

ESTTA Tracking number: **ESTTA1029534**

Filing date: **01/17/2020**

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	Richard D. Castellano M.D., P.A.		
Entity	Corporation	Citizenship	FLORIDA
Address	3314 Henderson Blvd. Suite 206 Tampa, FL 33609 UNITED STATES		

Attorney information	Jack Baldini, Esq. Baldini Law LLC 12557 LEATHERLEAF DR TAMPA, FL 33626 UNITED STATES jack@baldinilaw.com, baldinilaw@gmail.com 9739451645		
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Applicant Information

Application No	88579581	Publication date	12/24/2019
Opposition Filing Date	01/17/2020	Opposition Period Ends	01/23/2020
Applicant	Signature Aesthetics, LLC 3200 Cobb Galleria Parkway, Suite 205 Atlanta, GA 30339 UNITED STATES		

Goods/Services Affected by Opposition


Class 044. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medical services

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act Section 2(d)
Applicant not rightful owner of mark for identified goods or services	Trademark Act Section 1

Marks Cited by Opposer as Basis for Opposition


U.S. Application No.	88757121	Application Date	01/13/2020
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	IMAGELIFT
Design Mark	
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2012/08/14 First Use In Commerce: 2012/08/14 Cosmetic skin care services; Cosmetic and plastic surgery; Medical counseling; Providing health care information by personal consultations, seminars, events, newsletters, blog posts, and email; Providing personalized healthcare and medical information in the nature of reports, evaluations, analysis, diagnoses, and recommendations in the field of cosmetic, plastic, and restorative surgery; Providing a website featuring information about health and wellness, namely, cosmetic surgery, facial rejuvenation, plastic and reconstructive surgery, and injection techniques

U.S. Registration No.	3691914	Application Date	03/10/2009
Registration Date	10/06/2009	Foreign Priority Date	NONE

Word Mark	IMAGE LIFT
Design Mark	
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2009/03/04 First Use In Commerce: 2009/03/04 Cosmetic and plastic surgery

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	Facial and Cosmetic Plastic Surgery

Attachments	88757121#TMSN.png(bytes) 77687516#TMSN.png(bytes) Logo.jpg IMAGELIFT Notice of Opposition 1 17 20.pdf(69470 bytes) Exhibit A Prior Registration.pdf(116018 bytes) Exhibit B Application Filing.pdf(124129 bytes) Exhibit C State Registration.pdf(135234 bytes)
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Signature	/jackbaldini/
Name	Jack Baldini, Esq.
Date	01/17/2020

BALDINI LAW, LLC
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Attorney for Petitioner – Richard D. Castellano M.D., P.A.

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

Richard D. Castellano M.D., P.A.	:	Opposition No.:	
	:	Application Serial No.:	88/579,581
Opposer,	:	Mark:	IMAGELIFT
v.	:		
Signature Aesthetics, LLC	:		
Applicant.	:		

NOTICE OF OPPOSITION


In the matter of Trademark Application Serial No. 88/579,581 for the mark IMAGELIFT, filed August 15, 2019, by Signature Aesthetics, LLC (“Applicant”), and Published for Opposition in the Official Gazette of the United States Patent and Trademark Office (“USPTO”) on December 24, 2019;

Richard D. Castellano M.D., P.A. (Opposer), a Tampa corporation having a place of business at 3314 Henderson Blvd., Suite 206, Tampa, Florida 33609, believes that it will be damaged by the registration of the mark shown in the above identified application for the services in International Class 44, and hereby opposes the same on the following grounds:

1. Applicant Signature Aesthetics, LLC, upon information and belief is a Georgia limited liability company with a place of business at 3200 Cobb Parkway, Suite 205, Atlanta, Georgia 30339, and seeks to register IMAGELIFT as a trademark for “medical services” in International Class 44.
2. The application herein opposed was filed on August 15, 2019 on the basis of Section 1(b) of the Trademark Act, ‘intent-to-use.’
3. Richard D. Castellano M.D., P.A., and its physicians, technicians, and affiliates (collectively, “Opposer”) is and has been engaged in the business of delivering first in class medical services, developing new and improved technology and techniques, and performing the highest quality customer service in the fields of cosmetic surgery, plastic surgery, restorative surgery, and other related medical services.
4. Since at least as early as August 2012, Opposer has continuously used IMAGELIFT as a name and mark throughout the United States to brand the services just described and the public has come to know of this brand.
5. Since at least as early as March 2009, Opposer has also continuously used the highly similar and phonetically equivalent IMAGE LIFT name and mark to brand the services herein described and as evidenced by now cancelled USPTO Registration No. 3691914, inadvertently allowed to become abandoned by Opposer. The pertinent information about the now cancelled registration for Opposer’s former IMAGE LIFT mark from the USPTO website showing status and title are attached hereto as a true and correct copy of same as **Exhibit A**.
6. On or about January 13, 2020, Opposer filed application Serial No. 88/757,121 with the USPTO for the mark IMAGELIFT stating its date of first use at least as early as

