

ESTTA Tracking number: **ESTTA188524**

Filing date: **01/24/2008**

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	First Quality Hygienic, Inc.
Granted to Date of previous extension	01/30/2008
Address	80 Cuttermill Road - Suite 500 Great Neck, NY 11021 UNITED STATES

Attorney information	Holly Pekowsky, Esq. AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 Park Avenue New York, NY 10016 UNITED STATES ptodocket@arelaw.com Phone:212-336-8000
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**Applicant Information**

Application No	77146357	Publication date	10/02/2007
Opposition Filing Date	01/24/2008	Opposition Period Ends	01/30/2008
Applicant	Health Haus Labs, Inc. 425 SE 3rd Ave. suite #204 Portland, OR 97214 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. First Use: 2006/08/05 First Use In Commerce: 2006/08/05  
All goods and services in the class are opposed, namely: Body and beauty care cosmetics

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2556201	Application Date	07/06/2001
Registration Date	04/02/2002	Foreign Priority Date	NONE
Word Mark	FEMTEX		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1992/03/00 First Use In Commerce: 1993/10/26 TAMPONS		
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U.S. Registration No.	3131071	Application Date	12/20/2004
Registration Date	08/15/2006	Foreign Priority Date	NONE
Word Mark	OPAL BY FEMTEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/03/31 First Use In Commerce: 2006/03/31 TAMPONS		

Attachments	78535594#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition - Health Haus - TM - FEMFIX.pdf ( 5 pages )(161892 bytes )
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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 Overnight Courier on this date.

Signature	/Holly Pekowsky/
Name	Holly Pekowsky, Esq.
Date	01/24/2008

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

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FIRST QUALITY HYGIENIC, INC.,	:	Application Serial No. 77/146,357
	:	Filing Date: April 2, 2007
Opposer,	:	Publication Date: October 2, 2007
	:	Trademark: FEMFIX
v.	:	
	:	
HEALTH HAUS LABS, INC.,	:	
	:	
Applicant.	:	

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**NOTICE OF OPPOSITION**

In the matter of U.S. Trademark Application Serial No. 77/146,357 filed by Health Haus Labs, Inc. ("Applicant") on April 2, 2007 and published for opposition in the October 2, 2007 issue of the Official Gazette of the United States Patent and Trademark Office for the trademark FEMFIX as applied to body and beauty care cosmetics and alleging first use and first use in commerce on August 5, 2006.

As grounds for opposition of the above identified trademark Application, Opposer First Quality Hygienic, Inc. ("Opposer"), by and through its attorneys, alleges as follows:

1. Opposer, a Pennsylvania corporation maintaining a principal place of business at 80 Cuttermill Road, Suite 500, Great Neck, New York 11021 ("Opposer"), believes that it will be damaged by the registration of the Subject Application and hereby opposes the same.

2. Opposer is a well known manufacturer and seller of feminine hygiene and related products.

3. Among the many products sold by Opposer are tampons marketed and sold under the trademark FEMTEX (the "FEMTEX Mark").

4. The FEMTEX Mark has been in use for approximately fifteen years.

5. First Quality is also the owner of the following registrations and published U.S. Trademark Applications for FEMTEX and FEMTEX-formative marks:

- a. Registration No. 2,556,201 of April 2, 2002 for FEMTEX for tampons;
- b. Registration No. 3,131,071 of August 15, 2006 for OPAL BY FEMTEX for tampons;
- c. Application Serial No. 78/704,010, filed August 31, 2005 for FEMTEX for sanitary products, namely, feminine hygiene cleansing cloths;
- d. Application Serial No. 78/854,326, filed April 5, 2006 for FEMTEX CROWN JEWEL for feminine hygiene products, namely tampons and feminine cleansing cloth; and
- e. Application Serial No. 77/079,779, filed January 10, 2007 for FEMTEX for sanitary pads.

6. Products sold under the FEMTEX Mark have been advertised to the trade and purchasing public and have been the subject of unsolicited media attention.

7. The FEMTEX Mark, by reason of the high quality of products provided under the Mark, has come to be known to the purchasing public as representing tampons of the highest quality. As a result thereof, the FEMTEX Mark and the goodwill associated therewith are of inestimable value to Opposer.

8. By virtue of the renown acquired by the FEMTEX Mark, coupled with Opposer's reputation for high quality products, the FEMTEX Mark has acquired secondary meaning and has developed an enviable reputation in the minds of the purchasing public.

8. Long after Opposer commenced use of and applied to register the FEMTEX Mark, and long after the FEMTEX Mark became well known to consumers, Applicant: (i) purportedly began using the mark FEMFIX (the “Accused Mark”); and (ii) applied to register the Accused Mark.

9. The specimen of use submitted by Applicant for the Accused Mark shows the Accused Mark used in connection with a feminine cleanser.

10. According to a recent page from the website located at [www.healthhauslabs.com](http://www.healthhauslabs.com), which, is, upon information and belief, operated by or at the direction of Applicant, product sold under the Accused Mark is used for “feminine hygiene holistic needs.”

11. The Accused Mark is confusingly similar to the FEMTEX Mark.

12. The Accused Mark is very similar to Opposer’s FEMTEX Mark visually and phonetically since both Marks consist of a single word, the first element of which is FEM, the second element of which is three letters consisting of a consonant, a vowel, and ending with the letter “x.” In addition, both parties’ Marks are used for feminine hygiene products.

13. Based on the foregoing, the use and/or registration of the Accused Mark by Applicant is likely to cause confusion and mistake in the minds of the purchasing public, and, in particular, will, upon information and belief, tend to falsely create the impression that the products sold under the Accused Mark are authorized, sponsored, or approved by Opposer when, in fact, they are not.

14. Accordingly, it is Opposer's belief that if Applicant is granted the registration opposed herein, Opposer will suffer irreparable harm and damage.

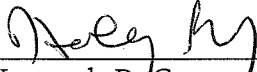
\* \* \* \* \*

**WHEREFORE**, Opposer respectfully requests that the mark shown in U.S. Trademark Application Serial No. 77/146,357 be refused registration and that this Opposition be sustained.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Opposer  
First Quality Hygienic, Inc.  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000

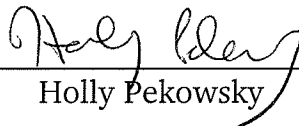
Dated: New York, New York  
January 24, 2008

By:   
Kenneth P. George  
Holly Pekowsky

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Health Haus Labs, Inc. by delivering said copy via Federal Express, overnight delivery, prepaid to:

Health Haus Labs, Inc.  
425 SE 3rd Ave. suite #204  
Portland, OR 97214

By:   
Holly Pekowsky

Dated: January 24, 2008  
New York, New York