



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

DSM MAGNETS B.V.,

Opposer,

v.

ORACEUTICAL LLC,

Applicant.

TTAB

Opposition No.

Our Account No. 14-1140

Our Order No. 4662-1036  
C# M#

In Re Application No. 77524159  
Filed: July 16, 2008  
For the Mark: ACTIVE BEAUTY

Date: June 8, 2009

**Box TTAB Fee**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Sir:

The document indicated below is attached for filing and is incorporated by reference. Fees are attached as calculated below:

- NOTICE OF OPPOSITION in 2 class(es) (Classes 3 and 5) (\$ 300.00 per class) (6402) \$ 600.00
  - PETITION FOR CANCELLATION in 0 class(es) (\$ 300.00 per class)(6401) \$ 0.00
  - CREDIT CARD FORM ATTACHED**
- TOTAL FEE ENCLOSED \$ 600.00**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this form) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

901 North Glebe Road, 11th Floor  
Arlington, Virginia 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100  
DMB:lfo

**NIXON & VANDERHYE P.C.**

By Atty: Duane M. Byers

Signature: \_\_\_\_\_



06-08-2009

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

_____	)	
DSM IP Assets B.V.	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. _____
	)	Application Serial No. 77524159
Oraceutical LLC	)	
	)	
Applicant	)	
_____	)	

**NOTICE OF OPPOSITION – AGAINST CLASSES 3 AND 5**

Opposer, DSM IP Assets B.V., a Netherlands corporation, with a business address of Het Overloon 1, 6411 TE Heerlen, The Netherlands, hereby opposes registration of the mark ACTIVE BEAUTY in Classes 3 and 5 that is the subject of application Serial No. 77524159, published in the Official Gazette of December 9, 2008, and requests that registration to Applicant be refused for Classes 3 and 5.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, prior to any date of first use upon which Applicant can rely, has contrived, adopted, applied for, and used the term BEUACTIVE as a trademark.
2. Opposer is the owner of U.S. Trademark Registration No. 3476925 for the

BEUACTIVE trademark for:

06/11/2009 SWILSON1 00000001 77524159

01 FC:6402

600.00 DP

**International Class 1:** Chemical preparations for the manufacture of cosmetics and skin-care products, other than for medical or veterinary purposes; biochemical substances, namely, peptides, milk proteins, for the manufacture of cosmetics and skin-care products, other than for medical or veterinary purposes.

**International Class 3:** Cosmetics; cosmetics for skin-care; hair lotions; products for skin-care, namely, wrinkle removing skin-care preparations; cosmetic preparations for skin renewal; non-medicated preparations all for the care of skin, hair and scalp; skin lotions, creams, gels, texturizers, toners and powders; skin and body topical lotions, creams and oils for cosmetic use; non-medicated skin care preparations, namely, lotions, creams, gels, texturizers, toners and powders.

**International Class 5:** Pharmaceutical preparations for skin care for collagen induction, anti-aging, reduction of wrinkles and lines, improved skin texture; medicated skin care preparations; medicated skin care products, namely, biochemical preparations for medical purposes, medicinal creams for skin care, medicated skin care preparations, namely, lotions, creams, gels, texturizers, toners and powders, nutritional supplements in lotion form sold as a component of nutritional skin care products.

This registration is valid, subsisting, unrevoked and uncancelled. The registration dates back to February 1, 2007.

3. Applicant has filed an application to register the mark ACTIVE BEAUTY for:

**International Class 3:** Anti-wrinkle cream; Cosmetic preparations for skin renewal; Cosmetics and cosmetic preparations; Cosmetics and make-up; Non-medicated skin care preparations; Wrinkle removing skin care preparations; Wrinkle-minimizing cosmetic preparations for topical facial use.

**International Class 5:** Dermatologicals; Medicated skin care preparations, and for two other classes that are not being opposed.

The application was filed on July 16, 2008, and was assigned Serial No. 77524159.

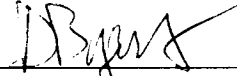
The application was filed as an "intent to use" trademark application. No statement of use has been filed.

4. Applicant's trademark so resembles Opposer's previously used and registered BEAUCTIVE trademark as to be likely, when used in connection with the Class 3 and 5 goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act. Opposer has duly used and registered the BEAUCTIVE trademark. Among other things, consumers are likely to believe that Applicant is somehow associated with, affiliated with, or licensed by Opposer in view of Opposer's registration and usage of its BEAUCTIVE mark and Applicant's usage of the ACTIVE BEAUTY mark on similar or related Class 3 and 5 goods.

WHEREFORE, Opposer prays that the opposition against the application in Classes 3 and 5 be sustained and that registration to Applicant be refused for Classes 3 and 5.

Date: June 8, 2009

Respectfully submitted,



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Duane M. Byers  
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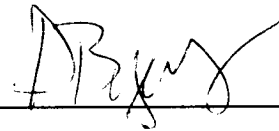
Attorneys for Opposer,  
DSM IP Assets B.V.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on Applicant,

Oraceutical LLC  
815 Pleasant Street  
Lee, MA 01238

via first-class mail on June 8 2009.

  
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