

ESTTA Tracking number: **ESTTA659811**

Filing date: **03/09/2015**

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	Diamond Cosmetics, Inc.
Granted to Date of previous extension	03/08/2015
Address	10551 N.W. 53rd Street Sunrise, FL 33351 UNITED STATES
Attorney information	Robert M. Schwartz Robert M. Schwartz, P.A. P.O. Box 221470 Hollywood, FL 33022 UNITED STATES litigation@patentmiami.com Phone:9549240707

**Applicant Information**

Application No	85755276	Publication date	09/09/2014
Opposition Filing Date	03/09/2015	Opposition Period Ends	03/08/2015
International Registration No.	NONE	International Registration Date	NONE
Applicant	DKH Retail Limited Unit 60 The Runnings Cheltenham, GL519NW UNITED KINGDOM		


**Goods/Services Affected by Opposition**

<p>Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cleaning preparations; soaps; body mist; body wash; body spray; body lotions; bubble bath; shower gel; lip gloss; lip balm; essential oils; hair lotions; dentifrices; deodorants for personal use; antiperspirants; deodorants; aftershaves; air fragranting preparations; cosmetics, namely, lipstick, lip liner, non-medicated lip plumping preparations, eye shadow, blusher, rouge, face powder, bronzer, foundation, concealer, mascara, eye pencils, eye liner, eye brow pencils, false eyelashes, skin care creams, skin care lotions, eye creams, eye primer, face primer, highlighting face creams, powders and lotions, topical skin sprays for cosmetic purposes, namely, for make-up setting, gel eye liner, tinted moisturizing creams and lotions, bath and beauty creams; all of the foregoing excluding nail care products</p>
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**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.	2297889	Application Date	08/24/1998
Registration Date	12/07/1999	Foreign Priority Date	NONE
Word Mark	SUPER DRY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1993/01/10 First Use In Commerce: 1993/01/10 nail polish, nail clear top coat, nail strengtheners and conditioners, and nail-hardeners		

Attachments	75541205#TMSN.png( bytes ) Notice of Opposition - SUPERDRY - 3-9-2015.pdf(30320 bytes ) Exhibit A 85755276.pdf(86716 bytes ) Exhibit B 2297889.pdf(43398 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	/robert m schwartz/
Name	Robert M. Schwartz
Date	03/09/2015



1. By the application herein opposed, Applicant seeks to obtain registration on the Principal Register of the United States Patent and Trademark Office (USPTO) of the mark SUPERDRY. and Design for various cosmetic goods in International Class 3 ("Applicant's Mark"). See attached Exhibit A.

2. On October 16, 2012, Applicant filed the '276 application with the USPTO under Sections 1(b) and 44(e) of the Trademark Act of 1946, as amended.

3. Applicant's Mark was published for opposition on September 9, 2014. The time for filing a Notice of Opposition was set to expire on October 9, 2014. On October 1, 2014, Opposer timely filed with the Trademark Trial and Appeal Board (TTAB) a first request for a 30-day extension of time to oppose Applicant's Mark, which was granted on the same date. On November 7, 2014, Opposer requested and was granted a 60-day extension of time to file a Notice of Opposition. On January 6, 2015, Opposer filed another request for a 60-day extension of time, which was granted, thus extending the deadline to file a Notice of Opposition to March 8, 2015. Accordingly, this Notice of Opposition is timely filed.

4. Opposer is the owner of U.S. Trademark Registration No. 2,297,889, issued on December 7, 1999, for the mark SUPER DRY, for "nail polish, nail clear top coat, nail strengtheners and conditioners, and nail hardeners," in International Class 3

(Opposer's Mark), and has used its mark continuously in connection with these goods since at least as early as January 10, 1993. See attached Exhibit B.

5. Since long prior to the filing date of Applicant's '276 application, Opposer's Mark has been and continues to be extensively used, advertised and promoted in interstate commerce throughout the United States to identify Opposer's goods. The mark SUPER DRY is a symbol of considerable good will and recognition built up by Opposer through substantial amounts of time and effort, and has become well-known to customers and potential customers as a trademark of Opposer, and as an origin and source of the goods sold and provided by Opposer.

