

ESTTA Tracking number: **ESTTA945803**

Filing date: **01/07/2019**

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	Blistex Inc.
Granted to Date of previous extension	01/06/2019
Address	1800 Swift Drive Oak Brook, IL 60523 UNITED STATES

Attorney information	BURTON S EHRLICH LADAS & PARRY LLP 224 S MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604 UNITED STATES CHIUSTM@LADAS.NET 312-427-1300
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Applicant Information

Application No	87777536	Publication date	07/10/2018
Opposition Filing Date	01/07/2019	Opposition Period Ends	01/06/2019
Applicant	Church & Dwight Co., Inc. Law Department 500 Charles Ewing Boulevard Ewing, NJ 08628 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: Household cleaning preparations; laundry detergent; stain removers; laundry additives, namely, scent boosters
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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.	1036051	Application Date	06/21/1974
Registration Date	03/23/1976	Foreign Priority Date	NONE

Word Mark	ODOR-EATERS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1973/02/22 First Use In Commerce: 1973/02/22 FOOT DEODORIZING PRODUCTS-NAMELY, DEODORIZING INSOLES FOR SHOES

U.S. Registration No.	1149920	Application Date	09/06/1979
Registration Date	03/31/1981	Foreign Priority Date	NONE
Word Mark	ODOR-EATERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1979/07/03 First Use In Commerce: 1979/07/03 [Foot] Deodorizing Products-Nameely, [Deodorant] * Deodorizing * Socks		

U.S. Registration No.	1587346	Application Date	01/06/1989
Registration Date	03/20/1990	Foreign Priority Date	NONE
Word Mark	ODOR-EATERS		
Design Mark	ODOR-EATERS		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1988/02/16 First Use In Commerce: 1988/02/16 FOOT POWDER		

U.S. Registration No.	1749207	Application Date	02/22/1991
Registration Date	01/26/1993	Foreign Priority Date	NONE
Word Mark	ODOR-EATERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1981/09/01 First Use In Commerce: 1981/09/01 anti-fungal foot spray powders		



U.S. Registration No.	3047631	Application Date	05/17/2004
Registration Date	01/24/2006	Foreign Priority Date	NONE

Word Mark	ODOR-EATERS PLUS
Design Mark	ODOR-EATERS PLUS
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2003/01/06 First Use In Commerce: 2003/01/06 Insoles with deodorizing properties


U.S. Registration No.	3106982	Application Date	03/17/2005
Registration Date	06/20/2006	Foreign Priority Date	NONE

Word Mark	ODOR-EATERS
Design Mark	ODOR-EATERS
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2001/02/12 First Use In Commerce: 2001/02/12 Cleaning preparations for carpets, carpet cushions, carpet underlay, and rugs Class 005. First use: First Use: 2001/02/12 First Use In Commerce: 2001/02/12 Deodorizing preparations for, and preparations for maintaining and restoring deodorizing properties of, carpets, carpetcushions, carpet underlay, and rugs Class 027. First use: First Use: 2001/02/12 First Use In Commerce: 2001/02/12 Carpets and carpet cushions with stain resisting properties and deodorizing properties

U.S. Registration No.	3106983	Application Date	03/17/2005
Registration Date	06/20/2006	Foreign Priority Date	NONE
Word Mark	ODOR-EATERS		

Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 2001/02/12 First Use In Commerce: 2001/02/12 Cleaning preparations for carpets, carpet cushions, carpet underlay, and rugs</p> <p>Class 005. First use: First Use: 2001/02/12 First Use In Commerce: 2001/02/12 Deodorizing preparations for, and preparations for maintaining and restoring deodorizing properties of, carpets, carpetcushions, carpet underlay, and rugs</p> <p>Class 027. First use: First Use: 2001/02/12 First Use In Commerce: 2001/02/12 Carpets and carpet cushions with stain resisting properties and deodorizing properties</p>		
U.S. Registration No.	4104312	Application Date	01/25/2011
Registration Date	02/28/2012	Foreign Priority Date	NONE
Word Mark	ODOR-EATERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1988/02/16 First Use In Commerce: 1988/02/16 Foot and skin care preparations, namely, powders and sprays; powders and spraysfor use on skin and feet, for absorbingwetness and used to absorb, neut-</p>		

