

ESTTA Tracking number: **ESTTA779446**

Filing date: **10/27/2016**

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	Allergan, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2525 Dupont Drive Irvine, CA 92612 UNITED STATES		

Correspondence information	Susan J. Hinchey Corporate Trademark Manager Allergan, Inc. 2525 Dupont Drive Irvine, CA 92612 UNITED STATES susan.hinchey@allergan.com, matthew.brady@allergan.com Phone:714-246-5507		
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Applicant Information

Application No	87018365	Publication date	10/04/2016
Opposition Filing Date	10/27/2016	Opposition Period Ends	11/03/2016
Applicant	Morganna's Alchemy LLC 10347 Palladio Drive New Port Richey, FL 34655 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: Body cream; Facial cream; Skin cream

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1692384	Application Date	12/21/1990
Registration Date	06/09/1992	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1990/09/00 First Use In Commerce: 1992/01/22 pharmaceutical preparations; namely, ophthalmic muscle relaxants

U.S. Registration No.	1709160	Application Date	02/06/1991
Registration Date	08/18/1992	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/09/00 First Use In Commerce: 1992/01/22 pharmaceutical preparations for the treatment of neurologic disorders		

U.S. Registration No.	2510675	Application Date	01/03/2001
Registration Date	11/20/2001	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/09/30 First Use In Commerce: 1992/01/22 Pharmaceutical preparations for the treatment of neurological disorders, muscledystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhydrosis, sports injuries, cerebral palsy, spasms, tremors and pain		

Attachments	78041618#TMSN.png(bytes) Opposition to TM App_ 87018365 BELLATOX001.pdf(388733 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	/SUSAN J. HINCHEY/
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Name	Susan J. Hinchey
Date	10/27/2016

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

In the Matter of Application Serial No. 87018365
Published in the Official Gazette of October 4, 2016

ALLERGAN, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
MORGANNA'S ALCHEMY LLC.,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer Allergan, Inc. ("Opposer") believes that it will be damaged by registration of the mark shown in Application Serial No. 87018365, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 2525 Dupont Drive, Irvine, California 92612. Opposer is, and has been for many years, engaged in the manufacture, development, sale and advertising of an extensive array of pharmaceutical, ophthalmic and dermatological products. Beginning in or before 1990, Opposer has continuously marketed a pharmaceutical product for the therapeutic treatment of a variety of diseases and disorders under the trademark BOTOX® (the BOTOX® Mark") in the United States and globally (the BOTOX® Product).
2. In or before 1999, Opposer began clinical trials of the BOTOX® Product for a cosmetic indication, and shipped the BOTOX® Product under the BOTOX® Mark during those trials. In 2002, following approval by the United States Food and Drug Administration of the BOTOX® Product for the temporary improvement in the appearance of moderate to severe glabellar lines, Opposer started promoting and marketing its BOTOX® Product under the BOTOX® Mark for that indication.

3. Opposer owns all right, title and interest in and to the BOTOX® Mark, as well as the following United States registrations on the Principal Register:
 - a. Registration No. 1,692,384 granted June 9, 1992, for BOTOX in International Class 5;
 - b. Registration No. 1,709,160 granted August 18, 1992, for BOTOX in International Class 5, and
 - c. Registration No. 2,510,675 granted November 20, 2001, for BOTOX in International Class 5.

All of these registrations are valid and subsisting and all have become incontestable. Copies of current printouts of information from the electronic database records of the USPTO showing the current status and title of these registrations are attached hereto as Exhibit 1 and are incorporated by reference herein as if set forth in full.

4. From a time long prior to the filing of the Application at issue, the BOTOX® Mark has been used in commerce in the United States for which the mark has become famous. Moreover, by virtue of the excellence of the product sold under the BOTOX® Mark, the mark has a valuable reputation.
5. Notwithstanding Opposer's long prior rights in and to the BOTOX® Mark, Applicant, on information and belief, on April 28, 2016, filed an application for registration of the trademark "BELLATOX" (the "BELLATOX Mark") for "Body cream; Facial cream; Skin cream" in International Class 3. The mark was published for opposition in the Trademark Official Gazette of October 4, 2016 (the "Opposed Application").

FIRST CLAIM FOR RELIEF

(Likelihood of Confusion with Registered Mark)

6. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 5, inclusive, as if fully set forth herein.
7. The BELLATOX Mark shown in the Opposed Application so resembles Opposer's registered BOTOX® Mark as to be likely, when used on or in connection with the goods and services in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. 1052(d).
8. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its

exclusive nationwide right to use, a mark that is confusingly similar to Opposer's BOTOX® Mark.

SECOND CLAIM FOR RELIEF

(Likelihood of Confusion with Previously-Used Trademark)

9. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 8, inclusive, as if fully set forth herein.
10. The *BELLATOX* Mark shown in the Opposed Application so resembles Opposer's previously used and not abandoned BOTOX® Mark as to be likely, when used on or in connection with the goods and services identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. 1052(d).
11. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's previously used and not abandoned BOTOX® Mark.

