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

IN THE MATTER OF APPLICATION SERIAL NO. 77/461,092
PUBLISHED IN THE OFFICIAL GAZETTE ON MARCH 31, 2009

LUSTER PRODUCTS, INC.	)	Opposition No.:
	)	
Opposer,	)	
v.	)	
	)	
HENKEL AG & CO. KGAA	)	
	)	
Applicant.	)	

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NOTICE OF OPPOSITION

In the matter of the trademark application of HENKEL AG & CO. KGAA for the registration of the mark **DIAMOND LUSTER** for "hair care preparations; hair styling preparations" in International Class 3, **Application Serial No. 77/461,092** filed on April 29, 2008, published in the Official Gazette of March 31, 2009;

Opposer LUSTER PRODUCTS, INC., an Illinois corporation with a principal place of business at 1104 West 43rd Street, Chicago, Illinois 60609, believes it will be damaged by the registration of the mark shown in the application and hereby opposes same.

The grounds for the opposition are:

1. Continuously since long prior to April 29, 2008, the Applicant's filing date for the trademark application at issue, the Opposer has marketed, advertised and sold and continues to sell throughout the United States under the names and marks **LUSTER'S; LUSTER'S OIL MOISTURIZER and Design; LUSTER PRODUCTS; LUSTER PRODUCTS, INC.; and LUSTER'S AUTHENTIC SEAL OF QUALITY and**

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Design an extensive range of hair care and personal care products.

2. Opposer's products sold under the above names and trademarks **LUSTER'S; LUSTER'S OIL MOISTURIZER and Design; LUSTER PRODUCTS; LUSTER PRODUCTS, INC.; and LUSTER'S AUTHENTIC SEAL OF QUALITY and Design** have been extensively promoted throughout the United States to the relevant trade and to the consuming public.

3. By reason of Opposer's aforesaid extensive promotion and sale of its products, Opposer's names and trademarks **LUSTER'S; LUSTER'S OIL MOISTURIZER and Design; LUSTER PRODUCTS; LUSTER PRODUCTS, INC.; and LUSTER'S AUTHENTIC SEAL OF QUALITY and Design** have acquired great recognition and renown, and the relevant trade and public have come to recognize the names and trademarks **LUSTER'S; LUSTER'S OIL MOISTURIZER and Design; LUSTER PRODUCTS; LUSTER PRODUCTS, INC.; and LUSTER'S AUTHENTIC SEAL OF QUALITY and Design** as signifying Opposer exclusively.

4. Opposer has duly registered in the United States Patent and Trademark Office and owns the following registrations:

REGISTRATION NUMBER	TRADEMARK
1,224,755	**LUSTER'S**
1,331,541	**LUSTER'S OIL MOISTURIZER and Design**
1,769,615	**LUSTER'S**

REGISTRATION NUMBER	TRADEMARK
1,767,126	**LUSTER'S**
1,845,568	**LUSTER PRODUCTS, INC.**
1,847,534	**LUSTER'S AUTHENTIC SEAL OF QUALITY**

5. Each of the registrations referenced in paragraph No. 4 for the above marks are valid subsisting registrations in full force and effect. Each of these registrations have achieved **"incontestable"** registration status thereby constituting conclusive prima facie evidence of Opposer's exclusive right to use said marks in commerce.

6. Applicant's claimed trademark **DIAMOND LUSTER**, as proposed for use in connection with the identified hair care products set forth in the application, is so similar to Opposer's names and trademarks **LUSTER'S; LUSTER'S OIL MOISTURIZER and Design; LUSTER PRODUCTS; LUSTER PRODUCTS, INC.; and LUSTER'S AUTHENTIC SEAL OF QUALITY and Design** used for extensive range of hair care and personal care products, as to be likely to create confusion, mistake or deception, all to the damage of Opposer, and to the damage of Opposer's rights in its names and trademarks, which names and marks have been in use long prior to the filing of the Applicant's trademark application and with Opposer having use of asserted marks and names prior to the use by Applicant of the mark shown in the application.

7. The hair care products sold by Opposer would be identically described to hair care products identified in the Applicant's application. Furthermore, products identified in Opposer's identified hair care registration(s) would include within the description items identified in the Applicant's application.

8. Based upon information and belief the goods identified in the Applicant's application for the trademark **DIAMOND LUSTER** and those products sold under the Opposer's names and marks could be sold to the same potential consumers or end-users as the Opposer's products.

9. Based upon information and belief the goods identified in the Applicant's application for the trademark **DIAMOND LUSTER** and those products sold under the Opposer's names and marks could move through the same channels of distribution and be sold in the same stores or in stores selling competing items.

10. Opposer holds rights in a family of trademarks which include the name and mark **LUSTER** as a name and mark, or as part of an overall name and mark with said marks often promoted together. The Applicant's mark **DIAMOND LUSTER** is thereby confusingly similar to the Opposer's rights in its family of marks.

11. Applicant, based upon information and belief, has not used the mark **DIAMOND LUSTER.** Applicant's earliest available possible priority date for the mark **DIAMOND LUSTER** is the filing date for its application, specifically April 29, 2008.

12. Use by the Applicant of the trademark **DIAMOND LUSTER**, for which registration is sought in the application opposed herein, is without Opposer's consent or permission.

13. Applicant's registration of the trademark **DIAMOND LUSTER** will result in damage and in the diminishment in sales and the loss of the value of the Opposer's names and marks.

14. Applicant's registration of the trademark **DIAMOND LUSTER** will result in damage, dilution, and in the diminishment in sales and the loss of the value of the Opposer's famous names and marks.

15. This Notice of Opposition is being filed in duplicate and **please charge the required fee of $300.00 to our deposit Account No. 120400**. Also, please charge any additional costs to our Deposit Account No. 120400.

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/461,092 in International Class 3 and prays that this Opposition be sustained and that the Applicant's registration be denied.

Please address all correspondence to Burton S. Ehrlich, Ladas & Parry LLP, 224 South Michigan Avenue, Suite 1600, Chicago, IL 60604, telephone (312) 427-1300.

Respectfully submitted,

By: _____
One of Opposer's attorneys

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited (in duplicate) with the United States Postal Service as First Class Mail addressed to ATTN: TTAB-FEE, Commissioner for Trademarks, U.S. Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on September 26, 2009.

Burton S. Ehrlich

CERTIFICATE OF SERVICE

The undersigned, one of Opposer's attorneys, hereby certifies that on September 26, 2009, he caused a true and correct copies of the foregoing NOTICE OF OPPOSITION to be served upon Applicant by First Class mail, postage pre-paid, at the following address:

Susan F. Evans
Legal Department
Henkel of America, Inc.
19001 N. Scottsdale Road
Scottsdale, AZ 85255

Burton S. Ehrlich