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Filing date: **02/12/2010**

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

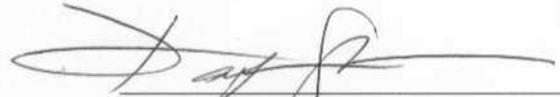
Proceeding	91188736
Party	Defendant Anastasia Marie Laboratories, Inc.
Correspondence Address	Daphne Sheridan Bass Law Offices of Daphne Sheridan Bass 921 26th Street Santa Monica, CA 90403-2203 UNITED STATES daphneb@earthlink.net
Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	02/12/2010
Attachments	AML Motion to Amend.pdf (3 pages)(298384 bytes) AML Amended Counterclaims.pdf (7 pages)(1370746 bytes)

Opposers' admissions and claimed excuses for their misrepresentations reveal that Opposers committed fraud upon the Patent and Trademark Office in obtaining registrations for the goods identified in both of their registrations which included nail polish, nail base coat, nail top coat, body powder, facial toners, facial astringents, facial masques, body toners, body astringents, body cleansing gels, fragranced gels, bar body toners and astringents.

In view of the foregoing, and because this motion is filed promptly after Opposers' filing of their Motion to Amend, it is submitted that the motion is well taken and that the Amended Counterclaims submitted herewith should be accepted and substituted for the Counterclaims.

Respectfully submitted,

DATED: February 11, 2010



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **APPLICANT'S MOTION TO AMEND COUNTERCLAIMS** was served by email, by agreement, on John M. May, Esq., attorney for Opposers, at John@May.us this 12th day of February, 2010.

Date

February 12, 2010

Daphne Sheridan Bass

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

ANASTASIA BEVERLY HILLS, INC.)	
ANASTASIA SOARE)	
ANASTASIA SKIN CARE, INC.)	
)	
Opposers,)	Opposition No.
)	91188736
v.)	
)	
ANASTASIA MARIE LABORATORIES, INC.)	APPLICANT'S
)	[PROPOSED]
)	AMENDED
)	COUNTERCLAIMS
)	FOR
Applicant / Petitioner.)	<u>CANCELLATION</u>

CANCELLATION OF REGISTRATION NO. 2,798,069

FRAUD

1. Opposers own Registration No. 2,798,069 for the mark A ANASTASIA BEVERLY HILLS for the following goods in Class 3:

Potpourri; cosmetics, namely, foundation, concealer, pressed powder, loose powder, eye shadow base, blush, bronzing liquid, eye shadows, mascara, eyeliners, lip coverings, lipstick, lip gloss, lip liners, eyebrow color pencils, eyebrow pencils, eyebrow powder, eyebrow pomade, eyebrow gel, nail polish, nail base coat, and nail top coat; skin care products, namely, facial cleansers, facial cleansing bars, facial toners, facial astringents, facial moisturizers, eye creams, eye gels, eye-area moisturizers, eye-area gels, eye-area creams, facial masques, facial

serums, facial exfoliators, body cream, body lotion, body powder, body moisturizers, body lotions, body toners, body astringents, and hand creams; body cleansing products, namely, creams, gels, and bar soaps; fragrance products, namely, perfume, eau de parfum, eau de toilette, eau de cologne, fragranced creams, lotions, gels, bar body toners, and astringents; room fragrances in Class 3, candles in Class 4, eyebrow tweezers, eyebrow grooming scissors in Class 8 and cosmetic brushes in Class 21.

2. Opposers' Registration No. 2,798,069 issued from Opposers' Application Serial No. 75833290 filed with the U.S. Patent and Trademark Office ("PTO") on October 27, 1999 on an intent-to-use basis.

3. On June 3, 2003, the PTO issued a Notice of Allowance on Application Serial No. 75833290 for the following goods in Class 3:

Potpourri; cosmetics, namely, foundation, concealer, pressed powder, loose powder, eye shadow base, blush, bronzing products, eye shadows, mascara, eyeliners, lip coverings, lipstick, lip gloss, lip liners, eyebrow color products, eyebrow pencils, eyebrow powder, eyebrow pomade, eyebrow gel, nail polish, nail base coat, and nail top coat; skin care products, namely, facial cleansers, facial cleansing bars, facial toners, facial astringents, facial moisturizers, eye creams, eye gels, eye-area moisturizers, eye-area gels, eye-area creams, facial masques, facial serums, facial exfoliators, body cream, body lotion, body powder, body moisturizers, body lotions, body toners, body astringents, and hand creams; body cleansing products, namely, creams, gels, and bar soaps; fragrance products, namely, perfume, eau de parfum, eau de toilette, eau de cologne, fragranced creams, lotions, gels, bar body toners, and astringents; room fragrances in Class 3, candles in Class 4, eyebrow tweezers, eyebrow grooming scissors in Class 8 and cosmetic brushes in Class 21.

4. On August 5, 2003, Opposers submitted an undated Declaration that the mark A ANASTASIA BEVERLY HILLS was used in commerce on or in connection with the goods specified in the Notice of Allowance and a Statement of Use claiming September, 1999 as the date of first use of the goods in commerce. Opposers made these representations to the PTO to induce the PTO to issue a registration.

5. As of January 14, 2010, years after Opposers had represented to the PTO that they used the A ANASTASIA BEVERLY HILLS mark in commerce in connection with nail polish, nail base coat, nail top coat, body powder, facial toners, facial astringents, facial masques, body toners, body astringents, body cleansing gels, fragranced gels, bar body toners, astringents, Opposers, in fact, had had not used the foregoing goods in commerce under the A ANASTASIA BEVERLY HILLS mark.

