

ESTTA Tracking number: **ESTTA702584**

Filing date: **10/15/2015**

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	Valley Dental, Inc. dba Mint Condition Dental
Granted to Date of previous extension	10/21/2015
Address	60 Simpson Parkway Cheney, WA 99004 UNITED STATES
Correspondence information	John Chandler Attorney Chandler IP 618 N 4th Street Coeur D Alene, ID 83814 UNITED STATES john@chandlerip.com Phone:5098081481

Applicant Information

Application No	86312789	Publication date	06/23/2015
Opposition Filing Date	10/15/2015	Opposition Period Ends	10/21/2015
Applicant	pitts, thomas h. 138 leisure lane columbia, SC 29210 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. First Use: 2014/01/01 First Use In Commerce: 2014/01/01 All goods and services in the class are opposed, namely: Dentistry
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Grounds for Opposition

Other	Section 2(d) of the Trademark Act, 15 U.S.C. Â§1052(d), contains a proviso under which an eligible applicant may request issuance of a registration based on rights acquired by concurrent use of its mark, either with the owner of a registration or application for a conflicting mark or with a common-law user of a conflicting mark.
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Attachments	86312789_Notice_of_Opposition.pdf(86471 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	/JOHN CHANDLER/
Name	Valley Dental dba Mint Condition Dntl
Date	10/15/2015

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

In re Application No. 86/312,789 for the mark KEEPING YOUR SMILE IN MINT
CONDITION

Valley Dental, Inc. dba Mint Condition Dental	:	
	:	
Opposer	:	
	:	
	:	Opposition No. _____
v.	:	
Thomas H. Pitts, D.M.D.	:	
	:	
Applicant	:	

**NOTICE OF OPPOSITION ON BASIS OF CONCURRENT USE
AND
REQUESTION FOR CONCURRENT USE REGISTRATION OF APP. NO. 86/329,503**

Opposer and owner of application no. 86/329,503 for MINT CONDITION DENTAL, by its undersigned counsel, hereby opposes unlimited registration of the above-indicated mark on the Principal Register of the United States Patent and Trademark Office (“USPTO” or Office), and Opposer requests a concurrent use registration of its mark.

PARTIES

1. The above-indicated mark of KEEPING YOUR SMILE IN MINT CONDITION is currently owned by Thomas H. Pitts, D.M.D. (“Applicant”), a sole proprietorship of Thomas H. Pitts organized under the laws of South Carolina. This business is operating at 138 Leisure Lane in Columbia, South Carolina.

2. Opposer is Valley Dental, Inc. dba Mint Condition Dental, a corporation Mint Condition Dental, a limited liability company organized under the laws of Washington State. This business is operating at 60 Simpson Parkway in Cheney, Washington.

ALLEGED FACTS

3. Opposer submits via the undersigned counsel that it will be harmed by unlimited registration of Applicant's mark on the Principal Register of the USPTO.

4. On 28 February 2014, Opposer verifiably first used in commerce its mark MINT CONDITION DENTAL and has continually used its mark in commerce from at least that date until the time of this writing. A specimen of use of Opposer's mark has already been submitted into the '503 Application.

4. On 18 June 2014, Applicant filed its Application for registration on the Principal Register in International Class 044. Applicant alleges use of its mark as early as 1 January 2014. However, Opposer used its mark in commerce prior to the filing of the '789 Application of Applicant.

5. On 7 July 2014, Opposer filed its application for registration of its mark in the same International Class 044 without any notice of either (1) use of Applicant's mark, or (2) filing with the USPTO of Applicant's application for registration.

REQUESTS FOR RELIEF

6. Opposer requests concurrent registration of its mark on the ground that there is no basis for consumer confusion between the two marks. Opposer asserts that the Office improperly

suspended, pursuant to TMEP § 716.02(c), Opposer's '503 application pending outcome of Applicant's '789 application. Opposer respectfully requests that the USPTO release suspension of Opposer's '503 application and that Opposer's '503 application be allowed to mature into a concurrent registration of Opposer's mark on the Principal Register.

7. Opposer also requests that Applicant's mark only be allowed registration with geographic restrictions in view of the respective dates of first use of the marks of Applicant and Opposer. That is, Opposer requests that the USPTO convert Opposer's '503 application into a concurrent use application pursuant to TMEP 1207.04, *et seq.* by amending Applicant's '789 application to include geographical restrictions which would allow Opposer to use its mark MINT CONDITION DENTAL without restriction in the geographic area in which Opposer has been using its mark.

Respectfully submitted,

/s/ /JOHN CHANDLER, REG NO 58280/
John Chandler, Attorney for Opposer and Concurrent User
USPTO Registration No. 58280
Washington State Bar No. 43399

Chandler IP
618 N 4th Street
Coeur D Alene ID 83814
Direct: 509.808.1481

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing notice of opposition has been served upon Applicant via its attorney of record, Michael A. Mann of Nexsen Pruet, LLC at P.O Box 2426, Columbia, South Carolina 29202

/s/ /JOHN CHANDLER