ESTTA Tracking number:	**ESTTA1353521**
Filing date:	**04/19/2024**

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

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner information

Name	JRY R and D, LLC		
Entity	Limited Liability Company	Incorporated or registered in	Texas
Address	3242 PRESTON ROAD, SUITE 160 PLANO, TX 75093 UNITED STATES		

Attorney information	AMANDA K. GREENSPON MUNCK WILSON MANDALA, LLP P.O. DRAWER 800889 DOCKET CLERK DALLAS, TX 75380 UNITED STATES Primary email: ttab@munckwilson.com 9726283600
Docket no.	YAKE01-00016

Registration subject to cancellation

Registration no.	6743807	Registration date	05/31/2022
Register	Principal		
Registrant	COOPER, NOELLE 16154 CHERRYLAWN DETROIT, MI 48221 UNITED STATES		

Goods/services subject to cancellation

Class 003. First Use: Jan 3, 2020 First Use In Commerce: Jan 3, 2020
All goods and services in the class are subject to cancellation, namely: Hair care preparations for hair edges; Hair oils; Shampoo-conditioners

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)

Attachments	YAKE01 Petition to Cancel HAIR DESTINY Design.pdf(3351924 bytes)

Signature	/AKG/
Name	Amanda K. Greenspon
Date	04/19/2024

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

In the Matter of Registration No. 6,743,807
For the mark: HAIR DESTINY & Design

Drawing:

Registered: 05/31/2022

JRY R and D, LLC,	§	
	§	Cancellation No. [__]
Petitioner,	§	
	§	
v.	§	
	§	
Cooper, Noelle,	§	
	§	
Respondent.	§	

PETITION FOR CANCELLATION

JRY R and D, LLC ("Petitioner"), a limited liability company organized and existing under the laws of Texas with a principal place of business at 3242 Preston Road, Suite 160, Plano, TX 75093, believes that it will be damaged by the continued registration of U.S. Trademark Registration No. 6,743,807 for the mark HAIR DESTINY & Design in connection with " *Hair care preparations for hair edges; Hair oils; Shampoo-conditioners*" in International Class 03 (hereafter, the "Registration"), and hereby petitions for cancellation of same pursuant to Section 14(3) of the Lanham Trademark Act of 1946 ("Lanham Act"), 15 U.S.C. § 1064(3). As grounds for cancellation, Petitioner alleges as follows:

1. Petitioner has filed Application Serial No. 98/048,936 (hereafter, "Petitioner's Application") for the HAIR DESTINY mark in connection with "*entertainment services and education services*" in International Class 41 (hereafter, "Petitioner's Services"). The Application

is pending. Attached hereto as Exhibit A is a true and correct printout from the United States Patent and Trademark Office ("USPTO") electronic database reflecting the pending Application.

2. In an office action dated March 12, 2024 (the "Office Action"), the USPTO has cited the Registration against Petitioner's Application, thereby interfering with Petitioner's Application and causing harm to Petitioner. Because this harm to Petitioner is within the zone of interests protected by the Lanham Act and is proximately caused by the Registration, Petitioner is entitled to bring this action. Attached hereto as Exhibit B is a true and correct copy of the Office Action.

3. Respondent, with an address of 16154 Cherrylawn, Detroit, MI 48221, is the current listed owner of the Registration.

4. Petitioner has investigated Respondent's use of the Registration and, upon information and belief, states that Respondent has ceased use of the Registration in U.S. commerce.

5. Upon information and belief, Respondent is not currently using the Registration in commerce in the United States in connection with any of the goods identified in the Registration.

6. Upon further information and belief, Respondent intends not to resume use of the mark in connection with these goods in U.S. commerce. Accordingly, Respondent has abandoned the HAIR DESTINY & Design mark in connection with these goods, and Registration No. 6,743,807 is subject to cancellation pursuant to 15 U.S.C. § 1064(3).

7. Upon information and belief, Respondent has abandoned the Registration by discontinuing use of the Registration with no intent to resume use.

8. Upon information and belief, Registrant intentionally ceased all use of the mark no later than January 15, 2024. A screenshot of Registrant's Facebook is attached as Exhibit C.

9. Upon information and belief, the Registration has been abandoned due to nonuse.

10. Petitioner has been and will continue to be damaged by the continuance of the Registration in that Petitioner will be unable to obtain registration of Petitioner's Application on the Principal Register and obtain the procedural and evidentiary advantages and presumptions that result therefrom so long as the Registration is maintained on the register, despite the abandonment of the Registration by Respondent.

