

ESTTA Tracking number: **ESTTA1146818**

Filing date: **07/14/2021**

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	Cult Beauty Limited
Granted to Date of previous extension	07/14/2021
Address	GROUND FLOOR, 46 COLEBROOKE ROW LONDON, N1 8AF UNITED KINGDOM
Attorney information	GLENN A. GUNDERSEN DECHERT LLP CIRA CENTRE 2929 ARCH STREET PHILADELPHIA, PA 19104-2808 UNITED STATES Primary Email: trademarks@dechert.com Secondary Email(s): jennifer.insley-pruitt@dechert.com, glenn.gundersen@dechert.com No phone number provided.
Docket Number	

Applicant Information

Application No.	90077733	Publication date	03/16/2021
Opposition Filing Date	07/14/2021	Opposition Period Ends	07/14/2021
Applicant	CULT 51 LTD MULBERRY HOUSE 9 STOATLEY RISE HASLEMERE, SURREY, GU271AF UNITED KINGDOM		

Goods/Services Affected by Opposition

<p>Class 003. First Use: 2015/12/31 First Use In Commerce: 2015/12/31 All goods and services in the class are opposed, namely: Cosmetics; non-medicated skin care preparations, namely, lotions, creams, and gels; non-medicated skin care preparations, namely, protective lotions, and cream; non-medicated skin care preparations, namely, cleansing and moisturising creams, oils, and lotions; non-medicated soaps; bath gel; non-medicated toilet preparations; essential oils; non-medicated skin care preparations, namely, lotions, creams and preparations for care of the face, body, scalp, nails and hair; non-medicated bath preparations; non-medicated skin care preparations, namely, cleansers and toners; perfumes; antiperspirants and deodorants; makeup; facial concealers for spots and blemishes; hair conditioner; shampoo; cleaning preparations, polishing preparations, abrasive preparations; non-medicated exfoliating preparations for the face and body; nail var-</p>
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Grounds for Opposition

Priority and likelihood of confusion

Trademark Act Section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4378248	Application Date	11/24/2011
Registration Date	08/06/2013	Foreign Priority Date	09/30/2011
Word Mark	CULT BEAUTY		
Design Mark	CULT BEAUTY		
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 [Perfume; eau de parfum, eau de toilette; cosmetics; skin care products, namely, skin conditioners, skin lotions, skincream and skin moisturizers; essential oils for personal use; beauty masks; cold cream, hand cream, night cream; body powder; soaps, namely, skin soaps and liquid hand soaps; body scrubs; shower and bath washes, oils, gels and lotions; shampoos, hair conditioners; hair care products, namely, hair spray and hair styling gels; hair dyes and colorants; hair fragrances; cosmetics; toilet waters; non-medicated toilet preparations; hair lotions; cosmetic preparations for the hair; depilatory preparations; non-medicated cleaning preparations for personal hygiene purposes; anti-perspirants; dentifrices; pot-pourris; non-medicated preparations for the bath]</p> <p>Class 004. First use: First Use: 0 First Use In Commerce: 0 [Candles, wicks for candles and lamp oils]</p> <p>Class 008. First use: First Use: 0 First Use In Commerce: 0 [Cutlery, namely, knives, forks and spoons; boxes specially adapted for the storage of cutlery; manicure and pedicure sets sold complete; nail files; nail clipper; electric fingernail polishers; hair clippers; non-electric razors; penknives; electric shavers; scissors]</p> <p>Class 009. First use: First Use: 0 First Use In Commerce: 0 [Spectacles; eye glasses; sunglasses; binoculars; field glasses; cases, cords and chains for the aforesaid goods; spectacles, sunglasses and monocle frames and monocle lenses; magnifying glasses; parts and fittings for all the aforesaid goods]</p> <p>Class 014. First use: First Use: 0 First Use In Commerce: 0 [Jewellery and imitation jewellery; clocks and watches and parts thereof]</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0 [Articles of leather or of imitation leather, namely, luggage; trunks;] travelling bags; [briefcases; attaché cases; portfolio bags for carrying suits;] hand bags; [purses, pocket wallets; leather shoulder belts; credit card holders; bank note cases; leather pouches; umbrellas; parasols;] wash bags for carrying toiletries [; tie cases; satchels; all purpose sport bags, all-purpose athletic bags, backpacks, bags and holdalls for sports clothing, daypacks, duffel bags, gym bags, rucksacks, sports packs, waistpacks]</p> <p>Class 021. First use: First Use: 0 First Use In Commerce: 0 [Tea services, coffee services; dinnerservices comprised of dishes, cups and saucers; cocktail shakers; chinaware, namely, dishes, cups and saucers; bever-</p>		

ageglassware; porcelain and earthenware not included in other classes, namely, dishes, cups and saucers; hair brushes, hair combs; clothes brushes; cork screws; bottle openers; hip flasks; figures and ornaments of crystal; candle holders; scent bottles, sold empty, and vases not of precious metal or coated therewith; toothpicks; picnic baskets sold empty; figurines of china and crystal; cleaning sponges not for surgical use; powder puffs]

