

ESTTA Tracking number: **ESTTA637906**

Filing date: **11/10/2014**

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	MerchSource, LLC
Granted to Date of previous extension	11/09/2014
Address	15 Cushing Irvine, CA 92618 UNITED STATES
Attorney information	Jennifer H. Hamilton The Eclipse Group LLP 6345 Balboa Blvd.Bldg. IV, Suite 190 Encino, CA 91316 UNITED STATES TMDocketing@eclipsegrp.com Phone:818-488-8141

**Applicant Information**

Application No	86163066	Publication date	05/13/2014
Opposition Filing Date	11/10/2014	Opposition Period Ends	11/09/2014
Applicant	American International Industries 2220 Gaspar Avenue Commerce, CA 90040 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. First Use: 2012/12/01 First Use In Commerce: 2012/12/01 All goods and services in the class are opposed, namely: Adhesives for affixing false eyelashes; Adhesives for false eyelashes, hair and nails; Artificial eyelashes; Cosmetic preparations for eye lashes; Cosmetics and cosmetic preparations; False eyelashes; Nail care preparations; Nail polish; Nail varnishes
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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 No.	3493282	Application Date	02/16/2007
Registration Date	08/26/2008	Foreign Priority Date	NONE
Word Mark	SARAH PEYTON		

Design Mark	<h1>SARAH PEYTON</h1>		
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 2007/03/06 First Use In Commerce: 2007/03/06 Gel eye masks; sachet-like eye pillows containing fragrances</p> <p>Class 004. First use: First Use: 2007/03/06 First Use In Commerce: 2007/03/06 Candles, scented candles, candles for lighting</p> <p>Class 011. First use: First Use: 2007/08/16 First Use In Commerce: 2007/08/16 Decorative water fountains; decorative table-top water fountains; decorative electric candles for non-illumination purposes</p> <p>Class 020. First use: First Use: 2007/08/16 First Use In Commerce: 2007/08/16 Picture frames; picture frames not of precious metal; mattresses; inflatable mattresses for in-home use and other than recreational use; pillows; head supporting pillows; neck-supporting pillows</p> <p>Class 021. First use: First Use: 2007/09/13 First Use In Commerce: 2007/09/13 Coasters not of paper and not being table linen, glass coasters, and candle holders</p> <p>Class 024. First use: First Use: 2007/09/13 First Use In Commerce: 2007/09/13 Mattress pads</p> <p>Class 025. First use: First Use: 2008/02/26 First Use In Commerce: 2008/02/26 Footwear; slippers, bath slippers, pedicure slippers; sleep masks</p>		

U.S. Registration No.	3962887	Application Date	01/29/2010
Registration Date	05/17/2011	Foreign Priority Date	NONE
Word Mark	SARAH PEYTON		
Design Mark	<h1>SARAH PEYTON</h1>		
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2010/01/31 First Use In Commerce: 2010/01/31 Electric and non-electric mechanical massagers, namely, foot, neck, back and		

	spot massagers
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U.S. Registration No.	3603089	Application Date	03/02/2007
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Registration Date	04/07/2009	Foreign Priority Date	NONE
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Word Mark	SARAH PEYTON		
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Description of Mark	NONE		
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Goods/Services	<p>Class 003. First use: First Use: 2007/03/06 First Use In Commerce: 2007/03/06 Gel eye masks; sachet-like eye pillows containing fragrances</p> <p>Class 021. First use: First Use: 2007/09/13 First Use In Commerce: 2007/09/13 Coasters not of paper and not being table linen, glass coasters; candle holders</p> <p>Class 024. First use: First Use: 2007/09/13 First Use In Commerce: 2007/09/13 Mattress pads</p> <p>Class 025. First use: First Use: 2008/02/26 First Use In Commerce: 2008/02/26 Footwear; slippers, bath slippers, pedicure slippers; sleep masks</p>		
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U.S. Registration No.	3732533	Application Date	11/14/2008
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Registration Date	12/29/2009	Foreign Priority Date	NONE
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Word Mark	SARAH PEYTON		
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Design Mark	
Description of Mark	The mark consists of the words "SARAH PEYTON" in capital letters partially superimposed over a series of curved interlocking lines.
Goods/Services	<p>Class 003. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 Gel eye masks; sachet-like eye pillows containing fragrances</p> <p>Class 004. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 Candles, scented candles, candles for lighting</p> <p>Class 011. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 Decorative water fountains; decorative table-top water fountains; decorative electric candles for non-illumination purposes</p> <p>Class 020. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 Mattress toppers; Picture frames; picture frames not of precious metal; mattresses; inflatable mattresses for in-home use and other than recreational use; pillows; head supporting pillows; neck-supporting pillows, mattresses</p> <p>Class 021. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 Coasters not of paper and not being table linen, glass coasters; candle holders</p> <p>Class 025. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 Footwear; slippers, bath slippers, pedicure slippers; sleep masks</p>

