

ESTTA Tracking number: **ESTTA18753**

Filing date: **11/05/2004**

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

Notice of Opposition

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

Opposer Information

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| Name | Nicole Lambert |
| Granted to Date of previous extension | 11/06/2004 |
| Address | 9 Rue Morere Paris, 75014 FRANCE |

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| Attorney information | Laura Popp-Rosenberg Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES lpopp-rosenberg@frosszelnick.com,pperkins@frosszelnick.com |
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Applicant Information

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| Application No | 75983237 | Publication date | 09/07/2004 |
| Opposition Filing Date | 11/05/2004 | Opposition Period Ends | 11/06/2004 |
| Applicant | CROMOSOMA, S.A. C/Peru, 174-176 08020 Barcelona, | | |

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| SPAIN |
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Goods/Services Affected by Opposition

Class 009.

All goods and services in the class are opposed, namely: Multimedia software featuring cartoons recorded on CD-ROMs, CD-LASER discs, CDI disc and TVD disc; acoustic discs featuring music, voices and sounds from cartoons; computer operating programs, computer game software, video game software, virtual reality game software, and interactive video game software; and computer graphics software used to produce illustrations on computer screens

Class 025.

All goods and services in the class are opposed, namely: Clothing, namely, shirts, suits, dresses, pants, footwear, namely, shoes and socks; headgear, namely, hats and caps

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| Related Proceedings | Cromosoma S.A. v. Nicole Lambert, Cancellation No. 92041371 |
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| Attachments | Notice of Opposition against Ser. No. 75983237.pdf (5 pages) |
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| Signature | /Laura Popp-Rosenberg/ |
| Name | Laura Popp-Rosenberg |
| Date | 11/05/2004 |

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

In the Matter of Application Serial No. 75983237

(Our Ref.: NLAM USA TC 03/01377)

Mark: THE TRIPLETS ANNA TERESA HELENA (and design)

Filed: July 15, 1997

Published in the *Official Gazette* on September 7, 2004

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| NICOLE LAMBERT, | : | |
| | : | |
| Opposer, | : | |
| | : | Opposition No. _____ |
| - against - | : | |
| | : | |
| CROMOSOMA, S.A., | : | FILED ELECTRONICALLY |
| | : | VIA ESTTA |
| Applicant. | : | |
| | : | |
| -----X | | |

Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451
BOX TTAB – FEE

NOTICE OF OPPOSITION

Opposer, Nicole Lambert, an individual residing in France, believes that she will be damaged by the issuance of a registration for the trademark THE TRIPLETS ANNA TERESA HELENA (and design) as applied for in Application Serial No. 75/983,237, and therefore opposes the same. As grounds for its opposition, Opposer, by her attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. For more than 20 years, Opposer has been the artist, designer and writer behind a beloved set of characters known in French as “Les Triplés” and in English as “The Triplets.” Originally appearing in a comic strip, “The Triplets” characters now also appear in books and in other media as well as on various merchandise.

2. Since at least as early as 1996, Opposer has used the mark THE TRIPLETS on various goods in the United States, and is continuing to do so.

3. Since at least as early as 1996, and prior to any date upon which Applicant can rely, Opposer has used the design mark



(the “Opposer’s Design Mark”) on various goods in the United States.

4. Opposer received a federal registration for Opposer’s Design Mark, U.S. Registration No. 2,251,561, on June 8, 1999 for “stationery, notebooks, memorandum books, pen and pencil cases made of cardboard or paper, writing paper, folders made of paper, cardboard or plastic for filing, pencils and pens” in International Class 16 and “dolls” in International Class 28.

Opposer’s registration is valid, subsisting, and in full force and effect. As such, it constitutes *prima facie* evidence of the validity of the registered mark and of the registration thereof, of Opposer’s ownership of the mark shown therein and of Opposer’s exclusive right to use the mark in commerce in connection with the goods and services named therein, without condition or limitation; it also constitutes notice to Applicant of Opposer’s claim of ownership of the mark shown therein; all as provided in Sections 7(b), 22 and 33(a) of the Lanham Trademark Act of 1946 as amended (the “Lanham Act”).

