

ESTTA Tracking number: **ESTTA369429**

Filing date: **09/21/2010**

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

Proceeding	91188736
Party	Plaintiff Anastasia Beverly Hills, Inc.
Correspondence Address	JOHN M. MAY BERLINER & ASSOCIATES 555 W Fifth STREET, 31st FLOOR LOS ANGELES, CA 90013 UNITED STATES lwerk@berliner-ip.com, Law@May.us, dchavez@dchavezlaw.com, raluca@anastasia.net
Submission	Other Motions/Papers
Filer's Name	John M May
Filer's e-mail	lwerk@berliner-ip.com, Law@May.us, dchavez@dchavezlaw.com, raluca@anastasia.net
Signature	/John M May/
Date	09/21/2010
Attachments	Notice re 2nd Sec8.pdf ( 2 pages )(52067 bytes ) SECT08-2821892-receipt.pdf ( 4 pages )(14341 bytes )

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.

Plaintiffs/Opposers

Opposition No.

v.

91188736

ANASTASIA MARIE LABORATORIES, INC.

Defendant/Applicant

**NOTICE RE FILING OF SECTION 8 DECLARATION**

Further to the Board's Order dated 30 June 2010, Registrant filed a Section 8 Declaration in Registration 2821892 on 16 September 2010.

A copy of the filing receipt for subject Section 8 Declaration is attached. Further details may be found in the official file for said Registration.

Respectfully submitted

/John M May/  
John M May  
Attorney for OPPOSERS

Dated: September 21, 2010

John May, Attorney-at-Law  
Berliner & Associates  
555 W Fifth St  
Los Angeles, CA 90013  
(626) 355 4607  
john@may.us

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this NOTICE RE FILING OF SECTION 8 DECLARATION is being served this date upon APPLICANT by email, by agreement, upon APPLICANT's counsel, at daphneb@earthlink.net.

/John M May/  
John M May  
Attorney for Opposers

Dated: September 21, 2010

Trademark Electronic Application System (TEAS) filing receipt

We have received your Declaration of Use of Mark Under Section 8 for registration number '2821892'. A summary of your submission is listed below. If you determine that you made an error in the information you entered, **DO NOT** request any changes by e-mail, because the TEAS Support Team cannot make corrections. You may submit a new document and new fees, if time remains in the statutory period; however, the USPTO will not refund any fees paid as part of this current submission. For further information, please contact the Post Registration Division at (571) 272-9500, and ask to speak to an Affidavit Renewal Examiner. Or, see Chapter 1600 of the Trademark Manual of Examining Procedure, at <http://tess2.uspto.gov/tmdb/tmep/1600.htm>

**REGISTRATION NUMBER:** 2821892

**REGISTRATION DATE:** 03/16/2004

**MARK:** ANASTASIA BEVERLY HILLS

The owner, ANASTASIA BEVERLY HILLS, INC., a corporation of California, having an address of  
438 N. BEDFORD DRIVE  
BEVERLY HILLS, California 90210  
United States

is filing a Declaration of Use and/or Excusable Nonuse of Mark in Commerce under Section 8.

For International Class 003, this filing does **NOT** cover the following goods or services for this specific class listed in the registration, and these goods or services are to be permanently **deleted** from the registration: Potpourri; loose powder, eye shadow base, bronzing products, nail polish, nail base coat, and nail top coat; facial cleansers, facial cleansing bars, facial toners, facial astringents, facial masques, 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, and fragranced creams, lotions, gels, bar body toners, and astringents; room fragrances. Excusable nonuse is claimed as to foundation, pressed powder, lipstick, eye liners. These goods or services are not to be deleted from the registration

The mark is in use in commerce on or in connection with the following goods or services listed in the existing registration for this specific class; or, the owner is making the listed excusable nonuse claim: cosmetics, namely, foundation, concealer, pressed powder, blush, eye shadows, mascara, eyeliners, lip coverings, lipstick, lip gloss, lip liners, eyebrow color pencils, eyebrow pencils, eyebrow powder, eyebrow pomade, eyebrow gel, skin care products, namely, facial moisturizers, eye creams, eye gels, eye-area moisturizers, eye-area gels, eye-area creams, facial serums

The owner is submitting one specimen showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) Recently downloaded pages from website of Registrant (Anastasia Beverly Hills) including images and descriptions of all products and shopping cart containing representative products in IC 003.