Attachments	<p>77110053#TMSN.png( bytes )  77924082#TMSN.png( bytes )  77121542#TMSN.png( bytes )  77614683#TMSN.png( bytes )  MS14TMO003_Not_of_Opp_Amer_Intl_EhxB.pdf(1325197 bytes )</p>
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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	/Jennifer H. Hamilton/
Name	Jennifer H. Hamilton
Date	11/10/2014

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

In the matter of Application No. 86/163,066 for SP (Stylized)  
Published in the Official Gazette May 13, 2014

MerchSource, LLC,	)	
	)	
Opposer,	)	Opposition No. _____
	)	
v.	)	
	)	
American International Industries	)	
Glamour Industries Co., SRYZ Corp.,	)	
ARYZ Corp., ERX Corp. and RAZY	)	
Properties, Inc.,	)	
	)	
Applicants.	)	
_____	)	


**NOTICE OF OPPOSITION**


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

Dear Sir/Madam:

MerchSource, LLC (“MerchSource” or “Opposer”) is a Delaware limited liability company with an address at 15 Cushing, Irvine, California 92618. Opposer believes that it is and will be damaged by registration of the SP (Stylized) mark in U.S. Application Serial No. 86/163,066 (“Applicants Mark”), which was filed by American International Industries Glamour Industries Co., SRYZ Corp., ARYZ Corp., ERX Corp. and RAZY Properties, Inc., (collectively “Applicants”), and published in the Official Gazette of the U.S. Patent and Trademark Office on May 13, 2014.

MerchSource opposes registration of Applicants Mark on the following grounds:

1. Opposer is a leading designer, marketer and distributor of consumer products to the retail sector. Among these consumer products, Opposer offers personal health and wellness products, as well as home décor products under its  SP (Stylized) trademark (“SP Mark”) and its SARAH PEYTON trademark (“SARAH PEYTON Mark”) (collectively, “Opposer’s SP Marks”). The letters SP in Opposer’s SP Mark are an abbreviation of SARAH PEYTON.

2. Opposer is the owner of U.S. Registration No. 4,005,546 for the mark  SP (Stylized), with a filing date of December 9, 2010, for “Electric and non-electric mechanical massagers, namely, foot, neck, back and spot massagers,” in International Class 10, and “Footwear; slippers, bath slippers, pedicure slippers,” in International Class 25. A true and correct copy of the Certificate of Registration is attached as Exhibit A.

3. Opposer also has common law rights in the SP Mark based on its use of the SP Mark in connection with the goods identified in the trademark registration, since at least as early as May 31, 2010.

4. In addition, Opposer owns the following registrations for the mark SARAH PEYTON:

Reg. No. Goods

3493282 Gel eye masks; sachet-like eye pillows containing fragrances. Candles, scented candles, candles for lighting. Decorative water fountains; decorative table-top water fountains; decorative electric candles for non-illumination purposes. Picture frames; picture frames not of precious metal; mattresses; inflatable mattresses for in-home use and other than recreational use; pillows; head supporting pillows; neck-supporting pillows. Coasters not of paper and not being table linen, glass coasters, and candle holders. Mattress pads. Footwear; slippers, bath slippers, pedicure slippers; sleep masks. Filing date: February 16, 2007.

