

ESTTA Tracking number: **ESTTA1099233**

Filing date: **12/02/2020**

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	L Squared Consulting, Inc.
Granted to Date of previous extension	12/02/2020
Address	608 35TH STREET MANHATTAN BEACH, CA 90266 UNITED STATES
Attorney information	NATHAN E. LAWRENCE, ESQ. GALLIAN WELKER & BECKSTROM, L.C. 540 EAST ST. LOUIS AVENUE LAS VEGAS, NV 89104 UNITED STATES Primary Email: nlawrence@vegascase.com Secondary Email(s): susan@manhattanbeachgroup.com 702-892-3500
Docket Number	C-4327

**Applicant Information**

Application No.	88861332	Publication date	08/04/2020
Opposition Filing Date	12/02/2020	Opposition Period Ends	12/02/2020
Applicant	Osmosis, LLC 30746 BRYANT DRIVE, #410 EVERGREEN, CO 80439 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: Consultations by estheticians

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b), 44(e) or 66(a)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application No.	88894563	Application Date	04/30/2020
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TELEESTHETICS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2020/03/01 First Use In Commerce: 2020/03/01 Skincare and make up consultations online through video conferencing		

Attachments	201202 L Squared - Opposition to TELESTHETICIAN 88861332.pdf(345258 bytes )
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Signature	/Nathan E. Lawrence/
Name	NATHAN E. LAWRENCE, ESQ.
Date	12/02/2020

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

L SQUARED CONSULTING, INC., a California  
corporation,

Opposer,

v.

OSMOSIS, LLC, a Colorado limited liability  
company,

Applicant.

Mark: TELESTHETICIAN

Serial No.: 88861332

Published: August 4, 2020

Class: 44

**NOTICE OF OPPOSITION**

Opposition No.: \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer L Squared Consulting, Inc. (“L Squared”), a California corporation with an address at 608 35<sup>th</sup> Street, Manhattan Beach, California 90266, believes it will be damaged by registration of the standard character mark TELESTHETICIAN (the “Opposed Mark”), currently pending under U.S. Serial No. 88861332, as filed on April 6, 2020, in International Class 44 for “Consultations by estheticians,” by applicant Osmosis, LLC, a Colorado limited liability company having an address at 30746 Bryant Drive, # 410, Evergreen, Colorado 80439 (“Osmosis”). Accordingly, L Squared hereby opposes registration of the Opposed Mark on the following grounds:

1. L Squared owns the TELEESTHETICS mark, currently pending registration under U.S. Serial No. 88894563 in Class 44 (filed on April 30, 2020), pursuant to its actual use of such mark throughout the United States in direct-to-consumer sales via its website ([www.mbbeautyhub.com](http://www.mbbeautyhub.com) and, more specifically, [www.mbbeautyhub.com/teleesthetics/](http://www.mbbeautyhub.com/teleesthetics/)).

2. L Squared first used the TELEESTHETICS mark in commerce in relation to its online skincare and makeup consultation services (and as more specifically enumerated below) as early as March 2020 and has continuously used the TELEESTHETICS mark for all enumerated services since that time.

3. The list of services associated with the pending application for the TELEESTHETICS mark includes the following: Skincare and make up consultations online through video conferencing; Consultation services in the field of make-up, namely, online makeup consultation services and in-person makeup consultation and application services online through video conferencing; Beauty consultation services in the selection and use of cosmetics, fragrances, beauty aids, personal care products, and bath, body and beauty products online through video conferencing; Online cosmetic skincare consultation services online through video conferencing; On-line make-up consultation services through video conferencing.

4. In addition to the [www.mbbeautyhub.com](http://www.mbbeautyhub.com) subpage referenced above, L Squared also acquired ownership of the following URL / websites on April 6, 2020: [www.teleesthetics.com](http://www.teleesthetics.com); [www.teleesthetician.com](http://www.teleesthetician.com); and [www.teleestheticians.com](http://www.teleestheticians.com).

5. From its initial adoption of the TELEESTHETICS mark to present, L Squared has generated sales and acquired customers of its services under the TELEESTHETICS mark, providing such services in connection with its mark in numerous locations throughout the United States.

6. L Squared has spent and continues to invest significant financial resources and time in advertising and promoting the TELEESTHETICS mark via various methods and forums, including the Internet, social media, direct e-mails, and direct mail.