WHEREFORE, Petitioner respectfully requests that its cancellation be sustained and that Respondent's Registration No. 6,743,807 be cancelled and for such other and further relief as the Commissioner for Trademarks shall deem proper and required by the Principles of Equity and Good Conscience.

The fee required in Section 2.6(a)(16) in the amount of $600.00 per class is enclosed herewith.

Dated: April 19, 2024

Respectfully submitted,

/s/Amanda K. Greenspon

Amanda K. Greenspon
Connecticut Bar No. 426639
Year of Admission 2007
Catherine L. Rifai
Texas Bar No. 24113679
Year of Admission 2019
Allison R. Ainsworth
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Year of Admission 2022
MUNCK WILSON MANDALA, LLP
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12770 Coit Road
Dallas, Texas 75251
Telephone: 972.628.3600
Telecopier: 972.628.3616
Email: ttab@munckwilson.com

ATTORNEYS FOR APPLICANT

EXHIBIT A

[EVIDENCE OF PETITIONER'S TRADEMARK APPLICATION]

PTO- 1478
Approved for use through 10/31/2024. OMB 0651-0009
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

Trademark/Service Mark Application, Principal Register

Serial Number: 98048936
Filing Date: 06/19/2023

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	98048936
MARK INFORMATION	
***MARK**	HAIR DESTINY
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	HAIR DESTINY
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
***OWNER OF MARK**	JRY R and D, LLC
***MAILING ADDRESS**	3242 Preston Road, Suite 160
***CITY**	Plano
***STATE** **(Required for U.S. applicants)**	Texas
***COUNTRY/REGION/JURISDICTION/U.S. TERRITORY**	United States
***ZIP/POSTAL CODE** **(Required for U.S. and certain international addresses)**	75093
***EMAIL ADDRESS**	XXXX
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY WHERE LEGALLY ORGANIZED	Texas
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	041
***IDENTIFICATION**	entertainment services and education services
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Amanda K. Greenspon
ATTORNEY DOCKET NUMBER	YAKE01-00009
ATTORNEY BAR MEMBERSHIP NUMBER	XXX

YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
FIRM NAME	Munck Wilson Mandala, LLP
INTERNAL ADDRESS	Docket Clerk
STREET	P.O. Drawer 800889
CITY	Dallas
STATE	Texas
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
ZIP/POSTAL CODE	75380
PHONE	972-628-3600
FAX	972-628-3616
EMAIL ADDRESS	trademarks@munckwilson.com
OTHER APPOINTED ATTORNEY	William A. Munck, Matthew S. Anderson, John J. Arnott, John Cain, Melissa LaBauve, Catherine Rifai
CORRESPONDENCE INFORMATION	
NAME	Amanda K. Greenspon
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	trademarks@munckwilson.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Standard
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	350
***TOTAL FEES DUE**	350
***TOTAL FEES PAID**	350
SIGNATURE INFORMATION	
SIGNATURE	/Joseph Yaker/
SIGNATORY'S NAME	Joseph Yaker
SIGNATORY'S POSITION	Applicant
SIGNATORY'S PHONE NUMBER	4697443700
DATE SIGNED	06/18/2023
SIGNATURE METHOD	Sent to third party for signature

PTO- 1478
Approved for use through 10/31/2024. OMB 0651-0009
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

Trademark/Service Mark Application, Principal Register

Serial Number: 98048936
Filing Date: 06/19/2023

To the Commissioner for Trademarks:

MARK: HAIR DESTINY (Standard Characters, see mark)
The literal element of the mark consists of HAIR DESTINY. The mark consists of standard characters, without claim to any particular font style, size, or color.
The applicant, JRY R and D, LLC, a limited liability company legally organized under the laws of Texas, having an address of
3242 Preston Road, Suite 160
Plano, Texas 75093
United States
XXXX

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 041: entertainment services and education services
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The owner's/holder's proposed attorney information: Amanda K. Greenspon. Other appointed attorneys are William A. Munck, Matthew S. Anderson, John J. Arnott, John Cain, Melissa LaBauve, Catherine Rifai. Amanda K. Greenspon of Munck Wilson Mandala, LLP, is a member of the XX bar, admitted to the bar in XXXX, bar membership no. XXX, and the attorney(s) is located at
Docket Clerk
P.O. Drawer 800889
Dallas, Texas 75380
United States
972-628-3600(phone)
972-628-3616(fax)
trademarks@munckwilson.com
The docket/reference number is YAKE01-00009.
Amanda K. Greenspon submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.
The applicant's current Correspondence Information:
Amanda K. Greenspon
PRIMARY EMAIL FOR CORRESPONDENCE: trademarks@munckwilson.com SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).
A fee payment in the amount of $350 has been submitted with the application, representing payment for 1 class(es).

