

ESTTA Tracking number: **ESTTA769460**

Filing date: **09/08/2016**

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	LFP IP, LLC
Granted to Date of previous extension	09/10/2016
Address	8484 Wilshire Boulevard Suite 900 Beverly Hills, CA 90211 UNITED STATES
Attorney information	Jonathan W. Brown Lipsitz Green Scime Cambria LLP 42 Delaware Avenue Suite 120 Buffalo, NY 14202 UNITED STATES ip@lglaw.com Phone:716-849-1333

**Applicant Information**

Application No	86915459	Publication date	07/12/2016
Opposition Filing Date	09/08/2016	Opposition Period Ends	09/10/2016
Applicant	Ascend Cleanse LLC 1457 Blue Jay Way Los Angeles, CA 90069 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 021. First Use: 2016/02/01 First Use In Commerce: 2016/02/01 All goods and services in the class are opposed, namely: Mugs; Tea infusers
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1011001	Application Date	05/06/1974
Registration Date	05/20/1975	Foreign Priority	NONE

		Date	
Word Mark	HUSTLER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1972/01/01 First Use In Commerce: 1972/01/01 ENTERTAINMENT MAGAZINE		

U.S. Registration No.	1145751	Application Date	02/15/1979
Registration Date	01/13/1981	Foreign Priority Date	NONE
Word Mark	HUSTLER HUMOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1978/02/28 First Use In Commerce: 1978/02/28 Entertainment Magazine		

U.S. Registration No.	1421856	Application Date	07/26/1984
Registration Date	12/23/1986	Foreign Priority Date	NONE
Word Mark	HUSTLER FANTASIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1983/09/14 First Use In Commerce: 1983/09/14 ADULT ENTERTAINMENT MAGAZINE		

U.S. Registration No.	2200271	Application Date	10/11/1996
Registration Date	10/27/1998	Foreign Priority Date	NONE
Word Mark	HUSTLER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1997/01/30 First Use In Commerce: 1997/01/30 skin care products, namely, skin soap, body oil and cream, bath oil, massage oil Class 010. First use: First Use: 1997/01/30 First Use In Commerce: 1997/01/30 adult sexual aids, namely, artificial penises, penis enlargers, mechanical apparatus to aid in the erection of the penis, rubber ring to be worn about the penis, vibrators, benwa balls, artificial vaginas		

U.S. Registration No.	4312312	Application Date	07/19/2012
Registration Date	04/02/2013	Foreign Priority Date	NONE
Word Mark	HUSTLER HOLLYWOOD		

Design Mark	<b>HUSTLER HOLLYWOOD</b>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1998/12/03 First Use In Commerce: 1998/12/03 Retail store services featuring digitalvideo discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics,candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions		

U.S. Registration No.	2689852	Application Date	10/16/2000
Registration Date	02/25/2003	Foreign Priority Date	NONE

Word Mark	HUSTLER		
Design Mark	<b>HUSTLER</b>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/12/03 First Use In Commerce: 1998/12/03 clothing, namely, beach wear, blouses, coats, coveralls, dresses, head wear, jackets, jeans, jogging suits, jumpers, leg warmers, leggings, lingerie, lounge wear, neckwear, pants, scarves, shirts, ski wear, slacks, sleep wear, tank tops, socks, vests		

U.S. Registration No.	2679483	Application Date	10/16/2000
Registration Date	01/28/2003	Foreign Priority Date	NONE

Word Mark	HUSTLER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1999/09/20 First Use In Commerce: 1999/09/20 men's and women's jewelry, namely, rings, necklaces, bracelets, [ watches ] Class 021. First use: First Use: 2000/10/01 First Use In Commerce: 2000/10/01 glassware, namely, shot glasses, mugs, beer steins		

U.S. Registration	2773372	Application Date	10/22/2002
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No.			
Registration Date	10/14/2003	Foreign Priority Date	NONE
Word Mark	HUSTLER CLUB		
Design Mark	<b>HUSTLER CLUB</b>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2000/12/28 First Use In Commerce: 2000/12/28 operation of night clubs		

U.S. Registration No.	3166771	Application Date	08/09/2005
Registration Date	10/31/2006	Foreign Priority Date	NONE
Word Mark	HUSTLER		
Design Mark	<b>HUSTLER</b>		
Description of Mark	NONE		
Goods/Services	Class 026. First use: First Use: 2004/04/30 First Use In Commerce: 2004/04/30 (Based on Use in Commerce) Men's and women's belt buckles not of precious metal Class 034. First use: First Use: 2005/10/28 First Use In Commerce: 2005/10/28 Cigarette lighters not of precious metal		

