

ESTTA Tracking number: **ESTTA1083243**

Filing date: **09/21/2020**

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	Hyper Ice, Inc.
Granted to Date of previous extension	09/26/2020
Address	525 TECHNOLOGY DRIVE SUITE 100 IRVINE, CA 92618 UNITED STATES
Attorney information	JILL ANDERFUREN LEWIS BRISBOIS BISGAARD & SMITH LLP 550 WEST ADAMS STREET SUITE 300 CHICAGO, IL 60661 UNITED STATES Primary Email: USDocket@lewisbrisbois.com Secondary Email(s): jonathan.pink@lewisbrisbois.com 3123451718
Docket Number	36366-2150OP

**Applicant Information**

Application No.	88622780	Publication date	07/28/2020
Opposition Filing Date	09/21/2020	Opposition Period Ends	09/26/2020
Applicant	Shenzhen Madman Technology Company Limited 108B, ZHONG'AN PAVILION ZHONGGUAN GARDEN, LIUXIAN AVE., XILI ST. NANSHAN, SHENZHEN, 518000 CHINA		

**Goods/Services Affected by Opposition**

Class 010. First Use: 2019/05/18 First Use In Commerce: 2019/05/18 Opposed goods and services in the class: Acupuncture instruments; Electric massage apparatus for household use; Electric massage appliances, namely, electric vibrating massager; Gloves for massage; Immunochemical testing apparatus for medical use; Orthopedic belts; Sphygmomanometers; Steam sterilizers for medical use; Ultraviolet lamps for medical purposes
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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.	4007601	Application Date	10/06/2010
Registration Date	08/02/2011	Foreign Priority Date	NONE
Word Mark	HYPERICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2010/11/20 First Use In Commerce: 2010/11/20 medical ice pack wraps		

U.S. Registration No.	4981957	Application Date	09/02/2015
Registration Date	06/21/2016	Foreign Priority Date	NONE
Word Mark	HYPERICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2010/11/20 First Use In Commerce: 2010/11/20 Therapeutic cold compression wraps, Therapeutic cold therapy packs, Massage apparatus; Foam rollers for use in therapeutic fitness activities, sports medicine, and medical and physical therapy; Fitness rollers designed for use in sports medicine, and medical and physical therapy		

U.S. Registration No.	5100485	Application Date	07/05/2016
Registration Date	12/13/2016	Foreign Priority Date	NONE
Word Mark	HYPERSPHERE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2015/10/20 First Use In Commerce: 2015/12/01 Massage apparatus; Electric massage appliances, namely, electric vibrating massager		

U.S. Registration No.	5498668	Application Date	11/21/2016
Registration Date	06/19/2018	Foreign Priority Date	NONE
Word Mark	HYPERVOLT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2018/01/31 First Use In Commerce: 2018/02/24 Massage apparatus		

U.S. Registration No.	5489979	Application Date	06/30/2017
Registration Date	06/12/2018	Foreign Priority Date	NONE
Word Mark	HYPERICE		
Design Mark			
Description of Mark	The mark consists of the word "HYPERICE" in a stylized font with an extended letter "R".		
Goods/Services	<p>Class 003. First use: First Use: 2016/08/25 First Use In Commerce: 2016/11/14 Body cream; Skin lotion</p> <p>Class 010. First use: First Use: 2010/11/20 First Use In Commerce: 2011/06/01 Cold therapy wraps; Electric massage appliances, namely, electric vibrating massager; Electronic stimulation apparatus for percussion therapy to muscles for physical therapy purposes; Foam rollers for use in physical therapy; Massage apparatus; Therapeutic compression wraps; Therapeutic hot and cold compression wraps; Vibrating apparatus used to stimulate muscles and increase strength and physical performance for health and medical purposes</p> <p>Class 028. First use: First Use: 2014/11/25 First Use In Commerce: 2014/11/25 Foam exercise rollers; Vibrating apparatus used in fitness and exercise programs to stimulate muscles and increase strength and physical performance; Physical fitness equipment, namely, an exercise and training roller</p>		

