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02-19-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #26

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

Exhibits

<p>A & H Sportswear Co., Inc. Opposer,</p> <p>v.</p> <p>The Balson-Hercules Group Ltd., Applicant.</p>
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Opposition No.

NOTICE OF OPPOSITION

In the matter of Intent to Use Trademark Application Serial No. 75/931,273 filed February 29, 2000 for "MIRACLE WICK" for "textiles and piece goods used in the manufacture of clothing" in International Class 24, published for opposition in the Official Gazette of October 30, 2001 at page TM 327:

A & H Sportswear Co., Inc. ("A&H"), a Pennsylvania corporation with a place of business at Routes 191 and 33, Stockertown, PA 18083, believes that it will be damaged if such registration is issued and, therefore, hereby gives notice of its intention to oppose the registration of said trademark.

CERTIFICATE OF MAILING
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on the date indicated below.

BY [Signature]
DATE 02-15-02

02/20/2002 EPINA1 00000069 75931273
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The grounds for opposition are as follows:

1. Applicant seeks to register the mark "MIRACLE WICK" for "textiles and piece goods used in the manufacture of clothing" in International Class 24, as evidenced by the publication of said mark in the Official Gazette of October 30, 2001.
2. Applicant filed its application as an Intent to Use application, and has a filing date of February 29, 2000.
3. Opposer owns the trademark "MIRATEX" registered in the United States Patent and Trademark Office, Registration No. 1,747,816, for "fabric for use in clothing; namely, bathing suits, leotards and dancewear", in International Class 24. Two status and title copies of Opposer's Registration No. 1,747,816 prepared by the Patent and Trademark Office are attached hereto at Exhibit A.
4. Opposer owns the trademark "MIRACLESUIT" registered in the United States Patent and Trademark Office, Registration No. 1,728,652, for swimwear in International Class 25. Two status and title copies of Opposer's Registration No. 1,728,652 prepared by the Patent and Trademark Office are attached hereto at Exhibit B.
5. Opposer also owns the trademark "MIRACLEBODY", registered in the United States Patent and Trademark Office, Registration No. 2,011,542 for "women's and children's leotards; dancewear, namely tights and unitards; bodywear, namely body shapers, body suits, and swimwear". Two status and title copies of Opposer's Registration No. 2,011,542 prepared by the Patent and Trademark Office are attached hereto at Exhibit C.
6. The above-identified registrations are valid and subsisting. Additionally, Registration No. 1,747,816, Registration No. 1,728,652 and Registration no. 2,011,542 are incontestable.

7. Opposer has continuously used the mark "MIRATEX" in connection with fabric for use in clothing since at least as early as November 18, 1991. Such use is long prior to the filing date claimed by Applicant.

8. Opposer has continuously used the mark "MIRACLESUIT" in connection with swimwear since at least as early as November 18, 1991. Such use is long prior to the filing date claimed by Applicant.

9. Opposer has continuously used the mark "MIRACLEBODY" in connection with leotards, dancewear, bodywear and swimwear since at least as early as May 29, 1995. Such use is long prior to the filing date claimed by Applicant.

10. In addition, Opposer is the owner of Pending Application Serial No. 75/141,810 in the United States Patent and Trademark Office for "MIRACLESUIT" for "men's and women's sportswear, namely, shorts, pants, tops, bodysuits; uniforms; intimate apparel, namely, shapers, girdles, figure controlling underwear; bodywear, namely, leotards", filed on the basis of an intent to use application on July 29, 1996. A computer generated printout of this application is attached hereto as Exhibit D.

11. Opposer is also the owner of Pending Application Serial No. 75/742,239 in the United States Patent and Trademark Office for "MIRACLEWEAR" for "men's and women's career apparel, namely, gloves, uniforms, namely, pants, skirts, shorts, dresses and vests; men's, women's, boy's and girl's sportswear, namely, articles of apparel worn for playing golf, tennis or for walking, namely, shirts, skirts, pants, shorts, blouses, leggings and unitards", filed on the basis of an intent to use application on July 2, 1999. A computer generated printout of this application is attached hereto as Exhibit E.

