

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
October 31, 2007  
Bucher

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Med-Surge Holdings, Inc.

Serial No. 76635896

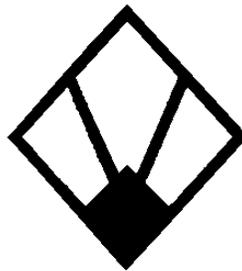
Scott L. Harper of Carstens & Cahoon LLP for Med-Surge  
Holdings, Inc.

Sally Shih, Trademark Examining Attorney, Law Office 106  
(Mary I. Sparrow, Managing Attorney).

Before Hairston, Bucher and Drost, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Med-Surge Holdings, Inc. seeks registration on the  
Principal Register of the mark shown below:



**BelleDerm**

for goods identified in the application, as amended, as follows:

"medicinal topical skin care preparations; namely, lotions, scrubs, salves, creams, peels, laser soothing gels, laser transmission gels, and sprays for application to the face or body available through physicians only" in International Class 5.<sup>1</sup>

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has taken the position that applicant's mark, when used in connection with the identified goods, so resembles the following mark:

**Belle Derm**

registered for goods identified as follows:

"cosmetics, namely, makeup, mascara, eye shadow, lipstick, blush concealer, face powder, nail polish, eye liner, and lip liner; cleaning preparations; skin cleansers and solutions; hand, face and eye creams; hand face and body lotions; skin moisturizers; sun screen and tan lotions; shampoos and conditioners, skin soaps, liquid and cream make-up, hair spray, hair

---

<sup>1</sup> Application Serial No. 76635896 was filed on April 14, 2005 based upon applicant's allegation of first use anywhere and first use in commerce at least as early as May 10, 2004.

mousse, hair gel, shaving cream, razors, skin lighteners, and toiletries, namely, toothpaste, eye make-up remover, deodorant and antiperspirant, in Int. Class 3,<sup>2</sup>

as to be likely to cause confusion, or to cause mistake, or to deceive.

Because on October 20, 2007, the United States Patent and Trademark Office (USPTO) cancelled the registration relied upon by the Trademark Examining Attorney, i.e., Reg. No. 2420645, due to registrant's failure to file its five-year affidavit of continued use under Section 8, this appeal is moot. Accordingly, the involved application will be forwarded to the Publication Branch of the USPTO for publication of the mark for opposition in the Trademark Official Gazette. See 37 C.F.R. §2.80.

---

<sup>2</sup> Reg. No. 2420645 issued on January 16, 2001 based upon an application filed on April 29, 1999 reciting to March 22, 1999 as the dates of first use and first use in commerce.