

ESTTA Tracking number: **ESTTA313081**

Filing date: **10/22/2009**

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	Allergan, Inc.
Granted to Date of previous extension	11/04/2009
Address	2525 Dupont Drive Irvine, CA 92612 UNITED STATES
Attorney information	Kenneth L. Wilton Seyfarth Shaw LLP 2029 Century Park East , Suite 3500 Los Angeles, CA 90067 UNITED STATES kwilton@seyfarth.com

Applicant Information

Application No	77281575	Publication date	07/07/2009
Opposition Filing Date	10/22/2009	Opposition Period Ends	11/04/2009
Applicant	Boom LLC 2nd Floor 800 Third Avenue New York, NY 10022 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 003. All goods and services in the class are opposed, namely: Cosmetics, namely, facial makeup, eye makeup and foundation makeup, cosmetic pencils, rouge, skin and beauty masks, foundations, concealers, blusher, eye shadows, eye liners, eye pencils, mascara, makeup removers, eye makeup removers, lipsticks, lip plumpers, non-medicated lip balm, lip pencils, lip gloss, cosmetic lip creams, non-medicated lip conditioner, non-medicated lip moisturizer, non-medicated lip gels, perfume, cologne, eau de toilette, eau de parfum, aftershave, incense, sachets, antiperspirants, personal deodorants, soap, deodorant soap, hair bleaching preparations, saddle soap, skin soaps, toilet soap, liquid soap, shampoo, conditioners, baby shampoo, bubble bath, bath gel, shower gel, hair dyes, hair gel, hydrogen peroxide for use on the hair, hair care preparations, hair relaxing preparations, hair rinses, hair spray, nail enamel, nail enamel remover, nail strengthener, cuticle removing preparations, nail care preparations, nail grooming products, namely, tips, glue, lacquer and glitter, nail hardeners, nail polish, nail polish base coat, nail polish remover, nail polish top coat, body lotion, hand cream, bust cream, eye cream, hair removing creams, night creams, skin cleansing creams and lotions, skin creams, cold creams, facial scrubs, skin clarifiers, skin emollients, skin lighteners, skin lotions, vanishing creams, depilatory creams, skin moisturizers, wrinkle removing creams, facial moisturizers, non-medicated foot powder, baby talcum powder, baby powder, body powder, face powder, bath powder, talcum powder, facial cleaners, astringents for cosmetic purpose, skin toner, after sun gel,</p>

sunblock preparations, sunscreen preparations, sun tanning preparations, baby oil, body oil, essential oils for personal use, massage oil, petroleum jelly for cosmetic purposes, pre-moistened cosmetic tissues, cosmetic towelettes, pre-moistened cosmetic towelettes, pre-moistened cosmetic wipes, cosmetic cotton for cosmetic purposes, cotton puffs for cosmetic purposes, cotton sticks for cosmetic purposes, cotton swabs for cosmetic purposes, toothpaste, tooth gel, tooth powder, non-medicated mouthwash, non-medicated mouth rinse, breath fresheners, dental bleaching gel and paste, denture cleaning preparations, shaving balm, shaving gel, shaving lotion

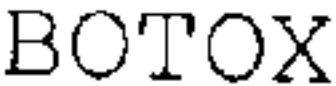
Grounds for Opposition

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.	1692384	Application Date	12/21/1990
Registration Date	06/09/1992	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/09/00 First Use In Commerce: 1992/01/22 pharmaceutical preparations; namely, ophthalmic muscle relaxants		

U.S. Registration No.	1709160	Application Date	02/06/1991
Registration Date	08/18/1992	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/09/00 First Use In Commerce: 1992/01/22 pharmaceutical preparations for the treatment of neurologic disorders		

U.S. Registration No.	2510675	Application Date	01/03/2001
Registration Date	11/20/2001	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1990/09/30 First Use In Commerce: 1992/01/22 Pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhydrosis, sports injuries, cerebral palsy, spasms, tremors and pain

Attachments	78041618#TMSN.gif (1 page)(bytes) 2009-10-22 - AI - Notice of Opposition.pdf (6 pages)(18205 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	/Kenneth L. Wilton/
Name	Kenneth L. Wilton
Date	10/22/2009

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

In the Matter of Application Serial No. 77/281,575
Published in the Official Gazette of July 7, 2009

ALLERGAN, INC.,

Opposer,

v.

BOOM LLC,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Opposer Allergan, Inc. (“Opposer”) believes that it will be damaged by registration of the mark shown in Application Serial No. 77/281,575, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 2525 Dupont Drive, Irvine, California 92612. Opposer is, and has been, for many years engaged in the manufacture, development, sale and advertising of an extensive array of pharmaceutical, ophthalmic and dermatological products. Since 1990, Opposer has marketed a pharmaceutical product for the therapeutic treatment of neurological disorders and muscle dystonias under the trademark BOTOX[®] (the “BOTOX[®] Mark”) in the United States and globally (the “BOTOX[®] Product”).

