

ESTTA Tracking number: **ESTTA205329**

Filing date: **04/16/2008**

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	Emanuel Ungaro Italia S.R.L.
Granted to Date of previous extension	04/16/2008
Address	Via Vittor Pisani 12/A Milan, ITALY

Domestic Representative	Robert Alpert, Esq. 26 West 61st Street New York, NY 10023 UNITED STATES ralpert@ladas.com, ashapiro@ladas.com, rroa@ladas.com, ssilverstein@ladas.com Phone:212-708-1860
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Applicant Information

Application No	77219706	Publication date	12/18/2007
Opposition Filing Date	04/16/2008	Opposition Period Ends	04/16/2008
Applicant	Shump, Larry 2452 Devotion Ridge Drive Henderson, NV 89052 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Cosmetics; Make-up

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.	1372041	Application Date	04/17/1984
Registration Date	11/26/1985	Foreign Priority Date	NONE
Word Mark	DIVA		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 003. First use: First Use: 1983/08/29 First Use In Commerce: 1984/03/12 Perfume and Eau de Parfum		
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U.S. Registration No.	1457922	Application Date	01/20/1987
Registration Date	09/22/1987	Foreign Priority Date	NONE
Word Mark	DIVA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1985/06/03 First Use In Commerce: 1985/06/03 [BATH SOAP,] BATH GEL, BODY LOTION [, BODY CREME, DUSTING POWDER]		

U.S. Registration No.	1366196	Application Date	06/04/1984
Registration Date	10/22/1985	Foreign Priority Date	NONE
Word Mark	DIVA UNGARO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1983/08/29 First Use In Commerce: 1984/03/12 PERFUME AND EAU DE PARFUM		

Attachments	73483510#TMSN.gif (1 page)(bytes) Notice of Opposition.pdf (3 pages)(75640 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	/RA/
Name	Robert Alpert, Esq.
Date	04/16/2008

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

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EMANUEL UNGARO ITALIA S.r.l.,
Opposer,
v.
LARRY SHUMP,
Applicant.
-----X

Opposition No. _____

NOTICE OF OPPOSITION

In the matter of Application Serial No. 77/219,706 filed on June 29, 2007 by Larry Shump, an individual with an address at 2452 Devotion Ridge Drive, Henderson, Nevada 89052, in International Class 3 seeking registration on the Principal Register of the trademark EVERYDAY DIVA LAS VEGAS in connection with “cosmetics; make-up”, which application was published for opposition on December 18, 2007, with an extension of time to file a Notice of Opposition granted until April 16, 2008;

Opposer, Emanuel Ungaro Italia S.r.l., an Italian limited liability company with an office at Via Vittor Pissani, 12/a, Milan, Italy, believes that it is or will be damaged by the issuance to registration of Application No. 77/219,706 and hereby opposes registration of said application on the following grounds:

1. Opposer is the owner of the marks DIVA and DIVA UNGARO, including U.S. Registration Nos. 1,372,041; 1,457,922; and 1,366,196; and of the good will associated with such marks (individually and collectively, the “DIVA Marks”);
2. Opposer adopted and has continuously used the DIVA Marks in

connection with fragrances and personal care products since long prior to the filing of applicant's EVERYDAY DIVA LAS VEGAS application.

3. Opposer has extensively advertised, promoted, and marketed its fragrances and personal care products, such that consumers have come to know and recognize DIVA Marks as identifying products which originate with or are authorized by opposer.

4. Applicant's use of the mark EVERYDAY DIVA LAS VEGAS in connection with "cosmetics; make-up" constitutes use of a mark confusingly similar to opposer's DIVA Marks. Applicant's mark wholly incorporates opposer's mark, DIVA, and applicant's EVERYDAY DIVA LAS VEGAS mark is likely to be perceived by purchasers as a variation, or another, of opposer's DIVA Marks. Moreover, the goods covered by applicant's EVERYDAY DIVA LAS VEGAS application are related to the fragrances and personal care products marketed and sold by opposer under its DIVA Marks.

5. Applicant's EVERYDAY DIVA LAS VEGAS mark is likely to be confused with opposer's DIVA Marks, such that the average purchaser is likely to be confused and deceived into believing that applicant's products also originate or are in some way associated with, or are connected, sponsored, or authorized by opposer.

WHEREFORE, opposer requests that the opposition be sustained and Application No. 77/219,706 be refused registration.

Respectfully submitted,

LADAS & PARRY LLP
Attorneys for Opposer

Dated: April 16, 2008

By:  _____

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