

ESTTA Tracking number: **ESTTA687022**

Filing date: **07/31/2015**

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	DERMAdoctor, Inc.
Granted to Date of previous extension	08/01/2015
Address	1901 McGee Street Kansas City, MO 64108 UNITED STATES
Attorney information	Wade Kerrigan, Esq. Husch Blackwell LLP 4801 Main Street, Suite 1000 Kansas City, MO 64112 UNITED STATES pto-kc@huschblackwell.com Phone:816-983-8000

**Applicant Information**

Application No	86494017	Publication date	06/02/2015
Opposition Filing Date	07/31/2015	Opposition Period Ends	08/01/2015
Applicant	YURRKU LLC 300 Broad Street #406 Stamford, CT 06901 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary and nutritional supplements containing vitamins
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application No.	86502562	Application Date	01/13/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KAKADU C		

Design Mark	<b>KAKADU C</b>
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2014/03/12 First Use In Commerce: 2014/03/12 Skin care products, namely, non-medicated skin care preparations Class 005. First use: First Use: 2014/03/12 First Use In Commerce: 2014/03/12 Skin care products, namely, medicated skin care preparations

Attachments	86502562#TMSN.png( bytes ) Notice of Opposition.pdf(5862588 bytes )
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### 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	/Wade Kerrigan/
Name	Wade Kerrigan, Esq.
Date	07/31/2015



preparations in International Class 005 (the “DERMAdoctor Mark”). A TEAS printout of the DERMAdoctor Mark is attached as Exhibit A.

4. Since at least as early as March 12, 2014, Opposer has sold skin care products, products throughout the United States in connection with the DERMAdoctor Mark. Proof of Opposer’s use of the mark is shown in advertisements attached as Exhibit B.

5. By reason of Opposer’s use of its DERMAdoctor Mark, the DERMAdoctor Mark has begun to achieve widespread and favorable public recognition and has become an asset of great value as a symbol of Opposer’s services and goodwill.

6. Opposer has invested a great deal of time and money in promoting its goods under the DERMAdoctor Mark and it continues to use and promote these goods under the DERMAdoctor Mark.

7. By virtue of Opposer’s continuous, exclusive and widespread use of the DERMAdoctor Mark, the DERMAdoctor Mark is entitled to a broad scope of protection.

8. On January 2, 2015, Applicant filed an application, Application Ser. No. 86/494,017 to register the mark KAKADU PLUM for use in connection with “Dietary and nutritional supplements containing vitamins” in International Class 003.

9. On information and belief, Applicant has not used Applicant’s mark KAKADU PLUM. On information and belief, Applicant has not made any use of Applicant’s mark KAKADU PLUM within the United States in connection with the goods named in Applicant’s application.

10. Opposer acquired trademark rights in and to the DERMAdoctor Mark for Opposer’s goods that predate actual and/or constructive use by Applicant of the mark KAKADU PLUM.

11. Applicant's mark KAKADU PLUM has the same or highly similar appearance, meaning, sound, connotation and commercial impression in comparison to Opposer's DERMAdoctor Mark. Applicant's KAKADU PLUM mark is highly similar to the DERMAdoctor Mark and as such is likely to be confused with the DERMAdoctor Mark.

12. Applicant's goods offered under the mark KAKADU PLUM are highly similar and in some cases are identical to the goods of the Opposer provided under the DERMAdoctor Mark. Both Applicant's goods and Opposer's goods are in the field of skin care, nutrition and personal care products.

13. Applicant's goods are directed to the same or related class of consumers as those of Opposer's goods provided under the DERMAdoctor Mark and Applicant's goods under the mark KAKADU PLUM are sold in the same or similar channels of trade.

14. Applicant's mark KAKADU PLUM, when used for the goods recited in the opposed application, is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

15. Use of and the application for registration by Applicant of the mark KAKADU PLUM is without Opposer's consent.

16. Registration of the mark KAKADU PLUM by Applicant will provide Applicant with *prima facie* exclusive rights therein, and would harm Opposer by interfering with Opposer's exclusive rights to the DERMAdoctor Mark.

17. Opposer has the right to continue using the DERMAdoctor Mark in connection with its goods and related goods and services and to use the mark without interference by Applicant and without confusion, mistake, or deception.

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