

ESTTA Tracking number: **ESTTA160893**

Filing date: **09/05/2007**

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	Med Spa 360, LLC		
Entity	Limited Liability Company	Citizenship	California
Address	13245 MIDLAND RD. Suite 100 Poway, CA 92064 UNITED STATES		

Attorney information	Michael J. Hoisington, Esq. Higgs Fletcher & Mack LLP 401 West A Street Suite 2600 San Diego, CA 92101 UNITED STATES trademarks@higgslaw.com Phone:619.595.4247
----------------------	--

Applicant Information

Application No	77086084	Publication date	08/28/2007
Opposition Filing Date	09/05/2007	Opposition Period Ends	09/27/2007
Applicant	International Cosmetics and Fragrances, Inc. 200 Corporate Woods Prkwy Vernon Hills, IL 60061 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Facial and body cleansers, scrubs, lotions, masks, concealers, and non-medicated skin care preparations
--

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3231003	Application Date	03/16/2005
Registration Date	04/17/2007	Foreign Priority Date	NONE
Word Mark	LUMINESSE MEDICAL SPA		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2006/01/21 First Use In Commerce: 2006/01/21 Cosmetic and plastic surgery; medical services, namely laser skin treatments, light-based technologies skin treatments, injectable fillers, cosmetic injection and microdermabrasion

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	LUMINESSENCE		
Goods/Services	Cosmetic skin care products.		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	LUMINESSE RX		
Goods/Services	Cosmetic skin care products.		

Attachments	78588262#TMSN.jpeg (1 page)(bytes) OPPOSITION CREMELUMINESSE.pdf (3 pages)(11801 bytes)
-------------	---

Signature	/Michael J. Hoisington/
Name	Michael J. Hoisington, Esq.
Date	09/05/2007

NOTICE OF OPPOSITION

Med Spa 360, LLC., a limited liability company organized and existing under the laws of the State of California, believes that it will be damaged by registration of the mark shown in Serial No. 77/086084 in Class 003 and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. The Applicant seeks to register CREME LUMINESSE as a trademark for the following:

"Facial and body cleansers, scrubs, lotions, masks, concealers, and non-medicated skin care preparations" in International Class 003,

as evidenced by the publication of said mark in the Official Gazette on page TM 474 of the August 28, 2007 issue.

2. The Opposer and its predecessors in title have used LUMINESSE MEDICAL SPA and LUMINESSENCE since as early as 2006 in conjunction with medical spa services and related skin care products and currently use LUMINESSE MEDICAL SPA and LUMINESSE RX with medical spa services and related cosmetic skin care products. Opposer is submitting herewith as a part hereof, Registration No. 3,231,003 issued on April 17, 2007 for its mark LUMINESSE MEDICAL SPA. LUMINESSENCE and LUMINESSE RX are related common law trademarks used to identify Opposer's related cosmetic skin care products.

3. There is no issue as to priority. The Applicant has yet to use the mark and therefore is subsequent to the issuance date of Opposer's Registration No. 3,231,003 and use of its common law marks.

4. Opposer has sold its services listed in its registration under its mark in the United States, and has sold its products under the related common-law marks in the United States. Opposer has developed valuable goodwill in respect to the marks covered by the aforesaid registration and common law use.

5. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its products, the Opposer has gained for its above-identified marks a most valuable reputation.

6. The trademark proposed for registration by the Applicant, namely, CREME LUMINESSE, is substantially incorporated in its entirety in Opposer's marks LUMINESSE MEDICAL SPA, LUMINESSENCE and LUMINESSE RX, and is intended to be applied to the identical goods as those sold by Opposer and so nearly resemble the Opposer's marks as to be likely to be confused therewith and mistaken therefor. The Applicant's mark is deceptively similar to Opposer's marks so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing the Applicant's mark.

7. If the Applicant is permitted to use and register its mark for its goods and services, as specified in the application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between the Applicant's mark and the Opposer's marks. Persons familiar with Opposer's marks would be likely to buy Applicant's goods as and for a product made and sold or services provided by the

Opposer. Any such confusion in trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's products or services marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its products merchandised under its marks.

8. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.