	<p>ralize and prevent odors; deodorant powders and sprays that also absorb wetness that may be applied to footwear, socks, hosiery and clothing for use as a personal deodorant</p> <p>Class 005. First use: First Use: 1981/09/01 First Use In Commerce: 1981/09/01 Deodorant powders and sprays that also absorb wetness for use as a clothing deodorant on footwear, socks, hosiery, and clothing; Medicated foot and skin care sprays and powders; anti-infective foot and skin sprays and powders; anti-fungal foot and shoe sprays and powders; medicated preparations for treatment of athlete's foot, for alleviating itching and for other foot and skin irritations</p> <p>Class 010. First use: First Use: 1973/02/22 First Use In Commerce: 1973/02/22 Insoles and inserts for footwear and shoes to absorb wetness being primarily for orthopedic purposes; insoles and inserts for footwear and shoes for absorbing, neutralizing and preventing odors being primarily for orthopedic purposes; insoles and inserts for footwear and shoes for deodorizing being primarily for orthopedic purposes; insoles and inserts for footwear and shoes for cushioning being primarily for orthopedic purposes; footwear cushions and pads designed and treated to absorb moisture and absorb, neutralize and prevent odors being primarily for orthopedic purposes</p> <p>Class 025. First use: First Use: 1973/02/22 First Use In Commerce: 1973/02/22 Insoles and inserts for footwear and shoes to absorb wetness being primarily for non-orthopedic purposes; insoles and inserts for footwear and shoes for absorbing, neutralizing and preventing odors being primarily for non-orthopedic purposes; insoles and inserts for footwear and shoes for deodorizing being primarily for non-orthopedic purposes; insoles and inserts for footwear and shoes for cushioning being primarily for non-orthopedic purposes; footwear cushions and pads designed and treated to absorb moisture and absorb, neutralize and prevent odors being primarily for non-orthopedic purposes</p>
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U.S. Registration No.	4615153	Application Date	11/04/2013
Registration Date	09/30/2014	Foreign Priority Date	NONE
Word Mark	ODOR-EATERS		
Design Mark			
Description of Mark	The mark consists of "odor-eaters" within a swirl.		
Goods/Services	Class 003. First use: First Use: 2014/01/00 First Use In Commerce: 2014/01/00 Non-medicated foot and skin care preparations, namely, powders and sprays; non-medicated powders and sprays for use on skin and feet, for absorbing wet-		

	<p>ness and used to absorb, neutralize and prevent odors; personal deodorant powders and sprays that also absorb wetness and can also be applied to footwear, socks, hosiery and clothing for use as a personal deodorant</p> <p>Class 005. First use: First Use: 2014/01/00 First Use In Commerce: 2014/01/00 Deodorant powders and sprays that also absorb wetness for use as a clothing deodorant on footwear, socks, hosiery, and clothing; medicated foot and skin care sprays and powders; anti-infective foot and skin sprays and powders; anti-fungal foot and shoe sprays and powders; medicated preparations for treatment of athlete's foot, for alleviating itching and for other foot and skin irritations</p> <p>Class 010. First use: First Use: 2014/01/00 First Use In Commerce: 2014/01/00 Insoles and inserts for footwear and shoes to absorb wetness being primarily for orthopedic purposes; insoles and inserts for footwear and shoes for absorbing, neutralizing and preventing odors being primarily for orthopedic purposes; insoles and inserts for footwear and shoes for deodorizing being primarily for orthopedic purposes; insoles and inserts for footwear and shoes for cushioning being primarily for orthopedic purposes; footwear cushions and pads designed and treated to absorb moisture and absorb, neutralize and prevent odors being primarily for orthopedic purposes</p> <p>Class 025. First use: First Use: 2014/01/00 First Use In Commerce: 2014/01/00 Insoles and inserts for footwear and shoes to absorb wetness being primarily for non-orthopedic purposes; insoles and inserts for footwear and shoes for absorbing, neutralizing and preventing odors being primarily for non-orthopedic purposes; insoles and inserts for footwear and shoes for deodorizing being primarily for non-orthopedic purposes; insoles and inserts for footwear and shoes for cushioning being primarily for non-orthopedic purposes; footwear cushions and pads designed and treated to absorb moisture and absorb, neutralize and prevent odors being primarily for non-orthopedic purposes</p>
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Attachments	<p>73773869#TMSN.png(bytes) 76592544#TMSN.png(bytes) 78977064#TMSN.png(bytes) 78977071#TMSN.png(bytes) 85225679#TMSN.png(bytes) 86109553#TMSN.png(bytes) ODOR BLASTERS and Design Notice of Opposition 87777536.pdf(20511 bytes)</p>
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Signature	/bsehrlich/
Name	BURTON S EHRLICH
Date	01/07/2019

of the mark shown in the application and hereby opposes the referenced application.

The grounds for the opposition are:

1. Continuously since long prior to January 31, 2018, the Applicant's earliest shown priority date for its application, being the filing date of the application, the Opposer has marketed, advertised and sold throughout the United States under the mark **ODOR-EATERS** an extensive range of skin and foot care preparations, including deodorant powders and sprays for skin and foot care and for deodorizing footwear, socks, hosiery and clothing, as well as other deodorizing or other odor or wetness absorbing products or personal care or cleaning products, including diverse consumer products, such as inserts or insoles for footwear.

2. Opposer's products sold under the above trademark **ODOR-EATERS** have been extensively promoted throughout the United States to the relevant trade and to the consuming public.

3. By reason of Opposer's aforesaid extensive promotion and sale of its products, Opposer's trademark **ODOR-EATERS** has acquired great recognition and renown, and the relevant trade and public have come to recognize the trademark **ODOR-EATERS** as signifying Opposer exclusively.