Declaration

☑ **Basis:**
If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;

- The mark is in use in commerce and was in use in commerce as of the filing date of the application on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application and was used on or in connection with the goods/services in the application as of the application filing date; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or
If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

☑ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

☑ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

☑ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Joseph Yaker/ Date: 06/18/2023
Signatory's Name: Joseph Yaker
Signatory's Position: Applicant
Signatory's Phone Number: 4697443700
Signature method: Sent to third party for signature
Payment Sale Number: 98048936
Payment Accounting Date: 06/20/2023

Serial Number: 98048936
Internet Transmission Date: Mon Jun 19 14:53:57 ET 2023
TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2023061914535902
3104-98048936-8602175ff2cae7c7ffb8c8d4f1
d56974a9bba249eb6c49cfc81776dc9419c038ab
-CC-53578504-20230614130329715904

HAIR DESTINY

EXHIBIT B

[OFFICE ACTION AGAINST PETITIONER'S APPLICATION]

To:	Amanda K. Greenspon(trademarks@munckwilson.com)
Subject:	U.S. Trademark Application Serial No. 98048936 - HAIR DESTINY - - YAKE01-00009
Sent:	March 12, 2024 08:40:15 AM EDT
Sent As:	tmng.notices@uspto.gov

Attachments

6743807
screencapture-alikaynaturals-com-pages-alikays-tv-17102445840001
screencapture-alikaynaturals-com-collections-hair-17102446000711
screencapture-www-clarinsusa-com-en-beauty-school-beauty-school-html-17102447240491
screencapture-www-clarinsusa-com-en-skincare-body-hair-care-hair-care-17102447479401
screencapture-www-burtsbees-com-blog-category-impact-17102455276401
screencapture-www-burtsbees-com-product-very-volumizing-pomegranate-shampoo-17102455564201
screencapture-www-ahdictionary-com-word-search-html-17102465370561

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 98048936

Mark: HAIR DESTINY

Correspondence Address:
AMANDA K. GREENSPON
MUNCK WILSON MANDALA, LLP
P.O. DRAWER 800889
DOCKET CLERK
DALLAS TX 75380
UNITED STATES

Applicant: JRY R and D, LLC

Reference/Docket No. YAKE01-00009

Correspondence Email Address: trademarks@munckwilson.com

NONFINAL OFFICE ACTION

Response deadline. File a response to this nonfinal Office action within three months of the "Issue date" below to avoid abandonment of the application. Review the Office action and respond using one of the links to the appropriate electronic forms in the "How to respond" section below.

Request an extension. For a fee, applicant may request one three-month extension of the response deadline prior to filing a response. The request must be filed within three months of the "Issue date" below. If the extension request is granted, the USPTO must receive applicant's response to this letter within six months of the "Issue date" to avoid abandonment of the application.

Issue date: March 12, 2024

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES:

- Section 2(d) Refusal - Likelihood of Confusion
- Identification of Services
- Disclaimer Required

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 6743807. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

In the present case, the applicant seeks registration of HAIR DESTINY in standard character form for "entertainment services and education services" in Class 41.

The cited registered mark is HAIR DESTINY with a design element for "Hair care preparations for hair edges; Hair oils; Shampoo-conditioners" in Class 3.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the "*du Pont* factors"). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, "not all of the *DuPont* factors are relevant or of similar weight in every case." *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) ("The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks."); TMEP §1207.01.

Comparison of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

When comparing marks, "[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties." *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *4 (TTAB 2020) (citing *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016)); *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018); TMEP §1207.01(b); *see In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014).

Here, applicant's mark is HAIR DESTINY in standard character form, and registrant's mark is HAIR DESTINY with a design element. In this case, the wording in applied-for mark are identical in sound, meaning, and commercial impression, and nearly identical in appearance.

The only difference between the respective marks is the design element in the registered mark. When evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and services. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *41 (TTAB 2022) (quoting *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *31 (TTAB 2021)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)). In this case, the design element in the registered mark does not change the sound, meaning, or commercial impression of the shared wording.

