

ESTTA Tracking number: **ESTTA605523**

Filing date: **05/21/2014**

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	Lifeguard Licensing Corp.
Granted to Date of previous extension	05/21/2014
Address	595 Madison Avenue New York, NY 10022 UNITED STATES
Correspondence information	Lifeguard Licensing Corp. 595 Madison Avenue New York, NY 10022 UNITED STATES thomas.mcniff@gmail.com Phone:5169029065

Applicant Information

Application No	77847796	Publication date	01/21/2014
Opposition Filing Date	05/21/2014	Opposition Period Ends	05/21/2014
Applicant	BEAUTY INNOVATIONS GROUP, LLC 28150 N. ALMA SCHOOL PARKWAY #103-617 SCOTTSDALE, AZ 85262 UNITED STATES		

Goods/Services Affected by Opposition


Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Non-medicated oral preparations, namely, non-medicated mouth wash and rinse
Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medicated nasal preparations and non-medicated nasal preparations, namely, nasal rinse and nasal spray preparations; medicated vaginal preparations and lubricants; non-medicated vaginal preparations, namely, vaginal washes and moisturizers; vaginal lubricants being gels and water-based personal lubricants; medicated oral preparations for the mouth; pharmaceutical preparations and substances for treatment of conditions and diseases of the mouth, nose and vagina

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. Application No.	86141376	Application Date	12/11/2013
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIFEGUARD		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0</p> <p>Cosmetics; facial makeup, concealers, blushers, facial powders, foundation makeup, eye makeup, eye pencils, eyebrow pencils, mascara, false eyelashes, face and body glitter, cosmetic compacts, cosmetic pencils, lipstick, lipstick cases, lipstick holders, lip gloss, lip pomades, lip pencils, makeup removers, makeup applicators in the nature of cotton swabs for cosmetic purposes, eye creams, facial cleansers, toners, facial exfoliants and scrubs, facial creams, facial moisturizers, and facial lotions; non-medicated facial treatments, namely, non-medicated facial emulsions, non-medicated facial masks, non-medicated acne treatment preparations, and non-medicated ointments for the prevention and treatment of sunburn; wrinkle removing skin care preparations, nail polishes, nail polish base coat, nail polish top coat, nail strengtheners, nail hardeners, nail polish removers, nail creams, cuticle removing preparations, nail tips, and nail buffing preparations; beauty milks, skin moisturizers and skin moisturizer masks, skin conditioners, hand creams, massage oils, essential oils for personal use, talcum powder, perfumed powders, bath beads, bath crystals, bath foam, bath gels, bath oils, bath powders, bath salts, face wash, skin cleansers, skin highlighter in the nature of a skin bronzer, body scrubs, body fragrances, fragrances for personal use, deodorant, body and hand lotions; body gels, namely, shower gels, sun tan gels, bath gels, beauty gels and shower gels. body oils, body powders, body exfoliants, body masks, body mask creams and lotions, shaving preparations, after shave lotions, shaving balm, shaving cream, shaving gel, skin abrasive preparations, non-medicated skin creams and skin lotions for relieving razor burns, non-medicated lip care preparations, lip cream, sunscreen preparations, suntanning preparations and after-sun lotions; cosmetic sun-protecting preparations; sun tan oils; self-tanning preparations, namely, self tanning milk and cream, accelerated tanning cream, self-tanning lotions, gels and sprays; perfume, perfume oils, cologne, eau de toilette, eau de perfume, eau de cologne and toilette water; toothpaste, deodorant and antiperspirant; cosmetic pads, pre-moistened cosmetic wipes, pre-moistened cosmetic tissues and towelettes; cotton sticks for cosmetic purposes; all purpose cotton swabs for personal use and cosmetic purposes; non-medicated topical ointments for the prevention and treatment of sunburn; non-medicated topical skin creams, gels, toners, lotions, sprays and powders, all for cosmetic use; aromatherapy creams, lotions and oils; hair care products, namely, shampoos, conditioners, mousse, gels, frosts, creams, rinses, sprays, hair color, hair waving lotion, permanent wave preparations, hair lighteners, hair dyes, hair emollients, hair mascara, hair pomades, hair color removers, hair relaxing preparations, hair styling preparations, hair removing cream, and hair care preparations; astringents for cosmetic purposes; baby wipes; disposable wipes impregnated with chemicals or compounds for personal hygiene and household use; incense; room fragrances; fra-</p>		

	grance emitting wicks for room fragrances; sachets; sachet-like eye pillows containing fragrances; scented ceramic stones; scented linen sprays and scented room sprays; scented oils used to produce aromas when heated; scented pine cones; potpourri. aromatherapy pillows comprising potpourri in fabric containers
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U.S. Application No.	86141379	Application Date	12/11/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIFEGUARD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 bandages, first aid kits, Wound dressings including hydrated, collagen based wound dressings, Medical and dental disposable products, namely, bandages for dressing and skin wounds, surgical bandages, adhesive tape for medical purposes, cotton for medical purposes, cotton tipped applicators, pharmaceutical preparations, Drug testing kits comprised of medical diagnostic reagents and assays that test for the presence of alcohol and/or drugs		

