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Filing date: **07/22/2008**

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

Proceeding	91181767
Party	Plaintiff Calista, Tools, LLC
Correspondence Address	Joseph J. Dougherty, Esquire Lyons Dougherty Shaffer & Schneider, LLC 6 Ponds Edge Drive, Suite 1 Chadds Ford, PA 19317 UNITED STATES jdougherty@lyonsdougherty.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	JOSEPH J. DOUGHERTY
Filer's e-mail	JDOUGHERTY@LYONSDOUGHERTY.COM
Signature	/JOSEPH J. DOUGHERTY/
Date	07/22/2008
Attachments	trademark opposition.pdf ( 5 pages )(84534 bytes ) 16142946.pdf ( 2 pages )(126974 bytes )

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

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CALISTA TOOLS, LLC	: Opposition No.91181767
Opposer	:
	: Mark:TOOLS
v.	: Application Serial No. 76673166
SALON K HAIR PRODUCTS, LLC	: Published in the Official Gazette on
Applicant	: September 11, 2007
	:
	: Filed February 26, 2007

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AMENDED NOTICE OF OPPOSITION

Calista Tools, LLC is a Pennsylvania limited liability company with a registered office address of 1210 Fieldstone Drive, West Chester, Pennsylvania 19382 and with offices for the conduct of business located at Suite 305, 1211 Wilmington Pike, West Chester, Pennsylvania 19382 (“Opposer”) believes it will be damaged by the issuance of a tradeMark registration to Salon K Hair Products, LLC (“Applicant”), a Missouri limited liability company with an address c/o Albert S. Watkins, 7800 Forsyth, Suite 700, St. Louis, Mo. 63105, and hereby opposes the application.

The grounds for the opposition are as follows:

1. Applicant is seeking to obtain, under the provisions of the TradeMark Act of 1946 as amended, registration of the stylized Mark TOOLS for “Hair Care Creams, Hair Care Lotions, Hair Care Preparations, Hair Conditioners, Hair Colorants, Hair Gels, Hair Shampoo, Hair Styling Gel, Hair Styling Preparations, Hair Styling Spray, 3 in 1 Conditioners and 3 in 1 Shampoos” in International Class 3.

2. Applicant is not now, and never was, entitled to registration on the Principal Register of the stylized Mark TOOLS either on February 26, 2007 or on September 11, 2007, the date of publication in the Official Gazette.

3. The Applicant filed its application for the stylized Mark TOOLS on February 26, 2007.

4. The Applicant has asserted in its application that its first use of stylized TOOLS in commerce occurred on January 29, 2007, Section 1 (a) of its Application.

5. The Applicant did not exist on January 29, 2007, the date it asserts that it first used the word TOOLS in the Special Form Drawing attached to its Application..

6. The Applicant did not exist on February 26, 2007, the date on which the Applicant filed its application for the stylized Mark TOOLS.

7. As evidenced by Exhibit "A" hereto, the Applicant was formed on March 5, 2007 with the organizers listed as Kim Meecey and Casey Ray.

8. For the Applicant to have standing to file for the stylized Mark TOOLS, the Applicant must be an entity existing at the time of the application that used in commerce TOOLS on its products.

9. The Applicant made material misrepresentations in its application for the Mark TOOLS in that it represented that it used the stylized Mark TOOLS in commerce commencing on July, 11, 2006, which was impossible as it did not exist on that date nor was it a legal entity on February 26, 2007 the date of its Application.

10. A Mark should not be issued when as here the Applicant has made a material misrepresentations of facts in support of its application.

11. It is believed and therefore averred that the Applicant did not use the Mark in

inter- state commerce before the filing of its Application.

12. The Applicant in a subsequent filing has asserted that Salon K, LLC should have been the applicant, and in another subsequent filing, that Casey Ray and Kim Meecey should have been the applicants, both of which assertions were raised over a year after the Application was filed.

13. The Opposer is in the business of selling hair and skin care products manufactured to its formulation.

14. In January of 2007, the Opposer advertised and sold its products on the QVC network, a national cable merchandise seller.

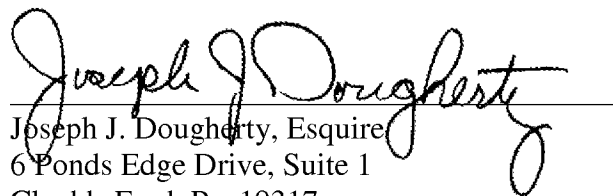
15. The Opposer has used the logo depicted in Exhibit "B" hereto on documents and promotional materials for its products since December of 2005 and used the logo on its products since October of 2006.

16. The Applicants Application did not denote that the word TOOLS "is presented in standard format without claim to any particular font style, size or color" but was to be registered in a special form drawing that depicts use of the word TOOLS in a logo with a female image..

