposer respectfully requests that the application for registration be denied.

Respectfully submitted,

Dated: September 17, 2013

/s/ Dean R. Karau
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the NOTICE OF OPPOSITION was served by Federal Express on the correspondent of record for Applicant, Craig Andrew Delmo as trustee for The IRS Holdings, by sending it to the address of record, C/- 22 Rocklea Drive, Port Melbourne, Australia, this 17th day of September, 2013.

/Dean R. Karau/

Dean R. Karau

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