Considering the above, the marks are sufficiently similar to cause a likelihood of confusion under Trademark Act Section 2(d).

Relatedness of the Goods and Services

The compared goods and services need not be identical or even competitive to find a likelihood of

confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i); *see Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *44 (TTAB 2022) (quoting *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006)).

In this case, applicant's mark is HAIR DESTINY in standard character form for "entertainment services and education services" in Class 41.

The cited registered mark is HAIR DESTINY with a design element for "Hair care preparations for hair edges; Hair oils; Shampoo-conditioners" in Class 3.

Here, the respective goods and services are closely related because they travel through similar channels of trade to the same class of consumer. The examining attorney has attached Internet website evidence demonstrating that hair care products and entertainment and education services are commonly provided together and commonly originate from the same source. The attached Internet evidence establishes that the same entity commonly produces and provides the relevant goods and services and markets the goods and services under the same mark and that the relevant goods and services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. Thus, applicant's and registrant's goods and services are considered related for likelihood of confusion purposes. *See, e.g.*, *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009). *See* attached evidence from:

- Alikay Naturals:
  - https://alikaynaturals.com/pages/alikays-tv;
  - https://alikaynaturals.com/collections/hair?view=all;
- Clarins:
  - https://www.clarinsusa.com/en/beauty-school/beauty-school.html;
  - https://www.clarinsusa.com/en/skincare-body-hair-care/hair-care/;
- Burt's Bees:
  - https://www.burtsbees.com/blog/category/impact/; and
  - https://www.burtsbees.com/product/very-volumizing-pomegranate-shampoo/.

Thus, upon encountering HAIR DESTINY for "entertainment services and education services" and HAIR DESTINY for "Hair care preparations for hair edges; Hair oils; Shampoo-conditioners," consumers are likely to be confused and mistakenly believe that the respective goods and services emanate from a common source. As such, registration must be refused under Trademark Act Section 2(d).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-

65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal, applicant must also respond to the requirements set forth below.

IDENTIFICATION OF SERVICES

The identification of services is indefinite and must be clarified because the nature and subject matter or field of the Class 41 services have not been identified with adequate specificity. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

Applicant may adopt the following identification, if accurate:

> Class 41: entertainment services and education services**, namely, [further clarify Class 41 services, e.g., the presentation of seminars, lectures, workshops and panel discussions, and ongoing television and radio talk shows all in the field of public interest concerning {indicate subject matter of interest, e.g., hair}]**

Applicant may amend the identification to clarify or limit the services, but not to broaden or expand the services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted services may not later be reinserted. *See* TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. *See* TMEP §1402.04.

DISCLAIMER REQUIRED

Applicant must disclaim the wording "HAIR" because it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods and services. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); TMEP §§1213, 1213.03(a).

The attached dictionary evidence states that the relevant meaning of the wording "HAIR" is "Any of the cylindrical, keratinized, often pigmented filaments characteristically growing from the epidermis of a mammal." *See* attached evidence from https://www.ahdictionary.com/word/search.html?q=hair.

Thus, the wording merely describes applicant's services, namely, entertainment and education services in the field of hair.

Applicant may respond to this issue by submitting a disclaimer in the following format:

> **No claim is made to the exclusive right to use "HAIR" apart from the mark as shown.**

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the Disclaimer webpage.

QUESTIONS

Please call or email the assigned trademark examining attorney with questions about this Office action. Although an examining attorney cannot provide legal advice, the examining attorney can provide additional explanation about the refusal and requirements in this Office action. *See* TMEP §§705.02, 709.06.

The USPTO does not accept emails as responses to Office actions; however, emails can be used for informal communications and are included in the application record. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

How to respond. File a **response form to this nonfinal Office action** or file a **request form for an extension of time to file a response**.

/Andrew Crowder-Schaefer/
Andrew Crowder-Schaefer
Examining Attorney
LO104--LAW OFFICE 104
(571) 272-0087
Andrew.CrowderSchaefer@USPTO.GOV

RESPONSE GUIDANCE

- **Missing the deadline for responding to this letter will cause the application to abandon.** A response or extension request must be received by the USPTO before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Trademark Electronic Application System (TEAS) system availability could affect an applicant's ability to timely respond. For help resolving technical issues with TEAS, email TEAS@uspto.gov.

- **Responses signed by an unauthorized party** are not accepted and can **cause the application to abandon.** If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.