17. Opposer has a right to use of the word TOOLS in the description of its products.

18. Opposer requests that the registration of the Mark TOOLS, Application Serial No. 76673166 be denied to the Applicant and this opposition be granted.

LYONS, DOUGHERTY, SHAFFER  
& SCHNEIDER, LLC

  
Joseph J. Dougherty, Esquire  
6 Ponds Edge Drive, Suite 1  
Chadds Ford, Pa. 19317

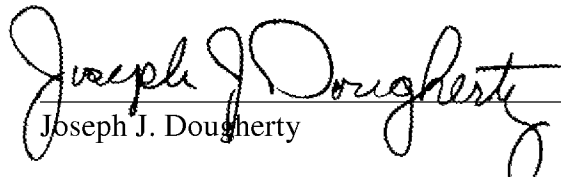
610-388-7371  
[jdougherty@lyonsdougherty.com](mailto:jdougherty@lyonsdougherty.com)  
Attorney for the Opposer  
Calista Tools, LLC

CERTIFICATE OF SERVICE

I, Joseph J. Dougherty, hereby certify that on July 22, 2008 a true and correct copy of the forgoing Amended Notice of Opposition was served via U.S. First Class Mail, postage prepaid and via e-mail upon the following:

Albert S. Watkins, Esquire  
Kodner Watkins Muchnick Weigley L.C.  
The Bank of America Building  
7800 Forsyth Blvd.  
Suite 700  
St. Louis, MO 873105  
[albertwatkins@kwmwlaw.com](mailto:albertwatkins@kwmwlaw.com)

Attorney for Applicant

  
Joseph J. Dougherty



**State of Missouri**  
Robin Carnahan, Secretary of State

Corporations Division  
P.O. Box 778 / 600 W. Main Street, Rm 322  
Jefferson City, MO 65102

File Number: 200706623224  
LC0801321  
Date Filed: 03/05/2007  
Robin Carnahan  
Secretary of State

**Articles of Organization**  
(Submit with filing fee of \$105)

1. The name of the limited liability company is:

Salon K Hair Products, LLC  
(Must include "Limited Liability Company," "Limited Company," "LC," "L.C.," "L.L.C.," or "LLC")

2. The purpose(s) for which the limited liability company is organized:

Developing and Selling

Hair and Beauty products

3. The name and address of the limited liability company's registered agent in Missouri is:

Albert S. Watkins 7800 Forsyth, Suite 700 St. Louis, MO 63105  
Name Street Address: May not use P.O. Box unless street address also provided City/State/Zip

4. The management of the limited liability company is vested in:  managers  members (check one)

5. The events, if any, on which the limited liability company is to dissolve or the number of years the limited liability company is to continue, which may be any number or perpetual: perpetual

(The answer to this question could cause possible tax consequences, you may wish to consult with your attorney or accountant)

6. The name(s) and street address(es) of each organizer (P.O. Box may only be used in addition to a physical street address):  
(Organizer(s) are not required to be member(s), manager(s) or owner(s))

Kim Meecey 610 Kingsland Ave. St. Louis, MO 63130  
Casey Ray 610 Kingsland Ave. St. Louis, MO 63130

7. The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows: \_\_\_\_\_

(Date may not be more than 90 days after the filing date in this office)

In Affirmation thereof, the facts stated above are true and correct:  
(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

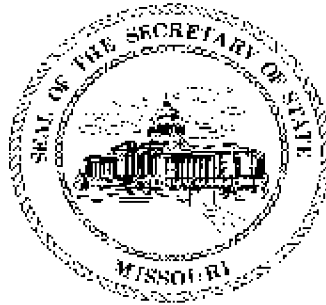
Kim Meecey  
Organizer Signature  
Casey Ray  
Organizer Signature  
Organizer Signature

Kim Meecey 2/28/07  
Printed Name Date  
Casey Ray 2/28/07  
Printed Name Date  
Printed Name Date

Name and address to return filed document:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, and Zip Code: \_\_\_\_\_

State of Missouri  
Creation - LLC/LP 1 Page(s)  
  
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# State of Missouri



Robin Carnahan  
Secretary of State

## CERTIFICATE OF ORGANIZATION

WHEREAS,

*Salon K Hair Products, LLC*  
*LC0801321*

filed its Articles of Organization with this office on the 5th day of March, 2007, and that filing was found to conform to the Missouri Limited Liability Company Act.

NOW, THEREFORE, I, ROBIN CARNAHAN, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do certify and declare that on the 5th day of March, 2007, the above entity is a Limited Liability Company, organized in this state and entitled to any rights granted to Limited Liability Companies.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 5th day of March, 2007.

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State