6. Applicant's mark SUPERDRY. and Design is highly similar in appearance, sound, meaning and commercial impression to Opposer's SUPER DRY mark. The goods in connection with which Applicant seeks to register its mark are closely related to the goods in connection with which Opposer uses its SUPER DRY mark.

7. In view of the similarity of the parties' respective marks and the related nature of the goods of the respective parties, Applicant's Mark so resembles Opposer's Mark that, when used in connection with Applicant's goods, it is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark (Lanham) Act of 1946, 15 U.S.C.

§ 1052(d); and, more particularly, Applicant's Mark and use thereof is likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that Applicant's goods originate with or otherwise are authorized, licensed or sponsored by Opposer.

8. Registration of Applicant's Mark will result in irreparable injury to Opposer and to its rights in its SUPER DRY mark.

WHEREFORE, for the foregoing reasons, Opposer, Diamond Cosmetics, by and through its counsel, respectfully requests that this opposition be sustained and that the registration sought by Applicant in U. S. Trademark Application Serial No. 84/755,276 be denied.

Dated: March 9, 2015

Respectfully submitted,

ROBERT M. SCHWARTZ, P.A.

s/robert m. schwartz/  
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Attorney for Diamond Cosmetics, Inc.

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been sent by First-Class mail this 9th day of March, 2015 to:

Stephen R. Baird  
Winthrop & Weinstine, P.A.  
Capella Twr Ste 3500  
225 S 6TH ST  
Minneapolis, Minnesota 55402-4601

s/robert m. schwartz/  
Robert M. Schwartz, Esquire

# EXHIBIT A





United States Patent and Trademark Office

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極度乾燥(しなさい)  
**Superdry.**

**Word Mark** SUPERDRY.

**Translations** The non-Latin characters in the mark transliterate to "su:pa:dorai" and this means "extremely dry" in English.

**Goods and Services** IC 003. US 001 004 006 050 051 052. G & S: Cleaning preparations; soaps; body mist; body wash; body spray; body lotions; bubble bath; shower gel; lip gloss; lip balm; essential oils; hair lotions; dentifrices; deodorants for personal use; antiperspirants; deodorants; aftershaves; air fragrancing preparations; cosmetics, namely, lipstick, lip liner, non-medicated lip plumping preparations, eye shadow, blusher, rouge, face powder, bronzer, foundation, concealer, mascara, eye pencils, eye liner, eye brow pencils, false eyelashes, skin care creams, skin care lotions, eye creams, eye primer, face primer, highlighting face creams, powders and lotions, topical skin sprays for cosmetic purposes, namely, for make-up setting, gel eye liner, tinted moisturizing creams and lotions, bath and beauty creams; all of the foregoing excluding nail care products

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 28.01.03 - Asian characters; Chinese characters; Japanese characters

**Serial Number** 85755276

**Filing Date** October 16, 2012

**Current Basis** 44E

**Original Filing Basis** 1B;44E

**Published for Opposition** September 9, 2014

**Owner** (APPLICANT) DKH Retail Limited LIMITED LIABILITY COMPANY UNITED KINGDOM Unit 60 The Runnings Cheltenham UNITED KINGDOM GL519NW

**Attorney of Record** Stephen R. Baird

**Prior Registrations** 4085538

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the stylized literal element "SUPERDRY" followed by a period, with Japanese characters directly above the literal element.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# EXHIBIT B

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

**United States Patent and Trademark Office**

Reg. No. 2,297,889

Registered Dec. 7, 1999

**TRADEMARK  
PRINCIPAL REGISTER**

**SUPER DRY**

DIAMOND COSMETICS, INC. (FLORIDA CORPORATION)  
10551 N.W. 53RD STREET  
SUNRISE, FL 33351

FIRST USE 1-10-1993; IN COMMERCE  
1-10-1993.

SEC. 2(F).

FOR: NAIL POLISH, NAIL CLEAR TOP  
COAT, NAIL STRENGTHENERS AND CONDI-  
TIONERS, AND NAIL HARDENERS, IN CLASS  
3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

SER. NO. 75-541,205, FILED 8-24-1998.

PAUL F. GAST, EXAMINING ATTORNEY