12. Opposer is also the owner of Pending Application Serial No. 75/797,921 in the United States Patent and Trademark Office for "MIRACLEWEAR" for "bodywear, namely leotards; golf wear, namely, skirts, shorts, polo shirts and knit tops; tennis wear; walking wear, namely, leggings, shorts, pants, shirts, and knit tops", filed on the basis of an intent to use application on September 13, 1999. A computer generated printout of this application is attached hereto as Exhibit F.

13. By virtue of its continuous and substantial use and promotion of goods under the "MIRATEX", "MIRACLESUIT", "MIRACLEBODY" and "MIRACLEWEAR" marks ("Opposer's Marks"), and by virtue of Opposer maintaining its high quality standards for such goods, consumers of such goods and others have come to recognize the marks as an indication of origin with Opposer. Additionally, as a consequence of its use of its "MIRACLE" marks for its goods, Opposer has established a family of "MIRACLE" trademarks. As a result, Opposer has established valuable goodwill and exclusive rights in Opposer's Marks and its family of "MIRACLE" marks.

14. The first dates of use for Opposer's "MIRATEX", "MIRACLESUIT" and "MIRACLEBODY" marks, and the filing dates for Opposer's "MIRACLESUIT" and "MIRACLEWEAR" applications, are prior to the filing date of July 22, 1999, to which Applicant's Serial No. 75/758,810 is entitled. As a result, Opposer's rights in Opposer's Marks are superior to the rights of Applicant in its application and any registration that issues from such application.

15. Opposer's Marks and Applicant's mark are similar in sound, meaning, connotation, appearance, and dominant portions. Significantly, Applicant's mark shares the same dominant term, "MIRACLE", with Opposer's "MIRACLE" marks and the same prefix, "MIRA" with

Opposer's "MIRATEX" mark. When viewed as a whole, the marks convey similar overall commercial impressions.

16. Applicant's goods intended to be sold under Applicant's mark are substantially the same type of goods as the goods offered or intended to be offered in connection with Opposer's Marks and are distributed or are likely to be distributed through the same or commercially related channels of trade to the same or overlapping classes of consumers.

17. Persons familiar with Opposer's Marks or with the extensive efforts by Opposer to associate its marks with Opposer's goods and services, upon seeing Applicant's goods under a similar mark, would be likely to believe and would be justified in so believing, that such goods originated from Opposer or were produced in association or affiliation with, or under authorization of, Opposer. Thus, the Applicant's mark, as used on its goods, would lead persons familiar with Opposer's Marks and the goods sold in connection therewith to believe that Applicant's goods are produced by or sold in affiliation with or under license from Opposer.

18. Additionally, Applicant's mark, by reason of its similarity to Opposer's Marks, will be able to gain a foothold in Opposer's market or closely-related markets, by exploiting subliminal or subconscious association with Opposer's Marks. Purchasers of Applicant's goods will thus identify the properties and reputation of Applicant's goods with those of Opposer.

19. For the reasons stated above, Opposer believes that if Applicant is permitted to register its mark "MIRACLE WICK" for Applicant's goods, confusion of the trade and public resulting in damage and injury to Opposer would be caused or would result by reason of the similarity between Applicant's mark and Opposer's "MIRATEX", "MIRACLESUIT", "MIRACLEBODY" and "MIRACLEWEAR" marks. Customers familiar with Opposer's goods and Opposer's Marks would be likely to purchase Applicant's goods believing them to originate

from or be sponsored by Opposer. Any defect, objection, fault or adverse publicity in connection with Applicant's goods marketed under a mark confusingly similar to the Opposer's Marks will necessarily reflect on and seriously injure the reputation that Opposer has established for its goods.

20. If Applicant is granted a registration for this mark for the goods identified, it would obtain thereby at least a prima facie exclusive right to use such mark. Such registration would be a source of damage and injury to Opposer and to Opposer's customers.

WHEREFORE, Opposer prays that Application Serial No. 75/931,273 be rejected, that registration of the mark therein sought be denied and refused, and this opposition be sustained.

A duplicate copy of this Notice of Opposition is enclosed herewith.

A check in the amount of \$300 is also enclosed herewith for all fees in connection with this Notice of Opposition.

Respectfully submitted,

A & H SPORTSWEAR CO., INC.

Dated: February 15, 2002

BY:



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