

Handwritten initials: JAM

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



09-27-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #58

 BOOTS HEALTHCARE USA, INC., :
 :
 Opposer, :
 :
 v. :
 :
 CLEARIASIS, L.L.C., :
 :
 Applicant. :

Opposition No.:

Serial No.: 76/204,041

NOTICE OF OPPOSITION

Boots Healthcare USA, Inc., a Delaware corporation, with a business address at 1209 Orange Street, Wilmington, Delaware ("Opposer"), believes that it will be damaged by registration of the alleged mark CLEARIASIS for "medicated topical skin preparations, namely skin creams for the treatment of psoriasis, eczema and dermatitis" as shown in Application Serial No. 76/204,041 filed on February 2, 2001 by Cleariasis L.L.C., a Louisiana corporation located at 1616-A South Columbia, Bogalusa, Louisiana 70427 ("Applicant"). This application was published on May 28, 2002. Opposer, as a result, hereby opposes registration of the aforesaid mark.

As grounds for opposition, it is alleged that:

1. Since at least as early as 1950, Opposer and its predecessors in interest have continuously used the CLEARASIL trademark in connection with medicated skin preparations, creams and soaps throughout the United States. By virtue of substantial sales and extensive

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distribution, advertising and promotion of CLEARASIL products, this mark is widely recognized by the purchasing public as the source for Opposer's high quality products.

2. Opposer owns the following United States Patent and Trademark Office registrations and application (all of these marks are collectively referred to as "Opposer's Mark"):

<u>Mark</u>	<u>Reg. Appln. No.</u>	<u>Goods/Services</u>
CLEARASIL	1,951,073	pharmaceutical preparation, namely, a greaseless medication for external application to pimples and acne
CLEARASIL STAYCLEAR	2,339,266	acne medication
CLEARASIL	620,540	medicated toilet and bath soap
CLEARASIL	76/355,469	therapeutic skin cleanser, preparation for covering and concealing acne blemishes; medicated skin preparation, medicated skin cream, medicated soap.

The registrations are valid and subsisting, unrevoked and uncancelled and Registration Nos. 620,540 and 1,951,073 have been granted incontestable status pursuant to Section 15 of the Trademark Act.

3. Applicant's mark and Opposer's Mark are similar in appearance, spelling, pronunciation and overall commercial impression.

4. Applicant's Mark and Opposer's Mark identify goods which treat conditions of the skin.

5. On information and belief, the goods identified by Applicant's Mark will be marketed through the same channels of trade as the goods identified by Opposer's Mark.

6. The first use of Opposer's Mark predates the intent to use filing date for Applicant's

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Mark. Therefore, there is no issue of priority in this proceeding.

7. Applicant's Mark is confusingly similar to Opposer's Mark, and its use and registration is likely to deceive and to cause mistake or confusion among members of the public as to the source of Applicant's goods within the meaning of 15 U.S.C. §1052(d).

8. As a direct result of the long, continuous and extensive use of Opposer's Mark, this mark has become famous. Applicant's use and registration of its alleged CLEARIASIS mark will dilute the distinctive quality of Opposer's Mark within the meaning of 15 U.S.C. § 1125(c).

9. As a result of the foregoing, Opposer will be damaged within the meaning of 15 U.S.C. §1063.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of Application Serial No. 76/204,041 for CLEARIASIS be denied.

Respectfully submitted,



LAWRENCE E. ABELMAN
STEPHEN J. QUIGLEY

Dated: September 24, 2002

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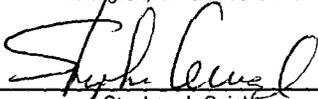
Attorneys for Opposer

Serial No.: 76/204,041

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
United States Patent and Trademark Office
2900 Crystal Drive,
Arlington, VA 22202-3513



Stephen J. Quigley

Date: September 24, 2002

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September 24, 2002

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09-27-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #58

Re: Opposition to Appln. No. 76/204,041
for CLEARIASIS
Our Ref.: 211145

Dear Sir:

Enclosed please find:

1. A Notice of Opposition, in duplicate, on behalf of Boots Healthcare USA, Inc. with respect to Application No. 76/204,041 for CLEARIASIS filed by Cleariasis, L.L.C.

2. Our firm's check in the amount of \$300 for the opposition fee. If this amount is not sufficient, please charge Deposit Account No. 01-0035.

Please acknowledge receipt by returning the attached postcard.

Respectfully submitted,

ABELMAN, FRAYNE & SCHWAB

By: Stephen J. Quigley
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Attorneys for Opposer

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