5. On December 23, 2004, Applicant instituted with the United States Trademark Trial and Appeal Board proceeding number 92041371 seeking cancellation of Opposer’s trademark Registration No. 2,251,561 for Opposer’s Design Mark. That cancellation proceeding is still pending, with trial briefing completed by both parties on September 16, 2004.

6. Opposer has invested a substantial amount of time, effort and money in promoting THE TRIPLETS mark and Opposer's Design Mark (together, "Opposer's Marks"). As a result, Opposer's Marks have become distinctive of Opposer and her goods and have come to represent enormous goodwill for Opposer.

7. On information and belief, Applicant is a corporation organized and existing under the laws of Spain, with its principal offices at C/Peru, 174-176, 08020 Barcelona, Spain.

8. On July 15, 1997, Applicant filed Application Ser. No. 75/983,237 to register the design mark



("Applicant's Design Mark") for "multimedia software featuring cartoons recorded on CD-ROMs, CD-LASER discs, CDI disc and TVD disc; acoustic discs featuring music, voices and sounds from cartoons, computer operating programs, computer game software, video game software, virtual reality game software, and interactive video game software, virtual reality game software, and interactive video game software; and computer graphics software used to produce illustrations on computer screens" in International Class 9 and "clothing, namely, shirts, suits, dresses, pants, footwear, namely shoes and socks; headgear, namely, hats and caps" in International Class 25. Upon information and belief, Applicant made no use of this mark in United States commerce prior to its filing date.

9. Upon information and belief, Applicant had actual knowledge of Opposer's prior rights to and interest in Opposer's Marks prior to filing the Application herein opposed. As a matter of law, Applicant was on constructive notice of Opposer's rights in Opposer's Design

Mark based on Opposer's registration, and Applicant had such constructive notice before filing the Application herein opposed.

10. Upon information and belief, Applicant cannot show any use of or rights in Applicant's Design Mark that predate Opposer's rights in and to Opposer's Marks. The only dates on which Applicant can rely in connection with Applicant's Design Mark are subsequent not only to Opposer's first use of Opposer's Mark but also to the date on which Opposer received Registration No. 2,251,561.

11. Applicant's Design Mark is similar in sound, meaning and/or commercial impression to Opposer's Marks. Applicant's Design Mark incorporates Opposer's THE TRIPLETS word mark in whole and has numerous confusingly similar elements to Opposer's Design Mark. As a result, Applicant's Design Mark is highly similar in similar in sound, appearance and/or commercial impression to each of Opposer's Marks.

12. The goods listed in Applicant's application are identical to and/or related to goods on which Opposer has used or has licensed to use Opposer's Marks. In addition, Applicant's application does not limit the channels of trade through which Applicant's goods will travel nor does it limit the consumers to whom the goods are directed. Thus, Applicant's goods are presumed to travel through all channels of trade and to be directed to all relevant consumers.

13. Any use by Applicant of Applicant's Design Mark for the goods listed in the application is likely to create the erroneous impression that Applicant's goods originate with, are sponsored or promoted by, come from, or are otherwise associated with Opposer or Opposer's goods provided under Opposer's Marks, or that Applicant's goods are endorsed, sponsored, or in some way connected with Opposer. Any use of Applicant's Design Mark by Applicant is, therefore, likely to cause confusion, cause mistake or to deceive the public into the belief that the

goods offered under Applicant's Design Mark come from or are otherwise authorized or sponsored by Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's Design Mark.

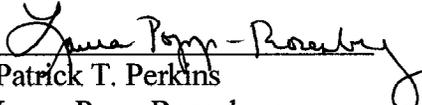
WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 75/983,237 be denied.

It is requested that Opposer's attorneys' Deposit Account No. 23-0825-0576900 be charged the filing fee of \$600.00 for this opposition in two classes.

Dated: New York, New York
November 5, 2004

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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