

ESTTA Tracking number: **ESTTA532590**

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	Panco Men's Products, Inc. d/b/a Panco Ltd.		
Entity	Corporation	Citizenship	California
Address	45-605 Citrus Avenue Indio, CA 92201 UNITED STATES		

Attorney information	Diane M. Reed Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@knobbe.com Phone:(949) 760-0404		
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Applicant Information

Application No	85565421	Publication date	03/19/2013
Opposition Filing Date	04/16/2013	Opposition Period Ends	04/18/2013
Applicant	Groupe Marcelle Inc. 9200 Cote-de-Liesse Lachine, Quebec, H8T1A1 CANADA		

Goods/Services Affected by Opposition

Class 003.

All goods and services in the class are opposed, namely: Cosmetics, cosmetic preparations for skin care; non-medicated skin care creams and lotions; day cream, night cream, and eye cream

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.	4248459	Application Date	08/08/2011
Registration Date	11/27/2012	Foreign Priority Date	NONE
Word Mark	GENES		

Design Mark	<h1>GENES</h1>
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2000/11/02 First Use In Commerce: 2000/11/02 Skin creams, lotions and moisturizers

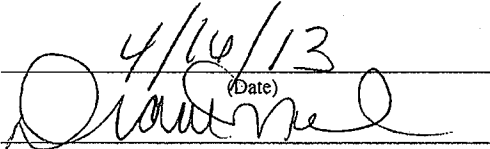
Attachments	85392591#TMSN.jpeg (1 page)(bytes) 2013-04-16 - Notice of Oppposition - PANCO.046M.pdf (9 pages)(480996 bytes)
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Certificate of Service

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	/diane m. reed/
Name	Diane M. Reed
Date	04/16/2013

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

<p>Panco Men's Products, Inc., d/b/a Panco, Ltd.</p> <p>Opposer,</p> <p>v.</p> <p>Groupe Marcelle Inc., a Canadian corporation</p> <p>Applicant.</p>	<p>) Opposition No.: _____</p> <p>) Serial No.: 85/565,421</p> <p>) Mark: GENE YOUTH</p> <p>) I hereby certify that this correspondence and all marked attachments are being electronically filed with the Trademark Trial and Appeal Board through their web site located at http://estta.uspto.gov on:</p> <p>) <u>4/16/13</u></p> <p>) (Date)</p> <p>) </p> <p>) Diane M. Reed</p>
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NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Panco Men's Products, Inc., d/b/a Panco, Ltd., a California corporation, located and doing business at 45-605 Citrus Avenue, Indio, California 92201 ("Opposer"), believes that it will be damaged by registration of U.S. Trademark Application Serial No. 85/565,421 ("the Application") for the mark GENE YOUTH owned by Groupe Marcelle Inc., a Canadian corporation with a place of business at 9200 Cote-de-Liesse Lachine, Quebec, Canada H8T1A1 ("Applicant") and therefore opposes the same.

As grounds for opposition, it is alleged:

1. By the Application filed on March 9, 2012, Applicant seeks to obtain registration on the Principal Register of the trademark GENE YOUTH in connection with "cosmetics, cosmetic skin preparations for skin care; on-medicated skin care creams and lotions; day cream, night cream, and eye cream" in International Class 03.

2. The Application is based on an intent-to-use under Section 1(b) of the Trademark Act.

3. Since at least November 2, 2000, long before the filing date of the Application, Opposer has been and still is engaged in the development, production, marketing and sale of skin creams, lotions and moisturizers under the trademark GENES.

4. Opposer owns and relies on U.S. Trademark Registration No. 4,248,459 for the mark GENES in connection with "skin creams, lotions and moisturizers," in International Class 3, which registration issued on November 27, 2012 and is based on an application filed in the United States Patent and Trademark Office ("PTO") on August 8, 2011 ("Opposer's Registration"). Both the filing date and the registration date of Opposer's Registration are prior to the filing date of Applicant's GENE YOUTH application.

5. Opposer's Registration is valid, subsisting, unrevoked and uncanceled; as such it constitutes *prima facie* evidence of the validity of the registered mark and of the registration thereof, and of Opposer's ownership of the mark shown therein. Opposer's Registration also constitutes notice to Applicant of Opposer's claim of ownership of the mark shown therein as provided in Sections 7(b), 22 and 33(a) of the Trademark Act.

6. In addition to the protection afforded Opposer by its federal trademark registration, Opposer has extensive common law rights in its GENES mark throughout the United States. Since long before filing date of the Application, Opposer has continuously and

extensively used and promoted its GENES mark in connection with its goods in interstate commerce. By virtue of Opposer's continuous and substantial use, Opposer's GENES mark has become an identifier of Opposer and its goods, and distinguishes Opposer's goods from the goods of others. Opposer has built up valuable goodwill in its GENES mark such that consumers have come to recognize the GENES Mark with which Opposer markets and sells its goods.

