

ESTTA Tracking number: **ESTTA1184907**

Filing date: **01/17/2022**

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	David S. Ducommun, D.D.S., S.C.
Granted to date of previous extension	01/22/2022
Address	344 S. YELLOWSTONE DRIVE MADISON, WI 53705 UNITED STATES
Attorney information	ELIZABETH T RUSSELL LAW OFFICE OF ELIZABETH T RUSSELL LLC 2711 ALLEN BLVD., SUITE 300 #410 MIDDLETON, WI 53562 UNITED STATES Primary email: beth@erklaw.com Secondary email(s): brussell@supranet.net 608-826-5007
Docket no.	91050-001

**Applicant information**

Application no.	90585432	Publication date	11/23/2021
Opposition filing date	01/17/2022	Opposition period ends	01/22/2022
Applicant	Jaiswal, Nidhi 4526 BURNHILL DRIVE PLANO, TX 75024 UNITED STATES		

**Goods/services affected by opposition**


Class 044. First Use: 2019/05/01 First Use In Commerce: 2020/05/01  
All goods and services in the class are opposed, namely: Dentist 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

**Mark cited by opposer as basis for opposition**

U.S. registration no.	4583812	Application date	12/18/2013
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Register	Principal		
Registration date	08/12/2014	Foreign priority date	NONE
Word mark	NO FEAR DENTISTRY		
Design mark			
Description of mark	NONE		
Goods/services	Class 044. First use: First Use: 2012/02/01 First Use In Commerce: 2012/02/01 Dentist services		

Attachments	86147751#TMSN.png( bytes ) NOTICE OF OPPOSITION.pdf(463868 bytes )
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Signature	/elizabeth russell/
Name	ELIZABETH T RUSSELL
Date	01/17/2022

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>DAVID S. DUCOMMUN, D.D.S., S.C.,</p> <p>Opposer-Plaintiff,</p> <p>v.</p> <p>NIDHI JAISWAL,</p> <p>Applicant.</p>	<p>OPPOSITION NO.</p> <p>_____</p> <p>Serial No. 90585432</p> <p>Mark: THE NO ANXIETY DENTIST</p> <p>Filed: March 17, 2021</p> <p>Publication Date: November 23, 2021</p>
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**NOTICE OF OPPOSITION**

DAVID S. DUCOMMUN, D.D.S., S.C. ( "Opposer"), a Wisconsin service corporation located and doing business at 344 S. Yellowstone Drive, Madison, WI 53705, believes it

will be damaged by registration of THE NO ANXIETY DENTIST (“Applicant’s Mark”), set forth in Application Serial No. 90585432 (the “Application”) filed March 17, 2021, by NIDHI JAISWAL (“Applicant”). Opposer hereby opposes the Application, upon the following grounds:

1. Opposer provides dentist services.
2. Opposer adopted and uses the designation NO FEAR DENTISTRY (“Opposer’s Mark”) to identify and promote its services.
3. Opposer owns United States Trademark Registration No. 4583812 (“Opposer’s Registration”), attached hereto as **Exhibit A**.
4. Opposer’s Registration is for Opposer’s Mark, in Class 044, for *Dentist services* (“Opposer’s Services”).
5. Opposer’s Registration is a standard character mark registration.
6. As a standard character mark registration, Opposer’s Registration protects depictions of the standard character mark regardless of font style, size, or color.
7. Opposer’s Registration is valid and subsisting.
8. Opposer’s Registration is on the Principal Register.
9. Opposer’s Registration is incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065 (**Exhibit A**).
10. Because Opposer’s Registration is incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, Opposer’s Registration is conclusive evidence of the validity of the registered mark and of its registration, of Opposer's ownership of the mark, and of Opposer's exclusive right to use the registered mark in commerce (15 U.S.C.

§ 1115[b]).

11. The Application is for Applicant's Mark, in Class 044, for *Dentist services* ("Applicant's Services").
12. The Application was published for opposition on November 23, 2021(**Exhibit B**).
13. Opposer sought and obtained a first extension of time to oppose on November 24, 2021, extending the deadline to January 22, 2022 (**Exhibit B**).
14. This Notice of Opposition is timely filed.