- If needed, **find contact information for the supervisor** of the office or unit listed in the signature block.

6743807

Word Mark	HAIR DESTINY
Goods/Services	IC 003 US 001 004 006 051 050 052 Hair care preparations for hair edges; Hair oils; Shampoo-conditioners.
Register	PRINCIPAL
Serial Number	90724739
Filing Date	2021-05-20T00:00:00
Original Filing Basis	1a
Current Filing Basis	1a
Publication Date	2022-03-15
Registration Number	6743807
Date Registered	2022-05-31
Owner	(REGISTRANT) COOPER, NOELLE (INDIVIDUAL; USA); 16154 CHERRYLAWN, DETROIT, MICHIGAN 48221, UNITED STATES
Type of Mark	TRADEMARK
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Code	110701, 270305
Description of Mark	• The color(s) white, gold, fuchsia, and tan is/are claimed as a feature of the mark. • The mark consists of the word 'HAIR' expressed in gold and fuchsia gradient stylized font, directly above a pair of gold and tan shears, the letter 'D' of the word 'DESTINY' intersects the shears and is expressed in fuchsia gradient stylized font, all amidst a white background.

Disclaimer	"HAIR"
Live Dead Indicator	LIVE
Status	REGISTERED
Attorney of Record	Mikai Green, Esq.

Print: March 12, 2024 7:44 AM

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Why I Created 'HER' by Alikay

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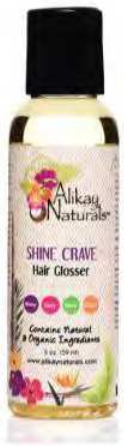

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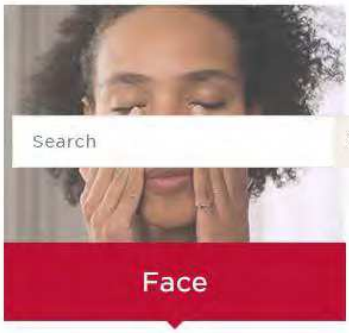
Exclusive Application Methods

At Clarins, it's not enough to formulate a product. We've created an application method adapted to make the most out of its effectiveness based on our knowledge of skin: easy expert techniques to repeat at home.

The Clarins Methods



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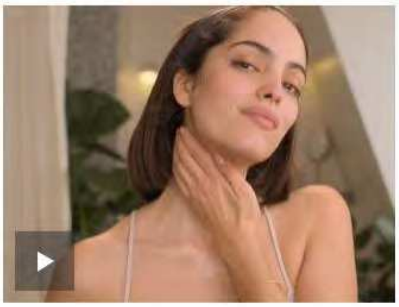
12 Video(s)

How to remove makeup with water

CLEANSERS & TONERS

How to apply day cream

DAY CARE



How to remove makeup without water

CLEANSERS & TONERS

How to apply face oil

FACE TREATMENT OIL

How to apply face serum

SERUMS

How to apply night cream

NIGHT CARE

“ Optimize the benefits of each formula by breathing in the scent before

How to apply an eye contour treatment

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Dr. Olivier Courtin-Clarins

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https://www.clarinsusa.com/en/skincare-body-hair-care/hair-care/ at 07:59:12, 03/12/2024

Hair Care

5 products

ONLINE EXCLUSIVE

Invigorating Shine Gel Shampoo with Ginseng

10.1 Oz.

$33.00

ONLINE EXCLUSIVE

Invigorating Shine Hair Conditioner with Shea Butter

10.6 Oz.

$33.00

ONLINE EXCLUSIVE

Nourishing Fortifying Hair Mask with Shea Butter and...

6.4 Oz.

$35.00

ONLINE EXCLUSIVE

Nourishing Beauty Hair Oil with Argan and Camellia Oils

1.6 Oz.

$29.00

ONLINE EXCLUSIVE

Nourishing Shampoo Bar

3.5 Oz.

$22.00

You have viewed 5 of 5 products

Natural hair care expertise for your most beautiful hair

Your hair care concerns are as important to you as skin care. After all, your scalp structure is essentially the same as your skin's. Clarins now applies advanced skin care expertise to the scalp and hair—from lengths to tips—in a 4-step essentials hair care routine that shampoos, detangles, nourishes and beautifies.
Born from the same philosophy as Clarins skin care, Clarins hair care products use plant based formulas to deliver on performance while gently caring for your hair the natural way. The bonus? Four textures with aromatic fragrances that promote a feeling of freshness and wellbeing. Your result? Hair that appears silky soft and visibly shinier. Your complete hair beauty ritual in four indulgent steps!