7. As a result of its continuous use of the TELEESTHETICS mark in commerce, TELEESTHETICS has become exclusively associated with L Squared's services, which are reasonably understood by consumers to originate from L Squared (and its operational *nom de commerce*, MB Beauty Hub).

8. Osmosis first became aware of L Squared's use of its TELEESTHETICS mark in late March 2020, approximately two weeks prior to its presentment to the United States Patent and Trademark Office ("USPTO") of the application for the Opposed Mark, following contact generated by L Squared with respect to the possibility of selling certain of Osmosis' goods.

9. In the time period between the above-referenced initial contact, Osmosis' owner / signatory and other principals engaged in ongoing communication and interaction with L Squared regarding the proposed business opportunity, including L Squared sales team training, further to which communication, Osmosis was fully and actually aware of L Squared's use of the TELEESTHETICS mark.

10. On April 6, 2020, Osmosis filed its intent-to-use application for the Opposed Mark, which is nearly identical in sight, sound, connotation, and overall commercial impression to the TELEESTHETICS mark.

11. In late April 2020 or early May 2020, L Squared engaged in further communication with Osmosis' owner / signatory who acknowledged L Squared's ongoing and prior use in commerce, further stating that Osmosis was still exploring "what [it] wanted to do with this" as an area they "had an interest in developing" even though it didn't "have any sort of timeline on that effort."

12. Osmosis seeks registration for the Opposed Mark in Class 44 for services which are highly similar to and overlap with the services offered by L Squared under the

TELEESTHETICS mark, namely online consultations by estheticians, related to, *inter alia*, skincare and makeup.

13. Due to the similarities in sight, sound, connotation, and overall commercial impression between TELEESTHETICS and the Opposed Mark, as well as the overlapping, identical, and/or highly related services in the same Class, the Opposed Mark is likely to create consumer confusion.

14. In full contemplation of the circumstances above, it is evident that Osmosis acted in bad faith in prosecuting its application for the Opposed Mark.

#### **THE OPPOSED MARK IS LIKELY TO CAUSE CONSUMER CONFUSION**

15. L Squared hereby readopts and realleges the allegations contained in the preceding Paragraphs 1 – 14 as though fully set forth herein.

16. On April 6, 2020, Osmosis filed its Section 1(b), intent-to-use trademark application for the Opposed Mark in Class 44 for “Consultation by estheticians,” which mark, upon information and belief, has yet to be used, generally or in commerce, with no amendment to allege use having been filed to date.

17. The application for the Opposed Mark was assigned U.S. Serial No. 8886133 and published for opposition on August 4, 2020.

18. Pursuant to a 90 Day Request for Extension of Time to Oppose for Good Cause, as filed by L Squared on September 1, 2020, the time for L Squared to oppose the application for the Opposed Mark was extended until December 2, 2020.

19. Osmosis filed the application for the Opposed Mark only after becoming aware of L Squared's ongoing and continuing use of its TELEESTHETICS mark in connection with substantially comparable and/or identical services in interstate commerce.

20. L Squared is neither affiliated nor connected with Osmosis or its proposed services, has not endorsed or sponsored Osmosis or its services, and has not, impliedly or expressly, authorized Osmosis to use the TELEESTHETICS mark or any confusingly similar derivative thereof.

21. The Opposed Mark is highly similar and/or nearly identical to the TELEESTHETICS mark, varying only by a few letters, which does little to diminish similarities in the respective sight, sound, or connotation of the marks.

22. The Opposed Mark conveys the same commercial impression as and is confusingly similar to the TELEESTHETICS mark.

23. The proposed services identified in the application for the Opposed Mark are highly related to the services associated with L Squared's TELEESTHETICS mark, as evidenced by its current use and as enumerated in L Squared's trademark application, as initially filed and subsequently amended.

24. The proposed services identified in the application for the Opposed Mark are reasonably understood to be marketed and sold in the same channels of trade and to be purchased by the same class of consumers as are the services offered by L Squared under the TELEESTHETICS mark, namely, online esthetic consultation.

25. As explicated above, Osmosis' application arises solely from its certain and actual knowledge of the prior and continuing use by L Squared of the TELEESTHETICS mark, which

constitutes an exercise of bad faith, which, in and of itself, is strong evidence that confusion is likely, as such an inference is drawn from the imitating Osmosis' expectation of confusion.

