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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 78/550,816
Published in the Official Gazette on: August 22, 2006
For the mark: HOLIDAY SPA ESCAPE

BC INTERNATIONAL COSMETIC & IMAGE SERVICES,INC Opposer, v. LINDA SAINT MARC Applicant.	Opposition No.: 91172798

ANSWER TO NOTICE OF OPPOSITION

Applicant, Linda Saint Marc answers the Notice of Opposition as follows:

1. In answering the initial paragraphs of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truth of the allegations about Opposer, and thus denies the same. Applicant denies any and all allegations and inferences that Opposer would be damaged by Applicant's registration of the mark HOLIDAY SPA ESCAPE (herein "Applicant's Mark"). In answering Paragraph 1 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truth of the allegations contained therein, and thus denies the same.

2. In answering Paragraph 2 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truth of the allegations contained therein, and thus denies the same.

3. Applicant admits Paragraph 3 of the Notice of Opposition.

4. Applicant admits Paragraph 4 of the Notice of Opposition .

5. In answering Paragraph 5 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

6. In answering Paragraph 6 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same .

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition without waiver of any objection or an admission of sufficiency of the Notice of Opposition, Applicant asserts upon information and belief that:

1. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

2. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be

thought by the public to be a use by Opposer or with Opposer's authorization or approval.

3. Applicant's mark in its entirety is sufficiently distinctively different from Opposer's mark to avoid confusion, deception or mistake as to the source or association of Applicant's goods.

4. Applicant's mark, when used on Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

RELIEF REQUESTED

WHEREFORE, Applicant prays that the Opposition be dismissed and the mark be allowed to mature to registration.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: October 23,, 2006

By: L Saint Marc

Linda Saint Marc
Linda.saintmarc@verizon.net
55 Continental Avenue
Forest Hills, NY 11375
Tel 718.575.1959
Fax 718.575.0595

PROOF OF SERVICE

I, Linda Saint marc, hereby declare that I am over 18 years of age; and that I served the following document: ANSWER TO NOTICE OF OPPOSITION, relating to OPPOSITION NO. 91172798 this 23rd day of October, 2006, by causing a true copy to be deposited in the United States Mail, first class postage prepaid to Opposer's attorneys as follows:

Robert A Becker -- Attorney For Opposer

Fross Zelnick Lehrman & Zissu, PC

866 United Nations Plaza
New York, New York 10017

And to:

United States Patent and Trademark Office
Trademark Trail and Appeal Board
P.O.Box 1451
Alexandria, VA 22313-1451

And to:

Trademark Assistance Center
Concourse Level Room C55
600 Delaney St
Alexandria VA 22314

And via email to : rbecker@frosszelnick.com

Date: Oct 23, 2006 L Saint Marc

Linda Saint Marc

Linda Saint Marc
Linda.saintmarc@verizon.net
55 Continental Avenue
Forest Hills, NY 11375
Tel 718.575.1959
Fax 718.575.0595

BERNARD J CARTOON, LL.M.
21300 ERWIN STREET
WOODLAND HILLS, CALIFORNIA 91367
Phone: 818-316-1448
Fax: 818-999-1541(Office)
Fax: 818-710-1794(Home)
Email: Bernard.cartoon@weiderhf.com

Member: California Bar

Member: District of Columbia Bar

May 2, 2005

Robert A Becker,Esq.
Fross Zelnick, et. al.
866 U.N. Plaza
New York,N.Y.10017 Via email: rbecker@frosszelnick.com

Re: BC International Cosmetic& Imaging Services,Inc. Your Ref. BCI USA TC-05/02422

Dear Mr. Becker:

This will refer to your letter to Linda Saint Marc dated April 4,2005 with respect to your client BC International Cosmetic & Image Services, Inc. ("BCI").

We deny that our client's intent-to-use trademark application (78/550,816) for the mark *Holiday Spa Escape* in classes 3, 4, 14, 16, 18 and 25 is in conflict with BCI's various non-related service marks identified in your letter (classes 9, 41, and 44) of which only one has achieved the final status of being registered by the US Trademark Office.

We say this for the following reasons, among others:

1. Our client's prospective trademark is in classes 3, 4, 14, 16, 18 and 25, whereas your client's service marks are in classes 9, 41, and 44. There is absolutely no commonality between the type of mark applied for (trademark vs. service mark) nor the specific classes.

