

ESTTA Tracking number: **ESTTA117325**

Filing date: **12/29/2006**

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

Name	JULIA KAROLY ENTERPRISES LLC
Granted to Date of previous extension	01/24/2007
Address	4335 SOUTH LEE STREET SUITE C BUFORD, GA 30518 UNITED STATES

Applicant Information

Application No	78741172	Publication date	09/26/2006
Opposition Filing Date	12/29/2006	Opposition Period Ends	01/24/2007
Applicant	W LAB ACQUISITION CORP. ONE EXETER PLAZA 699 BOYLSTON STREET - 3RD FLOOR BOSTON, MA 02116 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: COSMETICS; non-medicated SKIN CARE preparations
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Attachments	OPPOSITION.pdf (3 pages)(102518 bytes)
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Signature	/BT/
Name	BREWSTER TAYLOR
Date	12/29/2006

JULIA KAROLY ENTERPRISES, LLC, a Georgia corporation, with a principal address at 4335 South Lee Street, Suite C, Buford, Georgia 30518 (hereinafter "Opposer"), believes that it would be damaged by registration of the mark "BOTÁGE IDB", which is shown in U.S. Trademark Application Serial No. 78/741,172 and of which the owner of record is **W LAB ACQUISITION CORP.**, a Delaware corporation with a principal address at One Exeter Plaza, 699 Boylston Street – 3rd Floor, Boston, Massachusetts 02116 (hereinafter "Applicant"), and Opposer, by its undersigned attorneys, hereby requests that registration of the mark " BOTÁGE IDB" be denied on the following grounds:

1. In U.S. Trademark Application Serial No. 78/741,172, Applicant seeks registration of the mark "BOTÁGE IDB" for a "cosmetics; non-medicated skin care preparations". The application was filed on October 26, 2005, and is based on Applicant's alleged bona fide intention to use the mark in commerce on said goods under Section 1(b) of the Trademark Act (15 U.S.C. §1051(b)), and, on information and belief, there has been no actual use of the mark by Applicant prior to the filing date of the application.

2. Opposer is the owner of the mark "BEAUTAGÉ" and of prior U.S. Trademark Registration No. 3,064,179, which issued on February 28, 2006, to Opposer on its application filed on May 17, 2004, for registration of the mark "BEAUTAGÉ" for "cosmetic skin renewal products, namely wrinkle removing and wrinkle minimizing skin care preparations; lip, face, and eye serums, creams and lotions; moisturizing creams and lotions" based on use of the mark on the goods in commerce since at least as early as July, 2005. On information and belief, Opposer's use in commerce of its "BEAUTAGÉ" mark for its products is long prior to any actual use by Applicant of the "BOTÁGE IDB" mark.

3. Opposer's registration of "BEAUTAGÉ" for "cosmetic skin renewal products, namely wrinkle removing and wrinkle minimizing skin care preparations; lip, face, and eye serums, creams and lotions; moisturizing creams and lotions" (U.S. Trademark Registration No. 2,938,348) operates as *prima facie* evidence of the validity of the registered mark and of the registration of the mark, of Opposer's ownership of the mark set forth therein, and of Opposer's exclusive right to use the mark in connection with the goods listed in the registration. See 15 U.S.C. § 1057(a).

4. In view of the close similarity of the marks of Applicant and Opposer and of the close relationship, if not identity, of the types of products in connection with which the marks are used, purchasers are likely to be confused as to the source of the products and mistakenly to attribute them to the same source.

5. Any defects, objections or faults found with Applicant's "cosmetics; non-medicated skin care preparations" sold under the "BOTÁGE IDB" mark could inflict upon and seriously injure the reputation of Opposer and the good will established in its mark "BEAUTAGÉ" for "cosmetic skin renewal products, namely wrinkle removing and wrinkle minimizing skin care preparations; lip, face, and eye serums, creams and lotions; moisturizing creams and lotions".

6. The grant of a registration to Applicant of the mark "BOTÁGE IDB" would be in derogation of Opposer's prior rights in its "BEAUTAGÉ" mark and registration and thereby cause damage and injury to Opposer and cause confusion of the relevant purchasing public.

7. Applicant's "BOTÁGE IDB" mark so resembles Opposer's previously used and registered "BEAUTAGÉ" mark as to be likely, when used in connection with

Applicant's goods, to cause confusion, mistake or deception and thereby falls within the proscription of Section 2(d) of the statute, 15 U.S.C. § 1052(d) and should be denied registration.

8. **WHEREFORE**, Opposer believes that it would be damaged by grant to Applicant of a registration on U.S. Trademark Application Serial No. 78/741,172 and prays that the opposition be sustained and that registration be denied.

Enclosed herewith are a duplicate copy of the Notice of Opposition and our Credit Card payment in the amount of \$300.00 to cover the filing fee for filing the Notice of Opposition in one class. If no Credit Card payment form is enclosed, the Commissioner is authorized to charge \$300.00 due in connection herewith to Deposit Account No. 12-0555.