

ESTTA Tracking number: **ESTTA333890**

Filing date: **02/24/2010**

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	Gurwitch Products, L.L.C.
Granted to Date of previous extension	02/24/2010
Address	13259 North Promenade Boulevard Stafford, TX 77477 UNITED STATES

Attorney information	Lindsay E. Cohen and David A. Roodman BRYAN CAVE LLP One Metropolitan Square, Suite 3600 St. Louis, MO 63102 UNITED STATES lindsay.cohen@bryancave.com, daroodman@bryancave.com, ncollora@bryancave.com Phone:(314) 259-2000
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**Applicant Information**

Application No	76688686	Publication date	10/27/2009
Opposition Filing Date	02/24/2010	Opposition Period Ends	02/24/2010
Applicant	GREEK ISLAND LABS, LLC 7620 East McKellips Road, Suite 4 PMB 86 Scottsdale, AZ 85257 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. First Use: 2008/04/02 First Use In Commerce: 2008/04/02 All goods and services in the class are opposed, namely: Cosmetic products, namely, creams, lotions, gels, mascaras, pencils, groomers for use on eye brows
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**Applicant Information**

Application No	76688684	Publication date	12/01/2009
Opposition Filing Date	02/24/2010	Opposition Period Ends	
Applicant	GREEK ISLAND LABS, LLC 7620 East McKellips Road, Suite 4 PMB 86 Scottsdale, AZ 85257 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. First Use: 2008/04/02 First Use In Commerce: 2008/04/02
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All goods and services in the class are opposed, namely: Organic cosmetic products, namely, cosmetic creams, lotions for cosmetic purposes, eye gels, mascaras, cosmetic pencils, and eyebrow cosmetics, and eyebrow groomers for use on eyebrows sold as a unit therewith


## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	All grounds set forth in the attached Notice of Opposition

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2539403	Application Date	04/21/2000
Registration Date	02/19/2002	Foreign Priority Date	NONE
Word Mark	RE VIVE		
Design Mark			
Description of Mark	The mark is presented without any claim as to special form.		
Goods/Services	Class 003. First use: First Use: 1997/03/05 First Use In Commerce: 1997/03/05 Non-medicated skin products, namely, creams, lotions, gels, toners, cleaners and peels Class 005. First use: First Use: 1997/03/05 First Use In Commerce: 1997/03/05 Medicated skin products, namely, creams, lotions, gels, toners, cleaners and peels		

U.S. Registration No.	2875712	Application Date	04/14/2003
Registration Date	08/17/2004	Foreign Priority Date	NONE
Word Mark	RÅ# VIVE. GET THE GLOW.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/03/00 First Use In Commerce: 2004/04/00 Non-medicated skin products, namely, creams, lotions, gels, toners, cleaners and peels		

U.S. Application No.	77415089	Application Date	03/06/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	RÃ# VIVE ACNE REPARATIF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Non-medicated acne treatment preparations		

Attachments	76032093#TMSN.gif ( 1 page )( bytes ) 78237618#TMSN.gif ( 1 page )( bytes ) 77415089#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 9 pages )(94939 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	/lec/
Name	Lindsay E. Cohen and David A. Roodman
Date	02/24/2010

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

In the Matter of Application Serial No. 76/688,686  
Application Filing Date: April 17, 2008  
Proposed Mark: BROW REVÍVE and Design  
Date of Publication: October 27, 2009

In the Matter of Application Serial No. 76/688,684  
Application Filing Date: April 17, 2008  
Proposed Mark: ADONIA ORGANICS BROW REVÍVE and Design  
Date of Publication: December 1, 2009

Gurwitch Products, L.L.C.,	)	
	)	
v.	)	Opposition No. _____
	)	
Greek Island Labs, L.L.C.,	)	
Applicant.	)	
	)	
	)	

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

Gurwitch Products, L.L.C. (“Gurwitch”), a Delaware limited liability company, having a principal place of business at 13259 North Promenade Boulevard, Stafford, TX 77477, hereby states that it in good faith believes that it will be damaged by the registration of: (1) BROW REVÍVE and Design; and (2) ADONIA ORGANICS BROW REVÍVE and Design; as shown respectfully in U.S. Application Serial Nos. 76/688,686 and 76/688,684, both filed on April 17, 2008 by applicant Greek Island Labs, L.L.C. (“Greek Island Labs”). Accordingly, Gurwitch hereby respectfully opposes the registration of BROW REVÍVE and Design and ADONIA ORGANICS BROW REVÍVE and Design. In support of this Notice of Opposition, Opposer

hereby respectfully states as follows:

1. On information and belief, Applicant Greek Island Labs is an Arizona limited liability company having a principal place of business at 7620 East McKellips Road, Suite 4 PMB 86, Scottsdale, Arizona 85257.