U.S. Registration No.	5490090	Application Date	07/25/2017
Registration Date	06/12/2018	Foreign Priority Date	NONE
Word Mark	HYPERICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 001. First use: First Use: 2013/10/31 First Use In Commerce: 2013/10/31 Synthetic ice, namely, chemical preparations for use as an ice substitute</p> <p>Class 003. First use: First Use: 2016/08/25 First Use In Commerce: 2016/11/14 Body cream; Skin lotion</p> <p>Class 010. First use: First Use: 2010/11/20 First Use In Commerce: 2011/06/01 Cold therapy wraps; Electric massage appliances, namely, electric vibrating massager; Electronic stimulation apparatus for percussion therapy to muscles for physical therapy purposes; Foam rollers for use in physical therapy; Massage apparatus; Therapeutic compression wraps; Therapeutic hot and cold compression wraps and replacement parts; Vibrating apparatus used to stimulate muscles and increase strength and physical performance for health and medical purposes</p> <p>Class 025. First use: First Use: 2012/10/31 First Use In Commerce: 2012/10/31 Clothing, namely, tops and shirts</p> <p>Class 028. First use: First Use: 2014/11/25 First Use In Commerce: 2014/11/25 Foam exercise rollers; Vibrating apparatus used in fitness and exercise programs to stimulate muscles and increase strength and physical performance; Physical fitness equipment, namely, an exercise and training roller</p>		

Attachments	HYPEBEAUTY - US - Notice of Opposition.pdf(10051 bytes )
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	Hypebeauty Opp - Notice of Opposition - Exhibit A.pdf(12374 bytes )
Signature	/ja/
Name	JILL ANDERFUREN
Date	09/21/2020

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

**Serial No.:** 88/622,780  
**Filed:** September 19, 2019  
**Published:** July 28, 2020  
**Applicant:** Shenzhen Madman Technology Company Limited  
**Mark:** HYPEBEAUTY  
**International Class:** 10

Hyper Ice, Inc.	)	
	)	
	)	Opposition No.
Opposer,	)	
	)	
Shenzhen Madman Technology Company Limited,	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

1. Opposer, Hyper Ice, Inc. (“HYPER”), is a California corporation having its principal place of business at 525 Technology Drive, Suite 100, Irvine CA 92618.
2. Upon information and belief, Applicant, Shenzhen Madman Technology Company Limited (“SHENZHEN”), is a Chinese limited company having an address of 108b, Zhong'an Pavilion, Zhongguan Garden, Liuxian Ave., Xili St., Nanshan, Shenzhen, China 518000.
3. SHENZHEN is the owner of USSN 88/622,780, filed September 19, 2019, for HYPEBEAUTY, alleging a first use and first use in commerce date of May 18, 2019 (“SHENZHEN’s application”).

4. HYPER is the owner of multiple U.S. registrations in Class 10, which begin with “HYPE”, see: “Exhibit A” (“HYPER marks”).
5. Since at least as early as November 2010, HYPER has used the mark HYPERICE in commerce in connection with Class 10 goods, and applied for numerous other marks, beginning with ‘HYPE’, as included on Exhibit A, all prior to both the filing and alleged first date of use of SHENZHEN’s application.
6. Because of the widespread and extensive use of the HYPER marks, they have become well-known among the public as a means by which the HYPER products are known and by which source and origin are identified.
7. As a result of extensive use and promotion of goods under the HYPER marks, consumers and the public have come to know, rely upon, and recognize the HYPER marks as strong indicators of the source of the goods provided in connection with the marks. As a result, the HYPER marks represent significant goodwill.
8. Due to the continuous and extensive use of the HYPER marks in connection with its massage apparatus and related goods, the HYPER marks have become nationally known in the massage and rehabilitation fields, and achieved great success. HYPER has expended significant effort and sums of money in advertising and promoting its marks in connection with its goods, and in creating and maintaining the goodwill symbolized by the marks.
9. The mark SHENZHEN seeks to register, namely, HYPEBEAUTY, begins with the identical term, namely HYPE, and so resembles HYPER’s marks as to be likely, when applied to SHENZHEN’s similar goods, namely, “Acupuncture instruments; Electric massage apparatus for household use; Electric massage appliances, namely, electric

vibrating massager; Gloves for massage; Immunochemical testing apparatus for medical use; Orthopedic belts; Sphygmomanometers; Steam sterilizers for medical use; Ultraviolet lamps for medical purposes”, (the “Opposed Goods”) so as to cause confusion or mistake or to deceive persons by creating the erroneous impression that SHENZHEN’s goods originate with or come from the same source as HYPER’s goods, or that SHENZHEN or its goods are authorized by HYPER, are endorsed by HYPER, are sponsored by HYPER, or are connected in some way with HYPER or its goods in violation of Section 2(d) of the Lanham Act.

