

ESTTA Tracking number: **ESTTA500522**

Filing date: **10/17/2012**

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	Scrip, Inc.
Granted to Date of previous extension	10/17/2012
Address	360 Veterans Parkway, Suite 115 Bolingbrook, IL 60440 UNITED STATES

Attorney information	Kristin J. Achterhof c/o Katten Muchin Rosenman LLP 525 West Monroe Street Chicago, IL 60661 UNITED STATES kristin.achterhof@kattenlaw.com, breighanne.eggert@kattenlaw.com, deborah.wing@kattenlaw.com
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**Applicant Information**

Application No	85517641	Publication date	06/19/2012
Opposition Filing Date	10/17/2012	Opposition Period Ends	10/17/2012
Applicant	Kavanaugh, Judith 4621 Birch Tree Ln. NW Gig Harbor, WA 98335 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 044. All goods and services in the class are opposed, namely: Massage; Massage therapy services; Providing in-person energy healing services; Providing in-person vibrational energy healing services; Energy healing services, namely, therapeutic touch services
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**Grounds for Opposition**


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Application No.	85645100	Application Date	06/06/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	LOTUS TOUCH
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1998/09/01 First Use In Commerce: 1998/09/01 Body products sold on a wholesale basis and which are manufactured using traditional ayurvedic methods, namely, massage oils; hand, body and face lotions; hand, body, and face creams; essential oils for personal use; beauty masks consisting primarily of algae, mud, seaweeds and dried herbs; body masks; non-medical mineral salts for bathing and personal use; deodorants and soaps for personal use; body and facial scrubs for personal use; laundry detergent

U.S. Application No.	85645199	Application Date	06/06/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	LOTUS TOUCH
Design Mark	
Description of Mark	The mark consists of the words "LOTUS TOUCH" and between the words is a dark square with a circle superimposed over it and within the circle is a stylized representation of a lotus blossom.
Goods/Services	Class 003. First use: First Use: 1998/09/01 First Use In Commerce: 1998/09/01 Body products sold on a wholesale basis and which are manufactured using traditional ayurvedic methods, namely, massage oils; hand, body and face lotions; hand, body, and face creams; essential oils for personal use; beauty masks consisting primarily of algae, mud, seaweeds and dried herbs; body masks; non-medical mineral salts for bathing and personal use; deodorants and soaps for personal use; body and facial scrubs for personal use; laundry detergent

Attachments	85645100#TMSN.jpeg ( 1 page )( 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 Overnight Courier on this date.

Signature	/Kristin J. Achterhof/
Name	Kristin J. Achterhof
Date	10/17/2012

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

Applicant: Judith Kavanaugh  
Serial No.: 85/517,641  
Filing Date: January 17, 2012  
Mark: LOTUS TOUCH

Published in the Official Gazette on June 19, 2012

SCRIP, INC.,	)	
	)	
Opposer,	)	
	)	
vs.	)	Opposition No. _____
	)	
JUDITH KAVANAUGH,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer, Scrip, Inc. (“Opposer”), an Illinois corporation located at 360 Veterans Parkway, Suite 115, Bolingbrook, Illinois, 60440, believes that it would be damaged by registration of the service mark LOTUS TOUCH (“Applicant’s Mark”), depicted in U.S. Application Serial No. 85/517,641 (the “Application”), filed on January 17, 2012 by Judith Kavanaugh (the “Applicant”), an individual whose attorney of record in the Application is Raj Abhyanker, P.C., 1580 W. El Camino Real, Suite 8, Mountain View, California 94040-2462. Accordingly, Opposer, by and through its attorneys, hereby opposes registration of Applicant’s Mark, and as grounds for opposition alleges as follows:

1. For over forty years, Opposer has been an industry leader in the sale and distribution of chiropractic, physical therapy, massage, spa and consumer home health supplies and equipment. Opposer’s expansive product line features over 50,000 professional products, which include, but are not limited to, the LOTUS TOUCH line of massage, body care and

aromatherapy products. Opposer's LOTUS TOUCH line features creams, oils, lotions, scrubs, polishes, body sugars and bath salts—used by massage professionals, among others—made of high-quality, pure and natural ingredients that provide therapeutic benefits (“Opposer’s Goods”).