2. In or about 1999, Opposer began clinical trials of the BOTOX[®] Product for a cosmetic indication, and shipped the BOTOX[®] Product under the BOTOX[®] Mark during those trials. In 2002, following approval by the United States Food and Drug Administration of the

BOTOX[®] Product for the temporary improvement in the appearance of moderate to severe glabellar lines, Opposer started promoting and marketing its BOTOX[®] Product under the BOTOX[®] Mark for that indication.

3. Opposer owns all right, title and interest in and to the BOTOX[®] Mark, as well as the following United States registrations of its BOTOX[®] Mark on the Principal Register:

- a) Registration No. 1,692,384 granted June 9, 1992, for the mark BOTOX in International Class 5 for “pharmaceutical preparations; namely, ophthalmic muscle relaxants”;
- b) Registration No. 1,709,160 granted August 18, 1992, for the mark BOTOX in International Class 5 for “pharmaceutical preparations for the treatment of neurologic disorders”;
- c) Registration No. 2,510,675 granted November 20, 2001, for the mark BOTOX in International Class 5 for “pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhidrosis, sports injuries, cerebral palsy, spasms, tremors and pain”.

All of these registrations are valid and subsisting, and all have become incontestable. Copies of current printouts of information from the electronic database records of the USPTO showing the current status and title of these registrations are attached hereto as Exhibit 1 and are incorporated by reference herein as if set forth in full.

4. From a time long prior to the filing of the Application at issue, Opposer has used the BOTOX[®] Mark in commerce in the United States on and in connection with the foregoing

goods, for which the mark has become famous. Moreover, by virtue of the excellence of the product sold under the BOTOX[®] Mark, the mark has a valuable reputation.

5. Notwithstanding Opposer's long prior rights in and to the BOTOX[®] Mark, Applicant, on information and belief, on September 17, 2007, filed an application for the trademark INHIBITOX for "cosmetics, namely, facial makeup, eye makeup and foundation makeup, cosmetic pencils, rouge, skin and beauty masks, foundations, concealers, blusher, eye shadows, eye liners, eye pencils, mascara, makeup removers, eye makeup removers, lipsticks, lip plumpers, non-medicated lip balm, lip pencils, lip gloss, cosmetic lip creams, non-medicated lip conditioner, non-medicated lip moisturizer, non-medicated lip gels, perfume, cologne, eau de toilette, eau de parfum, aftershave, incense, sachets, antiperspirants, personal deodorants, soap, deodorant soap, hair bleaching preparations, saddle soap, skin soaps, toilet soap, liquid soap, shampoo, conditioners, baby shampoo, bubble bath, bath gel, shower gel, hair dyes, hair gel, hydrogen peroxide for use on the hair, hair care preparations, hair relaxing preparations, hair rinses, hair spray, nail enamel, nail enamel remover, nail strengthener, cuticle removing preparations, nail care preparations, nail grooming products, namely, tips, glue, lacquer and glitter, nail hardeners, nail polish, nail polish base coat, nail polish remover, nail polish top coat, body lotion, hand cream, bust cream, eye cream, hair removing creams, night creams, skin cleansing creams and lotions, skin creams, cold creams, facial scrubs, skin clarifiers, skin emollients, skin lighteners, skin lotions, vanishing creams, depilatory creams, skin moisturizers, wrinkle removing creams, facial moisturizers, non-medicated foot powder, baby talcum powder, baby powder, body powder, face powder, bath powder, talcum powder, facial cleaners, astringents for cosmetic purpose, skin toner, after sun gel, sunblock preparations, sunscreen preparations, sun tanning preparations, baby oil, body oil, essential oils for personal use, massage

oil, petroleum jelly for cosmetic purposes, pre-moistened cosmetic tissues, cosmetic towelettes, pre-moistened cosmetic towelettes, pre-moistened cosmetic wipes, cosmetic cotton for cosmetic purposes, cotton puffs for cosmetic purposes, cotton sticks for cosmetic purposes, cotton swabs for cosmetic purposes, toothpaste, tooth gel, tooth powder, non-medicated mouthwash, non-medicated mouth rinse, breath fresheners, dental bleaching gel and paste, denture cleaning preparations, shaving balm, shaving gel, shaving lotion” in International Class 3.

6. Applicant’s application was assigned Serial No. 77/281,575 and the mark was published for opposition in the Trademark Official Gazette of July 7, 2009 (the “Opposed Application”).

7. The INHIBITOX mark shown in the Opposed Application so resembles Opposer’s registered BOTOX[®] Mark as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant’s mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

8. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer’s BOTOX[®] Mark.

WHEREFORE, Opposer prays for judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

Please charge any deficiency or credit any overpayment related to this Opposition to Deposit Account No. 50-2291, and direct all correspondence in connection with this opposition to the undersigned and, in addition, to:

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2009, I served this Notice of Opposition on the applicant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to applicant's correspondence address of record as follows:

Michael J. Brown
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue, Floor 34
New York, NY 10178-0061

/Eva Salazar/

Eva Salazar