4. Opposer has duly registered the mark **ODOR-EATERS** in the United States Patent and Trademark Office and owns the following registrations:

<u>REGISTRATION NUMBER</u>	<u>TRADEMARK</u>
1,036,051	ODOR-EATERS
1,149,920	ODOR-EATERS
1,587,346	ODOR-EATERS
1,749,207	ODOR-EATERS
3,047,631	ODOR-EATERS PLUS
3,106,982	ODOR-EATERS
3,106,983	ODOR-EATERS AND DESIGN
4,104,312	ODOR-EATERS
4,615,153	ODOR-EATERS AND DESIGN

5. All of the registrations referenced in paragraph No. 4 that show or include the mark **ODOR-EATERS** are valid subsisting registrations in full force and effect. Furthermore, Registration Nos. 1,036,051; 1,149,920; 1,587,346; 1,749,207; 3,047,631; 3,106,982; 3,106,983 and 4,104,312 have each achieved "**incontestable**" registration status, thereby constituting conclusive prima facie evidence of Opposer's exclusive right to use said marks in commerce.

6. Applicant's claimed trademark **ODOR BLASTERS AND DESIGN**, as proposed for use in connection with items used for a variety

of consumer household products and cleaning preparations, referenced herein and as set forth in the opposed application, is so similar to Opposer's trademark **ODOR-EATERS**, used for a wide range of personal care, household and cleaning products, including deodorizers and moisture absorbing products, as to be likely to create confusion, mistake or deception, all to the damage of Opposer, and to the damage of Opposer's rights in its trademark, which mark has been in use long prior to the filing of the Applicant's trademark application or any priority date that Applicant could assert in its underlying mark.

7. Products identified in Opposer's referenced registrations would include, overlap, encompass or would be within the ambit of items identified or described in the Applicant's application, and products identified or described in the Applicant's application are also related personal household products or deodorizing or cleaning or moisture absorbing products to those sold by the Opposer.

8. The goods "household cleaning preparations" identified in the Applicant's application are very broadly described and could include numerous products and be used for a multiplicity of possible uses.

9. Based upon information and belief, the goods identified in the Applicant's application for the trademark **ODOR BLASTERS AND DESIGN** and those products sold under the Opposer's mark could be sold to the same potential consumers or end-users.

10. Based upon information and belief, the goods identified in the Applicant's application for the trademark **ODOR BLASTERS AND DESIGN** and those products sold under the Opposer's mark could move through the same channels of distribution, or be sold on the internet, or be sold in the same stores or in stores selling competing items or selling Opposer's related personal care, household or cleaning products.

11. Applicant sells other competing products to those offered and sold by Opposer, so consumers observing a confusingly similar mark on such items would believe that such similar or related household products would emanate from the same source. Consumers come to expect consumer products of the nature of those of the Applicant under the mark at issue and those of the Opposer under the Opposer's trademark **ODOR-EATERS** could emanate from the same source. Products sold by the Opposer and the Applicant or the products involved could be expected to be produced or be made available by the same entity, a factor which could heighten opportunities for confusion to occur when confusingly similar marks are used.

12. The Applicant filed the underlying application, on information and belief, with actual knowledge of the Opposer's mark **ODOR-EATERS AND DESIGN**.

13. The first word of both the Opposer's mark and the Applicant's mark is the same word "ODOR". Both opposer's mark and Applicant's mark are comprised of only two words with the

first word being the same in both marks and with the second word of Applicant's mark ending with the letters "TERS" which are the same in appearance, sound and meaning to the last four letters of the second word in Opposer's mark, which is the word "EATERS".

14. Applicant's mark is similar to Opposer's mark in sound.

15. Applicant's mark is similar to Opposer's mark in appearance.

16. Applicant's mark is similar to Opposer's mark in meaning.

17. Applicant's mark is similar to Opposer's mark in overall commercial impression.

18. Use by the Applicant of the trademark **ODOR BLASTERS AND DESIGN**, for which registration is sought in the application opposed herein, is without Opposer's consent or permission.

19. Applicant's registration of the trademark **ODOR BLASTERS AND DESIGN** will result in damage and in the diminishment in sales and the loss of the value of the Opposer's mark **ODOR-EATERS**.

20. Applicant's registration of the trademark **ODOR BLASTERS AND DESIGN** will result in damage, dilution, and in the diminishment in sales and the loss of the value of the Opposer's famous mark **ODOR-EATERS**.

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial

No. 87/777,536 and prays that this Opposition be sustained and that the Applicant's registration be denied for all of the goods covered by the application.

This Notice of Opposition is being filed electronically with the Trademark Trial And Appeal Board **with the required fee being charged to deposit Account No. 120400**. Please charge any additional costs to our Ladas & Parry Deposit Account No. 12-0400.

Please address all correspondence to Burton S. Ehrlich, Ladas & Parry, 224 South Michigan Avenue, Suite 1600, Chicago, IL 60604, telephone (312) 427-1300.

Respectfully submitted,

By: /Burton S. Ehrlich/
One of Opposer's attorneys

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being electronically filed with the United States Patent and Trademark Office on this 7th day of January 2019.

 /Burton S. Ehrlich/
Burton S. Ehrlich