

ESTTA Tracking number: **ESTTA118896**

Filing date: **01/10/2007**

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	YolandaEustaquio
Granted to Date of previous extension	01/10/2007
Address	1401 East 11th Avenue Hialeah, FL 33010 UNITED STATES
Attorney information	Andres F. Quintana Quintana Law Group, APC 21900 Burbank Boulevard, Third Floor Woodland Hills, CA 91367 UNITED STATES andres@qlglaw.com

Applicant Information

Application No	78732125	Publication date	09/12/2006
Opposition Filing Date	01/10/2007	Opposition Period Ends	01/10/2007
Applicant	Hernandez, Claudia G 13400 Saticoy Street #8 North Hollywood, CA 91605 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 2005/09/20 First Use In Commerce: 2005/09/20 All goods and sevicees in the class are opposed, namely: Skin Cream	
Related Proceedings	Hernandez v. Eustaquio et al, and Related Counterclaim, United States District Court, Central District of California, Case No. CV05-8616 AJG (SHx).
Attachments	1.10.07 TTB Notice of Opposition.pdf (68 pages)(3648389 bytes)
Signature	/andres quintana/
Name	Andres F. Quintana
Date	01/10/2007

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Pro-Mex Distributor, LLC and Yolanda Eustaquio

7 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
8 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
9

10 In The Matter of Trademark Application)
11 Serial No. 78732125 For The Mark)
12 QUADRYDERN N.F. Published in the)
13 Official Gazette on September 12, 2006,)

**NOTICE OF OPPOSITION OF
OPPOSER YOLANDA EUSTAQUIO
TO TRADEMARK APPLICATION,
SERIAL NO. 78732125**

13 YOLANDA EUSTAQUIO, an
14 individual,

15 Opposer,

16 vs.

17 CLAUDIA HERNANDEZ, an
18 Individual,

19 Applicant,
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1 **THE PARTIES**

2 The Opposer is YOLANDA EUSTAQUIO ("Eustaquio"), owner of Promex
3 Distributor, LLC, a Florida Limited Liability Company, located at 1401 East 11th
4 Avenue, Hialeah, Florida 33010. Eustaquio is also the registered owner of registered
5 trademark for CREMA CUADRIDERMA, in International Class 005 for Cream For
6 Itching And Inflammation, Anti-Fungus And Anti-biotic (Trademark Registration
7 Number 2906539). (See Exhibit "2" hereto.)

8 The Applicant is CLAUDIA HERNANDEZ ("Hernandez"), the owner of
9 Productos Zapotol located at 13400 Saticoy Street #8, North Hollywood, California
10 91605. Hernandez is attempting to register the alleged QUADRYDERN N.F. mark
11 through serial number 78732125. (Exhibit "1" hereto.)

12 **BRIEF STATEMENT OF GROUNDS**

13 **A. There Is A Pending Federal Lawsuit Between The Parties Relevant**
14 **To The Registrability of the Mark.**

15 There a pending federal lawsuit between applicant Hernandez and Eustaquio
16 before the U.S. District Court, Central District of California, entitled Hernandez v.
17 Eustaquio et al, and Related Counterclaim, Case No. CV05-8616 AJG (SHx).
18 Specifically, applicant Hernandez initially filed a Complaint seeking a Declaratory
19 Relief of Non-Infringement regarding her use of the QUADRYDERN N.F. mark.
20 Opposer Eustaquio filed a Counterclaim alleging, among other things, that applicant
21 Hernandez's use of QUADRYDERN N.F. (the mark pending before this Board)
22 infringes on Opposer Eustaquio's registered CREMA CUADRIDERMA trademark
23 and trade dress. (Exhibit 6 hereto contains a copy of the Counterclaim).