Attachments	86141376#TMSN.jpeg(bytes) 86141379#TMSN.jpeg(bytes) notice of opposition0001.PDF(149910 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	/Thomas McNiff/
Name	Thomas McNiff
Date	05/21/2014

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

In the Matter of Application)	
Serial No.: 77847796)	
)	
Lifeguard Licensing Corp.,)	
)	
Opposer,)	NOTICE OF OPPOSITION
)	
v.)	
)	
Beauty Innovations Group, LLC)	
Applicant.)	

This Notice of Opposition is submitted in the matter of Application Serial No. 77847796 for registration by Beauty Innovations Group, LLC of the term LIFE GUARD based upon its intent to use that term in connection with non-medicated oral preparations, namely, non-medicated mouth wash and rinse in International Class 3 and medicated nasal preparations and non-medicated nasal preparations, namely, nasal rinse and nasal spray preparations; medicated vaginal preparations and lubricants; non-medicated vaginal preparations, namely, vaginal washes and moisturizers; vaginal lubricants being gels and water-based personal lubricants; medicated oral preparations for the mouth; pharmaceutical preparations and substances for treatment of conditions and diseases of the mouth, nose and vagina in International Class 5. Lifeguard Licensing Corp., a Delaware Corporation, having a place of business at 595 Madison Avenue, New York, New York 10022, believes that it would be damaged by the registration of the aforesaid mark, and therefore opposes the same.

The grounds for Opposition herein are as follows:

1. For many years, and before to the acts of Applicant alleged herein Lifeguard Licensing Corp. ("LLC"), has been engaged, inter alia, in the manufacturing, marketing, distributing, and selling throughout the United States of a variety of shampoo, conditioner, hand body wash, and first aid kit items (collectively, "Products").

2. Since 2006, LLC has marketed, distributed and sold Products under the trademark LIFEGUARD. Since 2006, LLC has devoted substantial resources, time and effort to marketing, promoting and distributing its LIFEGUARD branded Products. As a result, LLC has developed considerable recognition and goodwill in the LIFEGUARD mark, which is now widely recognized as signifying LLC and its goods, and which is now considered to be among LLC's most valuable assets.

3. On October 13, 2009, after LLC began using the LIFEGUARD mark, Applicant filed an application to register the term LIFEGUARD based upon its intent to use the term in connection with a "non-medicated oral preparations, namely, non-medicated mouth wash and rinse" in International Class 3 and "medicated nasal preparations and non-medicated nasal preparations, namely, nasal rinse and nasal spray preparations; medicated vaginal preparations and lubricants; non-medicated vaginal preparations, namely, vaginal washes and moisturizers; vaginal lubricants being gels and water-based personal lubricants; medicated oral preparations for the mouth; pharmaceutical preparations and substances for treatment of conditions and diseases of the mouth, nose and vagina" in International Class 5. Serial No. 77847796. Applicant's application was published on January 21, 2014.

4. As a result of the similarity of the parties' marks, the similarity of the goods associated with the marks, and the strength of LLC's LIFEGUARD mark, Applicant's use and registration of the LIFEGUARD mark is likely to cause confusion or mistake, or to deceive purchasers, in that purchasers would be likely to believe Applicant's goods are LLC's goods, or are in some way legitimately connected with, sponsored by, or approved by LLC, in violation of 15 U.S.C. § 1052(d) and § 1125.

5. Registration of the mark LIFEGUARD would give Applicant an unqualified right to wrongfully appropriate LLC's valuable goodwill and reputation associated with its LIFEGUARD mark, to benefit from the likely confusion among purchasers led to believe that Applicant's goods are offered, sponsored, endorsed or legitimately associated with LLC, and harm LLC's goodwill and reputation associated with the LIFEGUARD mark, to tarnish LLC's good name by offering confusingly similar goods not subject to LLC's quality controls, and to restrict the natural growth of LLC's LIFEGUARD mark.

WHEREFORE, LLC requests that the registration sought by Applicant be refused

and that this Notice of Opposition be sustained.

Date: May 21, 2014

Respectfully submitted.

By: /Thomas J. McNiff/

Thomas J. McNiff
McNiff Law Group PLLC
9 Underhill Avenue
Locust Valley, New York 11560
Tel: 516.902.9065

CERTIFICATE OF SERVICE

I, Thomas J. McNiff, state that I served a copy of the foregoing Notice of Opposition upon:

Mark A. Carlino
Law Office of Mark A. Carlino, P.C.
28150 N. Alma School Pkwy
Suite 103/PMB 617
Scottsdale, Arizona 85262

via First Class U.S. Mail on May 21, 2014.

/Thomas J. McNiff/
Thomas J. McNiff