2. Opposer Gurwitch, and its related companies, comprise highly respected businesses that provide brands of skincare and cosmetic products sold worldwide, including, among other things, skincare products, creams, lotions, gels, toners, cleansers, peels, moisturizers, serums, cosmetics, and related products, including serums and creams specifically for eye care.

3. Opposer Gurwitch is the exclusive owner of all rights, title, and interest in, to, and under the brands RÉ VIVE®, RÉ VIVE. GET THE GLOW.®, RÉ VIVE ACNE REPARATIF™, and variations thereof, (the “RÉ VIVE® Marks.”).

4. The formulas for Opposer Gurwitch’s RÉ VIVE® skincare products are grounded in science and utilize Nobel prize winning technology.

5. Since at least as early as March 1997, Gurwitch and its predecessors in interest adopted and began using its RÉ VIVE® Marks on and in connection with, *inter alia*, skincare and cosmetic products.

6. Gurwitch’s RÉ VIVE® specialty skincare products are for use on the face and body including, but not limited to, the eye area. The RÉ VIVE® eye care line includes RÉ VIVE® LES YEUX PRESSÉ, a lightweight eye serum; RÉ VIVE® INTENSITÉ LES YEUX , a cream; RÉ VIVE® EYE RENEWAL CREAM, a firming eye cream; and RÉ VIVE® MASQUES DES YEUX, a cream.

7. The RÉ VIVE® Marks have long been and continue to be used by Gurwitch and

are extremely well-known in and to the relevant trade and public as identifying Gurwitch as the source of origin of goods bearing the RÉ VIVE® Marks, and, further, to distinguish goods provided by Gurwitch from those goods and services offered and/or associated with others.

8. Since at least as early as March 1997, Gurwitch and its predecessors in interest have expended a substantial amount of time, money, and effort promoting, marketing, and advertising its goods and services under and in connection with its valuable and well-known RÉ VIVE® Marks.

9. The RÉ VIVE® Marks are extremely valuable and have developed a significant amount of recognition and goodwill.

10. Numerous celebrities and members of the media regularly comment on the effectiveness and allure of RÉ VIVE® skincare products. Products bearing the RÉ VIVE® Marks have been the subject of unsolicited media attention in numerous publications and magazines throughout the world, including, among others, Glamour, Allure, Bazaar, Lucky, Marie Claire, People, Elle, Town and Country, Zink, New Beauty, Cosmopolitan, Vogue, and Hong Kong Tatler.

11. The RÉ VIVE® Marks are well-known, and have acquired substantial secondary meaning, notoriety, and goodwill among the relevant public.

12. By virtue of Gurwitch's continuous and exclusive use of the RÉ VIVE® Marks, the RÉ VIVE® Marks have become identified with high quality, prestigious, dependable, and innovative products that originate from Gurwitch for, *inter alia*, skincare and cosmetic products.

13. The RÉ VIVE® Marks include, among others, the following U.S. trademark registrations and pending application for use on and in connection with Gurwitch's goods:

Mark	U.S. Reg. No./ App. No.	Goods
RÉ VIVE	2,539,403	Non-medicated skin products, namely, creams, lotions, gels, toners, cleaners and peels in Int’1 Class 3. Medicated skin products, namely, creams, lotions, gels, toners, cleaners and peels in Int’1 Class 5.
RÉ VIVE. GET THE GLOW.	2,875,712	Non-medicated skin products, namely, creams, lotions, gels, toners, cleaners and peels in Int’1 Class 3.
RÉ VIVE ACNE REPARATIF	77/415,089	Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Non-medicated acne treatment preparations in Int’1 Class 3.