U.S. Registration No.	3149102	Application Date	03/11/2003
Registration Date	09/26/2006	Foreign Priority Date	NONE
Word Mark	HUSTLER		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2006/06/10 First Use In Commerce: 2006/06/10 footwear, namely, all types of shoes, boots, slippers, thongs and socks

U.S. Registration No.	4354035	Application Date	10/31/2012
Registration Date	06/18/2013	Foreign Priority Date	NONE

Word Mark	HUSTLER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Backpacks; Duffel bags; Handbags; Messenger bags; Purses; Tote bags; Travel bags; Wallets		

U.S. Registration No.	3918404	Application Date	07/13/2007
Registration Date	02/15/2011	Foreign Priority Date	NONE

Word Mark	HUSTLER		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2008/01/31 First Use In Commerce: 2008/01/31 Motorcycle helmets

U.S. Registration No.	4354038	Application Date	10/31/2012
Registration Date	06/18/2013	Foreign Priority Date	NONE

Word Mark	HUSTLER
Design Mark	

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2008/03/30 First Use In Commerce: 2008/03/30 Digital media, namely, downloadable audio and video recordings, digital versatile discs (DVDs), and high definition digital discs featuring adult entertainment

U.S. Registration No.	4453481	Application Date	10/24/2012
Registration Date	12/24/2013	Foreign Priority Date	NONE

Word Mark	HUSTLER
Design Mark	

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2011/06/30 First Use In Commerce: 2011/06/30 Eyewear, namely, sunglasses; Protectivegear for motorcycle riding, namely, motorcycle gloves for protecting hands in an accident and motorcycle goggles

U.S. Registration No.	4268341	Application Date	07/19/2012
Registration Date	01/01/2013	Foreign Priority Date	NONE

Word Mark	HUSTLERSTORE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2012/01/31 First Use In Commerce: 2012/01/31 On-line retail store services featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party-games, playing cards, candies, jewelry, books, magazines, condoms, and lotions

U.S. Registration No.	4611444	Application Date	01/30/2014
Registration Date	09/23/2014	Foreign Priority Date	NONE
Word Mark	LARRY FLYNT'S HUSTLER EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2014/03/31 First Use In Commerce: 2014/03/31 Retail stores featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions		

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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	/Jonathan W. Brown/
Name	Jonathan W. Brown
Date	09/08/2016

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

*In re* Application No. 86/915,459  
Filed: February 22, 2016  
Published: July 12, 2016 in the Official Gazette  
For: **HOLISTIC HUSTLER**

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LFP IP, LLC,

Opposer,

v.

ASCEND CLEANSE LLC,

Applicant.

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Opposition No.

**NOTICE OF OPPOSITION**

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Opposer LFP IP, LLC (“Opposer” or “LFP”), a Delaware limited liability company, believes that it would be damaged by the registration on the principal register of the mark HOLISTIC HUSTLER shown in Application Serial No. 86915459 and hereby opposes registration thereof.

As grounds for opposition, LFP alleges:

**Opposer and its HUSTLER Marks**

1. Opposer, LFP IP, LLC, is a limited liability company organized under the laws of the State of Delaware, having a principal place of business at 8484 Wilshire Boulevard, Suite 900, Beverly Hills, California 90211.

2. LFP, through its affiliated companies and licensees, provides various goods and services throughout the world utilizing its famous HUSTLER marks.

3. Since at least as early as 1972, LFP, through its predecessors, related companies, and licensees, has used its HUSTLER mark in connection with an entertainment magazine under that name and mark.

4. Opposer first used its HUSTLER and/or HUSTLER composite marks in commerce on or in connection with magazines as early as 1972; video tapes as early as 1983; online magazines as early as 1993; skincare products and sexual aids as early as 1997; clothing and retail store services as early as 1998; DVDs and jewelry as early as 1999; night clubs and glassware as early as 2000; broadcasting services and belt buckles as early as 2004; cigarette lighters as early as 2005; garments for pets, backpacks, duffel bags, handbags, messenger bags, purses, tote bags, travel bags, and wallets as early as 2007; motorcycle helmets as early as 2008; and eyewear and protective gear for motorcycle riding as early as 2011.