- 3962887 Electric and non-electric mechanical massagers, namely, foot, neck, back and spot massagers. Filing date: January 29, 2010.
- 3603089 Gel eye masks; sachet-like eye pillows containing fragrances. Coasters not of paper and not being table linen, glass coasters; candle holders. Mattress pads. Footwear; slippers, bath slippers, pedicure slippers; sleep masks. Filing date: March 2, 2007.
- 3732533 Gel eye masks; sachet-like eye pillows containing fragrances. Candles, scented candles, candles for lighting. Decorative water fountains; decorative table-top water fountains; decorative electric candles for non-illumination purposes. Mattress toppers; Picture frames; picture frames not of precious metal; mattresses; inflatable mattresses for in-home use and other than recreational use; pillows; head supporting pillows; neck-supporting pillows, mattresses. Coasters not of paper and not being table linen, glass coasters; candle holders. Footwear; slippers, bath slippers, pedicure slippers; sleep masks. Filing date: November 14, 2008.

True and correct copies of the Certificates of Registration for the SARAH PEYTON Marks, above, are attached as Exhibit B.

5. Opposer has common law rights in the SARAH PEYTON Mark based on its use of SARAH PEYTON in connection with the goods identified in the above-referenced trademark registrations since at least as early as 2007.

6. Upon information and belief, Applicants, American International Industries Glamour Industries Co. is a California corporation, SRYZ Corp. is a California corporation ARYZ Corp. is a California corporation, ERX Corp. is a California corporation and RAZY Properties, Inc. is a California corporation partnership of California, each having an address of 2220 Gaspar Avenue, Commerce, California 90040. Applicants seek to register Applicants Mark in connection with "Cosmetics and cosmetic preparations; False eyelashes; Nail care preparations; Nail polish; Nail varnishes," in International Class 3, in U.S. Application Serial No. 86/163,066. Applicants filed their application on January 10, 2014. Applicants filing date is subsequent to Opposer's filing dates for its applications for Opposer's SP Marks.

7. Applicants Mark is confusingly similar to Opposer's SP Marks, and when used in connection with the goods set forth in Applicants application, is likely to cause mistake and confusion, and deceive purchasers and potential purchasers of Applicants and Opposer's goods into erroneously believing there is some affiliation or relationship between Opposer and Applicants, or that Opposer has authorized, sponsored or licensed Applicants use of SP, in violation of 15 U.S.C. § 1052(d).

8. Due to Opposer's marketing efforts, the goods associated with Opposer's SP Marks are well known and widely recognized by consumers and third parties in various consumer retail stores. Thus, it is highly likely that confusion will occur between the Applicants Mark and Opposer's SP Marks.

9. Registration of Applicants mark will damage Opposer since such registration will give color of exclusive statutory rights to Applicants in the SP mark, in derogation and violation of Opposer's prior and superior federal rights in Opposer's SP Marks.

WHEREFORE, Opposer MerchSource believes that it will be damaged by the registration of U.S. Application Serial No. 86/163,066 for SP (Stylized) in Class 3, and therefore, respectfully requests that this Notice of Opposition be granted in its favor, and that Applicants Mark be denied registration under 15 U.S.C. § 1052(d).

Dated: November 10, 2014

Respectfully submitted,

/Jennifer H. Hamilton/

Jennifer H. Hamilton

Connie P. Limperis

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ATTORNEYS FOR OPPOSER

**Int. Cls.: 3, 4, 11, 20, 21, 24, and 25**

**Prior U.S. Cls.: 1, 2, 4, 6, 13, 15, 21, 22, 23, 25, 29, 30, 31, 32, 33, 34, 39, 40, 42, 50, 51, and 52**

**Reg. No. 3,493,282**

**United States Patent and Trademark Office**

**Registered Aug. 26, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**SARAH PEYTON**

MERCHSOURCE, LLC (CALIFORNIA LTD LIAB  
CO)  
19517 PAULING  
FOOTHILL RANCH, CA 92610

FOR: GEL EYE MASKS; SACHET-LIKE EYE  
PILLOWS CONTAINING FRAGRANCES, IN CLASS  
3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 3-6-2007; IN COMMERCE 3-6-2007.