August 14, 2012 with specimens of use as an in-use mark in connection with the services, “Cosmetic skin care services; Cosmetic and plastic surgery; Medical counseling; Providing health care information by personal consultations, seminars, events, newsletters, blog posts, and email; Providing personalized healthcare and medical information in the nature of reports, evaluations, analysts, diagnoses, and recommendations in the field of cosmetic, plastic, and restorative surgery; Providing a website featuring information about health and wellness, namely, cosmetic surgery, facial rejuvenation, plastic and reconstructive surgery, and injection techniques” in International Class 44. The pertinent information about the pending application for Opposer’s IMAGELIFT mark from the USPTO website showing status and title are attached hereto as a true and correct copy of same as **Exhibit B**. Opposer expects Applicant’s application opposed here to be raised as a bar to registration of Opposer’s pending application.

7. Opposer also owns a Florida Registration, Document Number T19000000622, for the mark described as IMAGELIFT & design of three overlapping petals of a flower to

the left of the name “imagelift”, namely,  , as used in connection with, “facial and cosmetic plastic surgery, at least as early as August 14, 2012. The pertinent information about the Florida Registration for Opposer’s mark



from the Florida www.sunbiz.org division of corporations website showing status and title is attached hereto as a true and correct copy as **Exhibit C**.

8. Upon information and belief, Applicant, Signature Aesthetics, LLC, a Georgia limited liability company, was formed on or about May 4, 2017 with Dr. Elizabeth Whitaker

- as its sole organizer and Member.
9. Upon information and belief, one of Applicant and/or its sole member, Dr. Elizabeth Whitaker, owns and operates the website www.atlantafaceandbeauty.com. Dr. Whitaker personally owns USPTO registrations for the marks, **Atlanta Face & Body Center**; **EmpowerLift**; **PrecisionLift**; **ProfileLift**; and **SignatureLift**; (among others), with only **Atlanta Face & Body Center** and **PrecisionLift** naming a first use date in 2015 and the rest in 2016 or later.
 10. Each of the referenced registrations was filed as a 1(A) (in-use) application when filed, whereas, the opposed application here is a 1(B) (intent-to-use) application. There is no evidence of use of the mark IMAGELIFT by Applicant or Dr. Whitaker on the website www.atlantafaceandbody.com, or otherwise, at present.
 11. Upon information and belief, Applicant's priority date for the mark IMAGELIFT is its filing date as a 1(B) application, namely, August 15, 2019.
 12. Opposer has used the mark IMAGE LIFT since at least as early as March 2009 and the mark IMAGELIFT since at least as early as August 2012 and has used the marks continuously and presently. Opposer's IMAGELIFT mark is inherently distinctive as applied to Opposer's medical services.
 13. Opposer's IMAGELIFT brand is inherently distinctive of Opposer's business, which has had customers from all over the country, and the brand has become a nationally known brand.
 14. Dr. Castellano, the face of Opposer and the IMAGELIFT brand, is an experienced facial rejuvenation artist and has a national reputation as a highly referred facial plastic surgeon. He has performed over 10,000 cosmetic procedures making him one

- of the most experienced facial plastic surgeons in the United States. Dr. Castellano and the IMAGELIFT brand has garnered many accolades and awards, including several Patients' Choice Awards. IMAGELIFT patients come from all over the United States due to Dr. Castellano's reputation.
15. Use of the IMAGELIFT brand by Opposer has been commercially significant.
 16. By virtue of Opposer's continuous use in commerce of the IMAGELIFT brand, and the nature and extent of such use, this mark has become well and favorably known in the relevant trade and to the relevant public as identifying the services and business of Opposer.
 17. Upon information and belief, Applicant was an attendee at, at least one of Opposer's seminars, and has become familiar with Opposer's brand and reputation prior to filing the opposed application.
 18. In fact, upon information and belief, Applicant was well aware of Dr. Castellano and the IMAGELIFT brand prior to filing any of her **EmpowerLift**; **PrecisionLift**; **ProfileLift**; or **SignatureLift** marks and all of that was a blatant attempt to garner undeserved association with Opposer.
 19. For example, even Applicant's entity name, Signature Aesthetics, LLC, is also and prior used by a significant, and well-established, and well-recognized cosmetic surgery provider in Idaho (see website www.signatureaesthetics.com).
 20. Applicant's IMAGELIFT mark is confusingly similar to Opposer's name and brand established well prior to Applicant's filing.
 21. Indeed, Applicant's proposed mark, IMAGELIFT, is identical to Opposer's name and mark, IMAGELIFT, and proposed for use in connection with legally identical

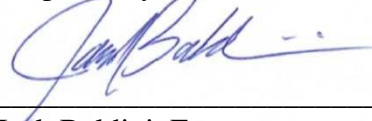
services.