5. Opposer owns numerous federal registrations on the Principal Register for its HUSTLER marks and various related and composite marks, many of which have become incontestable within the meaning of the Lanham Act. Such registrations include, but are not limited to, the following:

<b>Mark</b>	<b>Reg. No.</b>	<b>Reg. Date</b>	<b>Date of First Use in Commerce</b>	<b>Goods/Services</b>
HUSTLER	1011001	05-20-1975	01-01-1972	Entertainment magazine in Class 16
HUSTLER HUMOR	1145751	01-13-1981	02-28-1978	Entertainment magazine in Class 16
HUSTLER FANTASIES	1421856	12-23-1986	09-14-1983	Adult entertainment magazine in Class 16
HUSTLER	2200271	10-27-1998	01-30-1997	Skin care products, namely, skin soap, body oil and cream, bath oil, massage oil in Class 3; Adult sexual aids, namely, artificial penises, penis enlargers, mechanical apparatus to aid in the erection of the penis, rubber ring to be worn about the penis, vibrators, benwa balls, artificial vaginas in Class 10
HUSTLER HOLLYWOOD	4312312	04-02-2013	12-03-1998	Retail store services featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions in Class 35
HUSTLER	2689852	02-25-2003	12-06-1998	Clothing, namely, beach wear, blouses, coats, coveralls, dresses, head wear, jackets, jeans, jogging suits, jumpers, leg warmers, leggings, lingerie, lounge wear, neckwear, pants, scarves, shirts, ski wear, slacks, sleep wear, tank tops, socks, vests in Class 25
HUSTLER	2679483	01-28-2003	09-20-1999	Men's and women's jewelry, namely, rings, necklaces, bracelets in Class 14; Glassware, namely, shot glasses, mugs, beer steins in Class 21
HUSTLER CLUB	2773372	10-14-2003	12-28-2000	Operation of night clubs in Class 41
HUSTLER	3166771	10-31-2006	04-30-2004	Men's and women's belt buckles not of precious metal in Class 26; Cigarette lighters not of precious metal in Class 34

HUSTLER	3149102	09-26-2006	06-10-2006	Footwear, namely, all types of shoes, boots, slippers, thongs and socks in Class 25
HUSTLER	4354035	06-18-2013	12-31-2007	Backpacks; duffel bags; handbags; messenger bags; purses; tote bags; travel bags; wallets in Class 18
HUSTLER	3918404	02-15-2011	01-31-2008	Motorcycle helmets in Class 9
HUSTLER	4354038	06-18-2013	03-30-2008	Digital media, namely, downloadable audio and video recordings, digital versatile discs (DVDs), and high definition digital discs featuring adult entertainment in Class 9
HUSTLER	4453481	12-24-2013	06-30-2011	Eyewear, namely, sunglasses; Protective gear for motorcycle riding, namely, motorcycle gloves for protecting hands in an accident and motorcycle goggles in Class 9
HUSTLERSTORE	4268341	01-01-2013	01-31-2012	On-line retail store services featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions in Class 35
LARRY FLYNT'S HUSTLER EXPRESS	4611444	09-23-2014	03/31/2014	Retail stores featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions in Class 35

6. The federal trademark registrations set forth in Paragraph 5 above (among others, the “HUSTLER Marks”) are valid and subsisting, and constitute prima facie evidence of their validity.

7. By virtue of its extensive and longtime use, substantial worldwide promotional efforts and commercial success of its famous HUSTLER Marks, LFP has established valuable goodwill in the HUSTLER Marks, and the public has come to associate LFP's Marks with LFP and its famous founder, Larry Flynt. As such, the HUSTLER Marks have become distinctive and the public has come to know the HUSTLER Marks as an indication of goods and services that originate from Opposer.

### **The "HOLISTIC HUSTLER" Application**

8. Upon information and belief, Ascend Cleanse LLC ("Applicant") is a California limited liability company with an address of 1457 Blue Jay Way, Los Angeles, California 90069.

9. On February 22, 2016, Applicant filed U.S. Application Serial No. 86915459 under Section 1(a), 15 U.S.C. § 1051(a) to register the mark HOLISTIC HUSTLER ("Applicant's Mark") in connection with "Mugs; Tea infusers" in International Class 021 (the "Opposed Goods").

### **Count One**

#### **Likelihood of Confusion, 15 U.S.C. § 1052(d)**

10. Opposer incorporates by reference each and every allegation set forth in paragraphs 1 through 9 herein.

11. Opposer has priority based on its prior valid and subsisting registrations for its HUSTLER family of marks. Further, Opposer has used its HUSTLER Marks in commerce before the filing date of the opposed Application Serial No. 86915459, and before the February 2, 2016 date of first use asserted by Applicant.

12. The goods identified in Application Serial No. 86915459 are identical and/or highly related to the goods and services identified in LFP's registrations and applications for the HUSTLER Marks, and with which LFP has been using its HUSTLER Marks for many years. Among other registrations, LFP owns Registration No. 2679483 which covers "Glassware, namely, shot glasses, mugs, beer steins" in Class 21.

13. Moreover, Opposer's HUSTLER mark became famous before the filing date of the opposed Application Serial No. 86915459, and before the date of first use alleged by Applicant.