#### **COUNT I:**

##### **PRIORITY AND LIKELIHOOD OF CONFUSION (15 U.S.C. § 1052[d])**

15. Opposer repeats and realleges the allegations of Paragraphs 1-14 as if fully set forth herein.
16. As its first ground for relief, Opposer claims priority and likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).
17. The dominant part of Opposer's Mark is "NO FEAR."
18. The dominant part of Applicant's Mark is "NO ANXIETY."
19. The dominant parts of both Opposer's Mark and Applicant's Mark have confusingly similar meanings and create a confusingly similar overall commercial impression.
20. The words "FEAR" and "ANXIETY" are synonyms.
21. In marketing materials for her dental practice, Applicant herself routinely states,

“Dr Jaiswal understands the **anxiety** behind visiting the dentist. She believes that most of it is due to **fear** of not knowing what to expect.”

22. Opposer’s Registration carries a disclaimer for the word “DENTISTRY.”
23. The Application carries a disclaimer for the word “DENTIST.”
24. The disclaimed matter in both Opposer’s Registration and the Application is functionally identical.
25. The word “THE” in the Application is a peripheral difference that does nothing to alleviate confusion.
26. Applicant’s Mark is nearly identical in sight, sound, meaning, and commercial impression to Opposer’s Mark.
27. Taken in their entireties, Opposer’s Mark and Applicant’s Mark have confusingly similar meanings and create confusingly similar overall commercial impressions.
28. Applicant’s Services are legally identical to Opposer’s Services.
29. The consumers and trade channels for Opposer’s Services and Applicant’s Services are legally identical.
30. Opposer’s Registration is geographically unrestricted.
31. The Application is geographically unrestricted.
32. As the owner of Opposer’s Registration, Opposer has superior rights throughout the United States.
33. Territorial separation of the use of Applicant’s Mark from the area of use of Opposer’s Mark is irrelevant to determining likelihood of confusion.

34. Opposer's Registration on the Principal Register serves as constructive notice of Opposer's claim of ownership thereof (15 U.S.C. §1072).
35. Applicant had an obligation to avoid confusion with Opposer's incontestable registration in the same market.
36. Upon information and belief, Applicant had actual knowledge of the fact that Opposer used Opposer's Mark as a trademark before Applicant filed the Application.
37. Opposer would be damaged by registration of Applicant's Mark because Applicant's Mark, as applied to Applicant's Services, so closely resembles Opposer's Mark as to be likely to cause confusion, mistake, and deception as to the source of Applicant's Services, or to induce consumers to believe incorrectly that Applicant's Services are those of Opposer's, in violation of 15 U.S.C. § 1052(d).

## **COUNT II:**

### **PRIORITY AND LIKELIHOOD OF CONFUSION (COMMON LAW)**

38. Opposer repeats and realleges the allegations of Paragraphs 1-37 as if fully set forth herein.
39. As its second ground for relief, Opposer claims priority and likelihood of confusion under common law.
40. Opposer holds and protects state and common law rights in and to Opposer's Mark.
41. Opposer's Mark is inherently distinctive. In the alternative, Opposer asserts that Opposer's Mark has acquired distinctiveness.

42. Opposer's state and common law rights in and to Opposer's Mark are senior to any that Applicant holds in or to Applicant's Mark.

**COUNT III:**

**THE APPLICATION IS VOID**

43. Opposer repeats and realleges the allegations of Paragraphs 1-42 as if fully set forth herein.

44. As its third ground for relief, Opposer claims the application is void.

45. Applicant is an individual (**Exhibit B**).

46. Upon information and belief, Applicant does not provide dentist services as an individual.

47. Upon information and belief, Applicant's services as a dentist are provided by a Texas professional limited liability company known as SMILEZ DENTAL OF MCKINNEY PLLC (**Exhibit C**).

48. The Application's declarations contain materially false statements regarding the rights to use and ownership of Applicant's Mark.

49. The Application was filed in the name of the wrong party.

50. When an application is filed in the name of the wrong party, the defect cannot be cured.

51. The Application is void *ab initio*.

**WHEREFORE**, Opposer requests that the Board sustain this proceeding in Opposer's



favor by refusing registration of Applicant's Mark in underlying Application Serial No. 90585432. The required opposition fee is being submitted electronically with this Notice of Opposition.

Dated: January 17, 2022

Respectfully submitted,

/Elizabeth T Russell/

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*Attorney for Opposer-Plaintiff*

Electronically signed

Atty. Elizabeth T Russell  
Law Office of Elizabeth T Russell, LLC  
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Middleton, WI 53562  
Telephone (608) 826-5007  
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For assistance with TSDR, email [teas@uspto.gov](mailto:teas@uspto.gov) and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.