THIRD CLAIM FOR RELIEF

(Likelihood of Dilution with Previously Registered and Used Trademark)

12. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 11, inclusive, as if fully set forth herein.
13. Opposer's BOTOX® Mark is distinctive and famous, and was determined by the Board to be famous at last as early as August 20, 2007.
14. Opposer's BOTOX® Mark was famous long prior to the date of filing of the Opposed Application.
15. The *BELLATOX* Mark shown in the Opposed Application so resembles Opposer's previously used, registered and not abandoned BOTOX® Mark as to be likely to blur the distinctiveness of Opposer's famous BOTOX® Mark and Applicant's mark is thus unregistrable under Section 43(c) of the United States Trademark Act, 15 U.S.C. 1125(c).
16. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is likely to impair the distinctiveness of Opposer's famous BOTOX® Mark.

WHEREFORE, Opposer prays for judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

Please charge any deficiency or credit any overpayment related to this Opposition to Deposit Account No. 01-0885, and direct all correspondence in connection with this opposition to the undersigned and, in addition, to:

Susan J. Hinchey
Corporate Trademark Manager
ALLERGAN, INC.
2525 Dupont Drive
Irvine, California 92612
E-mail: hinchey_susan@allergan.com

Respectfully submitted,
ALLERGAN, INC.

Date: October 27, 2016

s/ MATTHEW O. BRADY

Matthew O. Brady
Associate Vice President – Intellectual Property
2525 Dupont Drive
Irvine, CA 92612
714-246-4788
E-mail: matthew.brady@allergan.com

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2016, I served this Notice of Opposition on the Applicant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to Applicant's correspondence address of record as follows:

Morganna's Alchemy LLC
10347 Palladio Drive
New Port Richey, FL 34655

EXHIBIT 1

1. TSDR is experiencing intermittent issues displaying certain documents. The issue is being addressed.
2. The Trademark organization is beta testing a next generation examination system. As a result, there may be instances where Office actions have unexpected formatting or spacing issues. The Office is working on improvements to resolve these issues and appreciates your patience. Please contact us at [TMFeedback](#)

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Mark: BOTOX

No Image exists for this case.

US Serial Number: 74126661

Application Filing Date: Dec. 21, 1

US Registration Number: 1692384

Registration Date: Jun. 09, 1

Register: Principal

Mark Type: Trademark

TM5 Common Status

Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered w

Status: The registration has been renewed.

Status Date: Feb. 25, 2012

Publication Date: Jul. 02, 1991

Notice of Allowance Date: Sep. 24, 1

▲ **Mark Information**

▼ [Expand All](#)

▼ **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 incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: pharmaceutical preparations; namely, ophthalmic muscle relaxants

International Class(es): 005 - Primary Class

U.S Class(es): 018

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 1990

Use in Commerce: Jan. 22, 1

▲ **Basis Information (Case Level)**

▼ **Current Owner(s) Information**

Owner Name: ALLERGAN, INC.

Owner Address: 2525 DUPONT DRIVE
IRVINE, CALIFORNIA UNITED STATES 92612

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWAR

▲ **Attorney/Correspondence Information**

▲ **Prosecution History**

▲ **Maintenance Filings or Post Registration Information**

▲ **TM Staff and Location Information**

▲ **Assignment Abstract Of Title Information - Click to Load**

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Mark: BOTOX

No Image exists for this case.

US Serial Number: 74136930

Application Filing Date: Feb. 06, 1

US Registration Number: 1709160

Registration Date: Aug. 18, 1

Register: Principal

Mark Type: Trademark

TM5 Common Status

LIVE/REGISTRATION/Issued and Active

Descriptor:



The trademark application has been registered w

Status: The registration has been renewed.

Status Date: Feb. 27, 2012

Publication Date: Nov. 12, 1991

Notice of Allowance Date: Feb. 04, 1

▲ **Mark Information**

▼ [Expand All](#)

▼ **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 incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: pharmaceutical preparations for the treatment of neurologic disorders

International Class(es): 005 - Primary Class

U.S Class(es): 018

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 1990

Use in Commerce: Jan. 22, 19

▲ **Basis Information (Case Level)**

▼ **Current Owner(s) Information**

Owner Name: ALLERGAN, INC.

Owner Address: 2525 DUPONT DRIVE
IRVINE, CALIFORNIA UNITED STATES 92612

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWAR

▲ **Attorney/Correspondence Information**

▲ **Prosecution History**

▲ **Maintenance Filings or Post Registration Information**

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Mark: BOTOX

BOTOX

US Serial Number: 78041618

Application Filing Date: Jan. 03, 2011

US Registration Number: 2510675

Registration Date: Nov. 20, 2011

Register: Principal

Mark Type: Trademark

TM5 Common Status

Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered w

Status: The registration has been renewed.

Status Date: Jan. 24, 2011

Publication Date: Aug. 28, 2001

▲ **Mark Information**

▼ [Expand All](#)

▲ **Related Properties Information**

▼ **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 incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smd disorders, headaches, wrinkles, hyperhidrosis, sports injuries, cerebral palsy, spasms, tremors

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018,

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 30, 1990

Use in Commerce: Jan. 22, 1990

▲ **Basis Information (Case Level)**

▼ **Current Owner(s) Information**

Owner Name: Allergan, Inc.

Owner Address: 2525 Dupont Drive
Irvine, CALIFORNIA UNITED STATES 92612

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

▲ **Attorney/Correspondence Information**

▲ **Prosecution History**

▲ **Maintenance Filings or Post Registration Information**

▲ **TM Staff and Location Information**

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