

ESTTA Tracking number: **ESTTA267378**

Filing date: **02/18/2009**

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	philosophy, inc.
Granted to Date of previous extension	02/18/2009
Address	3809 East Watkins Street Phoenix, AZ 85034 UNITED STATES

Attorney information	Albert L. Underhill SNELL & WILMER L.L.P. 400 E. Van Buren Phoenix, AZ 850042202 UNITED STATES aunderhill@swlaw.com,lericksen@swlaw.com Phone:602-382-6000
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Applicant Information

Application No	77482766	Publication date	10/21/2008
Opposition Filing Date	02/18/2009	Opposition Period Ends	02/18/2009
Applicant	Dakar, Sonya 9975 S. Santa Monica Boulevard Beverly Hills, CA 90212 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 003. All goods and services in the class are opposed, namely: facial cleansers, skin cleansers, body scrubs, facial scrubs, skin cleansing lotion, skin lotions, facial lotions, body lotions, facial moisturizer, face moisturizer, body moisturizers, makeup, skin moisturizer masks, skin moisturizer, beauty masks, body masks, skin masks, body mask creams, creams for cellulite reduction, depilatory creams, face creams, facial creams, skin whitening creams, sun creams, skin cleansing cream, disinfectant soaps, medicated soaps, soaps for hands, face and body, facial soap, anti-bacterial soap, deodorant soap, shaving soap, skin soap, toilet soap, skin sunscreens, body sunscreens, face sunscreens, skin conditioners, skin abrasive preparations, skin clarifiers, skin emollients, skin gels for accelerating, enhancing or extending tans, skin lighteners, skin texturizers, wrinkle removing skin care preparations, bath gel, shaving gel, non-medicated skin gel, skin oil for cosmetic use, body oil, essential oil for personal use</p>

Grounds for Opposition

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

U.S. Registration No.	3455164	Application Date	09/10/2003
Registration Date	06/24/2008	Foreign Priority Date	NONE
Word Mark	BOOT CAMP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2007/10/01 First Use In Commerce: 2007/10/01 Non-medicated skin care products, namely, scrubs, exfoliators, and skin clarifier		

Attachments	Notice of Opposition to Beauty Boot Camp.PDF (6 pages)(242279 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 First Class Mail on this date.

Signature	/Albert L. Underhill/
Name	Albert L. Underhill
Date	02/18/2009

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

In the matter of Application Serial No. 77/482,766
MARK: BEAUTY BOOT CAMP
Published in the *Official Gazette* of October 21, 2008, at page TM 310

philosophy, inc., an Arizona corporation,

Opposer,

vs.

SONYA DAKAR, an individual,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

philosophy, inc., an Arizona corporation, with its principal place of business at 3809 E. Watkins Street, Phoenix, Arizona, 85034 (“Opposer”), believes that it will be damaged by the registration of intent-to-use Trademark Application Serial No. 77/482,766 for the mark BEAUTY BOOT CAMP (“Applicant’s Mark”) with intended use in connection with “facial cleansers, skin cleansers, body scrubs, facial scrubs, skin cleansing lotion, skin lotions, facial lotions, body lotions, facial moisturizer, face moisturizer, body moisturizers, makeup, skin moisturizer masks, skin moisturizer, beauty masks, body masks, skin masks, body mask creams, creams for cellulite reduction, depilatory creams, face creams, facial creams, skin whitening creams, sun creams, skin cleansing cream, disinfectant soaps, medicated soaps, soaps for hands, face and body, facial soap, anti-bacterial soap, deodorant soap, shaving soap, skin soap, toilet soap, skin sunscreens, body sunscreens, face sunscreens, skin conditioners, skin abrasive preparations, skin clarifiers, skin emollients, skin gels for accelerating, enhancing or extending tans, skin lighteners, skin texturizers, wrinkle removing skin care preparations, bath gel, shaving

gel, non-medicated skin gel, skin oil for cosmetic use, body oil, essential oil for personal use,” in International Class 003.

As grounds for opposition, including grounds under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063, as amended, Opposer hereby alleges the following:

1. For many years, Opposer has been in the business of selling personal care products, including skin care products, fragrances, bath and body products, make-up, and hair care products.

2. Opposer owns U.S. Trademark Registration No. 3,455,164 for the mark BOOT CAMP based upon use in commerce since at least as early as October 1, 2007, for use in connection with “non-medicated skin care products, namely, scrubs, exfoliators and skin clarifier” in International Class 003 (“Opposer’s Mark”).

3. Opposer’s U.S. Trademark Registration No. 3,455,164 is valid and in full force and effect. A copy of the Registration No. 3,455,164 is attached hereto as Exhibit A.

4. Opposer has continuously used Opposer’s Mark in connection with the goods stated in the registration since at least as early as October 1, 2007.

