

ESTTA Tracking number: **ESTTA720304**

Filing date: **01/13/2016**

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 parties oppose registration of the indicated application.

Opposers Information

Name	PUIG FRANCE
Granted to Date of previous extension	01/13/2016
Address	65-67 avenue des Champs Elysées Paris, 75008 FRANCE

Name	Nina Ricci
Granted to Date of previous extension	01/13/2016
Address	39, avenue Montaigne Paris, F-75008 FRANCE

Attorney information	Brooks R. Bruneau FisherBroyles, LLP 100 Overlook CenterSecond Floor Princeton, NJ 08540 UNITED STATES docketing@fisherbroyles.com, brooks.bruneau@fisherbroyles.com, denise.mcculloch@fisherbroyles.com Phone:609 454-6772
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Applicant Information

Application No	86601942	Publication date	09/15/2015
Opposition Filing Date	01/13/2016	Opposition Period Ends	01/13/2016
Applicant	Kristina S. McFayden 720 Woodvalley Way Orlando, FL 32825 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: Cosmetics and make-up; Nail polish
Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Retail clothing boutiques

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
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Priority and likelihood of confusion	Trademark Act section 2(d)
Other	No bona fide intention to use under Trademark Act Section 1(b)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4168148	Application Date	10/27/2010
Registration Date	07/03/2012	Foreign Priority Date	NONE
Word Mark	NINA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 Perfumery; non-medicated skin care creams and lotions; and shower gel		

U.S. Registration No.	1472777	Application Date	12/15/1986
Registration Date	01/19/1988	Foreign Priority Date	NONE
Word Mark	NINA NINA RICCI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1983/11/15 First Use In Commerce: 1986/07/24 PERFUMES; COLOGNE; EAU DE TOILETTE; [ESSENTIAL OILS FOR USE IN THE MANUFACTURE OF PERFUMES;] AND BATH AND TOILET PRODUCTS, NAMELY, TOILET SOAP, [SPARKLING BATH SOAP, FOAMING SOAP, BATH OIL,] BODY CREAM, [DUSTING POWER]		

U.S. Registration No.	1441690	Application Date	01/14/1985
Registration Date	06/09/1987	Foreign Priority Date	NONE
Word Mark	NINA NINA RICCI		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 0 First Use In Commerce: 0 PERFUMES, COLOGNE, EAU DE TOILETTE; [ESSENTIAL OILS FOR USE IN THE MANUFACTURE OF PERFUME BATH AND TOILET PRODUCTS, NAMELY, TOILET SOAP, SPARKLING BATH SOAP, FOAMING SOAP, BATH OIL, BODY CREAM, DUSTING POWDER]		

U.S. Registration No.	923259	Application Date	08/12/1970
Registration Date	11/02/1971	Foreign Priority Date	NONE
Word Mark	NINA RICCI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1935/00/00 First Use In Commerce: 1935/00/00 [WOMEN'S HOSIERY, LINGERIE, BRASSIERES, AND GIRDLES; SHOES, HATS,] SCARVES AND TIES		

U.S. Registration No.	1751360	Application Date	05/22/1992
Registration Date	02/09/1993	Foreign Priority Date	NONE
Word Mark	NINA RICCI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1932/00/00 First Use In Commerce: 1959/00/00 outer garments; namely, gowns, dresses, skirts, blouses, slacks, coats and rain-coats		

U.S. Registration No.	2859297	Application Date	07/31/2001
Registration Date	07/06/2004	Foreign Priority Date	NONE
Word Mark	NINA RICCI		

Design Mark	NINA RICCI
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1935/00/00 First Use In Commerce: 1935/00/00 bathing suits, bathrobes, beach coverups, [berets,] bermuda shorts, blazers, blouses, body suits, boleros, bow ties, boxer shorts, brassieres, briefs, bustiers, camisoles, capes, cardigans, chemises, corsets, cuffs, dressing gowns, evening gowns, footwear, foundation garments, fur stoles, fur jackets, fur coats, lingerie, garter belts, gloves, halter tops,[hats], hosiery, jackets, jeans, jerseys, [kimonos,] knit shirts, leggings, miniskirts, mufflers, neckerchiefs, neckties, negligees, night shirts, pants, pantsuits, [parkas,] polo shirts, ponchos, pullovers, overcoats, quilted vests, [rainwear,] leather jackets, leather coats, [sarongs,] scarves, shawls, shoes, shirts, [golf shirts,] slacks, [sleepwear,] socks, [sport coats,] sport shirts, stockings, suits, sweatshirts, sweat suits, sweaters, T-shirts, tank tops, teddies, ties, tights, top coats, trousers, tunics, turtlenecks, [tuxedos,] underwear, veils, suits, vests, and wraps

