

ESTTA Tracking number: **ESTTA593480**

Filing date: **03/19/2014**

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	BODY VIBE INTERNATIONAL, LLC
Granted to Date of previous extension	03/19/2014
Address	3225 S. Mcleod Blvd., Ste. 100 Las Vegas, NV 89121 UNITED STATES
Attorney information	Thomas P. Philbrick ALLMARK TRADEMARK 2089 Avy Ave. Menlo Park, CA 94025 UNITED STATES tom@allmarktrademark.com, allmarktrademark@gmail.com Phone:(650)233-2789

Applicant Information

Application No	85966358	Publication date	11/19/2013
Opposition Filing Date	03/19/2014	Opposition Period Ends	03/19/2014
Applicant	Cox, David 2359 Erma Ct. Springfield, OR 97477 USX		

Goods/Services Affected by Opposition

Class 011. First Use: 2013/05/31 First Use In Commerce: 2013/05/31 All goods and services in the class are opposed, namely: Electric vaporizers
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Prior common law use in commerce of a confusingly similar mark, namely, DR. VAPE, for identical goods

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86221601	Application Date	03/14/2014
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	DR. VAPE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2013/01/12 First Use In Commerce: 2013/01/12 Electric vaporizers

U.S. Application No.	86221890	Application Date	03/14/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DR. VAPE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2013/01/12 First Use In Commerce: 2013/01/12 Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges, atomizers and vaporizers		

Attachments	86221601#TMSN.jpeg(bytes) 86221890#TMSN.jpeg(bytes) Notice of Opposition to DR. VAPE trademark.pdf(701689 bytes) Certificate of Service for opposition.pdf(97946 bytes)
-------------	--

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	/Thomas P. Philbrick/
-----------	-----------------------

Name	Thomas P. Philbrick
Date	03/19/2014

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

In re application serial no. 85966358

Filed on June 21, 2013

BODY VIBE INTERNATIONAL, LLC)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
Cox, David)	
)	
)	
Applicant.)	

Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

BODY VIBE INTERNATIONAL, LLC, a limited liability company legally organized under the laws of New Mexico, with a principal place of business of 11445 E. Via Linda, Suite 2626, Scottsdale, AZ 85259, (hereinafter “Opposer”), having filed a timely extension of time to oppose, hereby believes that it is being damaged and will continue to be damaged by the application for the mark DR. VAPE (standard character mark) in International Class 11 shown in U.S. serial no. 85966358, and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. David Cox, an individual and citizen of the United States (hereinafter “Applicant”) is the current listed owner of record of the application for the mark DR. VAPE (standard character

mark) as identified in U.S. Serial. No. 85966358 (“Applicant’s application”) that is seeking registration in connection with “Electric vaporizers,” in International Class 11. Applicant’s last known address of record as indicated on the USPTO’s TESS database is 2359 Erma Ct., Springfield, OR 97477.

2. Opposer has used the mark DR. VAPE in interstate commerce since at least as early as January 12, 2013 (well before the application filing date and alleged first usage dates alleged in Applicant’s serial number 85966358) in conjunction with a variety of goods and services including, “Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges, atomizers and vaporizer,” in International Class 30 and “Electric vaporizers,” in International Class 11. Opposer is the owner of U.S. Serial Nos. 86221601 and 86221890 (“Opposer’s marks”) for the mark DR. VAPE filed on a Section 1(a) basis, on March 14, 2014, used in connection with “Electric vaporizers,” in International Class 11 and “Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges, atomizers and vaporizers,” in International Class 30. Based on Opposer’s substantial prior interstate use of its DR. VAPE marks in commerce and resulting goodwill, Opposer believes that it is being and will be damaged by the registration of Serial No. 85966358 as it creates a confusingly similar overall commercial impression to Opposer’s marks (in fact identical) and is used in connection with identical goods in International Class 11 that are also related to and complimentary to Opposer’s class 30 goods. Moreover, Opposer has priority of use in the DR. VAPE mark over Applicant based on its interstate usage in commerce prior to Applicant’s adoption, filing and alleged use in commerce of identical and/or confusingly similar DR. VAPE related marks.

3. Prior to filing its application serial numbers 86221890 and 86221601, Opposer became aware of Applicant's Application serial number 85966358 via a search of the U.S. trademark register. On the basis of similarities in appearance (identical) and fields of usage, Opposer has a reasonable belief and is in fact certain that Applicant's prior filed application will be cited as a Section 2(d) "likelihood of confusion" conflict refusal against Opposer's DR. VAPE application in class 11 upon its eventual examination by the USPTO. Opposer therefore has standing to file this opposition as the registration of its DR. VAPE mark in Classes 11, and possibly class 30 (as identified in U.S. Serial Numbers 86221601 and 86221890) will be refused (causing irreparable damage and injury to Opposer) if Applicant's application is not successfully opposed and ultimately refused registration.

4. If Applicant's application is not successfully opposed, Applicant will own the *prima facie* exclusive right to use the DR. VAPE mark in International Class 11 in connection with goods that the Examining Attorney will certainly deem "confusingly similar" to Opposer's DR. VAPE goods as they are identical. Such a registration would be a source of damage and injury to Opposer as it would prevent the USPTO from issuing a registration to Opposer based on its pending application serial numbers 86221601 and 86221890.

5. In view of the substantial similarity (in fact identical appearances) between Opposer's marks and Applicant's application, Opposer's prior use in commerce, and the commercial relationship between the goods/services at issue, registration of the DR. VAPE mark herein opposed to Applicant in class 11, must be refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The mark depicted in Applicant's application so resembles a mark previously used in the United States by Opposer and not abandoned, as to be

likely, when used on or in connection with the goods or services of Applicant, to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer prays that this opposition be sustained in its favor and that Serial. No. 85966358 for the mark DR. VAPE be refused in its entirety.

DATED this 19th day of March, 2014.

Respectfully submitted,

BODY VIBE INTERNATIONAL, LLC

By: 

Thomas P. Philbrick, Esq.
John E. Russell, Esq.
Attorneys for Opposer

ALLMARK TRADEMARK®
2089 Avy Ave.
Menlo Park, CA 94025

Telephone: (650)233-2789
Facsimile: (650)233-2791
Email: tom@allmarktrademark.com
allmarktrademark@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Applicant's attorney of record by mailing said copy on March 19, 2014 via First Class Mail, postage fully prepaid to:

Mark S. Hubert, P.C.
Attn: Mark S. Hubert, Esq.
2300 SW First Ave., Suite 101
Portland, OR 97201

By: _____

A handwritten signature in black ink, appearing to read "Thomas P. Philbrick", written over a horizontal line.

Thomas P. Philbrick

Dated: _____

03/19/2014