14. The above-referenced registrations are valid, subsisting, and in full force and effect. Additionally, Gurwitch’s federal registration for the mark RÉ VIVE® is incontestable.

15. Notwithstanding the foregoing, on April 17, 2008, Applicant Greek Island Labs filed with the U.S. Patent and Trademark Office Application Serial No. 76/688,686 in an attempt to register BROW REVÍVE and Design on the Principal Register for the following goods: “cosmetic products, namely, creams, lotions, gels, mascaras, pencils, groomers for use on eye brows” in International Class 3 (“the ‘686 Application”).

16. On April 17, 2008, Applicant Greek Island Labs also filed with the U.S. Patent and Trademark Office Application Serial No. 76/688,684 in an attempt to register ADONIA ORGANICS BROW REVÍVE and Design on the Principal Register for the following goods: “organic cosmetic products, namely, cosmetic creams, lotions for cosmetic purposes, eye gels, mascaras, cosmetic pencils, and eyebrow cosmetics, and eyebrow groomers for use on eyebrows sold as a unit therewith” in International Class 3 (“the ‘684 Application”).

17. Gurwitch first used its RÉ VIVE® Marks at least as early as March 1997, which substantially predates Greek Island Labs April 17, 2008 filing date for the ‘686 Application and

the '684 Application.

18. The '686 Application claims that Greek Island Labs began using BROW REVÍVE and Design at least as early as on April 2, 2008.

19. The '684 Application claims that Greek Island Labs began using ADONIA ORGANICS BROW REVÍVE and Design on April 2, 2008.

20. Gurwitch began offering and providing its RÉ VIVE® products in the skincare and cosmetic industries at least eleven years: (a) before the application filing date for BROW REVÍVE and Design, and ADONIA ORGANICS BROW REVÍVE and Design, in the '686 Application and the '684 Application; and (b) before the alleged date of first use of BROW REVÍVE and Design, and ADONIA ORGANICS BROW REVÍVE and Design, in the '686 Application and the '684 Application. Accordingly, there can be no dispute that Gurwitch has priority and is the senior user in this Opposition Proceeding.

21. Prior to the filing dates of the '686 and the '684 Applications, Greek Island Labs knew or should have known of Gurwitch's extensive use and prior registrations of its RÉ VIVE® Marks.

22. The goods recited in the '686 and the '684 Applications are the same types of skincare products provided by Gurwitch in connection with the RÉ VIVE® Marks.

23. Further, the goods recited in the '686 and the '684 Applications are of the type that would be provided in the same and/or analogous channels of trade as Gurwitch's skincare and cosmetic products provided under the RÉ VIVE® Marks.

24. It is no coincidence that Greek Island Labs attempted to register BROW REVÍVE and Design and ADONIA ORGANICS BROW REVÍVE and Design. Considering Gurwitch's prior registrations and notoriety in the subject industries, Greek Island Labs either was or should



have been familiar with Gurwitch's products offered under and in connection with its RÉ VIVE® Marks.

25. Upon information and belief, Gurwitch will be damaged by the use and registration by Greek Island Labs of BROW REVÍVE and Design and ADONIA ORGANICS BROW REVÍVE and Design on or in connection with the goods recited in the '686 and the '684 Applications because, *inter alia*, there is a likelihood of confusion between Greek Island Labs' use and/or registration of BROW REVÍVE and Design and ADONIA ORGANICS BROW REVÍVE and Design for the goods recited therein, and Gurwitch's RÉ VIVE® Marks used in connection with Gurwitch's skincare and cosmetic products.

26. The application for BROW REVÍVE and Design includes Gurwitch's RÉ VIVE® mark as a prominent and material component thereof.

27. The application for BROW REVÍVE and Design is confusingly similar in, at least, appearance, meaning, sound, pronunciation, and commercial impression to the RÉ VIVE® Marks.

28. Accordingly, if used on or in connection with the goods set forth in the '686 Application, BROW REVÍVE and Design so resembles Gurwitch's RÉ VIVE® Marks as to cause confusion, mislead, to cause mistake, and to deceive as to the source of origin, sponsorship, or approval of Greek Island Labs' products.