10. SHENZHEN was aware of HYPER’s rights in and to the HYPER marks prior to its filing of its HYPEBEAUTY application.
11. HYPER has priority based on its filing and use dates for the HYPER marks, prior to the application and alleged use dates of SHENZHEN’s application.
12. On information and belief, the mark of SHENZHEN’s application was not in use with the opposed goods as of the alleged date of use in commerce, or of the date of filing of the specimen of use that was accepted, and is not currently in use with those goods.
13. HYPER will be damaged if application Serial No. 88/622,780 should be granted for the Opposed Goods, because SHENZHEN will obtain statutory rights in the designation HYPEBEAUTY in violation and derogation of the established prior rights and goodwill in the HYPER marks of HYPER.

WHEREFORE, HYPER prays that its opposition be sustained, that application Serial No. 88/622,780 be rejected, and that registration of HYPEBEAUTY as a trademark of SHENZHEN be refused and denied.

Respectfully submitted,

Hyper Ice, Inc.

Dated: September 21, 2020

By       /s/ Jill Anderfuren      

Jonathan Pink

Jill Anderfuren

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## Hyper Ice's Registered Marks

Mark	Serial No.	Registration No.	Filing Date	Registration Date	Goods	First Use	First Use in Commerce
HYPERICE	85146782	4007601	10/06/2010	08/02/2011	Class 10: medical ice pack wraps	11/20/2010	11/20/2010
HYPERICE	86745857	4981957	09/02/2015	06/21/2016	Class 10: Therapeutic cold compression wraps, Therapeutic cold therapy packs, Massage apparatus; Foam rollers for use in therapeutic fitness activities, sports medicine, and medical and physical therapy; Fitness rollers designed for use in sports medicine, and medical and physical therapy	11/20/2010	11/20/2010
HYPERSPHERE	87093177	5100485	07/05/2016	12/13/2016	Class 10: Massage apparatus; Electric massage appliances, namely, electric vibrating massager	10/20/2015	12/01/2015
HYPERVOLT	87243201	5498668	11/21/2016	06/19/2018	Class 10: Massage apparatus	01/31/2018	02/24/2018
<b>HYPERICE</b>	87512959	5489979	06/30/2017	06/12/2018	Class 3: Body cream; Skin lotion  Class 10: Cold therapy wraps; Electric massage appliances, namely, electric vibrating massager; Electronic stimulation apparatus for percussion therapy to muscles for physical therapy purposes; Foam	Class 3: 08/25/2016  Class 10: 11/20/10  Class 28: 11/25/2014	Class 3: 11/14/2016  Class 10: 06/01/2011  Class 28: 11/25/2014

					<p>rollers for use in physical therapy; Massage apparatus; Therapeutic compression wraps; Therapeutic hot and cold compression wraps; Vibrating apparatus used to stimulate muscles and increase strength and physical performance for health and medical purposes</p> <p>Class 28: Foam exercise rollers; Vibrating apparatus used in fitness and exercise programs to stimulate muscles and increase strength and physical performance; Physical fitness equipment, namely, an exercise and training roller</p>		
HYPERICE	87541587	5490090	07/25/2017	06/12/2018	<p>Class 1: Synthetic ice, namely, chemical preparations for use as an ice substitute</p> <p>Class 3: Body cream; Skin lotion</p> <p>Class 10: Cold therapy wraps; Electric massage appliances, namely, electric vibrating massager; Electronic stimulation apparatus for</p>	<p>Class 1: 10/31/2013</p> <p>Class 3: 08/25/2016</p> <p>Class 10: 11/20/2010</p> <p>Class 25: 10/31/2012</p> <p>Class 28: 11/25/2014</p>	<p>Class 1: 10/31/2013</p> <p>Class 3: 11/14/2016</p> <p>Class 10: 06/01/2011</p> <p>Class 25: 10/31/2012</p> <p>Class 28: 11/25/2014</p>

					<p>percussion therapy to muscles for physical therapy purposes; Foam rollers for use in physical therapy; Massage apparatus; Therapeutic compression wraps; Therapeutic hot and cold compression wraps and replacement parts; Vibrating apparatus used to stimulate muscles and increase strength and physical performance for health and medical purposes</p> <p>Class 25: Clothing, namely, tops and shirts</p> <p>Class 28: Foam exercise rollers; Vibrating apparatus used in fitness and exercise programs to stimulate muscles and increase strength and physical performance; Physical fitness equipment, namely, an exercise and training roller</p>		
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