FOR: CANDLES, SCENTED CANDLES, CAN-  
DLES FOR LIGHTING, IN CLASS 4 (U.S. CLS. 1, 6  
AND 15).

FIRST USE 3-6-2007; IN COMMERCE 3-6-2007.

FOR: DECORATIVE WATER FOUNTAINS; DEC-  
ORATIVE TABLE-TOP WATER FOUNTAINS; DEC-  
ORATIVE ELECTRIC CANDLES FOR NON-  
ILLUMINATION PURPOSES, IN CLASS 11 (U.S.  
CLS. 13, 21, 23, 31 AND 34).

FIRST USE 8-16-2007; IN COMMERCE 8-16-2007.

FOR: PICTURE FRAMES; PICTURE FRAMES  
NOT OF PRECIOUS METAL; MATTRESSES; INFLA-  
TABLE MATTRESSES FOR IN-HOME USE AND  
OTHER THAN RECREATIONAL USE; PILLOWS;  
HEAD SUPPORTING PILLOWS; NECK-SUPPORT-  
ING PILLOWS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32  
AND 50).

FIRST USE 8-16-2007; IN COMMERCE 8-16-2007.

FOR: COASTERS NOT OF PAPER AND NOT  
BEING TABLE LINEN, GLASS COASTERS, AND  
CANDLE HOLDERS, IN CLASS 21 (U.S. CLS. 2, 13, 23,  
29, 30, 33, 40 AND 50).

FIRST USE 9-13-2007; IN COMMERCE 9-13-2007.

FOR: MATTRESS PADS, IN CLASS 24 (U.S. CLS.  
42 AND 50).

FIRST USE 9-13-2007; IN COMMERCE 9-13-2007.

FOR: FOOTWEAR; SLIPPERS, BATH SLIPPERS,  
PEDICURE SLIPPERS; SLEEP MASKS, IN CLASS 25  
(U.S. CLS. 22 AND 39).

FIRST USE 2-26-2008; IN COMMERCE 2-26-2008.

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

THE NAME "SARAH PEYTON" DOES NOT IDEN-  
TIFY A LIVING INDIVIDUAL.

SN 77-110,053, FILED 2-16-2007.

JASON ROTH, EXAMINING ATTORNEY

**Int. Cls.: 3, 21, 24, and 25**

**Prior U.S. Cls.: 1, 2, 4, 6, 13, 22, 23, 29, 30, 33, 39, 40,  
42, 50, 51, and 52**

**Reg. No. 3,603,089**

**Registered Apr. 7, 2009**

**United States Patent and Trademark Office**

**TRADEMARK  
PRINCIPAL REGISTER**



MERCHSOURCE, LLC (CALIFORNIA LIMITED  
LIABILITY COMPANY)

19517 PAULING

FOOTHILL RANCH, CA 92610

FOR: GEL EYE MASKS; SACHET-LIKE EYE  
PILLOWS CONTAINING FRAGRANCES, IN CLASS  
3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 3-6-2007; IN COMMERCE 3-6-2007.

FOR: COASTERS NOT OF PAPER AND NOT  
BEING TABLE LINEN, GLASS COASTERS; CAN-  
DLE HOLDERS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29,  
30, 33, 40 AND 50).

FIRST USE 9-13-2007; IN COMMERCE 9-13-2007.

FOR: MATTRESS PADS, IN CLASS 24 (U.S. CLS. 42  
AND 50).

FIRST USE 9-13-2007; IN COMMERCE 9-13-2007.

FOR: FOOTWEAR; SLIPPERS, BATH SLIPPERS,  
PEDICURE SLIPPERS; SLEEP MASKS, IN CLASS 25  
(U.S. CLS. 22 AND 39).

