

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

Applicant : Luscious, LLC
Serial No. : 78/143,126
Filed : July 11, 2002
Mark : LUSCIOUS COSMETICS
Published : 12 August 2003
Int. Class : 3

Opp. 158982

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

NOTICE OF OPPOSITION

Opposer, Lush Ltd., an English company, located and doing business at 29 1/2 High Street, Poole, Dorset, BH15 1AB, United Kingdom, believes that it will be damaged by registration of the mark shown in the above-identified application and hereby opposes the same.

Opposer and its affiliate, Cosmetics Warriors Limited, requested and obtained an Extension of Time to 10 December 2003 to oppose this application.

GROUND FOR OPPOSITION

1. Opposer uses, and has, since long prior to 28 June 2002, used the trademark LUSH on an extensive line of cosmetics products including eye make-up, lip balms, bath

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

December 10, 2003

Date of Deposit

Signature

Maryann White
Maryann White
Typed or Printed Name of Person Signing Certificate

gels and bath soaps, body powder, face creams, skin lotions, hair care preparations and skin creams.

2. Opposer owns U.S. Trademark Registration No. 2,282,428 covering the trademark LUSH in International Classes 3 and 5. A copy of said Registration, from the TESS database, is here attached as "Exhibit A". Said Registration is currently valid and in force.

3. Opposer's trademark LUSH is a house mark and has become symbolic of the extensive good will built up through considerable expense in advertising and promoting Opposer's products.

4. On 11 July 2002, Applicant, Luscious LLC, filed Trademark Application No. 78/143,126 to register the trademark LUSCIOUS COSMETICS (with COSMETICS disclaimed) in International Class 3 for goods described as

Cosmetics, namely, non-medicated lip balm, lip cream, lip gloss, lip liner, lip stick, lip sheer, lip stain, eye make-up, eye make-up remover, eye pencils, eye shadow, eye liners, eye brow pencils eye cream, eye gel, eye balm, face powder, face concealers, face foundation, face cleansers, face creams, face emulsions, face masks, face scrubs, pre-moistened cosmetic towelettes, blush, bronzer, highlighter, body powder, cheek stain, mascara, brow gel, hair mascara, bath oil, bath tablets, bath gels, bath soaps, body creams, skin lotion, body masks, body scrub, body gel, hair mask, nail polish, nail lacquer, cuticle cream, nail oil.

Said application was based on Applicant's allegation that the mark has been used in commerce since 28 June 2002.

5. Opposer states, on information and belief that, as of 11 July 2002, Applicant was not using the trademark LUSCIOUS COSMETICS on all of the goods set forth in said application.

6. The sole distinctive feature of Applicant's trademark is the word LUSCIOUS. Opposer avers that LUSCIOUS is confusingly similar in sound to Opposer's trademark LUSH.

7. Potential purchasers who encounter products bearing the trademarks LUSCIOUS or LUSCIOUS COSMETICS are likely to assume that they emanate from Opposer or are associated with products which Opposer has been selling and distributing under its trademark LUSH. Applicant's use of its mark therefore is likely to cause confusion, mistake and/or deception of purchasers.

8. Registration of the trademark LUSCIOUS COSMETICS to Applicant would diminish the commercial value of Opposer's trademark LUSH and therefore would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration of Applicant's mark as set forth in Application No. 78/143,126 be denied.

Respectfully submitted,



Date: 10 December 2003

Frederick H. Rabin
Attorney for Opposer

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Typed Drawing

Word Mark
Goods and
Services

LUSH

IC 003. US 001 004 006 050 051 052. G & S: perfumes; non-medicated toilet and cosmetic preparations, namely, lotions, powders and creams for use on the skin, dentifrices, cosmetic depilatory creams, personal deodorants, preparations for the care of the hair, shampoos, soaps, and essential oils for personal use. FIRST USE: 19950410. FIRST USE IN COMMERCE: 19960600

IC 005. US 006 018 044 046 051 052. G & S: medicated hair care, skin care, teeth care and nail care preparations. FIRST USE: 19950410. FIRST USE IN COMMERCE: 19960600

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75247408

Filing Date February 25, 1997

Current Filing Basis 1A;44E

Original Filing Basis 1A;44E

Published for Opposition July 13, 1999

Registration Number 2282428

Registration Date October 5, 1999

Owner

(REGISTRANT) LUSH LTD. CORPORATION UNITED KINGDOM 29 1/2 High Street Poole,
Dorset BH15 1AB UNITED KINGDOM

Attorney of Record
Type of Mark
Register
Live/Dead Indicator

FREDERICK H RABIN
TRADEMARK
PRINCIPAL
LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DOC	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST
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