

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

McCaskill, Stacy N, Opposer

v.

Busch, James L. Applicant

Mark: FETISH SPA, Serial # 77172839,

Filing Date May, 04, 2007,

Publication Date Jan. 08, 2008, Proceeding # 91183923,

ESTTA Tracking #: ESTTA209516

**ANSWER TO OPPOSITION**

In the matter of Application Serial Number 77172839 filed May, 04, 2007 by James L Busch, (“Applicant”), an individual with a mailing address of 8126, 101<sup>st</sup> Street Ct. E., Puyallup, WA. 98373-1333, to register FETISH SPA as a trademark for use in connection with “Stock photography services, namely, leasing reproduction rights of photographs and transparencies to others,” in International Class 042, which was published in the Official Gazette on January 08, 2008.

James L Busch hereby rejects all issues as brought by Ms. McCaskill; before the Trial and Appeal Board for the following reasons:



A Prior to filing for the registered trademark FETISH SPA in May 2007 Mr. Busch did extensive searches for conflicting trademark names using all internet options available as well as spelling & word placement options. No similar trademark names were identified at that time. After May 2007 the USPTO as part of the registration process conducted a more extensive search of their documents and library using the mark FETISH SPA, as well as spelling & word placement options. The examiner did not find conflicts. If they identified the mark in question "SPAFETISH" the examiner determined it to be dissimilar enough; to not cause confusion in the general public. This is grounds for dismissal of this opposition based on the fact that Ms.

McCaskill did not file, or pay fees to protect the words FETISH SPA.

Aa. In checking the key words FETISH SPA or FETISHSPA prior to Ms. McCaskill's filing the opposition, the major internet providers linked to [www.fetishspa.us](http://www.fetishspa.us) . Since the date of opposition, the AOL search engine links the search for keyword *fetish spa/fetishspa* to Ms. McCaskill's site SPAFETISH. The only explanation for this sudden change is that Ms. McCaskill, her staff and confidants have paid the search engine providers for placement. Further more, these paid search engine placement agreements have imbedded the keywords: *fetish spa, fetishspa*. This represents a deliberate attempt to divert persons searching for my artistic websites to MS. McCaskill's multi-level marketing website.

B. Ms. McCaskill's Trademark SPAFETISH is only registered to protect the class of registration; International Class 003; "*Beauty products, namely, non-medicated lip*

*balm, skin moisturizing Facial care products, namely non-medicated face mask, non-medicated face scrub, non-medicated face toner; bath products, namely soap, bubble bath, bubble bath powder,; foaming bath butter, bath & shower gel, bath & shower cream, bath oil, bath salts, bath syrup, body scrub, bath bomb fizzies, bath milk, bath tea; body products, namely, body lotions, body oil, body butter, body powder, perfume, body mask, in class 3 (U.S. CLS. 1,4,6,50,51 and 52).* She failed to register *or* pay fees to protect additional classes including (but not limited to) International Class 042 ***“Stock photography services, namely, leasing reproduction rights of photographs and transparencies to others,”*** Mr. Busch has duly applied for and paid fees to register FETISH SPA under the International Class 042 for which Ms. McCaskill has no claim.

This is grounds for dismissal of this opposition based on the fact that Ms. McCaskill did not file, or pay fees to protect the International Class 042 ***“Stock photography services, namely, leasing reproduction rights of photographs and transparencies to others,”*** .

C. The defendant Mr. Busch wishes to submit as evidence attachment “A” the extortion letter from Ms. McCaskill

Ms. McCaskill has added her personal opinion as “grounds” to these pleadings and defamed Mr. Busch by making false and misleading statements and accusations. Mr. Busch’s response to these claims by opposer’s number to be entered into the record.

1. No opposition
2. Defendant questions “exclusive right” as presented by opposer. Opposer has failed to attempt to register, or pay fees associated with, registering the trade name FETISH SPA or FETISHSPA relying on the very narrow protection on the registered trade name SPAFETISH (class 003).
3. No opposition.
4. Although Ms. McCaskill claims superior rights based on the FETISH SPA fantasy depiction of adult spa/fetish photography, SPAFETISH owns no spas & is a multi-level marketing organization selling overpriced soap.
- 5 . Very, very, questionable.
6. This board will determine her rights.
7. Mr. Busch has made substantial investments as well; as evidenced by the opposer’s demands for intellectual property, profits etc. contained in Exhibit “A” Extortion letter
8. No opposition
9. No opposition
- 9a. USPTO search found no confusion during original search. In 2007 Ms. McCaskill made a conscious decision to reverse the words Fetish Spa in an attempt to create a unique name for her company. At that time she could have applied for the trademark Fetish Spa, FetishSpa and other trade names. She failed to do that, relying on her spelling and word reversal to create her unique brand and eliminate confusion.

10. Opposer has deliberately created confusion on the internet through the use of search engine keywords.
11. Opposer is a internet retailer seller of overpriced soap products whereas Mr. Busch is a professional photographer. It is extremely difficult to confuse the two.
12. Mr. Busch finds the unsubstantiated accusation of pornography in the public record to be highly defamatory. He also finds the oppositions self described "wholesome SPAFETISH" as self serving and un-proven. Mr. Busch is a nationally recognized photographer specializing in adult and fetish photography. All photography produced by Mr. Busch complies with title 18 U.S.C. 2257. The disclaimer presented as evidence by the opposer is standard for adult photography to insure persons who are not legally able or persons who prefer not to view this content will not enter the site. Ms. McCaskill may be less than wholesome as her previous demands to Mr. Busch may constitute extortion; a felony under the statutes of the State of Michigan. **THE MICHIGAN PENAL CODE (EXCERPT) Act 328 of 1931, 750.213 Malicious threats to extort money. Sec. 213. Malicious threats to extort money.** "Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars.
13. In dispute
14. Opposer's mark is clearly dissimilar to defendants as proven by previous searches.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.