

ESTTA Tracking number: **ESTTA374010**

Filing date: **10/19/2010**

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	Cynthia Callendar
Granted to Date of previous extension	10/20/2010
Address	1870 Jasmine Joy Ct Las Vegas, NV 89117 UNITED STATES
Party who filed Extension of time to oppose	CynthiaCallendar
Relationship to party who filed Extension of time to oppose	An unintentional typographical error occurred when Opposer, an individual, requested her first extension of time to oppose, causing her first and last name to run together. The only change being made herein is the addition of a space between Opposer's first and last name.

Attorney information	Justin G. Sanders Mind Law Firm 2424 S.E. Bristol Street, Suite 300 Newport Beach, CA 92660 UNITED STATES jsanders@mindlawfirm.com, jsartain@mindlawfirm.com Phone:949-250-5800
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Applicant Information

Application No	77927300	Publication date	06/22/2010
Opposition Filing Date	10/19/2010	Opposition Period Ends	10/20/2010
Applicant	Brooke Medlock 1839 S 139th Street Omaha, NE 68144 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. All goods and services in the class are opposed, namely: pillows

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Attachments	ANSOG.11134 - Notice of Opposition.pdf (8 pages)(39653 bytes)
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	ANSOG.11134 - Exhibit A.pdf (4 pages)(310500 bytes)
	ANSOG.11134 - Exhibit B.pdf (3 pages)(192266 bytes)
	ANSOG.11134 - Exhibit C.pdf (5 pages)(46983 bytes)
	ANSOG.11134 - Exhibit D (part 1).pdf (12 pages)(483461 bytes)
	ANSOG.11134 - Exhibit D (part 2).pdf (12 pages)(2365199 bytes)
	ANSOG.11134 - Exhibit D (part 3).pdf (12 pages)(448835 bytes)
	ANSOG.11134 - Exhibit D (part 4).pdf (12 pages)(721534 bytes)
	ANSOG.11134 - Exhibit D (part 5).pdf (4 pages)(430699 bytes)
	ANSOG.11134 - Exhibit D (part 6).pdf (3 pages)(224491 bytes)
	ANSOG.11134 - Exhibit D (part 7).pdf (14 pages)(821766 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Justin G. Sanders/
Name	Justin G. Sanders
Date	10/19/2010

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

3 Application Serial No.: 77/927,300
4 Mark: THE FACELIFT PILLOW

5 _____)
6 CYNTHIA CALLENDAR,)
7 an individual,)

8 Opposer,)

9 v.)

10 BROOKE MEDLOCK,)
11 an individual,)

12 Applicant.)

Opposition No.: _____

13 **NOTICE OF OPPOSITION**

14
15
16 Opposer Cynthia Callendar (“Opposer”) believes that she will be damaged by
17 registration of the trademark THE FACELIFT PILLOW as shown in the above-referenced
18 trademark application Serial No. 77/927,300 (the “Application”) and hereby opposes the same.

19 The Application was published for opposition on June 22, 2010. Opposer obtained a
20 30-day extension of time up until August 21, 2010, and then subsequently obtained a further
21 60-day extension of time up until October 20, 2010. Therefore, this Opposition is timely.

22 As grounds for opposition, Opposer alleges that:

23 **PARTIES**

24 1. Opposer is an individual and a citizen of the United States, having an address at
25 1870 Jasmine Joy Court, Las Vegas, Nevada 89117.

26 2. Opposer, directly or through affiliates, has developed and is in the process of
27 developing pillow products to be used for various purposes, including for reducing facial
28 wrinkling, by strategically lifting a user’s face, as a substitute for or prevention of the need for

1 a face-lift procedure, as well as for use in post-operative face-lift recoveries. As such, Opposer
2 has a real commercial interest in the term “facelift pillow” and the exclusive right to use such a
3 term granted to competitors in connection with identifying similar pillow products.
4 Furthermore, Opposer has an interest in using the term generically or, at the very least,
5 descriptively in connection with said pillow products.

6 3. Upon information and belief, Brooke Medlock (“Applicant”) is an individual
7 and a citizen of the United States, having an address at 1839 S. 139th Street, Omaha, Nebraska
8 68144.

9 **GENERAL ALLEGATIONS**

10 4. Applicant filed the Application on February 3, 2010, for the mark THE FACE
11 LIFT PILLOW, subsequently amended to THE FACELIFT PILLOW for “pillows” in
12 International Class 20, alleging intended use in commerce in the United States.

13 5. On May 5, 2010, through an Examiner’s Amendment, the Application was
14 amended to include the disclaimer statement, “No claim is made to the exclusive right to use
15 ‘PILLOW’ apart from the mark as shown.”

16 6. The Application was published for opposition in the Official Gazette on June 22,
17 2010.

18 7. Upon information and belief, Applicant is the current owner of at least one
19 related Internet domain, www.myfaceliftpillow.com (the “Website”), as evidenced by the
20 WHOIS search results provided through GoDaddy.com. A true and correct copy of said
21 WHOIS search results is appended to this Notice of Opposition as Exhibit A.

22 8. Upon information and belief, through at least the Website, Applicant has
23 described at least one of her pillow products, expressly referred to as “The Facelift Pillow,” as
24 being “an alternative to facelift surgery.” True and correct copies of screenshot captures of
25 pages of the Website as they appeared on August 28, 2010 and September 14, 2010,
26 respectively, retrieved from Google’s cached images of the Website, is appended to this Notice
27 of Opposition as Exhibit B (certain highlights added by Google).

28 9. Upon information and belief, through another website that is currently, or at

1 least at one time was, owned and operated by Applicant or an affiliate of Applicant's,
2 www.startechnologies.mobi, at least one of Applicant's products, expressly referred to as "The
3 Facelift Pillow," is again described as an alternative to facelift surgery. True and correct copies
4 of screenshot captures of pages of the www.startechnologies.mobi website as they appeared on
5 September 12, 2010, retrieved from Yahoo!'s cached images of that website, is appended to
6 this Notice of Opposition as Exhibit C (certain highlights added by Yahoo!).

7 10. Upon information and belief, at least one of Applicant's products, expressly
8 referred to as "The Facelift Pillow," purports to reduce pressure on the user's face so that the
9 formation of facial wrinkles is reduced or eliminated.

10 11. Upon information and belief, the reduction of pressure referred to in paragraph
11 10 above is accomplished by at least a portion of the user's face being at least partially
12 lifted/elevated by the pillow product so as to reduce the amount of contact between the user's
13 face and the pillow or underlying sleep surface.

14 12. Upon information and belief, it is common for people to use either traditional or
15 specially designed pillows to lift (i.e., elevate) and/or strategically support their face as an
16 alternative to, or after receiving, a surgical face-lift procedure.

17 13. Upon information and belief, there are currently numerous pillow products
18 being marketed and sold in the United States by various entities for the expressly stated
19 purpose of lifting and/or strategically supporting a person's face as an alternative to, or after
20 receiving, a surgical face-lift procedure, in at least four instances of which such third parties
21 expressly refer to such pillows using the phrase "facelift pillow" or a common alternate spelling
22 thereof (i.e., "face lift pillow" or "face-lift pillow"). True and correct copies of screenshot
23 captures of certain discovered websites currently advertising such products are appended to this
24 Notice of Opposition as Exhibit D (highlights added).

25 **GROUND FOR OPPOSITION**

26 **A. Applicant's Proposed Mark is Generic as Applied to Applicant's**
27 **Intended Goods and is Not Entitled to Registration.**

28 14. The allegations set forth in paragraphs 1-13 of this Notice of Opposition are

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