

ESTTA Tracking number: **ESTTA126622**

Filing date: **02/23/2007**

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	Sexy Hair Concepts, LLC
Granted to Date of previous extension	04/18/2007
Address	9232 Eton Avenue Chatsworth, CA 91311 UNITED STATES

Attorney information	Roberta Jacobs-Meadway Ballard Spahr Andrews and Ingersoll, LLP 1735 Market Street, 51st Floor Philadelphia, PA 19103 UNITED STATES jacobsmeadwayr@ballardspahr.com, steigerwalte@ballardspahr.com Phone:215-864-8201
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**Applicant Information**

Application No	78835371	Publication date	12/19/2006
Opposition Filing Date	02/23/2007	Opposition Period Ends	04/18/2007
Applicant	Victoria's Secret Stores Brand Management, Inc. Four Limited Parkway Reynoldsburg, OH 43068 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. Opposed goods and services in the class: hair conditioner, hair dyes, hair glitter, hair highlighter, hair mascara, hair rinses, hair removing creams, hair shampoo, hair spray, hair styling gel, hair styling mousse
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Attachments	NOO - Sexy In Bloom.PDF ( 9 pages )(226623 bytes )
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Signature	/Roberta Jacobs-Meadway/
Name	Roberta Jacobs-Meadway
Date	02/23/2007

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED ELECTRONICALLY TO THE COMMISSIONER FOR TRADEMARKS - <http://estta.uspto.gov/filing-type.jsp>

By: Jessie L. Martin

DATE: 2/22/06

**BOX TTAB FEE**

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

Sexy Hair Concepts LLC	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. _____
	:	
Victoria's Secret Stores Brand	:	
Management, Inc.	:	
	:	
Applicant.	:	

**NOTICE OF OPPOSITION**

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

In the matter of Trademark Application Serial No. 78/835,371 for the mark "SEXY IN BLOOM," filed March 13, 2006 and published for opposition in the Official Gazette on December 19, 2006:

Sexy Hair Concepts LLC, a California limited liability company having a place of business at 9232 Eton Avenue, Chatsworth, California 91311 ("Opposer"), believes that it will be damaged by the registration of the mark shown in the above-identified application and hereby opposes the same. The grounds for opposition are as follows:

1. Victoria's Secret Stores Brand Management, Inc., a Delaware corporation ("Applicant"), seeks to register "SEXY IN BLOOM" as a trademark for use in connection with, inter alia, hair conditioner, hair dyes, hair glitter, hair highlighter, hair mascara, hair rinses, hair removing creams, hair shampoo, hair spray, hair styling gel, hair styling mousse, in International

Class 3, as evidenced by the publication of said mark in the Official Gazette on December 19, 2006.

2. The application herein opposed was filed March 13, 2006 on the basis of intent to use. Applicant claims no date earlier than March 13, 2006 for the purpose of claiming priority.

3. Opposer is and has been engaged in the development, manufacture and sale of hair care products and has built a successful business in connection therewith.

4. Since at least as early as June 15, 1998, Opposer, itself and through its predecessor in interest, has used "SEXY" and "SEXY HAIR" as names and marks and as the dominant element of its names and marks for hair care preparations, including shampoo, conditioner, gels, sprays, color, dyes, rinses and mousses.

5. The nature and extent of Opposer's use of its "SEXY" and "SEXY HAIR" names and marks can be seen at its website, [www.sexyhairconcepts.com](http://www.sexyhairconcepts.com).

6. Opposer has taken steps to protect the "SEXY HAIR" mark and has secured U.S. Trademark Registration No. 2,403,396 for such mark for hair care preparations as identified therein. Registration No. 2,403,396 is valid and subsisting and incontestable. A copy of the pertinent information about such registration from the PTO database is attached as Exhibit A.

7. Since 1998, Opposer has taken steps to develop a family of "SEXY" marks for hair care preparations, including: "SEXY HAIR;" "BIG SEXY HAIR;" "SHORT SEXY HAIR;" "CURLY SEXY HAIR;" "STRAIGHT SEXY HAIR;" "HEALTHY SEXY HAIR;" "SILKY SEXY HAIR;" and "SEXY HAIR CONCEPTS."

8. Use of the "SEXY" and "SEXY HAIR" names and marks by Opposer has been continuous and commercially significant.

9. Opposer has since prior to March 13, 2006 used “Sexy Hair Concepts” and “Sexy Hair” as trade names as well as marks in connection with its business.

10. Opposer’s registered trademark “SEXY HAIR,” Opposer’s family of “SEXY” marks, and the “Sexy Hair” and “Sexy Hair Concepts” names are inherently distinctive as applied to Opposer’s products and business.

11. By virtue of Opposer’s continuous use in commerce of its registered “SEXY HAIR” trademark and its family of “SEXY” marks and the “Sexy Hair” and “Sexy Hair Concepts” names in connection with such goods and business, such goods and business have become favorably known to the relevant trade and public under such marks and names.