7. On information and belief, Applicant has not used the GENE YOUTH mark in commerce.

8. Applicant seeks an unrestricted federal registration for GENE YOUTH covering "cosmetics, cosmetic skin preparations for skin care; non-medicated skin care creams and lotions; day cream, night cream, and eye cream." If a registration issues for the Application, such registration will constitute prima facie evidence of the Applicant's exclusive right to use the registered mark in commerce on or in connection with cosmetics, skin creams and lotions throughout the United States with no limitation thereon.

9. The GENE YOUTH mark is substantially identical to Opposer's GENES mark.

10. The goods identified in the Application are identical and/or highly related to the goods covered by Opposer's Registration and on which Opposer uses its GENES mark in interstate commerce.

11. In view of the substantial similarity of the respective marks and the identical and/or related nature of the respective goods, Opposer will be damaged by registration of the Application in that the GENE YOUTH mark so resembles Opposer's GENES mark, which has been used and registered in the United States before the filing date of the Application and which has not been abandoned, as to be likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

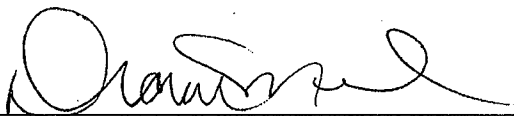
12. In view of Opposer's prior rights in its GENES mark, Applicant is not entitled to federal registration of the GENE YOUTH mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 85/565,421 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4/16/2013


By: 

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Attorneys for Opposer, Panco Men's Products,
Inc., d/b/a Panco, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **Notice of Opposition** upon Applicant's by depositing one copy thereof in the United States Mail, first-class postage prepaid, on April 16, 2013, addressed as follows:

Mark N. Mutterperl
Attorney for Applicant Groupe Marcelle Inc.
Fulbright & Jaworski L.L.P.
666 5th Ave Fl. 31
New York, New York 10103-3101



Pamela Pascual
Trademark Paralegal

15202444/041013

United States of America
United States Patent and Trademark Office

GENES

Reg. No. 4,248,459

PANCO MEN'S PRODUCTS, INC. (CALIFORNIA CORPORATION), DBA PANCO, LTD.
45-605 CITRUS AVENUE
INDIO, CA 92201

Registered Nov. 27, 2012

Int. Cl.: 3

FOR: SKIN CREAMS, LOTIONS AND MOISTURIZERS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

TRADEMARK

FIRST USE 11-2-2000; IN COMMERCE 11-2-2000.

PRINCIPAL REGISTER

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

SER. NO. 85-392,591, FILED 8-8-2011.

JAMES GRIFFIN, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

On March 7, 2013, the USPTO released version 2.1 of Trademark Status and Document Retrieval (TSDR). Please send any TSDR related questions or comments to TSDR@USPTO.GOV. Additional information about the TSDR 2.1 deployment is available here: [TSDR 2.1](#).

STATUS

DOCUMENTS

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Mark: GENES

GENES

US Serial Number: 85392591

Application Filing Date: Aug. 08, 2011

US Registration Number: 4248459

Registration Date: Nov. 27, 2012

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Nov. 27, 2012

Publication Date: Sep. 11, 2012

Mark Information

Mark Literal Elements: GENES

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Skin creams, lotions and moisturizers

International Class: 003 - Primary Class

U.S Class: 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 02, 2000**Use in Commerce:** Nov. 02, 2000**Basis Information (Case Level)**

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information**Owner Name:** Panco Men's Products, Inc.**DBA, AKA, Formerly:** DBA Panco, Ltd.

Owner Address: 45-605 Citrus Avenue
Indio, CALIFORNIA 92201
UNITED STATES

Legal Entity Type: CORPORATION

State or Country CALIFORNIA
Where Organized:

Attorney/Correspondence Information**Attorney of Record****Attorney Name:** Diane M. Reed**Docket Number:** PANCO.043T**Attorney Primary** efiling@kmob.com**Attorney Email** No**Email Address:****Authorized:****Correspondent****Correspondent** DIANE M. REED

Name/Address: KNOBBE, MARTENS, OLSON & BEAR, LLP
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IRVINE, CALIFORNIA 92614-8214
UNITED STATES

Phone: 949-760-0404**Fax:** 949-760-9502**Correspondent e-mail:** efiling@kmob.com**Correspondent e-mail** No**Authorized:****Domestic Representative - Not Found****Prosecution History**

Date	Description	Proceeding Number
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Nov. 27, 2012	REGISTERED-PRINCIPAL REGISTER	
Sep. 11, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Sep. 11, 2012	PUBLISHED FOR OPPOSITION	
Aug. 22, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Aug. 06, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED	68552
Aug. 02, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 02, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	68552
Aug. 02, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	68552
Jul. 27, 2012	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	
Jun. 04, 2012	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	68552
Jun. 04, 2012	ASSIGNED TO LIE	68552
Dec. 02, 2011	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Dec. 02, 2011	LETTER OF SUSPENSION E-MAILED	6332
Dec. 02, 2011	SUSPENSION LETTER WRITTEN	74784
Nov. 30, 2011	ASSIGNED TO EXAMINER	74784
Aug. 12, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 11, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Nov. 27, 2012

Assignment Abstract Of Title Information - None recorded

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