

ESTTA Tracking number: **ESTTA737275**

Filing date: **04/01/2016**

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 party opposes registration of the indicated application.

Opposer Information

Name	Studio 1C Inc.
Granted to Date of previous extension	04/02/2016
Address	11575 S. Hidden Valley Blvd. DBA EO Usage Guide Sandy, UT 84092 UNITED STATES

Correspondence information	Ruth Carter Venjuris PC 1938 E. Osborn Rd. Phoenix, AZ 85016 UNITED STATES pto_rbc@venjuris.com Phone:6026319100
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Applicant Information

Application No	86686620	Publication date	02/02/2016
Opposition Filing Date	04/01/2016	Opposition Period Ends	04/02/2016
Applicant	Weber Luke Alliance 14761 Briar Park Road Herriman, UT 84096 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Printed pamphlets, brochures, manuals, books, booklets, leaflets, informational flyers, recipe sheets, recipe card table tents, informational sheets and newsletters, adhesive backed labels, and kits comprised solely of one or more of the foregoing materials in the field of health, wellness, and essential oils

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
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Attachments	Rollerball TM Opposition.pdf(352574 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	/Ruth Carter/
Name	Ruth Carter
Date	04/01/2016

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

Studio 1C Inc.,)	Opposition No. _____
)	
Opposer,)	Serial No. 86686620
)	
v.)	Filed: July 8, 2015
)	
Weber Luke Alliance,)	For the Mark: ROLLERBALL
)	
Applicant.)	

NOTICE OF OPPOSITION

Studio 1C Inc. (“Opposer”), through its undersigned counsel, believes that it will be damaged by the registration of Application Serial No. 86686620 for the mark ROLLERBALL for “printed pamphlets, brochures, manuals, books, booklets, leaflets, informational flyers, recipe sheets, recipe card tabletents, informational sheets and newsletters, adhesive backed labels, and kits comprised solely of one or more of the foregoing materials in the field of health, wellness, and essential oils,” in Class 16. As grounds for its opposition, Opposer alleges the following, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other matters. Allegations relating to Opposer are based upon actual knowledge. All other allegations are based upon information and belief.

Opposer and its Use of ROLLERBALL

1. Studio 1C Inc. is a Utah corporation, DBA EO Usage Guide, with a place of business at 11575 South Hidden Valley Boulevard, Sandy, Utah 84092.

2. Opposer creates, distributes, and sells various products related to essential oils, including tear pads of essential oil recipes, rollerball bottles, diffusers, do-it-yourself (“DIY”) kits, and Make and Take kits. DIY kits come with essential oil recipes, bottle labels, and rollerball bottles in which to mix and store essential oil blends. Make and Take kits are designed for use for and with essential oil workshops or house parties. Make and Take kits contain printed materials for up to ten participants, including essential oil recipes, invitations, rollerball bottle labels, and instructions for the workshop leader or party host.



3. Opposer has six pending copyright applications with the U.S. Copyright Office for the original work of authorship contained in the following products: Rollerball Mentality: A Make & Take Workshop Kit (Case No. 1-2667707671), 12 Sprays of Christmas: A Make & Take Workshop Kit (Case No. 1-2943864491), Fido & Felix: A Make & Take Workshop Kit (Case No. 1-2960224121), Essential Perfumes: A Make & Take Workshop Kit (Case No. 1-3163510071), Essential Oil Perfumes (Case No. 1-3171524291), and Essential Oils for Dogs and Cats (Case No. 1-3171524387).

4. Since at least as early as February 12, 2015, Opposer and/or related companies in interest have used the term ROLLERBALL in connection with essential oils.

5. The word ROLLERBALL is a term in the essential oil industry used to describe dram bottles with roll-on ball applicator tops. These bottles are frequently and commonly used to mix, store, and apply essential oil blends, including blends made from recipes sold by Opposer and Weber Luke Alliance (“Applicant”). This is the term used for the bottles provided in EO Usage Guide’s DIY kits and the bottles recommended for use with its Make and Take kits.

Applicant and its ROLLERBALL Application

6. Applicant refers to two individuals, Lisa Luke and Melissa Weber, who are in a business partnership at 14761 Briar Park Road, Herriman, Utah 84096.

7. On July 8, 2015, Applicant filed an intent-to-use trademark application for the mark ROLLERBALL. The application was assigned Serial No. 86686620, was published for opposition on February 2, 2016, and covers “printed pamphlets,

brochures, manuals, books, booklets, leaflets, informational flyers, recipe sheets, recipe card table tents, informational sheets and newsletters, adhesive backed labels, and kits comprised solely of one or more of the foregoing materials in the field of health, wellness, and essential oils,” in Class 16.

8. Applicant maintains a website at <http://www.rollerballmakeandtake.com/>, with copyright notice “Copyright © 2015, Weber Luke Alliance, LLC.” Applicant offers several products on this website that contain the word ROLLERBALL in the name. When this term is used as part of a product name, Applicant uses superscript “TM” in text and on the products themselves.

