

ESTTA Tracking number: **ESTTA1066692**

Filing date: **07/07/2020**

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

Proceeding	91245529
Party	Plaintiff DSM IP Assets B.V.
Correspondence Address	DUANE M BYERS NIXON & VANDERHYE PC 901 N GLEBE RD 11TH FL, ARLINGTON, VA 22203 UNITED STATES Primary Email: nixonptomail@nixonvan.com Secondary Email(s): dmb@nixonvan.com 703-786-7421
Submission	Other Motions/Papers
Filer's Name	Duane M. Byers
Filer's email	dmb@nixonvan.com, nixonptomail@nixonvan.com
Signature	/dmb/
Date	07/07/2020
Attachments	4662-3720 opposer reply to applicant alleged second corrected extensi on motion - 7-7-20.pdf(137016 bytes ) 4662-3720 Declaration of Duane M Byers in support of Opposer Reply 7- 7-20 and Exhibit 1.doc.pdf(201242 bytes )

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

_____	)	
DSM IP Assets B.V.	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91245529
	)	Application No. 87891972
HHEALTH Inc.	)	
	)	
Applicant	)	
_____	)	

**OPPOSER’S REPLY TO APPLICANT’S “SECOND CORRECTED” MOTION TO EXTEND TIME TO RESPOND TO OPPOSER’S CROSS-MOTION FOR SUMMARY JUDGMENT or MOTION FOR DISCOVERY OF APPLICANT UNDER RULE 56(d)**

Opposer replies to Applicant’s “Second Corrected” Motion filed on June 17, 2020 [TTABVUE 19], as follows.

First, Opposer stands by its Reply filed on June 8, 2020 [TTABVUE 16], in response to Applicant’s Motion for Extension filed on May 18, 2020 [TTABVUE 15].

Second, Opposer stands by its Reply filed on June 17, 2020 [TTABVUE 18], in response to Applicant’s “Corrected” Motion for Extension filed on June 16, 2020 [TTABVUE 17].

Third, Opposer respectfully requests that the Board stop the Applicant’s evasion and delay tactics and the “shell game” that is summarized below, and enter judgment against the Applicant.

Fourth, Opposer respectfully submits that judgment is also justified in view of paragraph numbers 2 and 3 in the Notice of Opposition [TTABVUE 1], corresponding paragraph numbers 2 and 3 in the Answer [TTABVUE 9], and these two simple questions posed to the Applicant on June 18 and June 26, 2020 – which Applicant has intentionally not answered:

By return email before our filing deadline of July 7, 2020, please let us know if the person named Du Ruiyong is the person who actually signed:

1. the application filed at the USPTO on April 25, 2018, and
2. the Response filed at the USPTO on September 3, 2018.

If you truly want the TTAB to know the facts, then you will provide this information to us before July 7.

See Declaration of Duane M. Byers dated July 7, 2020, submitted herewith.

**Summary of what appears to be a “shell game”:**

1. **The first shell – the UK company**: Applicant filed its application on April 25, 2018. The application and its declaration were signed by "Du Ruiyong" as President of HHEALTH INC. In the application, Du Ruiyong declared that **HHEALTH INC. is a limited company (ltd.) legally organized under the laws of the United Kingdom, and having an address of 8 The Green, STER, Dover, Kent, 19901 United Kingdom.** As stated in Opposer’s Notice of Opposition, this **UK company** information is false. [TTABVUE 1 at ¶2]
2. **The first shell confirmed – the UK company**: During prosecution of the application, the USPTO examining attorney questioned the applicant whether it was a United Kingdom company. See the USPTO Office Action dated August 24, 2018. In the “Response to Office Action” dated September 3, 2018, the Applicant’s president, Du Ruiyong, stated that the Applicant is "HHEALTH INC., limited liability company legally organized under the laws of United Kingdom, having an address of 8 The Green, STER, Dover, Kent,, 19901 United Kingdom daisy.futianguoji@foxmail.com(authorized)." As stated in Opposer’s Notice of Opposition, this **UK company** information is false. [TTABVUE 1 at ¶3]

3. **The second shell – the US corporation:** After the Notice of Opposition was filed, Applicant admitted that it was **not a UK company** and moved to amend its application to identify a **US corporation** as the Applicant on February 4, 2019. [TTABVUE 5] Opposer opposed that Motion. Significantly, Applicant’s Motion papers did not include any declaration from (1) the Applicant’s president Du Ruiyong, or (2) some other person who was filing documents at the USPTO and has the email address **daisy.futianguoji@foxmail.com**, or (3) Wei Li who was identified by the Applicant in the Correspondence Information in the USPTO database at the time:

