

ESTTA Tracking number: **ESTTA12677**

Filing date: **07/30/2004**

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	Horst Weininger of WHR International and Roland Reis of R&K International
Granted to Date of previous extension	07/31/2004
Address	Horst Weininger of WHR International and Roland Reis of R&K International Am Trimmelter Hof 56 Trier, 54296 GERMANY

Attorney information	Marshall Lee Miller BAISE & MILLER P.C. 1020 19th Street, NW suite 400 Washington, DC 20036-6101 UNITED STATES miller@baisemiller.com Phone:202-331-9100
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Applicant Information

Application No	78225029	Publication date	06/01/2004
Opposition Filing Date	07/30/2004	Opposition Period Ends	07/31/2004

Applicant	Megasol Cosmetic GmbH
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Goods/Services Affected by Opposition

Class 003. First Use: First Use In Commerce:

All goods and services in the class are opposed, namely: Perfumes, essential oils for personal use, products for body and beauty care, namely, creams, facial mask paste, non-medicated skin moisturizing ointments, lotions, sun screen preparations, tanning lotions, soaps, massage oils

Class 005. First Use: First Use In Commerce:

All goods and services in the class are opposed, namely: Gels for use as a personal lubricant, medical lubricant, namely, vaginal lubricants, water-based personal lubricants

Opposer has information and belief that Applicant Megasol has a pending publication in the Official Gazette, on August 10, 2004, of an additional trademark application for the name, Erozone. Trademark application Serial number 78225023.

Attachments	78225029 Opposition RandK.pdf (7 pages)
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Signature	/Marshall Lee Miller/
Name	Marshall Lee Miller
Date	07/30/2004

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

In the matter of: Trademark application Serial number - 78225029

For the mark: Eroz-one

Published in the Official Gazette on: June 1, 2004

R&K International Cosmetics
Through Horst Weininger and Roland Reis
Am Trimmelter, Hof 56
Trier, Germany 54296

v.

Megasol Cosmetic GmbH
Jean-Monnet-Strasse 6
Fohren, Germany 54343

NOTICE OF OPPOSITION

The above-identified opposer, R&K International Cosmetics (hereinafter R&K), through its officers Horst Weininger and Roland Reis, believes that it will incur substantial commercial damages and egregious infringement of intellectual property rights, by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer R&K claims standing in this matter as legal owner of the Trademark "Erozone" in the Federal Republic of Germany since August 1999. (Exhibit A attached).
2. Opposer R&K's product, Erozone, is a personal lubricant.
3. Opposer R&K asserts its right in protecting its suggestive trade name "Erozone", and has marketed products under the name "Erozone" in Germany for at least five years. In

addition to the suggestive nature of the trademark and trade name, "Erozone," the product's name has acquired significant and substantial secondary meaning.

4. Opposer R&K has filed an application for the mark "Erozone" with the United States Patent and Trademark Office (USPTO) in February 2004 in order to protect its name while preparing its product for importation and distribution in the U.S. market (Exhibit B attached).

5. Applicant Megasol is a German national in the same line of business as Opposer R&K and has knowledge of Opposer's Erozone German trademark and product. Applicant Megasol's business address is within walking distance of Opposer R&K's business address in the German town of Trier, and the companies know each other well.

6. Applicant Megasol's product is also a personal lubricant, and is substantially indistinguishable from Opposer R&K's product.

7. Applicant Megasol markets its product in Germany under the names, "Megasol Eros" and "Pur Eros." Applicant Megasol does not have a legal interest in the name "Erozone" or "Eroz-one" in the Federal Republic of Germany.

8. Applicant Megasol's marketing of a substantially indistinguishable product in the U.S. market under the mark "Eroz-one" would amount to common law misappropriation.

9. Applicant Megasol is attempting to willfully appropriate Opposer R&K's German mark in order to create confusion within the U.S. market in violation of the Lanham Trade-Mark Act, 15 U.S.C.A. §1051, et seq.

10. Applicant Megasol's marketing a substantially indistinguishable product in the U.S. market is an impermissible attempt at the passing off of Applicants Megasol's product for that marketed by Opposer R&K in the European market, and misappropriating Opposer R&K's secondary meaning for its "Erozone" trademark.

11. Applicant Megasol willful intent to appropriate Opposer R&K's Trademark "raises an inference of likelihood of confusion" and may therefore raise a cause of action for trademark infringement pursuant to the Lanham Trade-Mark Act. See *Squirt Company v. Seven-Up Co.*, 628 F.2d 1086 (1980).

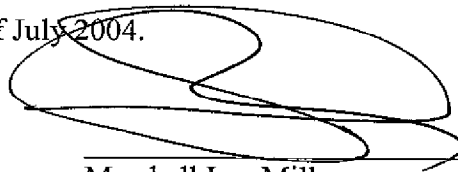
12. Applicant Megasol's use of the name "Eroz-one" in the US market would most likely be actionable as unlawful before the Federal Trade Commission under 15 USC §45 for unfair competition and "unfair or deceptive acts or practices."

13. Opposer R&K is preparing its product for lawful distribution in the U.S. through compliance with the requirements of the Food, Drug and Cosmetic Act and regulations governing the use and distribution of its product, Erozone, by having submitted appropriate applications to the U.S. Food and Drug Administration (Exhibit C attached).

14. Opposer R&K has prepared for mass distribution of its product in North America through contacting of potential distributors, marketing plans, shipments of product samples to selected test markets on the East and West Coasts, and establishing commercial contacts within North America in order to execute a broader marketing plan.

