

TTAB

EXPRESS MAIL CERTIFICATE

Date 3/13/02 Label No. AV706737380US

I hereby certify that, on the date indicated above, this paper or fee was deposited with the U.S. Postal Service and that it was addressed for delivery to the Assistant Commissioner For Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 by "Express Mail Post Office to Addressee" service.

D Beck [Signature]
Name (Print) Signature

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

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:
LAB21, INC., :
:
Opposer, :
:
v. :
:
ORLANE S.A., :
:
Applicant. :
-----X

OPPOSITION NO.



NOTICE OF OPPOSITION

In the matter of application of Orlane S.A. ("Applicant") for registration of B21 in for "toilet waters, revitalizing waters, perfumes," etc. in International Class 3; "pharmaceutical products for skin care and skin treatment," etc. in International Class 5; "vaporizers, namely perfume and toilet water vaporizers," etc. in International Class 21; and "body and face treatment services, hygiene and beauty care services," etc. in International Class 42, Application Serial No. 76/291,260, published in the Official Gazette of November 13, 2001 (the "Application"), with extensions of time to oppose granted through March 13, 2002.

03/18/2002 KGIBBONS 00000147 76291260

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Lab21, Inc., a New York corporation with its principal place of business at 245 Park Avenue, 39th Floor, New York, New York 10167, believes it will be damaged by the registration of the mark shown in the application and hereby opposes same.

The grounds for the opposition are:

1. Opposer manufactures, offers for sale and sells a wide variety of cosmetics and skin care products.
2. Opposer has used the LAB21 mark for its skin care products and cosmetics.
3. Opposer is owner of applications to register LAB21 (Serial No. 75/878866) and LAB21.COM (Serial No. 75/878868), which were each filed on December 23, 1999.
4. With respect to the pending intent to use application for LAB21.COM (Serial No. 75/878868), a statement of use has been accepted by the PTO.
5. On May 31, 2001, Applicant wrote a letter to Opposer demanding that Opposer "cease all use of the mark B21 as part of it mark and in the promotion of cosmetics and skin and hair care products. ... [and] withdraw its pending applications to register LAB21 (Serial No. 75/878866) and LAB21.COM (Serial No. 75/878868)."
6. On Sept. 19, 2001, Applicant filed a Complaint against Opposer in the Southern District of New York alleging various causes of action including trademark infringement, federal and state trademark dilution and unfair competition.
7. Applicant claims exclusive rights in the term "B21" and marks containing the term "B21" when used in connection with cosmetics, skin and hair care products.

8. Upon information and belief, registration of Applicant's mark will cause consumers and the trade to believe erroneously that Applicant has exclusive rights in all marks containing the terms B and 21.

9. Upon information and belief, the terms B21 do not comprise a mark by which the goods of Applicant may be distinguished from the goods of others, including those of Opposer.

10. Upon information and belief, Applicant will attempt to use a registration of the mark B21 to its procedural benefit in the litigation Applicant has filed against Opposer and to Opposer's detriment.

WHEREFORE, Opposer Lab21, Inc. believes it will be damaged by the registration of Application Serial No. 76/291,260 and prays that such registration be denied.

Respectfully submitted,



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March 13, 2002