

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

In the Matter of Trademark Application

Applicant: Joel D. Wallach

Trademark: OSTEO-FX

Serial No. 76/274,080

Published in the
Trademark Official Gazette: January 8, 2002

FILE COPY

NUMICO FINANCIAL SERVICES, SA.,)

Opposer)

v.)

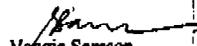
DR. JOEL D. WALLACH)

Applicant)

Opposition No. 91150888

EXPRESS MAIL MAILING LABEL NUMBER: EL 39567715US
DATE OF DEPOSIT: December 12, 2002

I hereby certify that this Answer to Opposition is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to Commissioner Of Patents and Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513


Vangie Samson

Date 12/12/02

BOX NO FEE - TTAB
Assistant Commissioner For Trademarks

2900 Crystal Drive
Arlington, VA 22202-3513

APPLICANT'S MOTION FOR JUDGEMENT ON THE PLEADINGS

Applicant hereby moves for judgment on the record dismissing this Opposition pursuant to 37 C.F.R. §2.132 for the reasons set forth below.

In the above-identified opposition proceeding, Opposer, NUMICO FINANCIAL SERVICES, SA., was assigned a period for taking its testimony-in-chief which closed on December 11, 2002. To date no testimony has been taken on behalf of Opposer. Furthermore, Applicant has at no time received notice that testimony is contemplated or is to be taken by Opposer, nor has Applicant received notice that the testimony schedule has been formally suspended or delayed by the Board. As of the date of this Motion, it is now too late for Opposer to take testimony.

Opposer has failed to offer any evidence in support of the Notice of Opposition. In opposition proceedings, irrespective of the taking of testimony, evidence will be made a part of the record under the following conditions:

1. Pursuant to 37 C.F.R. §1.22(d)(1), registrations pleaded in a Notice of Opposition will be received in evidence and made a part of the record if Notice is accompanied by two copies of the registration prepared and issued by the Patent and Trademark Office showing both the current status and current title to the registration; and

2. Pursuant to 37 CFR §2.122 (b)(2), registrations owned by any party to a proceeding may be made of record in the proceeding by that party by filing a Notice of Reliance during the testimony period of the party filing the Notice and providing a copy of the registration prepared and issued by the Patent and Trademark Office showing both the current status and current title to the registration.

Opposer has failed to avail itself to the identified procedures and, as a result, there is no evidence which has been made of record by Opposer in support of the Notice of Opposition.

The Opposer has the burden of proof of supporting its Notice of Opposition. That burden cannot now be met by the Opposer due to:

1. Its failure to take testimony within the allotted time; or
2. Its failure to offer its registration into evidence in accordance with 37 C.F.R.

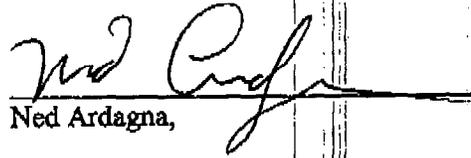
§2.122 (d).

As a result, Opposer cannot be damaged by registration of the trademark OSTEO-FX, Serial No. 76/274,080. As the allegations of the Notice of Opposition have been denied by the Applicant, it appears that no useful purpose would be served by continuing this Opposition proceeding and having Opposer take testimony or to otherwise offer evidence in this case. It is therefore respectfully requested that the Notice of Opposition be dismissed.

Respectfully submitted,

Dated: December 12, 2002

HASKINS & ASSOCIATES


 Ned Ardagna,

HASKINS & ASSOCIATES
 4540 Bonita Road, Suite 206
 Bonita, CA 91902
 (616) 479-4351

PROOF OF SERVICE

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

Numico Financial Services vs. Joel D. Wallach
Opposition No. 91150888

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action.

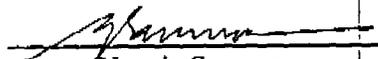
On December 12, 2002, I served the following documents described as:

APPLICANT'S MOTION FOR JUDGEMENT ON THE PLEADINGS

on all Parties in this action by placing in a separate envelope, with postage fully prepaid for each addressee named below, for collection and mailing on December 12, 2002, following the ordinary business practices of Haskins and Associates at 4045 Bonita Road, Suite 206, Bonita California. I certify that I am familiar with the ordinary business practice of my place of employment with regard to collection for mailing with the United States Postal Service.

W. Mack Webner, Esq.
c/o Paul M. Higgins, Esq.
SUGHRUE MION, PLLC
2100 Pennsylvania Ave., N.W.
Washington, D.C. 20037-3202

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 12, 2002, at Bonita, California.


Vangie Samson

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Ned A. Ardagna, Esq.
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FAX TRANSMITTAL MEMORANDUM

Date: March 6, 2003
From: Ned A. Ardagna
To: David Mermelstein Facsimile No. (703) 746-7083
Re: OSTEOPATHY - Opposition # 91150888

Number of Pages Including Cover Page: 5 *

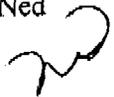
Comment:

Dear Mr. Mermelstein:

Attached to this facsimile is a copy of the Motion for Judgment on the Pleadings. Also, I was surprised about the Opposition to the Motion as I have not seen a copy.

Thank you for the call,

Ned



*If the material is illegible or incomplete please call (619) 479-4351, ext. 0 and ask to speak with Vangie.

THIS FACSIMILE AND THE INFORMATION IT CONTAINS IS INTENDED TO BE A CONFIDENTIAL COMMUNICATION ONLY TO THE PERSON OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FAX TO THIS OFFICE BY MAIL.