“WEI LI  
C/O WEI LI PO BOX521476,FLUSHING,NY,  
FLUSHING,, New York 11352  
718-416-5030(phone)”

The Board deferred ruling on the motion to amend the application to identify a **US corporation** as the Applicant. [TTABVUE 8]

4. **The third shell – the Chinese company:** After Opposer filed its Cross-Motion for Summary Judgment, the Applicant filed a Motion to Extend its reply deadline by 60 days. [TTABVUE 15] In that Motion to Extend filed on May 18, 2020, Applicant claimed to be a **Chinese company**, which Opposer believes is false. Again, Applicant did not file any declaration in support of its Motion or contentions. Opposer replied to the Motion on June 8, 2020. [TTABVUE 16]

5. **Back to the first shell – the UK company:** On June 16, 2020 (eight days after Opposer replied to the Motion to Extend filed on May 18), Applicant filed a “Corrected” Motion, wherein Applicant reverted to claiming it is a **U.K. company with some decision makers having deep ties to China and/or located in China**” (emphasis added, and coloring changed).

[TTABVUE 17] There is no mention of a **US corporation**. Again, Applicant did not file any declaration in support of its Motion or contentions.

6. **Now to the second shell – the US corporation**: On June 17, 2020 (after Opposer’s Reply [TTABVUE 18], Applicant filed a “Second Corrected” Motion, wherein Applicant claims it is a “**U.S. corporation with some decision makers having deep ties to China and/or located in China**” (emphasis added, and coloring changed). [TTABVUE 19] Again, Applicant did not file any declaration in support of its Motion or contentions.

Which shell contains the truth? Why has Applicant failed to file any Declarations in support of its filings in this Opposition proceeding? Why has Applicant intentionally not answered these simple questions posed on June 18 and June 26, 2020 – which are directly related to paragraphs 2 and 3 in the Notice of Opposition and the Answer:

By return email before our filing deadline of July 7, 2020, please let us know if the person named Du Ruiyong is the person who actually signed:

1. the application filed at the USPTO on April 25, 2018, and
2. the Response filed at the USPTO on September 3, 2018.

If you truly want the TTAB to know the facts, then you will provide this information to us before July 7.

See Declaration of Duane M. Byers dated July 7, 2020, submitted herewith.

The U.S. trademark registration system is founded upon honest and fair dealings with the U.S. Patent and Trademark Office.

Opposer respectfully requests that the Board stop the Applicant’s “shell game” and enter judgment against the Applicant in view of the Applicant’s own filings noted above, the other information noted above, and Opposer’s Cross-Motion for Summary Judgment.

Date: July 7, 2020

Respectfully submitted,

/Duane M. Byers/

Duane M. Byers

NIXON & VANDERHUYE, P.C.

901 North Glebe Road, 11<sup>th</sup> Floor

Arlington, Virginia 22203-1808

703-786-7421 phone

**Authorized e-mail:**

**[NIXONPTOMAIL@NIXONVAN.COM](mailto:NIXONPTOMAIL@NIXONVAN.COM)**

ATTORNEYS FOR OPPOSER,

DSM IP Assets B.V.

**Certificate of Service**

I hereby certify that a true and accurate copy of the foregoing will be served on Applicant's U.S. attorney of record M. Scott Alprin on this date by email to: [trademarks@alprinlaw.com](mailto:trademarks@alprinlaw.com).

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

_____	)	
DSM IP Assets B.V.	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91245529
	)	Application No. 87891972
HHEALTH Inc.	)	
	)	
Applicant	)	
_____	)	

**DECLARATION OF DUANE M. BYERS  
IN SUPPORT OF OPPOSER’S REPLY FILED JULY 7, 2020**

I, Duane M. Byers, hereby declare and state:

1. I am counsel for Opposer DSM IP Assets B.V.
2. I make this declaration based on personal knowledge and am competent to testify on the matters stated below.
3. Attached as Exhibit 1 is an email string including a June 18, 2020 email from Opposer’s attorney (Duane Byers) to Applicant’s attorney (Scott Alprin), a June 18, 2020 acknowledgment email from Applicant attorney’s paralegal (Tamae Heilen), a June 26, 2020 reminder email from Opposer’s attorney (Duane Byers) to Applicant’s attorney and paralegal (Scott Alprin and Tamae Heilen), and a June 30, 2020 acknowledgment email from Applicant attorney’s paralegal (Tamae Heilen).