2. Our client applied for a trademark in each of these classes with the consistent words "*Holiday Spa Escape*", whereas your client's use of the word *Escape* is inconsistent both in it's marketing materials and in it's service mark applications (e.g."*Time to escape*: the *BeautiControl spa experience*", "*Spa escape*", "*Spa escape at work*", "*Escape: the BeautiControl experience*"). The lack of consistent usage of Escape by your client fails to support any unique identifiable characteristic as suggested by your letter, in fact it points to the usage being a copy platform for marketing materials rather than a singularly identifiable, recognized and memorable signature phrase. Your client has diluted its own service marks with inconsistent, fragmented usage.

3. Our client is utilizing the applied for trademark for non-party-plan direct in-home sales channels of distribution, whereas by your client's own description (http://www.beauticontrol.com/Company_profile.htm) its business is based in the party-plan direct-sales channels with BeautiControl Independent Skin Care and Image Consultants. Clearly, there is no overlap in the core distribution channels.

4. Our client's applied for trademark is for merchandise marketed and sold related specifically to the classes filed for, whereas your client sells merchandise bearing trademarks for class 3 which are unrelated to the service marks addressed in your letter (e.g. *Skinlogics, Herbal Serenity, Regeneration, BeautiControl, Therma Del Sol, Microderm*). As your client's applications detail, multiple service marks are used for marketing a service concept for in-home parties/ conferences/ seminars provided by BeautiControl Independent Skin Care and Image Consultants as a means of engaging prospective customers to try the unrelated beauty products. Once again there is no similarity to our client.

5. Our client has applied for the trademark "*Holiday Spa Escape*", your client's service mark applications feature an array of multi-word phrase combinations ranging between 2 - 7 words each in length. None of your client's filings include the word "holiday".

6. In your client's service mark filings the word "*spa*" is disclaimed, leaving only the word "*escape*". As you should be aware within classes 41 and 9 your client co-exists with other service mark owners who

prominently include the word "escape" (e.g. "*SHAPE ESCAPE*" and "*ESCAPE YOUR SHAPE*"). Your client already co-exists with the mark "*SPABOX ESCAPE RELAX RENEW*" in that your client's marketing materials use the words Spa, Escape, Relax, Renew. The inference that there may be any sort of potential confusion in the marketplace due to the trademarks applied for by our client fails to recognize the dilution that already exists in the market for the word "*escape*" (especially in the service mark format), not to mention the widespread usage of the word "*spa*".

7. With regard to the trade mark classes our client has applied in, your client does not own any trademark in class 3, 4, 14, 16, 18 or 25 for "*spa escape*" or "*escape spa*". Furthermore, there are currently two trademark owners that co-exist within class 3 for "escape". There is absolutely no association between the trademarks filed for by our client and those within similar classes registered by your client.

8. Of the trademarks held by your client in class 3 (e.g. Skinlogics, Herbal Serenity, Regeneration,Therma Del Sol, Microderm) only "BeautiControl" is filed across all classes of your clients business operation areas which span classes 3, 5, 9, 14, 21, 25, 41, 42 and 44. This confirms that the base of BCI's business is found in the "BeautiControl" trademark and related service marks, none of which include the word "escape".

9. Two of BCI's service marks mentioned in your letter, feature combinations of 4-7 words which emphasize "BeautiControl". Of the service marks detailed in your letter, the first and most recent service marks applied for by your client are the versions which emphasize "BeautiControl". The trademark and service mark strategy of your client further reinforces that the primary mark for it's business is first and foremost "BeautiControl" , and then an assortment of trademarks held within class 3.

It follows that there is no likelihood that consumers familiar with the in-home educational services offered under your client's assorted service marks and the fact that skin care products bearing unrelated trademarks can be purchased at BeautiControl home party events would think that the products marketed and sold via non-party-plan direct in-home sales channels under the trademark "Holiday Spa Escape" could be connected to BCI's marks, products or services.

All our clients rights are reserved, including the right to advance additional grounds of non-infringement.

Sincerely,

Bernard J. Cartoon

cc. Linda Saint Marc(via email).