

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

BACH FLOWER REMEDIES LIMITED

Opposer,

v.

KLEARSEN CORPORATION,

Applicant.



TTAB

Opposition No. _____

Our Account No. 14-1140

Our Order No. 141-391
C# M#

In Re Application No. 78/363,962
Filed February 6, 2004
For the Mark BACK RESCUE

Date: October 11, 2005

Box TTAB Fee

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

The document indicated below is attached for filing and is incorporated by reference. Fees are attached as calculated below:

- NOTICE OF OPPOSITION in 1 class(es) (\$ 300 per class) (6402) \$ 300.00
- PETITION FOR CANCELLATION in 0 class(es) (\$ _____ per class)(6401) \$ 0.00

TOTAL FEE ENCLOSED \$ 300.00

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this form) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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By Atty: Donna J. Bunton

Signature: *Donna J. Bunton*



10-11-2005

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

In re Trademark Application of

Atty. Ref.: 141-391

Klearsen Corporation

Serial No.: 78/363,962

Filed: February 6, 2004

Mark: BACK RESCUE

For: Herbal gel for treatment of back pain, in International Class 5

Published in the *Official Gazette* of April 12, 2005 at TM 175

Bach Flower Remedies Limited,)

Opposer,)

v.)

Klearsen Corporation,)

Applicant.)

Opposition No. _____

NOTICE OF OPPOSITION

Bach Flower Remedies Limited, a private limited company of the United Kingdom, having its principal place of business at 5 Endeavour Way, Wimbledon, London SW19 9UH, England (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Application Serial No. 78/363,962 filed February 6, 2004, and hereby opposes same.

The grounds are as follows:

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300.00 DP

(1) Application Serial No. 78/363,962 seeks registration of BACK RESCUE for *herbal gel for treatment of back pain* (hereafter "Applicant's goods"). The application was filed February 6, 2004 and is based on Applicant's use of the mark in commerce since March 1, 2003 pursuant to § 1(a) of the Trademark Act.

(2) Since long prior to the filing date of Application Serial No. 78/363,962 on February 6, 2004 and Applicant's date of first use in commerce of March 1, 2003, Opposer adopted, used and is using in commerce the marks RESCUE and RESCUE REMEDY for *homeopathic pharmaceutical preparation made from flower extracts for alleviating emotional and mental stress* (Int'l Class 5), *herbal food beverage concentrate made from essences (not being in the nature of essential oils) extracted from plants and flowers* (Int'l Class 30), and *an herbal beverage made from essences (not being in the nature of essential oils) extracted from flowers* (Int'l Class 32) and the mark RESCUE CREAM for *remedial preparations made from flower extracts* (Int'l Class 5) (hereafter "herbal preparations").

(3) Opposer is the owner of the trademarks RESCUE, RESCUE REMEDY, and RESCUE CREAM, having continuously used the mark RESCUE REMEDY for herbal preparations in commerce since 1961, the mark RESCUE CREAM for herbal preparations since August 1995, and the mark RESCUE for herbal preparations since January 15, 2001.

(4) Opposer duly registered the marks RESCUE and RESCUE REMEDY as trademarks in the United States Patent and Trademark Office, Registration Nos. 1,237,564 (issued May 10, 1983), 1,822,260 (issued February 22, 1994) and 2,517,685

(issued December 11, 2001). Opposer filed Application Serial No. 78/588,767 to register the mark RESCUE CREAM on March 16, 2005.

(5) Registration Nos. 1,237,564, 1,822,260 and 2,517,685 are *prima facie* evidence of the validity thereof, Opposer's ownership and exclusive right to use the marks RESCUE and RESCUE REMEDY in commerce and are constructive notice of Opposer's ownership thereof, all as provided by §§ 7(b) and 22 of the Trademark Act of 1946. As Opposer's right to use the mark RESCUE REMEDY in commerce has become incontestable, Registration Nos. 1,237,564 and 1,822,260 are conclusive evidence of Opposer's right to use said mark in commerce on the goods specified in the registrations, as provided by §§ 15 and 33(b) of the Trademark Act of 1946.

(6) By virtue of Opposer's long, continuous and substantial promotion and sale of goods covered by Registration Nos. 1,237,564, 1,822,260 and 2,517,685 and Application Serial No. 78/588,767 and its maintenance of high quality standards relating thereto, purchasers, consumers and users of such products, and others, have come to recognize the marks RESCUE, RESCUE REMEDY and RESCUE CREAM as indications of origin in Opposer, as a consequence of which Opposer has established valuable goodwill and exclusive rights in the marks RESCUE, RESCUE REMEDY and RESCUE CREAM.

(7) Opposer's marks RESCUE, RESCUE REMEDY and RESCUE CREAM and Applicant's mark BACK RESCUE are identical in part, each including the word "RESCUE."

(8) The term "RESCUE" is the dominant portion of Opposer's marks RESCUE, RESCUE REMEDY and RESCUE CREAM and of Applicant's mark BACK RESCUE.

(9) The marks RESCUE, RESCUE REMEDY, RESCUE CREAM and BACK RESCUE are similar in sound and appearance.

(10) Opposer's herbal preparations sold under the marks RESCUE, RESCUE REMEDY and RESCUE CREAM and Applicant's goods under the mark BACK RESCUE are related products which are or are likely to be offered through the same or overlapping channels of trade to the same or overlapping classes of purchasers so that purchasers, prospective purchasers, users and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's goods offered under the mark BACK RESCUE emanate from and/or are in some way sponsored or approved by Opposer or are otherwise related to Opposer's RESCUE, RESCUE REMEDY and RESCUE CREAM herbal preparations, thereby damaging Opposer.

(11) Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that the mark BACK RESCUE for Applicant's goods so resembles Opposer's previously used and registered marks RESCUE and RESCUE REMEDY and Opposer's previously used mark RESCUE CREAM as to be likely to cause confusion, to cause mistake or to deceive within the meaning of Section 2(d) of the Federal Trademark Act, thereby damaging Opposer.

WHEREFORE, Opposer prays that the present opposition be sustained and the registration of BACK RESCUE sought by Applicant be refused.

The requisite filing fee of \$300 is submitted herewith.

Bach Flower Remedies Limited

By its Attorneys

Date: Oct. 11, 2005

By: Donna J. Buntun

Donna J. Buntun

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