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

Date: July 7, 2020 \_\_\_\_\_ Respectfully submitted,

/Duane M. Byers/ \_\_\_\_\_  
Duane M. Byers  
NIXON & VANDERHYE, P.C.  
901 North Glebe Road, 11<sup>th</sup> Floor  
Arlington, Virginia 22203-1808  
703-786-7421 phone

**Authorized e-mail:**  
[NIXONPTOMAIL@NIXONVAN.COM](mailto:NIXONPTOMAIL@NIXONVAN.COM)

**Certificate of Service**

I hereby certify that a true and accurate copy of the foregoing (including Exhibit 1) will be served on Applicant's U.S. attorney of record M. Scott Alprin on this date by email to: [trademarks@alprinlaw.com](mailto:trademarks@alprinlaw.com).



# EXHIBIT 1

**From:** Tamae Heilen <THEilen@AlprinLaw.com>  
**Sent:** Tuesday, June 30, 2020 3:57 PM  
**To:** Duane M. Byers; M. Scott Alprin  
**Cc:** Virginia Hamel; Becky Alprin; Asha Velay  
**Subject:** Re: US Trademark Opposition No. 91245529 - M|Health design trademark v HHealth design trademark/ NV ref 4662-3720 / ALO ref 0189007

Dear Mr. Byers:

We would like to confirm safe receipt of your email with thanks and will revert to you.

Best regards,

Tamae

\*\*\*\*\*

Tamae Heilen  
Paralegal  
Alprin Law Offices, P.C.  
5 Pinehurst Circle, N.W.  
Washington, D.C. 20015 USA  
202-659-8225 (phone)  
202-659-0441 (facsimile)  
[theilen@alprinlaw.com](mailto:theilen@alprinlaw.com)  
[www.alprinlaw.com](http://www.alprinlaw.com)

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**From:** Duane M. Byers <dmb@nixonvan.com>  
**Sent:** Friday, June 26, 2020 2:26 PM  
**To:** Tamae Heilen; M. Scott Alprin  
**Cc:** Virginia Hamel; Becky Alprin; Asha Velay; Duane M. Byers  
**Subject:** US Trademark Opposition No. 91245529 - M|Health design trademark v HHealth design trademark/ NV ref 4662-3720 / ALO ref 0189007

Dear Scott and Tamae,

This is a gentle reminder, i.e., we look forward to your answer to the yellow highlighted question in our email below on June 18.

Regards,  
Duane

**Duane M. Byers**

Nixon & Vanderhye P.C.

901 N. Glebe Road, 11th Floor

Arlington, VA 22203 USA

Phone: 1-703-786-7421

[www.nixonvan.com](http://www.nixonvan.com)



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**From:** Tamae Heilen <THEilen@AlprinLaw.com>

**Sent:** Thursday, June 18, 2020 9:02 AM

**To:** Duane M. Byers; M. Scott Alprin

**Cc:** Virginia Hamel; Becky Alprin; Asha Velay

**Subject:** Re: US TM Opposition No. 91245529 - M | Health design trademark v HHealth design trademark/  
NV ref 4662-3720 / ALO ref 0189007

Dear Mr. Byers:

We would like to confirm safe receipt of your email with thanks and will revert to you in the near future.

Best regards,

Tamae

\*\*\*\*\*

Tamae Heilen

Paralegal

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5 Pinehurst Circle, N.W.

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**From:** Duane M. Byers <dmb@nixonvan.com>

**Sent:** Thursday, June 18, 2020 12:53 AM

**To:** M. Scott Alprin

**Cc:** Virginia Hamel; Becky Alprin; Asha Velay; Duane M. Byers

**Subject:** Re: US TM Opposition No. 91245529 - M|Health design trademark v HHealth design trademark/  
NV ref 4662-3720 / ALO ref 0189007

Dear Scott,

Thank you for your email, but we respectfully disagree. We believe that the applicant (whoever the applicant is) has acted improperly in the application process and the opposition process.

By return email before our filing deadline of July 7, 2020, please let us know if the person named Du Ruiyong is the person who actually signed:

1. the application filed at the USPTO on April 25, 2018, and
2. the Response filed at the USPTO on September 3, 2018.

If you truly want the TTAB to know the facts, then you will provide this information to us before July 7.

Regards,  
Duane

**Duane M. Byers**

[Nixon & Vanderhye P.C.](#)

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