14. The goods identified in the opposed Application Serial No. 86915459 are likely to be sold and/or distributed through the same channels of trade and to the same class of purchasers as Opposer's goods and/or services are sold or distributed and/or are intended to be sold and/or distributed under its HUSTLER Marks.

15. Applicant's "HOLISTIC HUSTLER" mark incorporates Opposer's HUSTLER Mark and is likely to cause confusion, mistake or deception in the trade and among ordinary consumers and prospective purchasers as to the source, origin or sponsorship of the parties' respective goods under Section 2(d), 15 U.S.C. § 1052(d).

16. Consumers encountering Applicant's Mark in connection with the Opposed Goods are likely to associate Applicant's Mark with Opposer, and are likely to assume, mistakenly, that the Opposed Goods intended to be offered under Applicant's Mark originate with Opposer or that the Opposed Goods are sponsored, endorsed or otherwise authorized by, licensed through, or otherwise associated with Opposer.

17. Opposer would be damaged by registration of Applicant's Mark because registration would grant Applicant statutory rights under the Trademark Act of 1946, and would

tend to restrict, interfere with, and damage Opposer in the unhampered conduct of its business and protection of its legitimate interests.

## **Count Two**

### **Dilution, 15 U.S.C. § 1125(c)(1)**

18. Opposer incorporates by reference each and every allegation set forth in paragraphs 1 through 17 herein.

19. Opposer's HUSTLER Marks are famous and distinctive within the meaning of the Lanham Act.

20. Opposer has engaged in extensive, worldwide advertising, promotion, and use of the distinctive and famous HUSTLER mark since the 1970s, and the mark has received extensive unsolicited media attention since that time. Further, Opposer has had significant sales of the goods and services under its HUSTLER Marks worldwide.

21. Opposer's HUSTLER Marks became famous prior to the filing date of Application Serial No. 86915459.

22. On information and belief, Applicant selected the "HUSTLER" portion of the mark as a direct reference to Opposer's famous HUSTLER Marks. Applicant intends to profit from LFP's name and goodwill by creating a misleading association between Applicant's goods and those of Opposer, thereby diluting the HUSTLER Marks, and creating a misleading association between Opposer and Applicant.

23. Applicant's HOLISTIC HUSTLER mark incorporates Opposer's famous HUSTLER Marks and Applicant's Mark is likely to dilute, blur, and/or tarnish the distinctive quality of Opposer's famous mark in violation of Section 43(c), 15 U.S.C. § 1125(c).

24. If Application Serial No. 86915459 is permitted to register, the registration would presumptively entitle Applicant to *prima facie* exclusive ownership and rights to the “HOLISTIC HUSTLER” mark. Such registration would cause confusion among consumers as to the separate and distinct sources of Applicant’s goods and LFP’s goods and the relationship of LFP to Applicant, thereby damaging LFP’s goodwill in the HUSTLER Marks, diluting the value thereof, and resulting in irreparable harm to LFP’s business and reputation, all to the detriment of LFP who has expended considerable sums and effort in promoting the HUSTLER Marks.

25. Registration of Applicant’s highly similar mark would lessen the capacity of Opposer’s famous and distinctive HUSTLER Marks to distinguish and identify Opposer’s goods from those of others, thereby diluting the distinctive quality of Opposer’s HUSTLER Marks in violation of 15 U.S.C. § 1125(c), and causing damage to Opposer within the meaning of 15 U.S.C. § 1063.

26. Registration of Applicant’s Mark would result in damage to LFP pursuant to the provisions of 15 U.S.C. §§ 1114, 1115, and 1125, pursuant to the allegations stated above, and registration should be denied pursuant to 15 U.S.C. § 1052(d).

WHEREFORE, LFP prays that this Opposition be sustained and that registration of U.S. Trademark Application Serial No. 86915459 be denied.

Dated: September 8, 2016

Respectfully submitted,

LFP IP, LLC, by its counsel  
LIPSITZ GREEN SCIME CAMBRIA LLP

By: Jonathan W. Brown/  
Jonathan W. Brown, Esq.  
42 Delaware Avenue, Suite 120  
Buffalo, NY 14202  
(716) 849-1333, Ext. 371

**CERTIFICATE OF FILING AND SERVICE**

I, Amanda Russo, hereby certify that on September 8, 2016, I caused a true copy of the foregoing Notice of Opposition to be filed electronically with the United States Patent and Trademark Office via ESTTA, and served upon Applicant by depositing said copy with the United States Postal Service, U.S. First Class Mail, postage prepaid, in an envelope addressed to:

Ascend Cleanse LLC  
1457 Blue Jay Way  
Los Angeles, CA 90069

Dated: September 8, 2016

\_\_\_\_\_  
/Amanda Russo/  
Amanda Russo