

ESTTA Tracking number: **ESTTA351969**

Filing date: **06/09/2010**

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 parties oppose registration of the indicated application.

Opposers Information

Name	MERZ, INCORPORATED		
Entity	Corporation	Citizenship	North Carolina
Address	4215 Tudor Lane Greensboro, NC 27410 UNITED STATES		

Name	MERZ PHARMACEUTICALS, LLC		
Granted to Date of previous extension	06/09/2010		
Address	4215 Tudor Lane Greensboro, NC 27410 UNITED STATES		

Attorney information	Lile H. Deinard Dorsey & Whitney LLP 250 Park Avenue, Floor 15 New York, NY 10177 UNITED STATES deinard.lile@dorsey.com, robertson.sarah@dorsey.com, korzhin.svetlana@dorsey.com		
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Applicant Information

Application No	77830332	Publication date	02/09/2010
Opposition Filing Date	06/09/2010	Opposition Period Ends	06/09/2010
Applicant	Natural Source Store 101-102 4051 SW 47th Ave Davie, FL 33314 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Non-medicated skin creams
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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	2360460	Application Date	07/03/1995
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No.			
Registration Date	06/20/2000	Foreign Priority Date	NONE
Word Mark	MEDERMA		
Design Mark	MEDERMA		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/03/03 First Use In Commerce: 2000/03/03 skin care products, namely, essential oils for personal use		

U.S. Registration No.	2464771	Application Date	10/10/1996
Registration Date	07/03/2001	Foreign Priority Date	NONE
Word Mark	MEDERMA		
Design Mark	MEDERMA		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1997/04/04 First Use In Commerce: 1997/04/04 cosmetic and cleaning preparations, namely, a gel, cream, or ointment designed to improve the appearance of scars, blemishes, and other skin imperfections Class 005. First use: First Use: 1997/04/04 First Use In Commerce: 1997/04/04 pharmaceuticals, namely, a gel, cream, or ointment designed to improve the appearance of scars, blemishes, and other topical imperfections		

U.S. Registration No.	3139600	Application Date	09/16/2004
Registration Date	09/05/2006	Foreign Priority Date	NONE
Word Mark	MEDERMA FOR KIDS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2004/12/15 First Use In Commerce: 2004/12/15 Non-medicated cosmetic and cleaning preparations for skin, namely, a gel, cream, and ointment for improving the appearance of scars, blemishes, and other skin imperfections Class 005. First use: First Use: 2004/12/15 First Use In Commerce: 2004/12/15 Pharmaceuticals, namely, a gel, cream, and ointment designed to improve the appearance of scars, blemishes, and other skin imperfections

U.S. Registration No.	3233153	Application Date	06/14/2006
Registration Date	04/24/2007	Foreign Priority Date	NONE

Word Mark	MEDERMA
Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1997/04/04 First Use In Commerce: 1997/04/04 Pharmaceuticals, namely, a gel, cream, or ointment designed to improve the appearance of scars, blemishes, and other topical imperfections

Attachments	74696128#TMSN.gif (1 page)(bytes) 75179474#TMSN.gif (1 page)(bytes) 76611608#TMSN.gif (1 page)(bytes) 78908193#TMSN.jpeg (1 page)(bytes) Notice of Opposition Lyderma.pdf (6 pages)(34514 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	/lhd/
Name	Lile H. Deinard
Date	06/09/2010

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

In the Matter of Trademark Appl. Serial No. 77/830,332
For the Mark LYDERMA & Design
Published on February 9, 2010

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MERZ, INCORPORATED and	:	
MERZ PHARMACEUTICALS, LLC,	:	Opposition No.
	:	
Opposers,	:	
	:	
- against -	:	
	:	
NATURAL SOURCE STORE, LLC	:	
	:	<u>NOTICE OF OPPOSITION</u>
Applicant.	:	
	:	
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Merz, Incorporated, a North Carolina corporation (“Merz”), and its wholly owned subsidiary Merz Pharmaceuticals, LLC, a North Carolina limited liability company (“Merz Pharmaceuticals”), each having a principal place of business at 4215 Tudor Lane, Greensboro, North Carolina 27410 (hereinafter, collectively, “Opposer”) believe they will be damaged by the registration of the mark LYDERMA & Design for “non-medicated skin creams,” in International Class 3 sought to be registered in Appl. Serial No. 77/830,332 by Natural Source Store, LLC, a Florida limited liability company doing business at 101-102 4051 SW 47th Avenue, Davie, Florida 33314 (“Applicant”), and having been granted two successive extensions of time to oppose until June 9, 2010 by Orders of the Trademark Trial and Appeal Board issued on March 11, 2010 and April 8, 2010 respectively, hereby opposes same.