SPN0-38106941-211106221\_.\_ABH-ALL.pdf  
SPN0-38106941-211106221\_.\_ABH-cart\_IC3.pdf

The following explanation of excusable nonuse has been made of record: A limited quantity of Anastasia Beverly Hills branded foundation is currently available for purchase in the Anastasia Beverly Hills salons, and is in the process of being reformulated and repackaged for planned nationwide sale in 2012-2013; moreover, Anastasia Beverly Hills branded concealer as currently formulated and sold nationwide can also be used on selected areas of the face as a foundation. A limited quantity of Anastasia Beverly Hills branded pressed powder for use on the face is currently available for purchase in the Anastasia Beverly Hills salons, and is in the process of being reformulated and repackaged for planned nationwide sale in 2012; moreover, Anastasia Beverly Hills branded brow powder as currently formulated and sold nationwide is another type of pressed powder. A limited quantity of Anastasia Beverly Hills branded lipstick is currently available for purchase in the Anastasia Beverly Hills salons; a tinted lip balm in stick form which can also be used as lipstick is in the process of being formulated, packaged and market tested for planned nationwide sale in 2012. A limited quantity of Anastasia Beverly Hills branded eyeliner is currently available for purchase in the Anastasia Beverly Hills salons, and is in the process of being reformulated and repackaged for planned nationwide sale in 2011; moreover the Anastasia Beverly Hills branded "Brow Fix" wax pencil as currently formulated and sold nationwide is currently being promoted on Registrant's website as an "invisible" lip liner for use in combination with lip stains. A limited quantity of Anastasia Beverly Hills branded lid liner is currently available for purchase in the Anastasia Beverly Hills salons; moreover the Anastasia Beverly Hills branded "Brow Fix" wax pencil as currently formulated and sold nationwide is currently being promoted on Registrant's website for use in combination with shadow to line eyes.

For International Class 004, this filing does **not** cover this specific class. This entire class is to be permanently **deleted** from the registration.

For International Class 008, the mark is in use in commerce on or in connection with **all** goods or services listed in the existing registration for this specific class; or, the owner is making the listed excusable nonuse claim.

The owner is submitting one specimen showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) Recently downloaded pages from website of Registrant (Anastasia Beverly Hills) including images and descriptions of all products and shopping cart containing representative products in IC 008.

SPN2-38106941-211106221\_.\_ABH-ALL.pdf  
SPN2-1-38106941-211106221\_.\_ABH-cart-IC8.pdf

For International Class 021, the mark is in use in commerce on or in connection with **all** goods or services listed in the existing registration for this specific class; or, the owner is making the listed excusable nonuse claim.

The owner is submitting one specimen showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) Recently downloaded pages from website of Registrant (Anastasia Beverly Hills) including images and descriptions of all products and shopping cart containing representative products in IC 008.

SPN3-38106941-211106221\_.\_ABH-ALL.pdf  
SPN3-1-38106941-211106221\_.\_ABH-cart-IC21.pdf

## **MISCELLANEOUS STATEMENTS**

This registration is currently the subject of a cancellation counterclaim in TTAB Opposition 91188736. The TTAB approved certain permissible restrictions to the identification of the Class 3 goods and amended dates of use in compliance with the applicable rules, subject to the filing of the declaration required by Trademark Rule 2.173. Although the present amendment (and a corresponding Section 7 request filed on or about 30 July 2010) differs in certain minor respects from the proposed amendments that were before the TTAB, it is believed to be fully consistent with the TTAB opinion. The noted TTAB order also indicated that the TTAB would request that the Director take appropriate action to delete Class 4 in its entirety.

The registrant's current Attorney Information: John M May of BERLINER & ASSOCIATES  
555 WEST FIFTH STREET  
31ST FLOOR  
LOS ANGELES, California (CA) 90013  
United States (USX)

The registrant's proposed Attorney Information: John M May of BERLINER & ASSOCIATES  
555 WEST FIFTH STREET  
31ST FLOOR  
LOS ANGELES, California (CA) 90013  
United States (USX)

The docket/reference number is 7915-101 (AB-002T).

The phone number is 213-533-4176.

The fax number is 213-533-4174.

The email address is lwerk@berliner-ip.com.

The registrant's current Correspondence Information:

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The registrant's proposed Correspondence Information: John M May of BERLINER & ASSOCIATES  
555 WEST FIFTH STREET  
31ST FLOOR  
LOS ANGELES, California (CA) 90013  
United States (USX)

The docket/reference number is 7915-101 (AB-002T).

The phone number is 213-533-4176.

The fax number is 213-533-4174.

The email address is lwerk@berliner-ip.com.

A fee payment in the amount of \$600 will be submitted with the form, representing payment for 3

class(es), plus any additional grace period fee, if necessary.

**Declaration Signature**

Signature: /JohnMMay/ Date: 09/16/2010

Signatory's Name: John M May

Signatory's Position: Attorney of Record (California Bar)

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**NOTE:** If you would like to suggest additions or changes to the design search codes assigned to your mark, please send an email to [TMDesignCodeComments@USPTO.GOV](mailto:TMDesignCodeComments@USPTO.GOV) (please include the registration number of your mark on ALL correspondence with the USPTO) or call 1-800-786-9199 to speak with a Customer Service Representative. No fee is necessary. The USPTO will review your request and update the record if appropriate. Design search codes are described on Internet Web page <http://tess2.uspto.gov/tmdb/dscm/index.htm>. You may review the USPTO-assigned design codes for your mark by retrieving current information about your mark in the TARR system at <http://tarr.uspto.gov/> and looking under "Additional Information."

Thank you,

The TEAS support team

Thu Sep 16 21:49:57 EDT 2010

STAMP: USPTO/SECT08-38.106.9.41-20100916214957038899-2821892-470846bee34f93faa79e72e53cc661e6162-CC-7980-20100916211106221311