FIRST USE 2-26-2008; IN COMMERCE 2-26-2008.

THE NAME "SARAH PEYTON" DOES NOT IDEN-  
TIFY A LIVING INDIVIDUAL.

SN 77-121,542, FILED 3-2-2007.

MARC LEIPZIG, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office



**Reg. No. 3,732,533** MERCHSOURCE, LLC (CALIFORNIA LIMITED LIABILITY COMPANY)  
Registered Dec. 29, 2009 19517 PAULING  
FOOTHILL RANCH, CA 92610

**Int. Cls.: 3, 4, 11, 20, 21, and 25** FOR: GEL EYE MASKS; SACHET-LIKE EYE PILLOWS CONTAINING FRAGRANCES, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

**TRADEMARK** FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.  
**PRINCIPAL REGISTER** FOR: CANDLES, SCENTED CANDLES, CANDLES FOR LIGHTING, IN CLASS 4 (U.S. CLS. 1, 6 AND 15).

FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.

FOR: DECORATIVE WATER FOUNTAINS; DECORATIVE TABLE-TOP WATER FOUNTAINS; DECORATIVE ELECTRIC CANDLES FOR NON-ILLUMINATION PURPOSES, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.

FOR: MATTRESS TOPPERS; PICTURE FRAMES; PICTURE FRAMES NOT OF PRECIOUS METAL; MATTRESSES; INFLATABLE MATTRESSES FOR IN-HOME USE AND OTHER THAN RECREATIONAL USE; PILLOWS; HEAD SUPPORTING PILLOWS; NECK-SUPPORTING PILLOWS, MATTRESSES, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.

FOR: COASTERS NOT OF PAPER AND NOT BEING TABLE LINEN, GLASS COASTERS; CANDLE HOLDERS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.

FOR: FOOTWEAR; SLIPPERS, BATH SLIPPERS, PEDICURE SLIPPERS; SLEEP MASKS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.

OWNER OF U.S. REG. NO. 3,493,282.

THE NAME(S), PORTRAIT(S), AND/OR SIGNATURE(S) SHOWN IN THE MARK DOES NOT IDENTIFY A PARTICULAR LIVING INDIVIDUAL.



*David J. Kappas*

Director of the United States Patent and Trademark Office

**Reg. No. 3,732,533** THE MARK CONSISTS OF THE WORDS "SARAH PEYTON" IN CAPITAL LETTERS PARTIALLY SUPERIMPOSED OVER A SERIES OF CURVED INTERLOCKING LINES.

SN 77-614,683, FILED 11-14-2008.

MICHAEL KEATING, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

SARAH PEYTON

**Reg. No. 3,962,887**

MERCHSOURCE, LLC (CALIFORNIA CORPORATION)  
19517 PAULING

**Registered May 17, 2011**

FOOTHILL RANCH, CA 92610

**Int. Cl.: 10**

FOR: ELECTRIC AND NON-ELECTRIC MECHANICAL MASSAGERS, NAMELY, FOOT, NECK, BACK AND SPOT MASSAGERS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

**TRADEMARK**

FIRST USE 1-31-2010; IN COMMERCE 1-31-2010.

**PRINCIPAL REGISTER**

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

OWNER OF U.S. REG. NOS. 3,493,282, 3,603,089, AND 3,732,533.

THE NAME(S), PORTRAIT(S), AND/OR SIGNATURE(S) SHOWN IN THE MARK DOES NOT IDENTIFY A PARTICULAR LIVING INDIVIDUAL.

SN 77-924,082, FILED 1-29-2010.

MICHELE SWAIN, EXAMINING ATTORNEY



*David J. Kyfos*

Director of the United States Patent and Trademark Office

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing **NOTICE OF OPPOSITION** was mailed, first class, postage prepaid this 10th day of November 2014, to the Applicants:

Mark D. Kremer  
Conkle, Kremer & Engel  
3130 Wilshire Boulevard, Suite 500  
Santa Monica, California 90403-2351

By /Diane Gilden/  
Diane Gilden