

ESTTA Tracking number: **ESTTA532579**

Filing date: **04/16/2013**

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	First Quality Hygienic, Inc.
Granted to Date of previous extension	04/17/2013
Address	80 Cuttermill Road, Suite 500 Great Neck, NY 11021 UNITED STATES

Attorney information	Holly Pekowsky, Esq. AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 Park Avenue New York, NY 10016 UNITED STATES ptodocket@arelaw.com
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Applicant Information

Application No	85517499	Publication date	12/18/2012
Opposition Filing Date	04/16/2013	Opposition Period Ends	04/17/2013
Applicant	Hayes, Sheila M. 16302 Yarbie Dr. Sugar Land, TX 77498 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 2011/07/25 First Use In Commerce: 2011/09/18 All goods and services in the class are opposed, namely: Hygiene kit comprised of Antibacterial Deodorant Soap, pre-moistened cosmetic towel individually wrapped, wash cloth, moist feminine wipe in individually sealed travel size packet and sanitary pads, disposable or reusable underwear, re-sealable plastic bag sold as a unit
Class 005. First Use: 2011/07/25 First Use In Commerce: 2011/09/18 All goods and services in the class are opposed, namely: Hygiene kit comprised of sanitary pads, moist feminine wipe in individually sealed travel size packets, disposable or reusable underwear, re-sealable plastic bag sold as a unit

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.	2556201	Application Date	07/06/2001
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Registration Date	04/02/2002	Foreign Priority Date	NONE
Word Mark	FEMTEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1992/03/00 First Use In Commerce: 1993/10/26 TAMPONS		

U.S. Registration No.	3131071	Application Date	12/20/2004
Registration Date	08/15/2006	Foreign Priority Date	NONE
Word Mark	OPAL BY FEMTEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/03/31 First Use In Commerce: 2006/03/31 TAMPONS		

Attachments	78535594#TMSN.jpeg (1 page)(bytes) Notice of Opposition - FQH v. Sheila M. Hayes.pdf (8 pages)(219250 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	/Holly Pekowsky/
Name	Holly Pekowsky, Esq.
Date	04/16/2013

2. Opposer is a well known manufacturer and seller of feminine hygiene and related products.

3. Among the many products sold by Opposer are tampons marketed and sold under the trademark FEMTEX (the “FEMTEX Mark”).

4. The FEMTEX Mark has been in use for nearly twenty years.

5. Opposer is the owner of the following incontestable Registrations for FEMTEX:

- a. Registration No. 2,556,201 of April 2, 2002 for FEMTEX for tampons; and
- b. Registration No. 3,131,071 of August 15, 2006 for OPAL BY FEMTEX for tampons.

6. Copies of these Registrations are annexed hereto as Exhibits A and B, respectively.

7. Products sold under the FEMTEX Mark have been advertised to the trade and purchasing public and have been the subject of unsolicited media attention.

8. The FEMTEX Mark, by reason of the high quality of products provided under the Mark, has come to be known to the purchasing public as representing tampons of the highest quality. As a result thereof, the FEMTEX Mark and the goodwill associated therewith are of inestimable value to Opposer.

9. By virtue of the renown acquired by the FEMTEX Mark, coupled with Opposer’s reputation for high quality products, the FEMTEX Mark has acquired secondary meaning and has developed an enviable reputation in the minds of the purchasing public.

10. Long after Opposer commenced use of and applied to register the FEMTEX Mark, and long after the FEMTEX Mark became well known to consumers, Applicant applied to register the Accused Mark.

11. The Accused Mark is confusingly similar to the FEMTEX Mark. The likelihood of confusion is exacerbated because the FEMTEX Mark and the Accused Mark are both used for feminine hygiene products.

12. Based on the foregoing, the use and/or registration of the Accused Mark by Applicant is likely to cause confusion and mistake in the minds of the purchasing public, and, in particular, will, upon information and belief, tend to falsely create the impression that the products sold under the Accused Mark are authorized, sponsored, or approved by Opposer when, in fact, they are not.

13. Accordingly, it is Opposer's belief that if Applicant is granted the registration opposed herein, Opposer will suffer irreparable harm and damage.

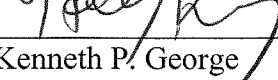
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WHEREFORE, Opposer respectfully requests that the mark shown in U.S. Trademark Application Serial No. 85/517,499 be refused registration and that this Opposition be sustained.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Opposer
First Quality Hygienic, Inc.
90 Park Avenue
New York, New York 10016
(212) 336-8000

Dated: New York, New York
April 16, 2013

By: 
Kenneth P. George
Holly Pekowsky

CERTIFICATE OF SERVICE

I hereby certify that true and complete copies of the foregoing NOTICE OF OPPOSITION have been served on Applicant Sheila M. Hayes d/b/a Heavenly Watch by delivering said copies via Federal Express, overnight delivery, prepaid to Applicant and its attorney of record, as follows:

Applicant

Sheila M. Hayes
d/b/a Heavenly Watch
16302 Yarbie Dr.
Sugarland, TX 77498

Applicant's Attorney of Record

Shakira Cruz, Esq.
The Cruz Law Firm, PLLC
800 Commerce St.
Houston, TX 77002-1707

By: 
Holly Pekowsky

Dated: April 16, 2013
New York, New York

EXHIBIT A

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,556,201

Registered Apr. 2, 2002

**TRADEMARK
PRINCIPAL REGISTER**

FEMTEX

FIRST QUALITY HYGIENIC, INC. (PENNSYLVANIA CORPORATION)
80 CUTTERMILL ROAD
SUITE 500
GREAT NECK, NY 11021

FIRST USE 3-0-1992; IN COMMERCE 10-26-1993.

SER. NO. 78-072,619, FILED 7-6-2001.

FOR: TAMPONS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

CHERYL CLAYTON, EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,131,071

Registered Aug. 15, 2006

**TRADEMARK
PRINCIPAL REGISTER**

OPAL BY FEMTEX

FIRST QUALITY HYGIENIC, INC. (PENNSYLVANIA CORPORATION)
SUITE 500
80 CUTTERMILL ROAD
GREAT NECK, NY 11021

FOR: TAMPONS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 3-31-2006; IN COMMERCE 3-31-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,556,201.

SN 78-535,594, FILED 12-20-2004.

JILL PRATER, EXAMINING ATTORNEY