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

Proceeding	91251448
Party	Plaintiff Novalash, Inc.
Correspondence Address	THOMAS L WARDEN CONLEY ROSE PC PO BOX 3267 HOUSTON, TX 77253-3267 UNITED STATES Primary Email: tmhou@conleyrose.com Secondary Email(s): mmoscicki@conleyrose.com, twarden@conleyrose.com 713-238-8000
Submission	Testimony For Plaintiff
Filer's Name	Thomas L. Warden
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Signature	/Thomas L. Warden/
Date	01/06/2021
Attachments	2021-01-06 Notice of Filing Rebuttal Trial Testimony.pdf(149757 bytes) 2020-01-06 Declaration of Sophy Merszei.pdf(278944 bytes)

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

In re U.S. Trademark Application Serial No. 87/395,581 for the mark SUGARLASH, filed on April 2, 2017, published on April 9, 2019, and having the current owner of record Sugar Lash Inc.

NovaLash, Inc.	§	
	§	
Opposer,	§	
	§	
vs.	§	Opposition No. 91251448
	§	
Sugar Lash Inc.,	§	
	§	
Applicant.	§	

OPPOSER NOVALASH, INC.’S NOTICE OF FILING REBUTTAL TRIAL TESTIMONY

Pursuant to the 37 CFR § 2.125 and the Order entered July 11, 2020 (TTABVUE #8), NovaLash, Inc. (hereafter, the “Opposer”), hereby notifies the Board and all parties that it is concurrently filing the Second Declaration of Sophy Merszei as its rebuttal trial testimony.

Dated: January 6, 2021.

/Thomas L. Warden/
Thomas Warden
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ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE UNDER TBMP 113

I HEREBY CERTIFY that a true and correct copy of the foregoing *Opposer NovaLash, Inc.'s Notice of Filing Rebuttal Trial Testimony* is being served on January 6, 2021, by email addressed to all counsel of record, as follows:

David L. Oppenhuizen
david@oppenhuizen.com
Oppenhuizen Law PLC
McKay Tower, Ste. 730
146 Monroe Center St. NW
Grand Rapids, MI 49503

/Thomas L. Warden/
Thomas L. Warden

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re U.S. Trademark Application Serial No. 87/395,581 for the mark SUGARLASH, filed on April 2, 2017, published on April 9, 2019, and having the current owner of record Sugar Lash Inc.

NovaLash, Inc.	§	
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Sugar Lash Inc.,	§	
	§	
Applicant.	§	

**SECOND DECLARATION OF SOPHY MERSZEI
IN SUPPORT OF OPPOSER NOVALASH, INC.’S OPPOSITION**

Pursuant to 28 U.S.C. § 1746, Sophy Merszei declares as follows:

1. I am making this Declaration to rebut and in direct response to the Declaration of Kim McIver dated November 23, 2020, as submitted by Applicant Sugar Lash Inc. in this Opposition (“McIver Declaration” or “McIver Decl.”).
2. This Declaration supplements my earlier declaration submitted in this Opposition dated September 23, 2020. My earlier Declaration provides a brief summary of my education and experience in the artificial eyelash industry, and my founding of NovaLash, Inc. (“NovaLash”) in 2004. I will cite exhibits from my earlier declaration using the same letter labels as were used in my earlier Declaration (i.e., A-H).
3. I remain the Chief Executive Officer of the Opposer NovaLash. I also continue to personally direct and oversee NovaLash in all facets of its day-to-day operations. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration.

4. As explained in more detail below and as discussed in my earlier Declaration, I am very concerned that consumers in the artificial eyelash industry are likely to be confused between Applicant's proposed mark SUGARLASH as used in connection with the goods and services described in Applicant's Trademark Application Serial No. 87/395,581 (the "SUGARLASH Application"), and NovaLash's registered mark CANDIED LASHES[®], as used in connection with the goods and services in Novalash's United States Trademark Registration No. 3,944,538 (the "CANDIED LASHES Registration").

5. By way of rebuttal, I first observe that the McIver Declaration acknowledges that the Applicant offers its SUGARLASH products directly to "public" consumers or "end users," as well as to "lash artists" and "boutiques." (McIver Decl. ¶¶ 5, 6.) Novalash likewise offers its CANDIED LASHES[®] products directly to consumers, as well as lash artists and boutiques. (See Ex. B (www.novalash.com).) Thus, given that the SUGARLASH products described in the SUGARLASH Application are principally "artificial eyelashes" and the CANDIED LASHES[®] products described in the CANDIED LASHES Registration are also principally "artificial eyelashes," the respective customers and distribution channels for these competing products are the **same**.

6. Ms. McIver also states that the Applicant markets its SUGARLASH products directly using its own website (www.sugarlashpro.com), at trade shows, and in social media such as Facebook, Instagram, and YouTube. (McIver Decl. ¶¶ 7, 9, 18-20). Novalash likewise markets its CANDIED LASHES[®] products using its own website, at trade shows, and in social medial such as Facebook and YouTube. (See Exs. B, E; see also

www.youtube.com/user/NovaLashUS.¹) Thus, the respective marketing channels are also the **same**.

7. Ms. McIver further acknowledges that the marks SUGARLASH and CANDIED LASHES[®] also have the same meaning or connotation. Here, Ms. McIver states that the term “lash” is synonymous with “eyelash” and that “the term ‘candied’ is commonly understood to mean that something is coated or encrusted with sugar.” (McIver Decl. ¶¶ 36, 37.) Thus, the marks SUGARLASH and CANDIED LASHES[®] both connote or convey the same image of sugar-coated or sugar-encrusted eyelashes. Of course, artificial eyelashes are never actually coated or encrusted with sugar. However, this whimsical use of these terms conveys a very memorable image. Based on my 16+ years’ of experience in all facets of the artificial eyelash industry, and nearly 30 years of experience in the broader cosmetics industry, I remain very concerned that potential consumers who are at some point exposed to one or the other of these two marks would specifically recall the image of sugar coated or sugar encrusted eyelashes, and then be confused or mistaken upon exposure to products labeled with the other of the two marks.

8. Ms. McIver lastly alleges that her “understanding is that CANDIED LASHES is a relatively inconsequential, minor, niche SKU of products in the lash industry. As a professional who is deeply involved with the artificial eyelash market and who also had never heard of Novalash, Inc.’s CANDIED LASHES brand until Novalash, Inc. asserted that mark against us, I completely disagree with any assertion that CANDIED LASHES is a famous trademark.” (McIver Decl. ¶ 32. In this regard, I strongly disagree with Ms. McIver’s speculative and uneducated opinion.

¹ A video featuring CANDIED LASHES[®] products is available at www.youtube.com/watch?v=wdXMVycTk5I.

CERTIFICATE OF SERVICE UNDER TBMP 113

I HEREBY CERTIFY that a true and correct copy of the foregoing *Second Declaration of Sophy Merszei in Support of Opposer NovaLash, Inc.'s Opposition* is being served on January 6, 2021, by email addressed to all counsel of record, as follows:

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