**Processing Wait Times:** Please note that due to an extraordinary surge in applications, processing times are longer than usual. See [current trademark processing wait times](#) for more information.

### Trademark Status & Document Retrieval (TSDR) ?

SEARCH MULTI-SEARCH ?

US Serial, Registration, or Reference No.  [Status](#) [Documents](#)

Status results found

STATUS	DOCUMENTS	MAINTENANCE ?	Download	Print Preview
Generated on: This page was generated by TSDR on 2022-01-17 12:21:33 EST				
Mark: NO FEAR DENTISTRY				
<h1>No Fear Dentistry</h1>				
US Serial Number:	86147751	Application Filing Date:	Dec. 18, 2013	
US Registration Number:	4583812	Registration Date:	Aug. 12, 2014	
Filed as TEAS Plus:	Yes	Currently TEAS Plus:	Yes	
Register:	Principal			
Mark Type:	Service Mark			
TM5 Common Status Descriptor:		LIVE/REGISTRATION/Issued and Active	The trademark application has been registered with the Office.	
Status:	A Sections 8 and 15 combined declaration has been accepted and acknowledged.			
Status Date:	Sep. 24, 2020			
Publication Date:	May 27, 2014			
<a href="#">Expand All</a>				
<b>Mark Information</b>				
<b>Goods and Services</b>				
<b>Basis Information (Case Level)</b>				
<b>Current Owner(s) Information</b>				
Owner Name:	DAVID S. DUCOMMUN, D.D.S., S.C.			
Owner Address:	344 S. Yellowstone Drive Madison, WISCONSIN UNITED STATES 53705			
Legal Entity Type:	CORPORATION	State or Country Where Organized:	WISCONSIN	
<b>Attorney/Correspondence Information</b>				
<b>Prosecution History</b>				
<b>TM Staff and Location Information</b>				
<b>Assignment Abstract Of Title Information - Click to Load</b>				
<b>Proceedings - Click to Load</b>				

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**EXHIBIT A**

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### Trademark Status & Document Retrieval (TSDR) ?

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STATUS	DOCUMENTS ?	Download	Print Preview
Generated on: This page was generated by TSDR on 2022-01-17 12:27:12 EST			
Mark: THE NO ANXIETY DENTIST		The No Anxiety Dentist	
US Serial Number: 90585432	Application Filing Date: Mar. 17, 2021		
Filed as TEAS Plus: Yes	Currently TEAS Plus: Yes		
Register: Principal			
Mark Type: Service Mark			
TM5 Common Status Descriptor: 	LIVE/APPLICATION/Published for Opposition		
Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.			
Status Date: Nov. 24, 2021			
Publication Date: Nov. 23, 2021			
<a href="#">- Mark Information</a> <a href="#">Expand All</a>			
<a href="#">+ Goods and Services</a>			
<a href="#">- Basis Information (Case Level)</a>			
<a href="#">+ Current Owner(s) Information</a>			
Owner Name: Jaiswal, Nidhi			
Owner Address: 4526 Burnhill Drive Plano, TEXAS UNITED STATES 75024			
Legal Entity Type: INDIVIDUAL	Citizenship: UNITED STATES		
<a href="#">+ Attorney/Correspondence Information</a>			
<a href="#">- Prosecution History</a>			
<a href="#">+ TM Staff and Location Information</a>			
<a href="#">+ Assignment Abstract Of Title Information - Click to Load</a>			
<a href="#">- Proceedings - Click to Load</a>			

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**EXHIBIT B**

**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

**Filing Number:** 802318182      **Entity Type:** Domestic Limited Liability Company (LLC)  
**Original Date of Filing:** October 23, 2015      **Entity Status:** In existence  
**Formation Date:** N/A  
**Tax ID:** 32058659064      **FEIN:**  
**Duration:** Perpetual  
**Name:** SMILEZ DENTAL OF MCKINNEY PLLC  
**Address:** 4150 ELDORADO PKWY STE 300  
 MCKINNEY, TX 75070 USA

REGISTERED AGENT		FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS
Name	Address					Inactive Date	
NIDHI JAISWAL	4150 Eldorado Pkwy # 300 McKinney, TX 75070 USA						

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