

ESTTA Tracking number: **ESTTA653981**

Filing date: **02/04/2015**

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	EIR NYC LLC		
Entity	limited liability company	Citizenship	New York
Address	270 Clinton Avenue - #2F Brooklyn, NY 11205 UNITED STATES		

Attorney information	Luke W. DeMarte Michael Best & Friedrich LLP 180 N. Stetson, Suite 2000 Chicago, IL 60601 UNITED STATES lwdemarte@michaelbest.com Phone:312.222.5795		
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Applicant Information

Application No	86335393	Publication date	01/13/2015
Opposition Filing Date	02/04/2015	Opposition Period Ends	02/12/2015
Applicants	ANFIELD Jason PO Box 655 Bulimba, QLD 4171, AUSTRALIA COLEMAN Jason PO Box 71 Cotton Tree QLD 4558, AUSTRALIA		

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: Concealers for skin, face and body; Cosmetic preparations for protecting the skin from the sun's rays; Cosmetic sun-protecting preparations; Cosmetic sunscreenpreparations; Waterproof sunscreen
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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 No.	86496296	Application Date	01/06/2015
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SURF MUD
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2012/12/00 First Use In Commerce: 2012/12/00 Non-medicated skin care preparations

Attachments	86496296#TMSN.png(bytes) 16340731_Notice_of_Opposition_-_SURF_MUD_86-335393.pdf(38342 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/Luke W. DeMarte/
Name	Luke W. DeMarte
Date	02/04/2015

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

EIR NYC LLC,

Opposer,

v.

Jason Coleman and Jason Anfield,

Applicants.

Opposition No. _____

Serial No.: 86/335393

Mark: SURF MUD

NOTICE OF OPPOSITION

1. Applicants are Jason Coleman, an individual from Australia with an address at P.O. Box 71, Cotton Tree, QLD 4558 Australia, and Jason Anfield, an individual from Australia with an address at P.O. Box 665, Bulimba, QLD 4171 Australia.

2. Opposer is EIR NYC LLC, a New York limited liability company with an address at 270 Clinton Avenue - #2F, Brooklyn, New York 11205.

3. Applicants filed Application Serial No. 86/335393 for the mark SURF MUD for “Concealers for skin, face and body; Cosmetic preparations for protecting the skin from the sun's rays; Cosmetic sun-protecting preparations; Cosmetic sunscreen preparations; Waterproof sunscreen” in International Class 3 (the “Opposed Application”).

4. The Opposed Application was published on January 13, 2015.

5. Long prior to July 12, 2014, the filing date of the Opposed Application, Opposer and its predecessors in interest adopted and have continuously used in interstate commerce the mark SURF MUD in connection with non-medicated skin care preparations.

6. Opposer’s rights in its SURF MUD mark predate any rights Applicants have in the Opposed Application or the mark shown therein.

7. As a result of Opposer’s use of its SURF MUD mark, Opposer established exceedingly valuable goodwill in such mark long before the filing date of the Opposed Application.

8. Opposer's SURF MUD mark is distinctive for Opposer's goods. Opposer's mark became distinctive long before the filing date of the Opposed Application.

9. The goods in the Opposed Application are the same as or highly related to the goods of Opposer offered under its SURF MUD mark.

10. Opposer is the owner of pending U.S. trademark application Serial No. 86/496296 for the mark SURF MUD for "non-medicated skin care preparations" ("Opposer's Application"). Information from the USPTO's TSDR database regarding Opposer's Application is attached as Exhibit A.

11. The mark set forth in the Opposed Application so resembles Opposer's SURF MUD mark as to be likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Trademark Act.

12. It is likely that the Opposed Application will be cited by the USPTO as an impediment to the registration of Opposer's Application.

13. In light of the foregoing allegations, Opposer believes that it would be damaged by the registration of the mark set forth in the Opposed Application.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of the Opposed Application be denied and refused.

Dated: February 4, 2015

Respectfully submitted,

EIR NYC LLC



By: _____

One of its Attorneys

Luke W. DeMarte
Michael Best & Friedrich LLP
180 N. Stetson Ave., Suite 2000
Chicago, Illinois 60601
(312) 222-0800

Attorneys for EIR NYC LLC

EXHIBIT A

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Mark: SURF MUD

SURF MUD

US Serial Number: 86496296
Application Filing Date: Jan. 06, 2015
Filed as TEAS Plus: Yes
Currently TEAS Plus: Yes
Register: Principal
Mark Type: Trademark
Status: New application will be assigned to an examining attorney approximately 3 months after filing date.
Status Date: Jan. 15, 2015

Mark Information

Mark Literal Elements: SURF MUD
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Non-medicated skin care preparations

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 2012

Use in Commerce: Dec. 2012

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: EIR NYC LLC
Owner Address: 270 Clinton Avenue - #2F
Brooklyn, NEW YORK 11205
UNITED STATES
Legal Entity Type: LIMITED LIABILITY COMPANY
State or Country Where Organized: NEW YORK

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Luke W. DeMarte
Attorney Primary Email Address: chiipdocket@michaelbest.com
Docket Number: 032630-9004
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: LUKE W. DEMARTE
Michael Best & Friedrich LLP
180 N Stetson Ave Ste 2000
Chicago, ILLINOIS 60601-6807
UNITED STATES

Phone: 312.222.5795

Fax: 312.222.0818

Correspondent e-mail: chiipdocket@michaelbest.com lwdemarte@michaelbest.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 16, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 09, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING

Date in Location: Jan. 15, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing Notice of Opposition has been served upon Jason Coleman and Jason Anfield by mailing said copy on February 4, 2015 via U.S. Priority Mail Express International, postage prepaid, to:

Jason Coleman
PO Box 71
Cotton Tree QLD 4558
Australia

Jason Anfield
PO Box 655
Bulimba QLD 4171
Australia



Luke W. DeMarte