

ESTTA Tracking number: **ESTTA712207**

Filing date: **12/02/2015**

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	The Burt's Bees Products Company
Granted to Date of previous extension	12/02/2015
Address	1221 Broadway Oakland, CA 94612 UNITED STATES

Correspondence information	Adam C. Brink The Burt's Bees Products Company 1221 Broadway Oakland, CA 94612 UNITED STATES trademarks@clorox.com Phone:510-208-1496
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Applicant Information

Application No	86541964	Publication date	08/04/2015
Opposition Filing Date	12/02/2015	Opposition Period Ends	12/02/2015
Applicant	David Miller 152 Calm Cove Anderson, SC 29626 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Medicated lip balm

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. Registration No.	2171302	Application Date	06/16/1997
Registration Date	07/07/1998	Foreign Priority Date	NONE
Word Mark	BURT'S BEES		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 003. First use: First Use: 1988/03/27 First Use In Commerce: 1988/03/27 cosmetics and skin care products, namely, cremes, oils, soaps, moisturizers, lotions, lip balms and glosses, shaving lotions, shaving balms, and colognes
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Attachments	2015.12.02 OPP as filed.pdf(448966 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	/adam c brink/
Name	Adam C. Brink
Date	12/02/2015

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

In re application of:

David Miller

For: MILLER BEES

Serial No.: 86/541,964

Filed: February 21, 2015

Published: August 4, 2015

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir or Madam:

Because The Burt's Bees Products Company ("Opposer" or "Burt's Bees") will be damaged by the registration of the MILLER BEES mark that is the subject of Application Serial No. 86/541,964, filed on February 21, 2015, by David Miller ("Applicant" or "David Miller"), Burt's Bees opposes such registration.

Burt's Bees is a Delaware corporation with its headquarters at 1221 Broadway, Oakland, California 94612. David Miller is, upon information and belief, a Sole Proprietor, with place of business at 152 Calm Cove, Anderson, South Carolina 29626. This Notice of Opposition has been timely filed. As grounds of opposition, Burt's Bees alleges as follows:

1. As illustrated in the Official Gazette dated August 4, 2015, Applicant seeks to register the mark MILLER BEES in International Class 5 for medicated lip balm. The application alleges intent to use.

2. Registration of the proposed mark would be a source of damage and injury to Burt's Bees and the public, and would be contrary to the principles of registration set out in 15 U.S.C. §§ 1051 *et seq.*

3. In 1991, Burt's Bees began making beeswax lip balm. Burt's Bees Lip Balm quickly became the company's best-selling product, as it remains today. In 1998, Burt's Bees began expanding into personal care products, including soaps, lotions, body wash, and cleansers. Burt's Bees first introduced flavored lip balm in 1992, and now markets 11 flavors in addition to its iconic beeswax lip balm and a medicated lip balm.

4. Burt's Bees is the owner of the distinctive and famous BURT'S BEES® trademark, which appears on its lip balm, soaps, lotions, and other personal care products. Burt's Bees owns the following U.S. trademark registrations for its BURT'S BEES trademark:

Trademark	Reg. No. / Date	Goods	Date of First Use
BURT'S BEES	2,171,302 7/7/1998	Cosmetics and skin care products, namely, cremes, oils, soaps, moisturizers, lotions, lip balms and glosses, shaving lotions, shaving balms, and colognes.	3/28/1988
BURT'S BEES	3,356,042 10/2/2007	Online retail store services featuring cosmetics, skin care products, hair care products, perfumery and toiletry products.	12/12/1998
BURT'S BEES NATURAL ACNE SOLUTION	3,855,940 10/5/2010	Skin lotions	6/5/2009

BURT'S BEES	3,971,409 5/31/2011	Toothpaste	12/5/2009
BURT'S BEES	4,082,624 1/10/2012	Medicated skin care preparations	12/31/2006
	4,215,321 9/25/2012	Body lotions; Body wash; Hair shampoos and conditioners; Hand creams; Hand soaps; Non-medicated skin care preparation, namely, body mist; Perfume; Shower gel	11/16/2011
	4,215,332 9/25/2012	Body lotions; Body wash; Hair shampoos and conditioners; Hand creams; Hand soaps; Non-medicated skin care preparation, namely, body mist; Perfume; Shower gels	12/31/2011
BURT'S BEES	4,273,260 1/8/2013	Cosmetics and skin care products, namely, creams, oils, soaps, moisturizers, lotions, lip balms and glosses, shaving lotions, shaving balms, and colognes.	5/23/2011
A BIT OF BURT'S BEES	4,506,461 4/1/2014	Lip balms, hand salve, cuticle cream	8/31/2013
BURT'S BEES	4,489,667 2/25/2014	Home dental care products for dogs and cats, namely, non-medicated dental spray; Home dental care products for dogs and cats, namely, toothpaste; Pet shampoo	3/31/2013
	4,581,391 8/5/2014	Wipes impregnated with a skin cleanser	12/31/2013
BURT'S BEES BABY	4,492,651 3/4/2014	Children's towels; Wash cloths	7/31/2012
BURT'S BEES	4652913 12/9/2014	Hand-sanitizing preparations	6/30/2007