Class 025. First use: First Use: 0 First Use In Commerce: 0

[Clothing, namely, jackets, shirts, pants, sweaters, shorts, scarves, shawls; footwear, boots, shoes, slippers, sandals; headgear, namely, caps and hats; headbands; belts; ties]

Class 028. First use: First Use: 0 First Use In Commerce: 0

[Toys and playthings, namely, board games other than ordinary playing cards; golf bags; Christmas crackers and decorations (other than candles or lamps) for Christmas trees; ankle and wrist weights for exercise; athletic equipment, namely, training devices to be worn on the body for support; bags specially adapted for sports equipment; balls for sports, barbells, exercise balls; exercise bars; exercise equipment, namely, exercise weights, leg weights; portable ski carriers; shin guards for athletic use; shoulder pads for athletic use; stretch bands used for yoga and physical fitness purposes; exercise treadmills; trolley bags specially adapted for sports equipment; weight lifting belts, weight lifting gloves; work-out gloves; wrist guards for athletic use]

Class 035. First use: First Use: 0 First Use In Commerce: 0

Retail store services featuring toiletries and cosmetics, candles [and incense], hand tools and implements, [cutleries and razors, goods of precious metals and their alloys, photo frames, napkin rings and cutlery, jewellery and precious stones, horological and chronometric instruments, writing paper, photographs, stationery,] goods [of leather] and imitation leather, [trunks and travelling bags, umbrellas, furniture, mirrors and picture frames, household and kitchen utensils and containers,] combs and sponges, brushes [, goods of unworked or semi-worked glass, glassware, porcelain and earthenware, crockery, textiles and textile goods, bed and table ware, cushions, curtains and rugs, clothing, footwear, headgear, carpets, rugs, mats and matting, wall hangings, games and playthings, decorations for Christmas trees, soft toys, articles made of precious metals or coated or plated therewith, jewellery and imitation jewellery, horological and chronometric instruments, parts and fittings for all the aforesaid, precious stones, statues, cufflinks, tie pins, cigar and cigarette boxes; the bringing together for the benefit of others of a variety of toys, games other than ordinary playing cards, playthings, golf bags, Christmas crackers and decorations other than candles or lamps for Christmas trees, ankle and wrist weights for exercise, athletic equipment, namely, training devices to be worn on the body for support, bags specially adapted for sports equipment, balls for sports, barbells, exercise balls, exercise bars, exercise equipment, exercise weights, leg weights, personal exercise mats, portable ski carriers, running gloves, shin guards for athletic use, shoulder pads for athletic use, stretch bands used for yoga and physical fitness purposes, treadmills, trolley bags specially adapted for sports equipment, weight lifting belts, weight lifting gloves, work-out gloves, wrist guards for athletic use, yoga mats, enabling customers to conveniently view and purchase those goods in a department store; consultancy services relating to the acquisition of goods and services in the field of retail store services; the bringing together for the benefit of others of a variety of clothing, scarves, shawls, footwear, boots, shoes, slippers, sandals, headgear, headbands, armbands, belts, ties, clothing, footwear and headgear, enabling customers to conveniently view and purchase those goods from a general merchandise Internet website]

Class 044. First use: First Use: 0 First Use In Commerce: 0

[Beauty salons; hairdressing, namely, hair styling; massage; manicuring; salons; providing Turkish bath facilities; sauna services]

Class 045. First use: First Use: 0 First Use In Commerce: 0

	[Personal and social services rendered by others to meet the needs of individuals, namely, social introduction agencies]
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U.S. Registration No.	4709986	Application Date	02/13/2014
Registration Date	03/31/2015	Foreign Priority Date	NONE
Word Mark	CULT BEAUTY		
Design Mark	CULT BEAUTY		
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0</p> <p>Perfume; eau de parfum, eau de toilette; cosmetics; skin care preparations, namely, skin conditioners, skin lotions, skin cream and skin moisturisers; essential oils for personal use; beauty masks; cold cream, hand cream, night cream; body powder; soaps, namely, skin soaps, liquid hand soaps, and perfumed soaps; body scrubs; shower and bath washes, oils, gels and lotions; shampoos, conditioners, hair care preparations, hair spray, hairstyling preparations, hair dyes and colorants, hair fragrances, hair lotions; cosmetics; non-medicated skin care preparations; perfumes; toilet waters; non-medicated toilet preparations, namely, toilet waters; essential oils; depilatory preparations; non-medicated cleaning preparations for personal hygiene purposes; anti-perspirants; dentifrices; potpourri; non-medicated preparations for the bath</p>		