6. In a Motion to Amend filed on January 14, 2010 with the Trademark Trial and Appeal Board (the "Board"), Opposers explicitly admitted that they did not use in commerce the A ANASTASIA BEVERLY HILLS & Design mark which is the subject of Registration No. 2,798,069 on any of the following 13 specifically listed goods: nail polish, nail base coat, nail top coat, body powder, facial toners, facial astringents, facial masques, body toners, body astringents, body cleansing gels, fragranced gels, bar body toners, astringents.

7. Opposers' representations to the PTO on August 8, 2003 were false.

8. Opposers knew that the representations were false.

9. The PTO relied upon Opposers' representations in issuing Registration No. 2,798,069.

10. These misrepresentations were material, because the PTO would not have issued Registration No. 2,798,069 but for Opposers' false representations.

11. Opposers' actions in the procurement of Registration No. 2,798,069 constitute fraud; thereby invalidating Registration No. 2,798,069. Accordingly, Registration No. 2,798,069 should be invalidated in Class 3.

12. Petitioner timely filed its counterclaim for cancellation, and this cancellation proceeding was instituted on March 16, 2009.

WHEREFORE, Petitioner respectfully requests that this Counterclaim for Cancellation be granted, and that Registration No. 2,798,069 be cancelled in Class 3.

CANCELLATION OF REGISTRATION NO. 2,821,892

FRAUD

13. Opposers own Registration No. 2,821,892 for the mark ANASTASIA BEVERLY HILLS for the following goods in Class 3:

Potpourri; cosmetics, namely, foundation, concealer, pressed powder, loose powder, eye shadow base, blush, bronzing liquid, eye shadows, mascara, eyeliners, lip coverings, lipstick, lip gloss, lip liners, eyebrow color pencils, eyebrow pencils, eyebrow powder, eyebrow pomade, eyebrow gel, nail polish, nail base coat, and nail top coat; skin care products, namely, facial cleansers, facial cleansing bars, facial toners, facial astringents, facial moisturizers, eye creams, eye gels, eye-area moisturizers, eye-area gels, eye-area creams, facial masques, facial serums, facial exfoliators, body cream, body lotion, body powder, body moisturizers, body lotions, body toners, body astringents, and hand creams; body cleansing products, namely, creams, gels, and bar soaps; fragrance products, namely, perfume, eau de parfum, eau de toilette, eau de cologne, fragranced creams, lotions, gels, bar body toners, and astringents; room fragrances in Class 3,

candles in Class 4, eyebrow tweezers, eyebrow grooming scissors in Class 8 and cosmetic brushes in Class 21.

14. Opposers' Registration No. 2,821,892 issued from Opposers' Application Serial No. 75833810 filed with the PTO on October 28, 1999 on an intent-to-use basis.

15. On May 22, 2001, Opposers signed a Declaration which was submitted to the PTO with an Amendment to Allege Use dated June 19, 2001 alleging that the mark ANASTASIA BEVERLY HILLS was used in commerce on or in connection with the goods specified in Application Serial No. 75833810 claiming September, 2000 as the date of first use of the goods in commerce. Opposers made these representations to the PTO to induce the PTO to issue a registration.

16. As of January 14, 2010, years after Opposers had represented to the PTO that they had used the ANASTASIA BEVERLY HILLS mark in commerce in connection with nail polish, nail base coat, nail top coat, body powder, facial toners, facial astringents, facial masques, body toners, body astringents, body cleansing gels, fragranced gels, bar body toners, astringents, Opposers, in fact, had not used the foregoing goods in commerce under the ANASTASIA BEVERLY HILLS mark.

17. In a Motion to Amend filed on January 14, 2010 with the Trademark Trial and Appeal Board (the "Board"), Opposers explicitly admitted that they did not use in commerce the ANASTASIA BEVERLY HILLS & Design mark which is the subject of Registration No. 2, 821,892 on any of the following 13 specifically listed goods: nail polish, nail base coat, nail top coat, body powder, facial toners, facial astringents, facial masques, body toners, body astringents, body cleansing gels, fragranced gels, bar body toners, astringents.

18. The representations which Opposers made to the PTO on May 22, 2001 were false.

19. Opposers knew that the representations were false.

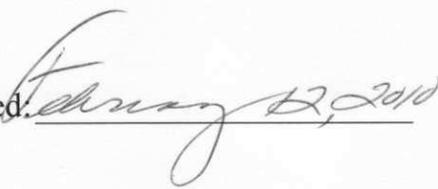
20. The PTO relied upon Opposers' representations in issuing Registration No. 2,821,892.

21. These misrepresentations were material, because the PTO would not have issued Registration No. 2,821,892 but for Opposers' false representations.

22. Opposers' actions in the procurement of Registration No. 2,821,892 constitute fraud; thereby invalidating Registration No. 2,821,892.

23. Petitioner timely filed its counterclaim for cancellation, and this cancellation proceeding was instituted on March 16, 2009.

WHEREFORE, Petitioner respectfully requests that this Counterclaim for Cancellation be granted, and that Registration No. 2,821,892 be cancelled in Class 3.

Dated:  February 12, 2010

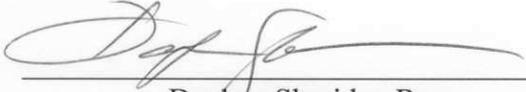

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Date

February 12, 2010


Daphne Sheridan Bass