12. As Opposer is the owner of a subsisting U.S. trademark registration for “SEXY HAIR,” priority is not in issue.

13. In the application herein opposed, there are no restrictions on trade channels, so it must be assumed that the International Class 3 goods identified in the application will travel through all trade channels appropriate for goods of that type.

14. Applicant’s mark is confusingly similar to Opposer’s registered “SEXY HAIR” trademarks and to the family of “SEXY” marks established by Opposer, and to Opposer’s “Sexy Hair” and “Sexy Hair Concepts” trade names.

15. Each of Opposer’s marks and names, and Applicant’s mark, employ the identical term—“SEXY,” as the dominant or a dominant element.

16. The goods of Opposer and hair care preparations of Applicant listed in the application herein opposed are essentially the same (hair care preparations, including hair shampoos, conditioners, sprays, gels, rinses and mousse), or otherwise closely related.

17. Hair care preparations such as are sold by Opposer and as are identified in the application herein opposed are customarily marketed through the same and overlapping channels of trade to the same and overlapping classes of purchasers.

18. Applicant's "SEXY IN BLOOM" trademark as applied to hair care preparations identified in the application herein opposed so resembles Opposer's registered "SEXY HAIR" trademarks, Opposer's family of "SEXY" marks as applied to Opposer's products, and Opposer's "Sexy Hair" and "Sexy Hair Concepts" names as used in connection with Opposer's business, that it is likely to cause confusion, mistake, and/or deception.

19. If Applicant is permitted to register "SEXY IN BLOOM" as a mark for the hair care preparations set forth in the application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer.

20. On seeing Applicant's "SEXY IN BLOOM" mark used in connection with Applicant's hair care preparations, purchasers and potential purchasers are likely to believe in error that such goods are offered by or in association with or under license from Opposer or that Opposer and Applicant are affiliated.

21. Any defect, objection to, or fault found with Applicant's hair care preparations sold under the mark "SEXY IN BLOOM" would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods and business.


22. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark for the goods identified in Class 3 in the registration. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Sexy Hair Concepts LLC prays that registration of the mark of Application Serial No. 78/835,371 for the goods in International Class 3 be refused and that this opposition be sustained.

The required fee of \$300 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

Respectfully submitted,

Dated: 2/23/07

By: 

Roberta Jacobs-Meadway

Patricia G. Cramer

Troy Larson

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

1735 Market Street, 51st Floor

Philadelphia, Pennsylvania 19103-7599

(215) 864-8201

ATTORNEYS FOR OPPOSER

# **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2007-02-23 11:14:03 ET**

**Serial Number:** 75634213 Assignment Information

**Registration Number:** 2403396

**Mark (words only):** SEXY HAIR

**Standard Character claim:** No

**Current Status:** Section 8 and 15 affidavits have been accepted and acknowledged.

**Date of Status:** 2006-06-28

**Filing Date:** 1999-02-05

**Transformed into a National Application:** No

**Registration Date:** 2000-11-14

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 104

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 40S -Scanning On Demand

**Date In Location:** 2006-08-03

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. SEXY HAIR CONCEPTS, LLC

**Address:**

SEXY HAIR CONCEPTS, LLC  
9232 ETON AVENUE  
CHATSWORTH, CA 91311  
United States

**Legal Entity Type:** Ltd Liab Co

**State or Country Where Organized:** California

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**GOODS AND/OR SERVICES**

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**International Class:** 003

**Class Status:** Active



Hair care products for men, women and children, namely hair shampoos, hair conditioners, hair lotions, hair cremes, hair gels, hair sprays, hair color, hair dyes, hair rinses, hair mousse

**Basis:** 1(a)

**First Use Date:** 1998-06-15

**First Use in Commerce Date:** 1998-12-21

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "HAIR"

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2006-08-03 - Case File In TICRS

2006-06-28 - Section 8 (6-year) accepted & Section 15 acknowledged

2006-06-12 - Assigned To Paralegal

2006-03-24 - Section 8 (6-year) and Section 15 Filed

2006-03-24 - TEAS Section 8 & 15 Received

2000-11-14 - Registered - Principal Register

2000-08-22 - Published for opposition

2000-07-21 - Notice of publication

2000-06-03 - Approved for Pub - Principal Register (Initial exam)

1999-12-14 - Letter of suspension mailed

1999-10-18 - Communication received from applicant

1999-08-17 - Non-final action mailed

1999-08-04 - Assigned To Examiner

1999-07-30 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Roberta Jacobs-Meadway

**Correspondent**

ROBERTA JACOBS-MEADWAY  
BALLARD SPAHR ANDREWS & INGERSOLL LLP  
1735 MARKET STREET, 51ST FL  
PHILADELPHIA PA 19103

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