U.S. Registration No.	6160665	Application Date	08/06/2019
Registration Date	09/29/2020	Foreign Priority Date	NONE
Word Mark	CULT BEAUTY		
Design Mark	CULT BEAUTY		
Description of Mark	NONE		
Goods/Services	<p>Class 004. First use: First Use: 0 First Use In Commerce: 0</p> <p>Candles and lamp oils</p> <p>Class 008. First use: First Use: 0 First Use In Commerce: 0</p> <p>Manicure sets and pedicure sets; nail files, nail clippers, non-electric fingernail polishers; hair clippers, non-electric razors; penknives; hand tools, namely, razors; non-electric shavers; scissors</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0</p> <p>Luggage; travelling bags; portfolio bags for carrying suits; handbags; purses, pocket wallets; leather shoulder belts; credit card holders; notecase wallets; leather pouches; umbrellas; parasols; wash bags sold empty for carrying toiletries; tie cases; satchels; all-purpose sport bags, all-purpose athletic bags, backpacks, bags and holdalls for sports clothing, daypacks, duffel bags, gym bags, rucksacks, sports packs, waist packs</p> <p>Class 021. First use: First Use: 0 First Use In Commerce: 0</p> <p>Hair brushes, combs; clothes brushes; candle holders; perfume bottles sold empty and vases, none of precious metal or coated therewith; toothpicks, cleaning sponges, none for surgical use; powder puffs</p>		

	Class 035. First use: First Use: 0 First Use In Commerce: 0 Online retail store services featuring toiletries and cosmetics, candles and incense, hand tools and implements, cutleries and razors, goods of leather and imitation leather, combs and sponges, brushes; business consultancy services relating to the acquisition of goods and services
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Signature	/Jennifer Insley-Pruitt/
Name	Jennifer Insley-Pruitt
Date	07/14/2021

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

Cult Beauty Limited,

Opposer,

Opposition No. _____

v.

Cult 51 Limited,

Applicant.

NOTICE OF OPPOSITION

Cult Beauty Limited (“Opposer”), a United Kingdom private limited company with an address at 46 Colebrooke Row, Ground Floor, London N1 8AF United Kingdom, believes that it would be damaged by the issuance of a registration for CULT51 (“Applicant’s Mark”), as applied for in Application Serial No. 90/077,733 (the “Application”) filed by Cult 51 Limited (“Applicant”), and therefore opposes the same.

As grounds for its opposition, Opposer, by its attorneys Dechert LLP, alleges as follows:

A. Opposer and Opposer’s CULT BEAUTY Mark

1. Since at least as early as 2014, Opposer has used and promoted the mark CULT BEAUTY (“Opposer’s Mark”) in the United States in connection with retail store services featuring products including toiletries and cosmetics, handbags, and related goods and services.

2. Opposer has invested substantial time, effort, and expense in promoting Opposer’s Mark. Through such promotion and use, Opposer’s Mark has become distinctive in the United States, is recognized as identifying Opposer exclusively, and symbolizes a reputation and goodwill belonging exclusively to Opposer.

3. In addition to the common law rights accruing to Opposer in Opposer's Mark, Opposer owns numerous U.S. trademark registrations for Opposer's Mark for a variety of goods and services, including the following:

Mark	Reg. No.	Reg. Date	Class / Goods
CULT BEAUTY	4,378,248	Aug. 6, 2013	Class 18: Travelling bags; hand bags; wash bags for carrying toiletries. Class 35: Retail store services featuring toiletries and cosmetics, candles, hand tools and implements, goods of imitation leather, combs and sponges, brushes.
CULT BEAUTY	4,709,986	Mar. 31, 2015	Class 3: cosmetics ¹
CULT BEAUTY	6,160,665	Sept. 29, 2020	Class 4: Candles and lamp oils Class 8: Manicure sets and pedicure sets; nail files, nail clippers, non-electric fingernail polishers; hair clippers, non-electric razors; penknives; hand tools, namely, razors; non-electric shavers; scissors Class 18: Luggage; travelling bags; portfolio bags for carrying suits; handbags; purses, pocket wallets; leather shoulder belts; credit card holders; notecase wallets; leather pouches; umbrellas; parasols; wash bags sold empty for carrying toiletries; tie cases; satchels; all-purpose sport bags, all-purpose athletic bags, backpacks, bags and holdalls for sports clothing, daypacks, duffel bags, gym bags, rucksacks, sports packs, waist packs Class 21: Hair brushes, combs; clothes brushes; candle holders; perfume bottles sold empty and vases, none of precious metal or coated therewith; toothpicks, cleaning

¹ As amended by Opposer's July 6, 2021 Declaration of Continued Use / Excusable Nonuse of Mark in Commerce Under Section 71.