2. Opposer, through its predecessor in interest, has used the LOTUS TOUCH mark in commerce since at least September 1, 1998, and Opposer continues to use the LOTUS TOUCH mark in commerce.

3. Opposer owned U.S. Trademark Registration No. 2,901,014 for LOTUS TOUCH in International Class 3 for “[b]ody products sold on a wholesale basis and which are manufactured using traditional Ayurvedic methods, namely, massage oils; hand, body and face lotions; hand, body, and face creams; essential oils for personal use; beauty masks consisting primarily of algae, mud, seaweeds and dried herbs; body masks; non-medical mineral salts for bathing and personal use; deodorants and soaps for personal use.” Such registration was cancelled on June 10, 2011 due to Opposer’s inadvertent failure to file its Section 8 Declaration of Use. This was merely an oversight, however, and Opposer continued to use the LOTUS TOUCH mark in commerce at all times.

4. To remedy this oversight and protect its rights, Opposer filed, and is also the owner of, Application Serial Nos. 85/645,100 and 85/645,199 for LOTUS TOUCH and LOTUS TOUCH and design in International Class 3 for the same goods covered by Registration No. 2,901,014, namely, “[b]ody products sold on a wholesale basis and which are manufactured using traditional ayurvedic methods, namely, massage oils; hand, body and face lotions; hand, body, and face creams; essential oils for personal use; beauty masks consisting primarily of algae, mud, seaweeds and dried herbs; body masks; non-medical mineral salts for bathing and personal use; deodorants and soaps for personal use; body and facial scrubs for personal use;

laundry detergent.” Opposer’s Applications are valid and subsisting, and Opposer’s LOTUS TOUCH Mark is referred to herein as “Opposer’s Mark.”

5. On January 17, 2012, Applicant filed the Application to register Applicant’s Mark in the USPTO for “[m]assage; Massage therapy services; Providing in-person energy healing services; Providing in-person vibrational energy healing services; Energy healing services, namely, therapeutic touch services” in International Class 44 (referred to herein as “Applicant’s Services”).

6. The Application was filed on an intent-to-use basis, and Opposer’s rights in Opposer’s Mark arose prior to any alleged rights of Applicant in Applicant’s Mark. Opposer’s rights are therefore superior to any rights of Applicant in Applicant’s Mark.

7. Applicant’s Mark is confusingly similar to Opposer’s Mark in that the marks are identical. The confusing similarity is heightened by the fact that the goods and services with which the parties use their marks are related and within the same field.

8. For the above reasons, among others, Applicant’s Mark falsely suggests a connection with Opposer within the meaning of 15 U.S.C. § 1052(a), and/or so resembles Opposer’s Mark as to be likely, when used on or in connection with the services identified in the Application, to cause confusion, mistake and/or deception within the meaning of 15 U.S.C. § 1052(d) as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant’s goods, services, or commercial activities by Opposer, causing damage to Opposer within the meaning of 15 U.S.C. § 1063(a).

9. WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration of Applicant’s Mark be refused in all respects.

Dated: October 17, 2012

Respectfully submitted,

/Kristin J. Achterhof/  
One of the attorneys for Opposer

Kristin J. Achterhof  
Breighanne A. Eggert  
KATTEN MUCHIN ROSENMAN LLP  
525 W. Monroe Street  
Chicago, Illinois 60661  
(312) 902-5391

**PROOF OF SERVICE**

I, Breighanne A. Eggert, an attorney, hereby certify that on today's date I caused a copy of the foregoing Notice of Opposition to be served upon counsel for Applicant via Federal Express Delivery and e-mail, at the following address:

Raj Abhyanker  
1580 W. El Camino Real, Suite 8,  
Mountain View, California 94040-2462  
[trademarks@rajpatent.com]

Dated: October 17, 2012

/Breighanne A. Eggert/\_\_\_\_\_