5. On May 23, 2008, Applicant filed intent-to-use Trademark Application Serial No. 77/482,766 for the mark BEAUTY BOOT CAMP with intended use in connection with “facial cleansers, skin cleansers, body scrubs, facial scrubs, skin cleansing lotion, skin lotions, facial lotions, body lotions, facial moisturizer, face moisturizer, body moisturizers, makeup, skin moisturizer masks, skin moisturizer, beauty masks, body masks, skin masks, body mask creams, creams for cellulite reduction, depilatory creams, face creams, facial creams, skin whitening creams, sun creams, skin cleansing cream, disinfectant soaps, medicated soaps, soaps for hands, face and body, facial soap, anti-bacterial soap, deodorant soap, shaving soap, skin

soap, toilet soap, skin sunscreens, body sunscreens, face sunscreens, skin conditioners, skin abrasive preparations, skin clarifiers, skin emollients, skin gels for accelerating, enhancing or extending tans, skin lighteners, skin texturizers, wrinkle removing skin care preparations, bath gel, shaving gel, non-medicated skin gel, skin oil for cosmetic use, body oil, essential oil for personal use,” in International Class 003, as well as for use in connection with other products in International Classes 005 and 032.

6. Applicant’s Mark was published for opposition on October 21, 2008.

7. Opposer filed and was granted an extension to February 18, 2009, to oppose Applicant’s Mark.

8. Following publication of Applicant’s Mark for opposition, Opposer sent a letter to Applicant’s counsel of record asking that Applicant abandon the application as to International Class 003 only. No response to that letter has been received.

9. There is no issue of priority in the present case, because the first use date of Opposer’s Mark in October, 2007, was prior to the May 23, 2008 filing date of Applicant’s intent-to-use application.

10. Opposer has spent and continues to spend significant sums of money in advertising and promoting its goods under its BOOT CAMP mark, and, as a result, has developed substantial goodwill and consumer recognition in that mark.

11. Opposer’s goods bearing Opposer’s Mark are sold at retail outlets including major department store chains and Opposer’s own retail stores. In addition, Opposer’s goods are offered for sale and sold through Opposer’s Internet web site.

12. Applicant intends to offer goods in connection with Applicant’s Mark that are substantially similar to the goods of Opposer bearing Opposer’s Mark.

13. Upon information and belief, Applicant's Mark is intended to be used on and in connection with goods sold to the same consumers and in the same channels of trade as the goods sold by Opposer bearing Opposer's Mark.

14. Opposer's Mark and Applicant's Mark are substantially similar in sight, sound, and meaning. The two words "BOOT CAMP" of Applicant's Mark are identical to Opposer's Mark. The addition of the word "BEAUTY" to Applicant's Mark does not serve to distinguish Applicant's Mark from Opposer's Mark. The word is descriptive of Applicant's goods in International Class 003 and Applicant disclaimed "BEAUTY" under 15 U.S.C. § 1056. Consumers are likely to perceive and associate Applicant's goods with the dominant two words "BOOT CAMP."

15. Applicant's Mark, if registered and used in connection with the goods in International Class 003 as recited in Applicant's Trademark Application Serial No. 77/482,766, would be confusingly similar in sight, sound, meaning, commercial impression and manner of use to Opposer's Mark, and would be likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

16. Upon information and belief, allowing registration of Applicant's Mark would allow Applicant to unfairly trade upon Opposer's substantial goodwill developed in Opposer's Mark.

17. Opposer would be injured by granting to Applicant a registration for Applicant's Mark.

WHEREFORE, Opposer prays that Application Serial No. 77/482,766 be rejected in International Class 003, that no registration be issued thereon in accordance with 15 U.S.C. §1052(d), and that this Opposition be sustained in favor of Opposer.

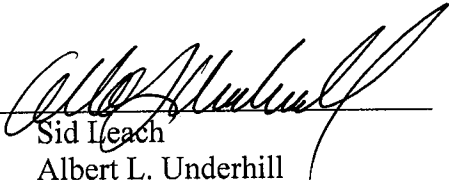
This Notice of Opposition is timely filed within the extension of time granted to Opposer by the Trademark Trial and Appeal Board. As noted in the electronic filing to which the document is attached, the undersigned has authorized payment by deposit account of the filing fee of \$300.00 for opposing an application in one class in accordance with 37 C.F.R. §2.6(a)(17).

Respectfully submitted,

SNELL & WILMER L.L.P.

Dated: February 18, 2009

By:


Sid Leach

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Attorneys for Opposer
philosophy, inc.

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,455,164

Registered June 24, 2008

**TRADEMARK
PRINCIPAL REGISTER**

BOOT CAMP

**PHILOSOPHY, INC. (ARIZONA CORPORATION)
3809 EAST WATKINS STREET
PHOENIX, AZ 85034**

FIRST USE 10-1-2007; IN COMMERCE 10-1-2007.

**FOR: NON-MEDICATED SKIN CARE PRO-
DUCTS, NAMELY, SCRUBS, EXFOLIATORS, AND
SKIN CLARIFIER, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51
AND 52).**

SN 78-298,766, FILED 9-10-2003.

JEFF DEFORD, EXAMINING ATTORNEY