26. L Squared is informed and believes, and thereupon alleges, that Osmosis is deliberately seeking to profit from the goodwill and prior and ongoing use of the TELEESTHETICS mark.

27. Because (1) L Squared is the evident senior user of the TELEESTHETICS mark; (2) the Opposed Mark is highly similar to L Squared's TELEESTHETICS mark; (3) Osmosis seeks registration for the Opposed Mark for services that are highly related to L Squared's services; (4) the channels of trade and the customer base for L Squared's and Osmosis' services are the same, highly similar, and/or overlap; and (5) it is apparent that Osmosis' application is presented to the USPTO in bad faith, the Opposed Mark is highly likely to cause confusion, to cause mistake, or to deceive consumers.

28. As a result of such confusion, mistake, or deceit, consumers encountering the Opposed Mark are likely to mistakenly believe that Osmosis' services originate from L Squared, which they do not.

29. Even if consumers distinguish the L Squared services from Osmosis' services or somehow identify the Opposed Mark as originating from Osmosis, they are likely to mistakenly believe Osmosis is an affiliate of, connected to, sponsored or endorsed by, or otherwise associated with L Squared, which it is not.

30. The maturation of Osmosis' application into a registration would cause a likelihood of consumer confusion through a false association, connection, or affiliation with L Squared and its services offered under the TELEESTHETICS mark or as to the origin, sponsorship, or approval by L Squared of Osmosis' services or commercial activities.



31. As a result of the foregoing, L Squared would be damaged by the registration of the Opposed Mark, and, accordingly, this Opposition should be sustained.

**APPLICANT LACKS A BONA FIDE INTENT TO USE THE OPPOSED MARK**

32. L Squared hereby readopts and realleges the allegations contained in the preceding Paragraphs 1 – 31 as though fully set forth herein.

33. Osmosis' Section 1(b) application is not sufficient, on its face and as a matter of law, to establish a bona fide intent to utilize the Opposed Mark in the near future.

34. Upon information and belief, Osmosis has not undertaken further material action, with any sufficient extent or focus, to initiate use of the Opposed Mark in commerce.

35. Further to the communication between L Squared and Osmosis in late April 2020 or early May 2020, upon information and belief, Osmosis was, at the time its application for the Opposed Mark was filed and even for at least some time thereafter, only exploring "what [it] wanted to do with this" as an area they "had an interest in developing" even though it didn't "have any sort of timeline on that effort."

36. Upon information and belief, Osmosis sought registration of the confusingly similar Opposed Mark solely to preclude L Squared's registration of its own TELEESTHETICS mark and to take economic advantage thereof.

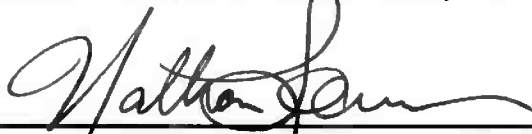
37. In light of the above, Osmosis fails to satisfy the statutory requirements of 15 U.S.C. § 1051(b)(1) *et seq.*, rendering the application for the Opposed Mark void *ab initio.*, and, upon that basis, this Opposition should be sustained.

**PRAYER FOR RELIEF**

WHEREFORE, Opposer prays that the Board sustain this Opposition in favor of L Squared that Osmosis' application be rejected and that the Opposed Mark (Serial No. 88861332) not be allowed to register.

Respectfully submitted this 2<sup>nd</sup> day of December 2020.

**GALLIAN WELKER & BECKSTROM, L.C.**



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Las Vegas, Nevada 89104

Telephone: 702-892-3500

*Attorney for Opposer L Squared Consulting, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 2<sup>nd</sup> day of December 2020, I served a true and correct copy of the foregoing **NOTICE OF OPPOSITION** by electronic mail and by depositing a copy of same with the United States Postal Service, first class certified postage prepaid, in Las Vegas, Nevada, to the following:

TRENNER LAW FIRM, LLC  
Mr. Mark D. Trenner, Esq.  
14143 Denver West Pkwy., Suite 100-94  
Golden, Colorado 80401  
mark@us-patentattorney.com  
records@us-patentattorney.com  
lisa@us-patentattorney.com

DATED this 2<sup>nd</sup> day of December 2020.

**GALLIAN WELKER & BECKSTROM, L.C.**



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