

TTAB

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

In the Matter of Application Serial No. 75/086,162  
by 3M ESPE AG for the Mark: [COLOR VIOLET]

DENTSPLY INTERNATIONAL INC.,

Opposer,

v.

3M ESPE AG,

Applicant.

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OPPOSITION NO. 91157364

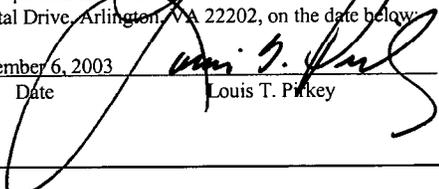


ANSWER

11-13-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

**BOX TTAB -- NO FEE**  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

CERTIFICATE OF MAILING 37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, on the date below:	
November 6, 2003	
Date	Louis T. Pirkey

3M ESPE AG ("Applicant") responds to the allegations in the Notice of Opposition as set forth below. The numbered paragraphs below correspond to those appearing in the Notice of Opposition.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Notice of Opposition.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Notice of Opposition.
3. Admitted.

4. (a) Applicant admits that under current U.S. law, the color of a product is not considered to be inherently distinctive, and thus Applicant's mark cannot be inherently distinctive under U.S. law. Applicant denies the remaining allegations in paragraph 4(a) of the Notice of Opposition.

(b) Denied.

(c) [There is no (c) in the Notice of Opposition.]

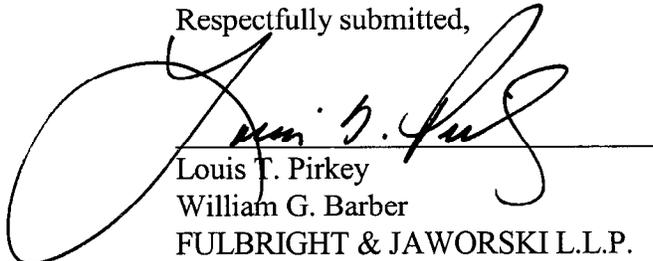
(d) Applicant admits that in its response to the Office Action dated September 21, 1998, it stated "to the best of the Applicant's knowledge, information and belief, there is only one competitor that has sold the impression material in the color violet – The L.D. Caulk Company . . . ." Applicant denies that this statement was false or misleading. Applicant admits that it is now aware of other manufacturers of impression materials who use various shades of violet or purple for their product, but asserts that such use is inconsequential or infringing of Applicant's rights. Applicant further admits that it is involved in litigation in Germany with Heraeus Kulzer GmbH & Co. KG.

5. Applicant admits the first sentence and denies the second sentence of paragraph 5 of the Notice of Opposition.

6. Applicant denies that Opposer will be irreparably damaged by the registration of Applicant's mark.

WHEREFORE, Applicant requests that judgment be entered in its favor dismissing this opposition, and that Applicant's mark proceed to registration.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Louis T. Pirkey". The signature is written over a horizontal line.

Louis T. Pirkey  
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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **ANSWER** was served by first class mail on this 6<sup>th</sup> day of November, 2003, to Opposer's counsel of record as follows:

Harvey Freedenberg  
Michael A. Doctrow  
McNees, Wallace & Nurick  
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