U.S. Registration No.	563573	Application Date	08/18/1950
Registration Date	09/02/1952	Foreign Priority Date	NONE
Word Mark	NINA RICCI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1936/03/03 First Use In Commerce: 1936/03/03 PERFUME		

U.S. Registration No.	947699	Application Date	04/07/1971
Registration Date	11/21/1972	Foreign Priority Date	NONE
Word Mark	NINA RICCI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1946/10/00 First Use In Commerce: 1946/10/00 PERFUME, COLOGNE, TOILET WATER, DUSTINGPOWDER, HAIR SPRAY, AND BATH OIL		

Attachments	76705073#TMSN.png(bytes) 73635314#TMSN.png(bytes) 73517321#TMSN.png(bytes)
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	76292782#TMSN.png(bytes) Notice of Opposition KISS THE NINA.pdf(68312 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	/brooks r. bruneau/
Name	Brooks R. Bruneau
Date	01/13/2016

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

_____	:	Opposition No.: _____
NINA RICCI,	:	
and	:	
PUIG FRANCE ,	:	
	:	Application No.: 86601942
Opposers,	:	
v.	:	Mark: KISS THE NINA
	:	Class: 3 and 35
	:	
KRISTINA S. McFAYDEN,	:	Published: September 15, 2015
	:	
Applicant.	:	
_____	:	

NOTICE OF OPPOSITION

Nina Ricci, a Société à Responsabilité Limitée of France, with a business address of 39, avenue Montaigne, Paris France F-75008, and PUIG France, a Société Par Actions Simplifiée of France, 65-67 avenue des Champs Elysées Paris, France 75008 (hereinafter both collectively referred to as “Opposers”) believe they will be damaged by the registration of the mark KISS THE NINA for “cosmetics and makeup; nail polish” in Class 3 and “retail clothing boutiques” in Class 35 as set forth in U.S. Trademark Application Serial No. 86601942, filed April 17, 2015 and published September 15, 2015, and oppose said application. As grounds for this Opposition it is alleged that:

1. Prior to the April 17, 2015 filing date of the KISS THE NINA trademark application, Opposers established rights in, and registered, the following United States Trademarks:

MARK	REGISTRATION NO.	CLASS GOODS/SERVICES
NINA	4168148	3
NINA NINA RICCI	1472777	3
	1441690	3
NINA RICCI	923259	25
NINA RICCI	1751360	25
NINA RICCI	2859297	25
NINA RICCI	563573	3
NINA RICCI	947699	3

2. The above listed trademarks and registrations are hereinafter collectively referred to as “NINA RICCI Marks”.

3. Opposers’ rights in the NINA RICCI Marks were first registered on September 2, 1952, and use of the NINA RICCI trademark dates back to 1935.

4. Opposers’ rights in its NINA RICCI Marks are registered in classes 3 and 25, and extend into related goods and services.

5. There is no doubt as to seniority in this case. Opposers’ use of the NINA RICCI Marks in connection with the Class 3 and 25 products listed above predate Applicant’s intent to use filing date by decades.

6. Based upon information and belief, Applicant has had no use of its KISS THE NINA trademark in connection with its listed goods in Class 3 or its listed services in Class 35.

7. The cosmetics and makeup, along with nail polish goods listed in class 3 are closely related to the Class 3 perfumery and skin care goods listed in the NINA RICCI Marks registrations above. Moreover, there has been use of the NINA RICCI trademark in connection with lipsticks directly extending the mark into the cosmetics area. The Class 25 clothing goods listed in connection with the NINA RICCI Marks above are highly related to the retail clothing boutique services proposed to be used by the Applicant in connection with its Class 35 listed services.