15. Opposer R&K requests oral argument in conjunction with this Notice of Opposition.

Respectfully submitted this 30th day of July 2004.



Marshall Lee Miller

Attorney for R&K International Cosmetics

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1020 19th Street, NW, Suite 400
Washington, DC 20036
Telephone: (202) 331-9100
Facsimile: (202) 331-9060

**Bibliographic data****INID Criterion****Field Content**

(111) Register number	RN	39921460
(210) File number	AKZ	39921460.7
(540) Reproduction of the trade mark	WM	e EROZONE THE FINEST FOR YOUR BODY
(540) Reproduction of the trade mark	WM	
(550) Type of mark	MF	Word/figurative mark (WBM)
(591) Colours	FA	gelb, weiß
(220) Application date	AT	04/15/1999
(151) Date of entry into the register	ET	08/17/1999
(450) Date of publication of the registration	VT	09/16/1999
(732) Proprietor	INH	Reis, Roland, Trier, DE
(750) Address for service/ recipient	ZUE	R&K Vertrieb International, Roland Reis, Kirchstr. 24, 54311 Trierweiler
(511) Leading class	LK	03
(510) List of goods/services	WDV	Massagemittel, soweit in Klasse 3 enthalten.
(531) Vienna Classification of the Figurative Elements of Marks	WBK	27.05.10, 27.05.21, 29.01.13

Alterations

Part	Week	Reason	New content
8cde	38/2003	Correction (324)	Zuän R&K Vertrieb International, Roland Reis, Am Trimmelter Hof 56, 54296 Trier

Further information (legal status information) on this document: **DPINFO**

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AKZ = "39921460.7"

Result list: 1 results

No. (111) Register number
1 [39921460](#)

(540) **Reproduction of the trade mark**
e EROZONE THE FINEST FOR YOUR BODY

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FILING RECEIPT FOR TRADEMARK APPLICATION

Ex B

Apr 6, 2004

This acknowledges receipt on the FILING DATE of the application for registration for the mark identified below. The FILING DATE is contingent upon all minimum filing date requirements being met. Your application will be considered in the order in which it was received. Action on the merits should be expected from the United States Patent and Trademark Office (USPTO) approximately six months from the FILING DATE. When inquiring about this application, include the SERIAL NUMBER, FILING DATE, OWNER NAME and MARK.

BRYAN BRENDLE
BAISE & MILLER, PC
1020 19 TH STREET, NW, SUITE 400
WASHINGTON, DC 20036

ATTORNEY
REFERENCE NUMBER
39921460.7

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days. Such request may be submitted by mail to: COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3514; by fax to 703-308-9096; or by e-mail to tmfilingreceipt@uspto.gov. The USPTO will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/581550
FILING DATE: Mar 15, 2004
REGISTER: Principal
LAW OFFICE: 110
MARK: EROZONE THE FINEST FOR YOUR BODY
MARK TYPE(S): Trademark
DRAWING TYPE: Stylized words, letters, or numbers
FILING BASIS: Sect. 1(b) (Intent to Use)

RECEIVED
APR 08 2004
Baise & Miller, P.C.

DOMESTIC REPRESENTATIVE: Bryan Brendle

OWNER: Roland Reis (NOT PROVIDED, Unknown)
R&K International Cosmetics
Am Trimmelter Hof 56
Trier, FED REP GERMANY 54296

FOR: Personal Lubricant- product label, appears on the container for the goods, or displays and advertisements associated with the product
INT. CLASS: 005

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

OTHER DATA

DESCRIPTION OF MARK: The stylized "e" is ballooned with black shading around the inner edges with a slight light blue shading at the top inner edge

LINING AND STIPPLING STATEMENT: Yellow, Blue, Grey (Stippling) Stippling in background is for shading purposes only.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Food and Drug Administration
Center for Devices and
Radiological Health
2098 Gaither Road
Rockville, Maryland 20850

April 29, 2004

Re: FDA Registration Form
Owner/Operator No: 9061295

Mr. Bryan Brendle
Baise & Miller, P.C.
1020 19th Street N.W.
Suite 400
Washington, DC 20036

RECEIVED

MAY 03 2004

Baise & Miller, P.C.

Dear Mr. Bryan Brendle:

We have received your form FDA 2891, Initial Registration of Device Establishment, and form FDA 2892, Medical Device Listing for the following medical device establishment:

R & K International Cosmetics
Am Trimmelter, Hof 56
Trier 54296 Germany

This information has been entered into our Establishment Registration database. We will forward your establishment registration number to you after the Field Investigations, Office of Regional Operations, Food and Drug Administration (FDA) assigns it. Nevertheless, until that time, you are still considered registered.

Please refer to the Owner/Operator Number when you or your United States Agent contacts our Branch with any subsequent correspondence.

FDA sends form FDA 2891a, Annual Registration, to all registered firms annually to be verified, corrected, and returned to us. Your copy of Part 1 is proof of registration for the coming year.

We do not acknowledge receipt of device listing forms received subsequent of an establishment initial registration. Please keep the yellow copy, or a photocopy, of each form FDA 2892 as proof of your listing. The listing form document number in the upper left corner specifically identifies the listed device. The document number should be included on all shipping invoices.

Any inquiries regarding your registration status or device listing should be directed to the registration and listing staff at 011-1-301-827-4555.

Sincerely yours,

Lisa M. King

For Lisa M. King
Consumer Safety Officer
Registration and Listing Program
Office of Compliance
Center for Devices and Radiological Health