

ESTTA Tracking number: **ESTTA1071107**

Filing date: **07/28/2020**

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	Diamond Cosmetics, Inc.		
Entity	Corporation	Citizenship	Florida
Address	10551 N.W. 53RD STREET SUNRISE, FL 33351 UNITED STATES		

Attorney information	ROBERT M. SCHWARTZ ROBERT M. SCHWARTZ, P.A. 2445 HOLLYWOOD BLVD HOLLYWOOD, FL 33020 UNITED STATES Primary Email: litigation@patentmiami.com 954-924-0707		
Docket Number	DE217.049		

Applicant Information

Application No.	88393896	Publication date	06/30/2020
Opposition Filing Date	07/28/2020	Opposition Period Ends	07/30/2020
Applicant	UNIVERSAL IMPORTS ENTERPRISES CORP 4727 NW 72 AVENUE MIAMI, FL 33166 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: Nail art pens; Nail art stickers; Nail care kits comprising nail polish; Nail cosmetics; Nail decolorants; Nail enamels; Nail paint; Nail polish; Nail polish remover; Nail polishing powder; Nail repair products, namely, nail wraps; Nail strengtheners; Adhesives for affixing false nails; False nails made of LIQUID ACRYLICS AND POLYMERS

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.	2417510	Application Date	01/07/2000
Registration Date	01/02/2001	Foreign Priority Date	NONE

Word Mark	DIAMOND C-O-S-M-E-T-I-C-S
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1986/03/01 First Use In Commerce: 1986/03/01 cosmetic products and cosmetic accessories, namely, eyeliners, lip liners, lip gloss, lipsticks, mascara, nail polish, nail care preparations

U.S. Registration No.	4385375	Application Date	07/13/2012
Registration Date	08/13/2013	Foreign Priority Date	NONE
Word Mark	DIAMOND COSMETICS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 NAIL POLISH, COSMETIC PREPARATIONS FOR NAIL DRYING, NAIL STRENGTHENERS, NAIL CARE PREPARATIONS; FALSE EYELASHES Class 035. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 [ON-LINE RETAIL AND] ON-LINE WHOLESALE STORE SERVICES FEATURING NAIL POLISH, NAIL CARE PREPARATIONS AND NAIL CARE IMPLEMENTS		

U.S. Registration No.	5964846	Application Date	11/30/2018
Registration Date	01/21/2020	Foreign Priority Date	NONE
Word Mark	DIAMOND COSMETICS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/01/31 First Use In Commerce: 2000/01/31 Nail polish; cosmetic preparations for nail drying; nail strengtheners; nail care preparations; false eyelashes; cosmetic nail hardening preparations; false eyelashes; eyeliners; eye pencils; mascara; lip pencils; lipstick; lip gloss Class 008. First use: First Use: 2000/01/31 First Use In Commerce: 2000/01/31 Tweezers; cases specially adapted for holding nail files; nail clippers; wood sticks for manicure use; cuticle sticks for manicure use; cuticle scissors; eyelash curlers; nail files; emery boards; nail filing blocks for manicure use; nail buffers; pumice stones for personal use;kits comprised of nail files, nail buffer, wood stick for manicure use, cuticlestick and nail cleaning brush; kits comprised of nail file, nail buffer, cuticle stick, wood stick for manicure use andfoam toe separators for use in pedicures; kits comprised of nail file, nail clipper and cuticle nipper; kits comprised of tweezers, wood stick for manicure use, nail file and nail clip-pers Class 016. First use: First Use: 2000/01/31 First Use In Commerce: 2000/01/31 Eyebrow stencils Class 021. First use: First Use: 2000/01/31 First Use In Commerce: 2000/01/31 Foam toe separators for use in pedicures; nail cleaning brushes, eyeshadow brushes for cosmetic purposes; powder brushes for cosmetic purposes; combination eyebrow brush and comb for applying cosmetics; gel toe separators for		

	use in pedicures; eye shadow sponge applicators for cosmetic purposes; silicone mascara applicator wands for applying cosmetics
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Attachments	Notice of Opposition DIAMOND ROSE 072820.pdf(204064 bytes)
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Signature	/robert m schwartz/
Name	Robert M. Schwartz
Date	07/28/2020

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

In the Matter of Application Serial No. 88/393,896
Publication in the *Official Gazette* of June 30, 2020
For: DIAMOND ROSE

Diamond Cosmetics, Inc., : Opposition No. _____
Opposer, :
vs. :
Universal Imports Enterprises Corp :
Applicant. :
_____ :

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, Diamond Cosmetics, Inc., a Florida corporation, having its principal place of business at 10551 N.W. 53rd Street, Sunrise, Florida 33351 believes that it will be damaged by the registration of the mark DIAMOND ROSE shown in Application Serial No. 88/393,896 and hereby opposes same.