24 Fact discovery in the federal case is set to close on January 31, 2007 and expert
25 discovery regarding the likelihood of confusion between the Opposer Eustaquio's
26 registered CREMA CUADRIDERMA mark and applicant Hernandez's pending
27 QUADRYDERN N.F. mark will conclude by the end of March 2007. Trial in this
28 dispute is set to begin on June 26, 2007. More importantly, the trial in this case is

1 likely to resolve the dispute whether applicant Hernandez's use of the
2 QUADRYDERN N.F. mark infringes on the trademark and trade dress of Opposer
3 Eustaquio's CREMA CUADRIDERMA registered mark. Thus, Opposer Eustaquio
4 respectfully submits that this Board either: (1) deny Hernandez's trademark
5 application for the alleged QUADRYDERN N.F. mark; or (2) suspend the
6 application of said mark before the Trademark Office until such time as the pending
7 litigation between the parties is resolved by the U.S. District Court for the Central
8 District of California.

9 **B. There Is A Likelihood Of Confusion Between Eustaquio's**
10 **Registered Mark And Hernandez's Pending Application.**

11 Eustaquio alleges that there is a likelihood of confusion between her registered
12 CREMA CUADRIDERMA mark and Hernandez's QUADRYDERN N.F. mark that
13 is the subject of the instant registration application. Eustaquio presents the following
14 in support of her allegation:

15 Under Section 2 of the Lanham Act (15 U.S.C. 1052), a trademark shall be
16 refused registration on the principal register on account of its nature if the mark,
17 among other things,

18 "(d) Consists of or comprises a mark which so resembles
19 a mark registered in the Patent Office or a mark or trade
20 name previously used in the United States by another and
21 not abandoned, as to be likely, when applied to the goods
22 of the applicant to cause confusion, or to cause mistake
23 or to deceive.";

24 Thus, under the statute the Trademark Office must refuse registration when
25 confusion is likely because of concurrent use of the marks of an applicant and a prior
26 user on their respective goods.

27 In any likelihood of confusion analysis, two key considerations are the
28 similarity of the marks and the similarity of the goods or services. See Federated

1 Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 U.S.P.Q. 24 (CCPA
2 1976), and In re Azteca Restaurant Enterprises Inc., 50 USPQ2d 1209 (TTAB 1999).
3 Eustaquio respectfully contends that both the marks and goods at issue are highly
4 similar.

5 The Examining Attorney must first look at the marks themselves for
6 similarities in appearance, sound, connotation and commercial impression. In re E. I.
7 DuPont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (CCPA 1973).
8 Eustaquio respectfully alleges that her CREMA CUADRIDERMA; and
9 Hernandez&'s QUADRYDERN N.F are sufficiently similar under this standard
10 so as to permit a finding of likelihood of confusion. For one, both trademarks are
11 phonetically similar in the Spanish language. Further, the dominant portions of the
12 two marks are similar. Here, the dominant portion of CREMA CUADRIDERMA's
13 mark, which disclaims the word CREMA (meaning "cream"; in Spanish) is
14 CUADRIDERMA; See In re National Data Corp., 753 F.2d 1056, 1058, 224 USPQ
15 749, 751 (Fed. Cir. 1985) (it is not improper to give more or less weight to a
16 particular feature of a mark). That dominant portion is almost phonetically identical
17 to the proposed QUADRYDERN mark, especially when pronounced in Spanish.
18 Neither the design element nor the generic term N.F. contained in Hernandez's
19 proposed QUADRYDERN mark offers sufficient distinctiveness to create a different
20 commercial impression with the CREMA CUADRIDERMA mark.

21 Second, the Examining Attorney must compare the goods or services to
22 determine if they are related or if the activities surrounding their marketing are such
23 that confusion as to origin is likely. In re August Storck KG, 218 U.S.P.Q. 823
24 (TTAB 1983); In re International Telephone and Telegraph Corp., 197 U.S.P.Q. 910
25 (TTAB 1978); Guardian Products Co., v. Scott Paper Co., 200 U.S.P.Q. 738 (TTAB
26 1978). In order to support a finding of likelihood of confusion, all that is required is
27 a showing that the goods on which the parties' marks are used are related in some
28 manner or are marketed under conditions which would cause a potential purchaser to



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