

ESTTA Tracking number: **ESTTA644337**

Filing date: **12/15/2014**

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	Market America, Inc.
Granted to Date of previous extension	12/13/2014
Address	1302 Pleasant Ridge Road Greensboro, NC 27409 UNITED STATES

Attorney information	Ryan S. Luft 1302 Pleasant Ridge Road Greensboro, NC 27409 UNITED STATES trademarks@marketamerica.com Phone:336/544-6349
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Applicant Information

Application No	86284907	Publication date	10/14/2014
Opposition Filing Date	12/15/2014	Opposition Period Ends	12/13/2014
Applicant	Spartan Brands, Inc. 451 Park Avenue South, 5th Floor New York, NY 10016 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Hair conditioners, shampoos, and hair fixatives
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4081123	Application Date	10/19/2010
Registration Date	01/03/2012	Foreign Priority Date	NONE
Word Mark	FIXX BY LOREN RIDINGER		

Design Mark	Fixx by Loren Ridinger
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2011/02/01 First Use In Commerce: 2011/02/01 Hair care products, namely, shampoo and conditioner; hair styling preparations; skincare products for facial and body use, namely, body balm, creams, and lotions

U.S. Registration No.	4289986	Application Date	11/14/2011
Registration Date	02/12/2013	Foreign Priority Date	NONE

Word Mark	FIXX SOLUTION-ORIENTED PRODUCTS
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Design Mark	Fixx Solution-oriented products
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Description of Mark	NONE
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Goods/Services	Class 003. First use: First Use: 2011/11/01 First Use In Commerce: 2011/11/01 Hair care products, namely, shampoo and conditioner; hair styling preparations; skincare products for facial and body use, namely, body balm, creams, and lotions
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U.S. Application No.	85851877	Application Date	02/16/2013
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	FIXX
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2011/02/01 First Use In Commerce: 2011/02/01 Hair care products, namely, shampoo and conditioner; hair styling preparations; skincare products for facial and body use, namely, body balm, creams, and lotions

Attachments	85155946#TMSN.png(bytes) 85471959#TMSN.png(bytes) 85851877#TMSN.png(bytes) FIX - Notice of Opposition.pdf(3449073 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	/Ryan S. Luft/
Name	Ryan S. Luft
Date	12/15/2014

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

In the matter of trademark application Serial No. 86/284907

For the mark FIX

Published in the Official Gazette on October 14, 2014

Market America, Inc.)
)
v.)
)
Spartan Brands, Inc.)
_____)

The above-identified opposer (“Market America”) believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The applicant, Spartan Brands, Inc. (“Applicant”), filed a trademark application assigned Application Serial No. 86/284907 in the United States Patent and Trademark Office (“PTO”) on May 19, 2014 (the “Application”) to register the mark FIX (the “Applicant’s Mark”) for use in connection with “Hair conditioners, shampoos, and hair fixatives” in International Class 003.

2. The Application is based on Applicant’s intent to use the mark. On information and belief, at the time Applicant filed the Application, Applicant did not have actual use of Applicant’s Mark as a trademark with the goods and services identified above.

3. The Application was published for opposition in the *Official Gazette* on October 14, 2014. Market America sought and was granted an extension of time to file a Notice of Opposition.

4. Applicant's use of Applicant's Mark is confusingly similar to Market America's trademark, FIXX™, which has been in use for almost four years for the same category of goods as those which are the subject of Applicant's trademark application. Market America has accrued common law rights in the name FIXX through its widespread use of the mark for hair care products and other related goods. (For an example of Market America's use of the trademark, FIXX, see attached.)

5. In addition, Market America has the following trademark registrations and a pending application, also covering the same category of goods:

- a. FIXX BY LOREN RIDINGER, U.S. Reg. No. 4081123;
- b. FIXX SOLUTION-ORIENTED PRODUCTS, U.S. Reg. No. 4289986; and
- c. FIXX, U.S. Application No. 85851877.

(FIXX, FIXX BY LOREN RIDINGER, and FIXX SOLUTION-ORIENTED PRODUCTS, collectively, the "FIXX trademarks.")

6. Market America and its affiliated entities also hold international trademark registrations that include FIXX, FIXX BY LOREN RIDINGER, and FIXX SOLUTION-ORIENTED PRODUCTS.

7. Through Market America's continuous use of the FIXX trademarks, the public has come to recognize its mark as being uniquely associated with Market America.

8. Applicant's Mark, FIX, is nearly identical to Market America's trademark, FIXX, and nearly identical to the predominant portion of FIXX BY LOREN RIDINGER and FIXX SOLUTION-ORIENTED PRODUCTS. Further, Applicant's goods and services are closely related to Market America's goods and services.

9. As a result of the similarity of the parties' trademarks, the similarity of the goods and services associated with the trademarks, and the strength of the FIXX trademarks, Applicant's registration and use of Applicant's Mark would likely create confusion, mistake, or deception in the minds of prospective purchasers as to the origin or source of Market America's goods and services.

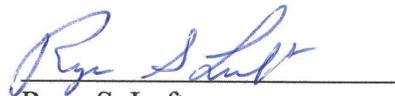
10. Prospective purchasers are likely to mistakenly believe that Applicant's goods and services are sponsored by, authorized, endorsed, affiliated with, or otherwise approved by Market America because Applicant's Mark sought to be registered and used by Applicant is confusingly similar to Market America's trademark.

11. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Market America believes that it would be damaged thereby.

12. WHEREFORE, Market America respectfully requests that registration of Applicant's Mark be refused, and that this Opposition be sustained in favor of Market America.

Dated: December 15, 2014

Respectfully submitted,



Ryan S. Luft
Attorney of record, N.C. bar member
Senior Counsel
Market America, Inc.
336/544-6349

Sort: Best Match

Grid View Detail View

Search in these results

Refine results

- Hair Care Product Type ^
 - Shampoos (2)
 - Conditioners (2)
 - Dry Shampoo (1)
- Gender & Age ^
 - Women (3)
- Store ^
 - Market America (4)
- Price Range ^
 - \$20.00 and Below (3)
 - \$20.01 and Above (1)
- Deals & Offers ^
 - Sale Items (0)
- Other Options ^
 - Just show in stock items (4)



Fixx™ Dry Shampoo
Sold by Fixx by Market America
\$24.50
\$0.49 Cashback



Fixx™ Argan Oil Shampoo
Sold by Fixx by Market America
\$19.95
\$0.40 Cashback
★★★★★



Fixx™ Thick Hair Shampoo & Conditioner
Sold by Fixx by Market America
\$16.95
\$0.34 Cashback
★★★★★



Fixx™ Argan Oil Conditioner
Sold by Fixx by Market America
\$19.95
\$0.40 Cashback
★★★★★

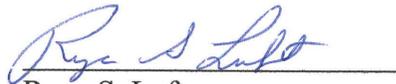
Hello Shopper!
Care to tell us how we

Screen shot from website, http://www.shop.com/Beauty/fixx+shampoo?k=30&sort_popular=&t=0.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Market America, Inc.'s Notice of Opposition, was served upon the attorney of record for Spartan Brands, Inc. by overnight courier on December 15, 2014 at the following address:

Philip Y. Braginsky
Tarter Krinsky & Drogin LLP
1350 Broadway
11th Floor
New York, New York 10018



Ryan S. Luft
Attorney of record, N.C. bar member
Senior Counsel
Market America, Inc.
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