BURT'S BEES BABY	4727872 4/28/2015	Hangers for clothes; baskets; Baby bedding, namely, bundle bags, swaddling blankets, fitted crib sheets, crib skirts, crib blankets and diaper changing pad covers not of paper; bath linen; bed linen; burp cloths not of paper; receiving, baby and children	7/8/2012
	4728952 4/28/2015	Candles	2/15/2015
BURT'S BEES KIDS	4786268 8/4/2015	Bathrobes; body suits; booties; headwear; coats; coveralls; creepers; dresses; footwear; gloves; hats; infantwear; jackets; jumpers; layettes; mittens; pants; rompers; rainwear; shorts; sleepwear; snow suits; swimwear; tights; tops; underwear	3/31/2013

These registrations for the BURT'S BEES® trademark are in full force and effect, and some of them have become incontestable under 15 U.S.C. § 1065. Burt's Bees also owns a number of pending trademark applications for the BURT'S BEES® mark.

7. Since at least as early as 1988, Burt's Bees continuously has used its BURT'S BEES® trademark on a variety of goods, including lip balm and other personal care products. Burt's Bees' dates of adoption and first use of its BURT'S BEES® trademark precede any first use of Applicant's mark.

8. Since adoption and first use of its BURT'S BEES® trademark, Burt's Bees continuously has marketed and is presently marketing goods bearing the mark nationwide. Burt's Bees has expended and continues to expend substantial time, money, and effort in

promoting its BURT'S BEES® products and using the mark to identify Burt's Bees as the source of those products. As a result, Burt's Bees' goods are identified as originating from Burt's Bees through the display of the BURT'S BEES® mark, and the public recognizes Burt's Bees as the source of goods displaying the BURT'S BEES® mark. By virtue of its long use and promotion of the BURT'S BEES® trademark, Burt's Bees has gained a valuable reputation for the mark and has developed valuable goodwill in the mark.

9. Registration of Applicant's mark for medicated lip balm will likely lead the public to conclude, incorrectly, that Applicant is or has been, and Applicant's goods displaying the MILLER BEES mark are or have been, authorized, sponsored, or licensed by Burt's Bees. Registration of Applicant's proposed mark is therefore contrary to the provisions of 15 U.S.C. § 1052(a) and will cause damage to Burt's Bees and the public.

10. Applicant's mark is deceptively similar to the BURT'S BEES® trademark so as to cause likely confusion, or to cause mistake or to deceive the public as to the origin of Applicant's goods, causing harm and damage of Burt's Bees and the public. Therefore, registration of Applicant's mark is prohibited by 15 U.S.C. § 1052(d).

11. The BURT'S BEES® trademark is distinctive and famous under 15 U.S.C. § 1125(c), and was famous at the time Applicant filed the proposed mark. Applicant's mark has caused or is likely to cause dilution of the distinctive quality of the famous BURT'S BEES® mark in violation of 15 U.S.C. § 1125(c), causing harm and damage to Burt's Bees and the public. Therefore, registration of Applicant's mark must be refused under 15 U.S.C. §§ 1052 and 1063(a).

12. Registration of Applicant's proposed mark would constitute prima facie evidence of the validity of such registration, Applicant's ownership of the mark, and Applicant's exclusive

right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b). Burt's Bees and the public would be harmed as a result.

WHEREFORE, Burt's Bees prays that this Opposition be sustained, and that registration to David Miller for MILLER BEES covered by Application Serial No. 86/541,964 be denied.

Please charge any necessary fee regarding this Opposition to the Deposit Account of The Clorox Company, No. 03-2270, and credit any overpayment to such deposit account.

Please direct all notices, pleadings and process regarding this matter to:

Adam C. Brink
The Clorox Company
1221 Broadway
Oakland, CA 94612
Telephone: (510) 208-1496
Facsimile: (510) 271-1652

Respectfully submitted,

Dated: December 2, 2015

By:



Adam C. Brink

Attorneys for Opposer
The Burt's Bees Products Company

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2015, the foregoing **NOTICE OF OPPOSITION** is being deposited with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

David Miller
152 Calm Cove
Anderson, SC 29626


Jillian Greenacre