			<p>sponges, none for surgical use; powder puffs</p> <p>Class 35: Online retail store services featuring toiletries and cosmetics, candles and incense, hand tools and implements, cutleries and razors, goods of leather and imitation leather, combs and sponges, brushes; business consultancy services relating to the acquisition of goods and services</p>
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4. Opposer’s registrations are valid, subsisting and in full effect and serve as evidence of the validity of the registered marks and of Opposer’s exclusive right to use these marks in connection with the goods and services identified therein, pursuant to Section 33(a) of the Lanham Act, 15 U.S.C. § 1115(a).

B. Applicant and the Application

5. According to the online records of the United States Patent and Trademark Office (“USPTO”), Applicant is a private limited company organized under the laws of England with an address at Mulberry House, 9 Stroatley Rise, Haslemere, Surrey, United Kingdom GU271AF.

6. According to the online records of the USPTO, on July 28, 2020, Applicant filed its Application to register Applicant’s Mark in connection with “[c]osmetics; non-medicated skin care preparations, namely, lotions, creams, and gels; non-medicated skin care preparations, namely, protective lotions, and cream; non-medicated skin care preparations, namely, cleansing and moisturising creams, oils, and lotions; non-medicated soaps; bath gel; non-medicated toilet preparations; essential oils; non-medicated skin care preparations, namely, lotions, creams and preparations for care of the face, body, scalp, nails and hair; non-medicated bath preparations; non-medicated skin care preparations, namely, cleansers and toners; perfumes; antiperspirants

and deodorants; makeup; facial concealers for spots and blemishes; hair conditioner; shampoo; cleaning preparations, polishing preparations, abrasive preparations; non-medicated exfoliating preparations for the face and body; nail varnish” in International Class 3 under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), based on alleged use in United States commerce since December 31, 2015.

7. Applicant is not connected to Opposer in any way, and has not been authorized by Opposer to use Applicant’s Mark.

8. At the time that Applicant filed the Application herein opposed, Applicant was on constructive notice of Opposer’s prior and exclusive rights in Opposer’s Mark by virtue of Opposer’s federal trademark registrations, pursuant to Section 22 of the Lanham Act, 15 U.S.C. § 1072.

COUNT I
PRIORITY AND LIKELIHOOD OF CONFUSION

9. Opposer repeats and re-alleges each and every allegation contained in paragraphs 1 through 8 as though fully set forth herein.

10. Upon information and belief, the December 31, 2015 claimed date of first use in commerce is the earliest date upon which Applicant can rely to establish rights in Applicant’s Mark.

11. Both the December 31, 2015 claimed date of first use in commerce and the filing date of Applicant’s Application are subsequent to Opposer’s priority date in Opposer’s Mark. As such, Opposer’s rights in Opposer’s Mark are prior and superior to any rights Applicant may claim in Applicant’s Mark.

12. Applicant’s Mark is confusingly similar to Opposer’s Mark in sight, sound, and commercial impression.

13. The goods covered by Applicant's Mark are related to the goods and services in connection with which Opposer has used and registered Opposer's Mark.


14. Applicant's use and registration of Applicant's Mark in connection with the goods identified in its Application is therefore likely to cause confusion or cause mistake or to deceive the purchasing public into mistakenly believing that Applicant's goods offered under Applicant's mark originate from, come from, or are otherwise associated with Opposer, or that Applicant's goods offered under Applicant's mark are endorsed, sponsored, or in some way connected with Opposer, in violation of Section 2(d) of the Latham Act, 15 U.S.C. § 1052(d).

15. Registration to Applicant of Applicant's Mark would be inconsistent with Opposer's prior exclusive rights in Opposer's Mark, and would threaten to destroy Opposer's investment and goodwill in Opposer's Mark

16. By reason of the foregoing, Opposer will be damaged by registration of Applicant's Mark to Applicant.

WHEREFORE, it is respectfully requested that this Opposition be sustained and that registration of the mark shown in Application Serial No. 90/077,733 be refused in its entirety.

Dated: July 14, 2021

By: 

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Counsel for Opposer