9. Applicant describes its ROLLERBALL Make and Take kits that are sold through its website as, “The beautifully designed Rollerball™ Kits offer all the printed pieces you need to have a successful Make & Take Workshop. The Kits includes a tip sheet with suggestions on how to do the workshop, postcards to invite your guests, recipe sheet handouts, professionally designed and printed WATERPROOF labels to apply to the finished rollerballs, and more. This is an excellent hands-on class to bring in new and existing essential oil users.” (Emphasis in original) Indeed, Applicant uses “rollerballs” to refer to the essential oil storage and applicator bottles that are used and filled during its make and take workshops.

10. The images included on Applicant’s products include images of rollerball bottles.



Likelihood of Confusion, 15 U.S.C. § 1052(e)(1)

11. Opposer repeats and realleges each and every allegation set for in each of the preceding paragraphs.

12. ROLLERBALL is merely a descriptive term used in the essential oil industry to describe the bottles commonly used to mix, store, and apply oils and similar products. Registration of an applied-for mark may be refused by the United States Patent and Trademark Office (“USPTO”) if it merely describes qualities, functions, features, or uses of the applicant’s goods and/or services. 15 U.S.C. § 1052(e)(1); TMEP §1209.01(b); see, e.g., *In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574,

1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)).

13. Indeed, the USPTO found that the use of the term ROLLERBALL for these uses is “merely descriptive.” On November 2, 2015, Examining Attorney Tejbir Singh issued an Office Action for a trademark application for ROLLERBALL, Application Serial No. 86695430, for “Cosmetic creams; massage creams; moisturizing creams; Delivery apparatus for creams, namely, applicators sold filled with creams, refillable applicators sold filled with creams, applicators with replaceable cartridges sold filled with creams, replacement cartridges sold filled with creams, and applicator tips sold filled with creams” in Class 3; “Personal lubricants; Delivery apparatus for personal lubricants, namely, applicators sold filled with personal lubricants, refillable applicators sold filled with personal lubricants, applicators with replaceable cartridges sold filled with personal lubricants, replacement cartridges sold filled with personal lubricants, and applicator tips sold filled with personal lubricants” in Class 5; and “Delivery apparatus for personal lubricants and creams, namely, applicators for personal lubricants and creams sold empty, refillable applicators for personal lubricants and creams sold empty, applicators with replaceable cartridges for personal lubricants and creams sold empty, replacement cartridges for applicators sold empty, condoms featuring an applicator tip for the delivery of personal lubricants, and applicator tips for the delivery of personal lubricants and creams” in Class 10. (Emphasis added.)

14. Here, Examining Attorney Singh refused registration of the applied-for mark because it “merely describes features of applicant’s goods and/or services.” The Office Action included “web page evidence” showing the use of “rollerball” to describe “a delivery apparatus or applicator for cosmetics, perfumes, and related goods. . . . This evidence demonstrates the widespread use of ‘rollerball’ to convey a feature of a delivery apparatus or applicator. Thus, consumers would immediately understand that applicant’s goods, including its delivery apparatus and applicator, included a ‘rollerball.’”

15. If Applicant’s applied-for mark for ROLLERBALL is permitted to be registered, it would likely to cause confusion among consumers. It is well-established that the consuming public associates the term ROLLERBALL with essential oil, personal lubricant, and cosmetic containers with roll-on applicators. Here, Applicant is attempting to establish a monopoly for the term ROLLERBALL, claiming that it is for printed materials; however, all of its uses to date indicate that it is in reference to essential oils where this merely descriptive term is presently in use. It would be confusing to consumers if only one company could use the term ROLLERBALL in reference to essential oils where this term has a well-established meaning.

16. If Applicant’s applied-for mark for ROLLERBALL is permitted to be registered, it would likely to inhibit competition in the marketplace. Businesses and competitors should be free to use descriptive language when describing their own goods and/or services to the public in advertising and marketing materials. See *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001). If this ROLLERBALL mark is allowed to be registered, Applicant could bring costly infringement suits against any

competitors who use the term ROLLERBALL in a trademark related to essential oils, particularly companies that sell DIY or make and take kits. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209.

WHEREFORE, EO Usage Guide believes it will be damaged by the registration of the mark shown in Application Serial No. 86686620 for ROLLERBALL, and respectfully requests that this opposition be sustained and that registration to Applicant be refused.

Respectfully submitted this 1st day of April, 2016.

VENJURIS, P.C.

/s/Ruth Carter
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Attorneys for Opposer

CERTIFICATE OF FILING AND SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition is being filed electronically with the Trademark Trial and Appeal Board and that a copy was served on April 1, 2016 via first class mail, postage prepaid, on counsel for Applicant at the following address of record:

JASON P. WEBB
JP WEBB
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SOUTH JORDAN, UT 84095

/s/Ruth Carter