

ESTTA Tracking number: **ESTTA328994**

Filing date: **01/27/2010**

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	Ashcove Eneterprises PTY Ltd
Granted to Date of previous extension	01/27/2010
Address	Suite 1, 4th Floor207 Murray Street Perth WA, 6000 AUSTRALIA
Attorney information	Gregory C. Golla Merchant & Gould P.C. 3200 IDS Center80 South Eighth Street Minneapolis, MN 55402-2215 UNITED STATES ggolla@merchantgould.com, electronictm@merchantgould.com Phone:612-371-5395

**Applicant Information**

Application No	77531712	Publication date	09/29/2009
Opposition Filing Date	01/27/2010	Opposition Period Ends	01/27/2010
Applicant	LUSTOUR INC. 152 PROSPECT PLACE ALPHARETTA, GA 30005 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 014. All goods and services in the class are opposed, namely: Cut diamonds; Diamond; Diamond jewelry; Diamonds; Sintered diamonds; Synthetic diamonds
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**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.	3090444	Application Date	04/27/2004
Registration Date	05/09/2006	Foreign Priority Date	NONE
Word Mark	LUST		

Design Mark	<b>LUST</b>
Description of Mark	NONE
Goods/Services	Class 014. First use: Jewelry, pearls, jewelry made with pearls; items of personal adornment made both with and without pearls, namely watches, wrist watches, watch chains, watch straps, watch bands, tie pins, tie clips; buckles made of precious metal; buckles made of precious metal and pearls; bracelets, necklaces, earrings, rings, jewelry chains, jewelry pendants, jewelry amulets, cuff links, body piercing rings and studs; personal trinkets made of precious metals, namely, brooches; key rings made of precious metals; hair ornaments made wholly of precious metals

Attachments	79004934#TMSN.jpeg ( 1 page )( bytes ) 15063.1USTA_20100127123805.pdf ( 9 pages )(315660 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	/gcg/
Name	Gregory C. Golla
Date	01/27/2010

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

Ashcove Enterprises Pty Ltd.,	)	Opposition No. _____
Opposer,	)	
	)	Mark: LUST UR
v.	)	
	)	
Lustour Inc.,	)	
Applicant.	)	

Serial No.: 77/531,712  
Filing Date: 2008-07-25  
Publication Date: 2009-09-29

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**NOTICE OF OPPOSITION**

Ashcove Enterprises Pty Ltd., an Australian corporation with a mailing address of Suite 1 4th Floor; 207 Murray Street; PERTH WA 6000, Australia, (hereinafter "Opposer"), believes it will be damaged by the registration of the mark shown in application Serial No. 77/531,712, filed on July 25, 2008, by Lustour Inc., a Georgia Corporation with a mailing address of 152 Prospect Place, Alpharetta, GA 30005, United States (hereinafter "Applicant"), and hereby opposes registration of the mark. The grounds for opposition are as follows:

1. By the applications herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the mark LUST UR and Design for " Cut diamonds; Diamond; Diamond jewelry; Diamonds; Sintered diamonds; Synthetic diamonds," in International Class 14. The application was filed with the United States Patent and Trademark Office on July 25, 2008, subject to Section 1(b) of the Act.
  
2. Applicant's mark published for opposition on September 29, 2009. On October 29, 2009, Opposer filed with the Trademark Trial and Appeal Board a ninety (90) day extension of time to oppose the subject application. This Notice of Opposition is timely filed.

3. Opposer is the owner of U.S. registration number 3,090,444 for the mark LUST for “Jewelry, pearls, jewelry made with pearls; items of personal adornment made both with and without pearls, namely watches, wrist watches, watch chains, watch straps, watch bands, tie pins, tie clips; buckles made of precious metal; buckles made of precious metal and pearls; bracelets, necklaces, earrings, rings, jewelry chains, jewelry pendants, jewelry amulets, cuff links, body piercing rings and studs; personal trinkets made of precious metals, namely, brooches; key rings made of precious metals; hair ornaments made wholly of precious metals”, filed 2004-04-27 and registered 2006-05-09 (see Exhibit A for a current printout of information from the electronic database records of the USPTO showing the current status and title of the registration):

4. Opposer has priority with respect to the marks at issue in this opposition. Opposer’s LUST mark was registered and used long before the July 25, 2008, filing date of Applicant’s application.

5. Applicant's mark is confusingly and deceptively similar to Opposer's mark. The marks have a confusingly similar meaning, and the goods of the parties are closely related as both parties goods are jewelry.

6. Due to the similarity between Applicant's claimed mark and Opposer's previously used and registered mark, and the closely related nature of the goods of the respective parties, consumers and potential consumers are likely to believe that Applicant's goods originate from or are sponsored or otherwise affiliated with Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

7. The Applicant’s goods are identical to Opposer’s goods as both are jewelry products.

8. The Applicant’s goods are highly related to Opposer’s goods.

9. Applicant's LUST UR Design mark is confusingly similar in sight, sound and commercial impression to Opposer's LUST mark.

10. Applicant's LUST UR Design mark with a diamond "O" creates a commercial impression of LUST, followed by a diamond, followed by UR.

11. The use and registration by Applicant of the mark LUST UR and Design for Applicant's goods is likely to cause confusion or to cause mistake or deception among consumers and potential consumers, with Opposer's previously used and registered LUST mark, again resulting in damage to Opposer.