The grounds for opposition are as follows:

1. Applicant filed an application to register the mark LYDERMA & Design for “non-medicated skin creams,” in International Class 3 on September 18, 2009 (the “Application”). The Application was filed on an intent-to-use basis.

2. Since long prior to September 18, 2009, the date Applicant filed the Application that is the subject of opposition herein, Opposer has engaged in the development, manufacture, advertising, distribution and sale in interstate commerce of, *inter alia*, non-medicated and medicated skin care products bearing the trademark MEDERMA® and related trademarks.

3. The trademark MEDERMA was adopted by Opposer as a trademark for skin products as early as April 4, 1997. Opposer has used the trademark MEDERMA continuously for over thirteen (13) years in connection with said goods in interstate commerce by applying labels bearing the trademark to the goods and to the packages in which said goods are shipped and sold, by displaying representations of the trademark in advertising and in other ways customary to the trade.

4. Merz and/or its wholly owned subsidiary Merz Pharmaceuticals are the owners of the entire right, title and interest in and to the trademark MEDERMA and related marks as evidenced by the following registrations on the Principal Register of the U.S. Patent and Trademark Office:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Claimed First Use Date</u>	<u>Goods</u>
MEDERMA	Reg. No. 2,360,460	06/20/00	03/03/00	“Skin care products, namely, essential oils for personal use,” in International Class 3

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Claimed First Use Date</u>	<u>Goods</u>
MEDERMA (Stylized)	Reg. No. 2,464,771	07/03/01	04/04/97	<i>“Cosmetic and cleaning preparations, namely, a gel, cream, or ointment designed to improve the appearance of scars, blemishes, and other skin imperfections,” in International Class 3; and “Pharmaceuticals, namely, a gel, cream, or ointment designed to improve the appearance of scars, blemishes, and other topical imperfections,” in International Class 5</i>
MEDERMA FOR KIDS (Stylized)	Reg. No. 3,139,600	09/05/06	12/15/04	<i>“Non-medicated cosmetic and cleaning preparations for skin, namely, a gel, cream, and ointment for improving the appearance of scars, blemishes, and other skin imperfections,” in International Class 3; and “Pharmaceuticals, namely, a gel, cream, and ointment designed to improve the appearance of scars, blemishes, and other skin imperfections,” in International Class 5</i>
MEDERMA	Reg. No. 3,233,153	04/24/07	04/04/97	<i>“Pharmaceuticals, namely a gel, cream, or ointment designed to improve the appearance of scars, blemishes, and other topical imperfections,” in International Class 5</i>

The above-identified registrations are in all respects valid, subsisting and owned by Opposer.

Further, U.S. Reg. Nos. 2,464,771 and 2,360,460 are incontestable pursuant to 15 U.S.C. §1065.

5. Opposer has spent and continues to spend large sums of money on the advertisement and promotion of the goods bearing the mark MEDERMA and related marks, and by reason of such advertising and the high quality of the goods carrying these marks, Opposer enjoys a valuable goodwill and an enviable reputation with respect to the MEDERMA marks in question.

6. Opposer’s trademark MEDERMA is a distinctive and well-known mark and became well-known long prior to the filing date of the Application opposed herein.

7. Opposer's MEDERMA trademark and Applicant's LYDERMA & Design trademark are confusingly similar in sight, sound and meaning. Further, Opposer's non-medicated and medicated skin care products bearing the MEDERMA trademark and the goods covered by the Application, namely, non-medicated skin creams, are identical and/or very closely related.

8. As a result of the foregoing, the purchasing public familiar with Opposer's products bearing Opposer's MEDERMA trademarks are likely to be confused, misled or deceived into thinking the proposed LYDERMA products of Applicant are products of Opposer or are in some way sponsored by or connected with Opposer, to Opposer's irreparable damage and injury, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer respectfully prays that this opposition be sustained and that registration of Application Serial No. 77/830,332 be denied.

Please recognize as attorneys for Opposer in this proceeding Lile H. Deinard, Sarah Robertson and Jose Hernandez, members of the Bar of the State of New York, whose address is Dorsey & Whitney LLP, 250 Park Avenue, New York, New York, 10177, telephone number (212) 415-9200.

Dated: New York, New York
June 9, 2010

DORSEY & WHITNEY LLP

By: /lhd/
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Sarah Robertson
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New York, New York 10177
(212) 415-9200

Attorneys for Petitioner
Merz, Incorporated
Merz Pharmaceuticals, LLC

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For the Mark LYDERMA & Design
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition is being served upon the Applicant
by mailing a true copy thereof by first class mail, postage prepaid, addressed to:

DEBORAH COVINGTON
NATURAL SOURCE STORE
4051 SW 47TH AVE
DAVIE, FL 33314-4051

on June 9, 2010.

_____/pnb/
Phoebe N. Baker