29. If used on or in connection with the goods set forth in the '686 Application, BROW REVÍVE and Design so resembles Gurwitch's RÉ VIVE® Marks as to cause confusion, mislead, to cause mistake, and to deceive as to the affiliation, connection, or association of Greek Island Labs.

30. BROW REVÍVE and Design, as applied for in the '686 Application is not

registrable under Section 2(d) of the Lanham Act in view of Gurwitch's prior, continuous, and ongoing use of, and rights in, to, and under, its RÉ VIVE® Marks in U.S. commerce.

31. The application for ADONIA ORGANICS BROW REVÍVE and Design includes Gurwitch's RÉ VIVE® mark as a prominent and material portion of the application.

32. The application for ADONIA ORGANICS BROW REVÍVE and Design is confusingly similar in, at least, appearance, meaning, sound, pronunciation, and commercial impression to the RÉ VIVE® Marks.

33. Accordingly, if used on or in connection with the goods set forth in the '684 Application, ADONIA ORGANICS BROW REVÍVE and Design so resembles Gurwitch's RÉ VIVE® Marks as to cause confusion, mislead, to cause mistake, and to deceive as to the source of origin, sponsorship, or approval of Greek Island Labs' products.

34. If used on or in connection with the goods set forth in the '684 Application, ADONIA ORGANICS BROW REVÍVE and Design so resembles Gurwitch's RÉ VIVE® Marks as to cause confusion, mislead, to cause mistake, and to deceive as to the affiliation, connection, or association of Greek Island Labs.

35. ADONIA ORGANICS BROW REVÍVE and Design, as applied for in the '684 Application, is not registrable under Section 2(d) of the Lanham Act in view of Gurwitch's prior, continuous, and ongoing use of, and rights in, to, and under, its RÉ VIVE® Marks in U.S. commerce.

WHEREFORE, Gurwitch respectfully requests that the Trademark Trial and Appeal Board refuse to register Application Serial No. 76/688,686 and Application Serial No. 76/688,684.

Gurwitch hereby appoints the following individuals as its attorneys with full power of

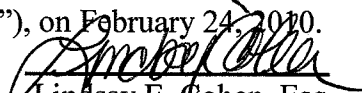
substitution, association and revocation in the above-entitled opposition to prosecute same and to transact all business in the United States Patent and Trademark Office in connection with said opposition: David A. Roodman, Lindsay E. Cohen, Robert G. Lancaster, Daniel A. Crowe, Edward J. Hejlek, George C. Chen, J. Bennett Clark, Stephen P. Gilbert, Erik Wolff Kahn, Lawrence G. Kurland, Todd J. Braverman, James B. Surber, Lucinda A. Althausser, Mark A. Paskar, Michael A. Kahn, Allan W. Watts, K. Lee Marshall, Andrew Klungness, Walter P. Opaska, Emma Harty, Nick E. Williamson, Patricia L. Werner, Wilhemina Tyler, and other intellectual property attorneys from the law firm of Bryan Cave LLP, One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102.

The Commissioner is authorized to charge the opposition fee in the amount of \$600 to USPTO Deposit Account No. 02-4467, as well as any additional fees that may be incurred or required in connection with the filing of this Opposition Proceeding.

Date: February 24, 2010

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this Notice of Opposition was electronically transmitted to the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals ("ESTTA"), on February 24, 2010.

  
Lindsay E. Cohen, Esq.

Respectfully submitted,



David A. Roodman, Esq., USPTO No. 35,663

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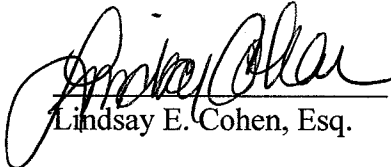
Fax: (314) 259-2020

ATTORNEYS FOR OPPOSER Gurwitch Products, L.L.C.

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 24th day of February, 2010, a true and correct copy of the foregoing Notice Of Opposition was served via first class mail and e-mail, to Applicant's counsel as follows:

Mr. Scot L. Claus, Esq.  
Mariscal, Weeks, McIntyre & Friedlander  
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Phoenix, AZ 85012

  
Lindsay E. Cohen, Esq.