As grounds for its opposition, Opposer, by and through its counsel, alleges as follows:

1. Opposer is the owner of the following U.S. federal trademark registrations for the following marks, hereinafter collectively referred to as the DIAMOND COSMETICS Marks:

(a) DIAMOND C-O-S-M-E-T-I-C-S and Design, Reg. No. 2,417,510, for "cosmetic products and cosmetic accessories,

namely, eyeliners, lip liners, lip gloss, lipsticks, mascara, nail polish, nail care preparations”;

(b) DIAMOND COSMETICS, Reg. No. 4,385,375, for “nail polish, cosmetic preparations for nail drying, nail strengtheners, nail care preparations; false eyelashes; on-line wholesale store services featuring nail polish, nail care preparations and nail care implements”; and

(c) DIAMOND COSMETICS, Reg. No. 5,964,846, for “nail polish; cosmetic preparations for nail drying; nail strengtheners; nail care preparations; false eyelashes; cosmetic nail hardening preparations; false eyelashes; eyeliners; eye pencils; mascara; lip pencils; lipstick; lip gloss; “tweezers; cases specially adapted for holding nail files; nail clippers; wood sticks for manicure use; cuticle sticks for manicure use; cuticle scissors; eyelash curlers; nail files; emery boards; nail filing blocks for manicure use; nail buffers; pumice stones for personal use; kits comprised of nail files, nail buffer, wood stick for manicure use, cuticle stick and nail cleaning brush; kits comprised of nail file, nail buffer, cuticle stick, wood stick for manicure use and foam toe separators for use in pedicures; kits comprised of nail file, nail clipper and cuticle nipper; kits comprised of tweezers, wood stick for manicure use, nail file and nail clippers; eyebrow stencils; foam toe separators for use in pedicures; nail cleaning brushes, eyeshadow brushes for cosmetic purposes; powder brushes for cosmetic purposes; combination eyebrow brush and comb for applying cosmetics; gel toe separators for use in pedicures; eye shadow sponge applicators for cosmetic purposes; silicone mascara applicator wands for applying cosmetics.”

2. Applicant is the owner of U.S. Trademark Application Serial No. 88/393,896 (the '896 application) for the mark DIAMOND ROSE for “Nail art pens; Nail art stickers; Nail care kits comprising

nail polish; Nail cosmetics; Nail decolorants; Nail enamels; Nail paint; Nail polish; Nail polish remover; Nail polishing powder; Nail repair products, namely, nail wraps; Nail strengtheners; Adhesives for affixing false nails; False nails made of liquid acrylics and polymers." Said application was filed on April 19, 2019, based on Applicant's alleged intent to use said mark.

3. Upon information and belief, Applicant has made no use of the mark DIAMOND ROSE as a trademark in the United States.

4. Since long prior to the filing date of Applicant's '896 application, Opposer's DIAMOND COSMETICS Marks have been and continue to be extensively used, advertised and promoted in interstate commerce throughout the United States to identify Opposer's goods and services. The DIAMOND COSMETICS Marks symbolize considerable good will and recognition built up by Opposer through substantial amounts of time and effort, and have become well-known to customers and potential customers as the trademarks of Opposer, and as an origin and source of the goods sold and services provided by Opposer.

5. Applicant's mark DIAMOND ROSE is highly similar in appearance, sound, meaning and commercial impression to Opposer's DIAMOND COSMETICS Marks. The goods in connection with which Applicant seeks to register its DIAMOND ROSE mark are identical and/or closely related to the goods and services in connection with which Opposer uses its DIAMOND COSMETICS Marks.

6. In view of the similarity of the parties' respective marks and the related nature of the goods and services of the respective parties, Applicant's mark so resembles Opposer's marks that, when used in connection with Applicant's goods, it is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark (Lanham) Act of 1946, 15 U.S.C. § 1052(d); and, more particularly,

Applicant's mark and use thereof is likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that Applicant's goods originate with or otherwise are authorized, licensed or sponsored by Opposer.

7. Registration of Applicant's mark will result in irreparable injury to Opposer and to its rights in its DIAMOND COSMETICS Marks.

WHEREFORE, for the foregoing reasons, Opposer, Diamond Cosmetics, Inc., by and through its counsel, respectfully requests that this opposition be sustained and that the registration sought by Applicant in U. S. Trademark Application Serial No. 88/393,896 be denied.

Dated: July 28, 2020

Respectfully submitted,

ROBERT M. SCHWARTZ, P.A.

s/robert m. schwartz/
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