Step #1: Shampoo

Gorgeous flip-worthy hair full of natural bounce and shine starts with the best hair care products that cleanse gently and effectively. Clarins Invigorating Shine Shampoo with Ginseng Extract washes away pollution residue the caring way—while bathing the hair and scalp in vitamins necessary for the hair's vitality. The fresh tonic gel promotes a feeling of freshness and wellbeing with the invigorating fragrance of essential oils of Lemon, Patchouli, Petit Grain, Ginseng and White Tea. Hair appears silky soft and is visibly shinier.

Step #2: Detangle

Follow your refreshing shampoo with a detangling conditioner—an essential step in how to take care of your hair. Clarins Invigorating Shine Hair Conditioner with Shea Butter detangles the hair to make combing a breeze. Tangles and hair breakage are never part of the program. Clarins Shea Butter natural hair care formula helps to nourish and smooth, leaving locks beautifully manageable, visibly soft and gorgeously shiny.

Step #3: Nourish

You never miss your weekly face mask — so why not invite your hair to the party? Clarins Nourishing Fortifying Mask with Shea Butter and Argan Oil helps to revive the scalp and hair by intensely nourishing the hair fiber. Hair is visibly softer and shinier and appears to regain its radiance with each application. Create a spa experience at home with this rich, melty balm's fragrance that pampers with sparkling twists of Mandarin, Grapefruit, Ylang-ylang and Patchouli. Natural hair care at its best!

Step #4: Beautify

Clarins Nourishing Beauty Oil with Argan and Camellia Oils provides an instant deep nourishing pick-me-up for dry or damaged hair. Powerful plant oils help to care for hair exposed to external aggressors—while leaving your senses pampered with an enchanting sunny fragrance that lingers long after. The formula is light, non-greasy and never weighs hair down—and you get to choose how you'd prefer to use it: before or after you shampoo, or on wet or dry hair.
Clarins hair care tip: For very dry or damaged hair—add a few drops of Nourishing Beauty Oil to your Nourishing Fortifying Mask for an added boost of visible radiance, softness and shine!

to your Nourishing Fortifying Mask for an added boost of visible radiance, softness and shine.

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Finding joy in the natural world, restorative skin care and the promise of a full-circle future.

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breaking the wave of plastic pollution

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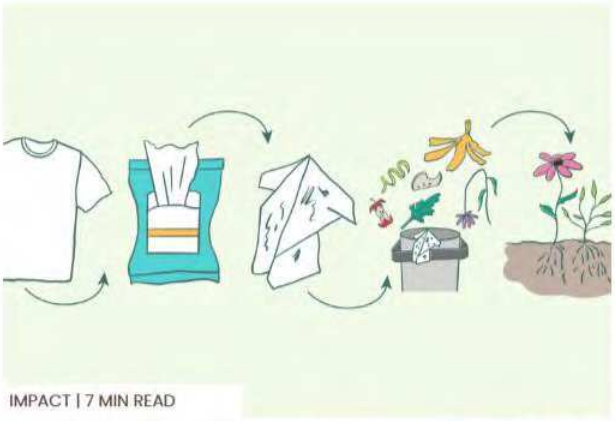

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Very Volumizing Pomegranate Shampoo

Viva volume.

$8.99 ★★★★☆ (327) reviews

Turn up the volume and body of your hair with our Very Volumizing Shampoo. This gentle shampoo easily rinses and adds super shine while leaving your hair feeling thicker and looking oh-so fuller. Formulated with antioxidant-rich Pomegranate Seed Oil and Jojoba Protein, a natural moisturizer, it's the nourishing shampoo that gives you beauti-FULL, healthy-looking hair. • Moisturizes with Pomegranate Seed Oil and Jojoba Protein • Adds shine to hair • Smoothes and reduces frizz • SLS free

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Overall Rating

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327 Reviews

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Adding a review will require a valid email for verification

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★★★★★

Hooked After First Use!

Chellebelly

14 years ago

This shampoo is the BEST I have ever used! No...

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51 PEOPLE FOUND THIS HELPFUL

Show Reviews: 5 ★ and 4 ★

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★☆☆☆☆

Not great.

Mele

14 years ago

I was disappointed by this shampoo. It smells...