12. Because of the related nature of the goods, and the confusing similarity in appearance, sound and commercial impression of the marks, use and registration of the mark LUST UR and Design by Applicant is likely to cause confusion, mistake, or deception that Applicant's services are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer causing further damage to Opposer.

13. If Applicant is granted registration of the marks herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

14. Registration of the mark shown in Application Serial No. 77/531,712 will result in damage to Opposer under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. § 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer requests that its opposition to this application be sustained and that the registration of the mark LUST UR and Design set forth therein be refused.

**Please direct all correspondence to:**

**Gregory Golla  
MERCHANT & GOULD P.C.  
P.O. Box 2910  
Minneapolis, MN 55402-0910**


Opposer herein appoints John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Andrew S. Ehard; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I. Mattessich; Scott M. Oslick; Christopher J. Schulte and William D. Schultz, and all other attorneys of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

Ashcove Enterprises Pty Ltd.

By its Attorneys,

Date: 1-27-2010

  
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Gregory Golla  
MERCHANT & GOULD P.C.  
80 South Eighth Street, Suite 3200  
Minneapolis, Minnesota 55402-2215  
(612) 332-5300

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon the following correspondent of record for Applicant by First Class Mail, postage prepaid, this 21 day of January, 2010:

CHENAB AIYA  
LUSTOUR INC.  
152 PROSPECT PL  
ALPHARETTA, GA 30005-5445

  
\_\_\_\_\_  
Gregory Cola

## **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2010-01-26 17:24:11 ET**

**Serial Number: 79004934 Assignment Information      Trademark Document Retrieval**

**Registration Number: 3090444**

**Mark**

# LUST

**(words only): LUST**

**Standard Character claim: Yes**

**Current Status: Registered.**

**Date of Status: 2006-05-09**

**Filing Date: 2004-04-27**

**Transformed into a National Application: No**

**Registration Date: 2006-05-09**

**Register: Principal**

**Law Office Assigned: LAW OFFICE 108**

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location: 650 -Publication And Issue Section**

**Date In Location: 2006-05-09**

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## LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. Ashcove Enterprises Pty Ltd

**Address:**

Ashcove Enterprises Pty Ltd  
Suite 1 4th Floor; 207 Murray Street; PERTH WA 6000  
Australia

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Australia

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### GOODS AND/OR SERVICES

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**International Class:** 014

**Class Status:** Active

Jewelry, pearls, jewelry made with pearls; items of personal adornment made both with and without pearls, namely watches, wrist watches, watch chains, watch straps, watch bands, tie pins, tie clips; buckles made of precious metal; buckles made of precious metal and pearls; bracelets, necklaces, earrings, rings, jewelry chains, jewelry pendants, jewelry amulets, cuff links, body piercing rings and studs; personal trinkets made of precious metals, namely, brooches; key rings made of precious metals; hair ornaments made wholly of precious metals

**Basis:** 66(a)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

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### ADDITIONAL INFORMATION

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(NOT AVAILABLE)

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### MADRID PROTOCOL INFORMATION

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**International Registration Number:** 0832143

**International Registration Date:** 2004-04-27

**Priority Claimed:** No

**Date of Section 67 Priority Claim:** (DATE NOT AVAILABLE)

**International Registration Status:** Request For Extension Of Protection Processed

**Date of International Registration Status:** 2004-10-07

**International Registration Renewal Date:** 2014-04-27

**Notification of Designation Date:** 2004-10-07

**Date of Automatic Protection:** 2006-04-07

**Date International Registration Cancelled:** (DATE NOT AVAILABLE)

**First Refusal:** Yes

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## PROSECUTION HISTORY

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-11-30 - Final Decision Transaction Processed By IB

2006-12-28 - Final Disposition Notice Sent To IB

2006-12-28 - Final Disposition Processed

2006-11-20 - Final Disposition Notice Created, To Be Sent To IB

2006-05-09 - Registered - Principal Register

2006-04-06 - Notification Of Possible Opposition - Processed By IB

2006-03-09 - Notification Of Possible Opposition Sent To IB

2006-03-09 - Notification Of Possible Opposition Created, To Be Sent To IB

2006-02-14 - Published for opposition

2006-01-25 - Notice of publication

2006-01-04 - Law Office Publication Review Completed

2005-12-23 - Assigned To LIE

2005-12-18 - Approved for Pub - Principal Register (Initial exam)

2005-12-16 - Examiner's Amendment Entered

2005-12-15 - Examiner's amendment mailed

2005-12-14 - Examiners Amendment -Written

2005-06-16 - Final refusal mailed

2005-06-15 - Final Refusal Written

2005-06-02 - Amendment From Applicant Entered

2005-05-12 - Communication received from applicant

2005-05-12 - PAPER RECEIVED

2005-01-20 - Refusal Processed By IB  
2004-12-07 - Non-final action mailed  
2004-12-02 - Non-Final Action Written  
2004-11-21 - Assigned To Examiner  
2004-10-08 - New Application Entered In Tram  
2004-10-07 - Sn Assigned For Sect 66a Appl From IB

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**  
ANDREW S. EHARD

**Correspondent**  
ANDREW S. EHARD  
MERCHANT & GOULD  
P.O. BOX 2910  
MINNEAPOLIS, MN 55402-0910

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