

ESTTA Tracking number: **ESTTA3236**

Filing date: **11/14/2003**

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

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Name	GAPARDIS HEALTH & BEAUTY, INC.
Granted to Date of previous extension	11/22/2003
Address	GAPARDIS HEALTH & BEAUTY, INC. 6848 N.W. 77th Court Miami, FL 33166 UNITED STATES

Correspondence information	David M. Rogero 2600 Douglas Road, Suite 600 Coral Gables, FL 33134 UNITED STATES dmrogero@dmrpa.com Phone:305-441-0200
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Applicant Information

Application No	76449823	Publication date	09/23/2003
Opposition Filing Date	11/14/2003	Opposition Period Ends	11/22/2003
Applicant	Gapardis, Inc.		
Address	7494 NW 54th Street Miami, FL 33166 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 19980801 First Use In Commerce: 19980901
All goods and services in the class are opposed, namely: FULL LINE OF DISTRIBUTORSHIP SERVICES IN THE FIELD OF FRAGRANCES AND TOILETRIES, NAMELY, IMPORTATION, WHOLESALE AND RETAIL DISTRIBUTORSHIP SERVICES FOR FRAGRANCES AND TOILETRIES

Attachments Text of opposition statement.pdf (1 page)

1. Opposer, Gapardis Health & Beauty, Inc., is a corporation formed and existing under the laws of the state of Florida, which maintains its principal office in Miami, Florida. Opposer conducts business in commerce as a distributor of hair and skin care products, including the importation and wholesale and retail sales of such products.
2. Applicant, Gapardis, Inc., is a corporation organized and existing under the laws of the state of Florida, which maintains its principal office in Miami, Florida. Upon information and belief, Applicant is a distributor of perfumes.
3. Opposer believes that it would be damaged by Applicant's registration of the mark GAPARDIS.
4. On or about March 17, 2000, the principal of Applicant entered into an agreement with other parties to form a Florida corporation named Gapardis Health and Beauty, Inc., to conduct the business of distribution of hair and skin care products. Among other things, it was agreed that Applicant would be the owner of a portion of the stock of the new company. Pursuant to the agreement, Opposer was formed on or about March 28, 2000, and immediately began operations.
5. On or about July 13, 2001, Applicant entered into an agreement to sell the stock it owned in Opposer. Pursuant to this agreement, Applicant transferred stock of the Opposer to the Opposer and ended its ownership interest in the Opposer. The agreement did not contemplate any change of Opposer's business name or the discontinuance of its use of the mark GAPARDIS.
6. Since its inception in March 2000, Opposer has used the name Gapardis Health & Beauty, Inc., and the mark GAPARDIS in commerce in connection with services as a distributor of hair and skin care products, including the importation and wholesale and retail sales of such products. Applicant has tolerated Opposer's use of the name and mark for more than three and a half years without demand or complaint.
7. As a result of acquiescence, waiver, and/or estoppel, Applicant has allowed the mark to lose its significance as a mark, and has abandoned any exclusive right to use GAPARDIS as a mark.
8. At the time of its application for registration of the mark, Applicant had actual knowledge of Opposer's right to use the mark in commerce. Applicant's declaration that it knows of no other person, firm, corporation, or association that has the right to use the mark in commerce is therefore false, and its application is void for fraud.
9. Upon information and belief, the Applicant's attempt to register the mark is calculated to cause Opposer to cease its use of the mark, despite Applicant's acquiescence, waiver and estoppel as to Opposer's use of the mark.