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51 PEOPLE FOUND THIS HELPFUL

Show Reviews: 3 ★ 2 ★ and 1 ★

Customer Images and Videos

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Rating | My skin is | User for

1 – 5 of 327 Reviews

Sort by Most Recent

★★★★★

Fantastic

Betsy d

a month ago

Fantastic just loving using this wonderful shampoo that makes me feel so great

★★★★★

More Shampoos

Complimentary

2 months ago

I learned how to use the natural shampoo's by Burt's Bee. It doesn't have any suds making chemicals so I add a little at a time to my palm to work into sections of my scalp then into my hair. I have long hair so it's important to me that my hair doesn't get a weighed down look like some moisturizing shampoos do and I have gray and white wild hairs that I don't want going wild by some of the fullness shampoos do. This Burt's Bee is perfect for my long/gray/think /oily scalp/ hair. I don't even need conditioner every time. Because Burt's Bee shampoos don't have synthetics or common lathering shampoos have. It's more of a bell feeling on my hands that I can tell if there's enough or not in my hair. I should feel the gel like on my fingers and scalp area as I massage in. I then let it sit for about a minute or two before rinsing. Then repeat. I used the Burt's Bee shampoo for my dogs first and loved their coats and skin from them so I wanted to try this. I just wish it came in a bigger bottle. And more selections. Love the honey shampoos for dogs. And that cat shampoo is the only shampoo my cat's actually feel good about. Love this shampoo.

★☆☆☆☆

Do not buy the shampoo and conditioner ever!!!

Aayushi

3 months ago

I am a loyal BB customer. Most of their products are great, so I bought the Pomegranate Shampoo and Conditioner but it was an absolute no for me. My hair became extremely extremely dry, rough, and frizzy. I cannot stress enough on how much dry and rough it made my hair. This shampoo and conditioner damaged my hair tremendously. It took me time to figure out that the damage was due to this shampoo. Once I stopped using the shampoo and conditioner, my hair felt better. But I am still repairing the damage caused by this product. I have stopped buying BB products and would never

recommend any friend or family to try their products.

Response from Burt's Bees: 3 months ago

Ashlee from The Burt's Bees Team

We appreciate your loyalty and are very sorry to hear about your experience trying our Very Volumizing Pomegranate Shampoo, Aayushi. We're committed to quality and want to lend a helping hand. Would you please call our team? We're at 800-849-7112, and your reference number is 231206-000380. We hope to talk with you soon.

This is by far I best shampoo I have used(I tried many big name ones), it makes my hair more healthy and shine. Hope they never change the formula and keep this product forever!

★★★★★

Burt's Bees Very Volumizing Shampoo

Lyn C

5 months ago

I have been using this shampoo for years! It's gotten almost impossible for me to find in stores where I'm currently living in Florida. I was happy I could order it directly from Burt's Bees! I received it promptly after placing my order. I will be ordering this product directly from them in the future!

1 – 5 of 327 Reviews

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1.
   a. Any of the cylindrical, keratinized, often pigmented filaments characteristically growing from the epidermis of a mammal.
   b. A growth of such filaments, as that forming the coat of an animal or covering the scalp of a human.
2. A filamentous projection or bristle similar to a hair, such as a seta of an arthropod or an epidermal process of a plant.
3. Fabric made from the hair of certain animals: *a coat of alpaca hair.*
4.
   a. A minute distance or narrow margin: *won by a hair.*
   b. A precise or exact degree: *calibrated to a hair.*

[Middle English *her*, from Old English *hǣr*.]

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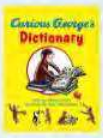
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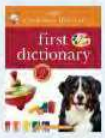
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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on March 12, 2024 for
U.S. Trademark Application Serial No. 98048936

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action to avoid your application abandoning. Follow the steps below.

(1) Read the Office action. This email is NOT the Office action.

(2) Respond to the Office action by the deadline using the Trademark Electronic Application System (TEAS). Your response, or extension request, must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Otherwise, your application will be abandoned. See the Office action itself regarding how to respond.

(3) Direct general questions about using USPTO electronic forms, the USPTO website, the application process, the status of your application, and whether there are outstanding deadlines to the Trademark Assistance Center (TAC).

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **Check the status of your application periodically** in the Trademark Status & Document Retrieval (TSDR) database to avoid missing critical deadlines.

- **Update your correspondence email address** to ensure you receive important USPTO notices about your application.