COUNT ONE
Likelihood of Confusion and False Connection

8. Opposers repeat and reallege the statements and allegations set forth above as if fully set forth in this Count.

9. The commercial impression created by Applicant's KISS THE NINA mark is that of a variation on the NINA RICCI Marks or a direct reference to NINA RICCI due to its fame in the perfume, beauty care and clothing industry. This is supported by the fact, that Opposer, PUIG France, is the owner of U.S. Registration No. 1132528 for a perfume bottle design mark described as two kissing doves which is used in connection with Opposer's Class 3 perfumery products sold in connection with the NINA RICCI trademark; the sale of lipsticks under the NINA RICCI trademark (adding to the connotation of KISS THE NINA as referring to NINA RICCI; and that Opposer, PUIG France, has solely registered NINA as a variation on the NINA RICCI trademark, and also in a manner that emphasizes "Nina" in connection with NINA

RICCI, such as with the  trademark.

10. Because Applicant's KISS THE NINA mark is so similar to Opposers' NINA RICCI Marks and/or looks like a variation of the NINA RICCI Marks, registration of Applicant's mark is likely to cause confusion, mistake or deception among consumers as to the

source of Applicant's goods, and is likely to falsely suggest a common association, affiliation, or sponsorship of said goods between Applicant and Opposers, causing damage to Opposers. Moreover, any fault, disappointments, complaints or other dissatisfaction a consumer might experience with the goods and services of Applicant under the KISS THE NINA mark would inure to the detriment of Opposers. As such, Applicant is not entitled to registration pursuant to 15 U.S.C. Section 1052(d).

11. The difference between Applicant's KISS THE NINA mark and the NINA RICCI Marks of Opposers is so minor because NINA is the subject of the KISS THE NINA trademark, it creates a false suggestion of a connection between Applicant and Opposers when used in connection with goods in Class 3 and/or the clothing boutique services in Class 35.

12. Opposers assert that the KISS THE NINA mark sought to be registered is a close approximation of the NINA RICCI Marks and name previously registered and used by Opposers.

13. The KISS THE NINA mark would be recognized as a close approximation of the NINA RICCI Marks and name used by Opposers.

14. The mark KISS THE NINA would be recognized as that close approximation such that consumers are likely to recognize the KISS THE NINA mark as pointing unmistakably to Opposers and the NINA RICCI Marks.

15. Opposers are not connected or affiliated with Applicant, Applicant's activities or Applicant's KISS THE NINA mark.

16. The reputation of Opposers and the NINA RICCI Marks is of such a nature that a connection between Applicant and Opposers would be presumed by consumers when Applicant's mark is used with Applicant's listed goods and services in the opposed application.

17. Accordingly, Applicant's KISS THE NINA mark falsely suggests a connection with Opposers and the NINA RICCI Marks in violation of Lanham Act Section 2(a), and is therefore not entitled to registration.

COUNT TWO
No Intent to Use in U.S. Commerce

18. Opposers repeat and reallege the statements and allegations set forth above as if fully set forth in this Count.

19. Opposer asserts that in violation of Trademark Act Section 1(b), Applicant did not have a bona fide intention to use the KISS THE NINA mark in connection with all the goods and services listed in Application Serial No. 86601942 at time of filing that application.

20. Due to the failure of Applicant to have a genuine bona fide intention to use the KISS THE NINA mark with all the goods and services listed in Application Serial No. 86601942, that application is void.

WHEREFORE, Opposer requests that the Board sustain the Opposition and refuse registration of Application Serial No. 86601942.

Respectfully submitted:

NINA RICCI
PUIG FRANCE

Dated: January 13, 2016

By: /Brooks R. Bruneau/
Brooks R. Bruneau
Attorney for Opposer
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Princeton, NJ 08540
Tel: 609-454-6772

CERTIFICATE OF ELECTRONIC FILING

I hereby certify this Notice of Opposition was electronically filed with the
Trademark Trial and Appeal Board this 13th day of January, 2016.

/Brooks R. Bruneau/
(Signature)
January 13, 2016
(Date of Signature)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Opposition was served upon Applicant, via First Class Mail, Postage Prepaid, on this 13th day of January, 2016 addressed to:

KRISTINA S. MCFAYDEN
720 Woodvalley Way
Orlando, FLORIDA 32825-6836

Dated: January 13, 2016

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