22. Applicant's proposed use of the mark IMAGELIFT as applied to its proposed services as identified in the application herein opposed is likely to cause confusion, or to cause mistake, or to deceive, as to its affiliation between the parties, the source of services, and the sponsorship of Applicant's services by Opposer.
23. On seeing Applicant's IMAGELIFT mark used in connection with Applicant's services, purchasers and potential purchasers are likely to believe in error that such services are offered by or in association with Opposer, or that Applicant and Opposer are somehow affiliated or endorsed by one another.
24. If Applicant is permitted to register IMAGELIFT as a mark for the services as set forth in the application herein opposed, confusion in the relevant trade and public is likely to result, which deprives Opposer of control over its own reputation and so is likely to damage and injure Opposer, as well as the consuming public.
25. Any defect, objection to, fault with, or negative publicity associated with Applicant and/or her services as rendered, would reflect on and injure the reputation that Opposer has worked very hard to achieve and has established for his services.
26. If Applicant is granted a registration for the IMAGELIFT mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to a mark for such services and deprive Opposer the rights to which it is legally entitled. Such registration would be a source of damage and injury to Opposer and to the consuming public to the extent that there would be a likelihood of confusion, which in this instance is high.

WHEREFORE, Richard D. Castellano M.D., P.A. prays that registration of the mark of

application Serial No. 88/579,581 for the services in International Class 44 identified therein be refused and this Opposition be sustained.

Respectfully submitted,



Dated: January 17, 2020

Jack Baldini, Esq
Baldini Law, LLC
12557 Leatherleaf Drive
Tampa, Florida 33626
jack@baldinilaw.com
973.945.1645
Attorney for Opposer – Richard D.
Castellano M.D., P.A.

CERTIFICATION OF FILING

The undersigned hereby certifies that in accordance with 37 C.F.R. § 2.119(b), a true and correct copy of the foregoing Notice of Opposition was filed electronically with the United States Patent and Trademark Office via the Electronic System for Trademark Trial and Appeals (“ESSTA”) on the date shown below with all applicable fees paid.

Pursuant to 37 C.F.R. § 2.105, the Trademark Trial and Appeal Board shall notify applicant, Signature Aesthetics, LLC c/o JungJin Lee, attorney for applicant, by email to docket@trademarklawyerfirm.com or at the correspondence address Trademark Lawyer Law Firm, PLLC, P.O. Box 512 Ann Arbor, Michigan 48106-0512.

I declare under penalty of perjury that the foregoing statements are true and correct.

By: 

JACK B. BALDINI, ESQ.

Dated: January 17, 2020



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IMAGE LIFT

Word Mark	IMAGE LIFT
Goods and Services	(CANCELLED) IC 044. US 100 101. G & S: Cosmetic and plastic surgery. FIRST USE: 20090304. FIRST USE IN COMMERCE: 20090304
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77687516
Filing Date	March 10, 2009
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 21, 2009
Registration Number	3691914
Registration Date	October 6, 2009
Owner	(REGISTRANT) Richard D. Castellano M.D., P.A. CORPORATION FLORIDA 929 Guisando De Avila Tampa FLORIDA 33613
Attorney of Record	Diana L. Hayes
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LIFT" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Cancellation Date	May 13, 2016

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IMAGELIFT

Word Mark	IMAGELIFT
Goods and Services	IC 044. US 100 101. G & S: Cosmetic skin care services; Cosmetic and plastic surgery; Medical counseling; Providing health care information by personal consultations, seminars, events, newsletters, blog posts, and email; Providing personalized healthcare and medical information in the nature of reports, evaluations, analysis, diagnoses, and recommendations in the field of cosmetic, plastic, and restorative surgery; Providing a website featuring information about health and wellness, namely, cosmetic surgery, facial rejuvenation, plastic and reconstructive surgery, and injection techniques. FIRST USE: 20120814. FIRST USE IN COMMERCE: 20120814
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	88757121
Filing Date	January 13, 2020
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Richard D. Castellano M.D., P.A. CORPORATION FLORIDA Suite 206 3314 Henderson Blvd. Tampa FLORIDA 33609
Attorney of Record	Jack Baldini, Esq.
Prior Registrations	3691914
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Detail by Entity Name

Trademark

IMAGELIFT & DESIGN OF THREE OVERLAPPING PETALS OF A FLOWER TO THE LEFT OF THE NAME "IMAGELIFT"

Filing Information

Document Number	T19000000622
Date Filed	05/13/2019
Expiration Date	05/13/2024
First Used in Florida	08/14/2012
First Used Anywhere	08/14/2012
Status	ACTIVE

Mark Used In Connection With
FACIAL AND COSMETIC PLASTIC SURGERY

Owners

Name & Address

RICHARD D. CASTELLANO M.D., P.A.
 3314 HENDERSON BLVD, STE. 206
 TAMPA, FL 33609

Type/Class

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Cross Reference

No Cross Reference

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