- **Beware of trademark-related scams**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. Verify the correspondence originated from us by using your serial number in our database, TSDR, to confirm that it appears under the "Documents" tab, or contact the Trademark Assistance Center.

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6743807

Word Mark	HAIR DESTINY
Goods/Services	IC 003 US 001 004 006 051 050 052 Hair care preparations for hair edges; Hair oils; Shampoo-conditioners.
Register	PRINCIPAL
Serial Number	90724739
Filing Date	2021-05-20T00:00:00
Original Filing Basis	1a
Current Filing Basis	1a
Publication Date	2022-03-15
Registration Number	6743807
Date Registered	2022-05-31
Owner	(REGISTRANT) COOPER, NOELLE (INDIVIDUAL; USA); 16154 CHERRYLAWN, DETROIT, MICHIGAN 48221, UNITED STATES
Type of Mark	TRADEMARK
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Code	110701, 270305
Description of Mark	• The color(s) white, gold, fuchsia, and tan is/are claimed as a feature of the mark. • The mark consists of the word 'HAIR' expressed in gold and fuchsia gradient stylized font, directly above a pair of gold and tan shears, the letter 'D' of the word 'DESTINY' intersects the shears and is expressed in fuchsia gradient stylized font, all amidst a white background.

Disclaimer	"HAIR"
Live Dead Indicator	LIVE
Status	REGISTERED
Attorney of Record	Mikai Green, Esq.

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Natural hair care expertise for your most beautiful hair

Your hair care concerns are as important to you as skin care. After all, your scalp structure is essentially the same as your skin's. Clarins now applies advanced skin care expertise to the scalp and hair—from lengths to tips—in a 4-step essentials hair care routine that shampoos, detangles, nourishes and beautifies.
Born from the same philosophy as Clarins skin care, Clarins hair care products use plant based formulas to deliver on performance while gently caring for your hair the natural way. The bonus? Four textures with aromatic fragrances that promote a feeling of freshness and wellbeing. Your result? Hair that appears silky soft and visibly shinier. Your complete hair beauty ritual in four indulgent steps!

Step #1: Shampoo

Gorgeous flip-worthy hair full of natural bounce and shine starts with the best hair care products that cleanse gently and effectively. Clarins Invigorating Shine Shampoo with Ginseng Extract washes away pollution residue the caring way—while bathing the hair and scalp in vitamins necessary for the hair's vitality. The fresh tonic gel promotes a feeling of freshness and wellbeing with the invigorating fragrance of essential oils of Lemon, Patchouli, Petit Grain, Ginseng and White Tea. Hair appears silky soft and is visibly shinier.

Step #2: Detangle

Follow your refreshing shampoo with a detangling conditioner—an essential step in how to take care of your hair. Clarins Invigorating Shine Hair Conditioner with Shea Butter detangles the hair to make combing a breeze. Tangles and hair breakage are never part of the program. Clarins Shea Butter natural hair care formula helps to nourish and smooth, leaving locks beautifully manageable, visibly soft and gorgeously shiny.

Step #3: Nourish

You never miss your weekly face mask — so why not invite your hair to the party? Clarins Nourishing Fortifying Mask with Shea Butter and Argan Oil helps to revive the scalp and hair by intensely nourishing the hair fiber. Hair is visibly softer and shinier and appears to regain its radiance with each application. Create a spa experience at home with this rich, melty balm's fragrance that pampers with sparkling twists of Mandarin, Grapefruit, Ylang-ylang and Patchouli. Natural hair care at its best!

Step #4: Beautify

Clarins Nourishing Beauty Oil with Argan and Camellia Oils provides an instant deep nourishing pick-me-up for dry or damaged hair. Powerful plant oils help to care for hair exposed to external aggressors—while leaving your senses pampered with an enchanting sunny fragrance that lingers long after. The formula is light, non-greasy and never weighs hair down—and you get to choose how you'd prefer to use it: before or after you shampoo, or on wet or dry hair.
Clarins hair care tip: For very dry or damaged hair—add a few drops of Nourishing Beauty Oil to your Nourishing Fortifying Mask for an added boost of visible radiance, softness and shine!

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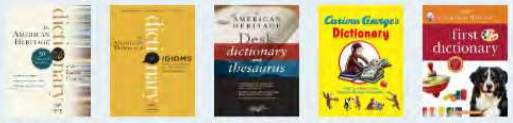

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EXHIBIT C

[EVIDENCE OF REGISTRANT'S ABANDONMENT]

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