



2. In fact, opposers did not serve Applicant until *after* they filed the Opposition. In their letter serving applicant's attorney by U.S. mail, opposers' attorneys stated that the opposition ".....was filed earlier today....". *Bass Decl. attaching May Jan. 24, 2009 Letter – Exh. 1.*

### Memorandum of Law

The Trademark Rules pertaining to service specifically require that:

...proof of such service must be made *before* the paper will be considered by the Office. A statement signed by the attorney or other authorized representative, attached to or appearing on the original paper when filed, clearly stating the date and manner in which service *was* made will be accepted as prima facie proof of service. *Trademark Rule § 2.119(a)* (Emphasis added).

The Board's Ruling in *Springfield Inc. vs. XD*, 86 USPQ2d 1063 (TTAB 2008) is precisely on point. In that case, as here, the opposer filed the Opposition on the last day; checking the box on the ESTTA form that it had served the applicant, when, in fact, it had not. Citing *Trademark Rules §§ 2.101(a) and 2.101(d)(4)*, which state that the Notice of Opposition must include a proof of service, and that the filing date of the Opposition is the date of receipt in the Office of the Notice of Opposition with the proof of service, the Board declared the Opposition a nullity; stating:

“Proof of service is meaningless in the absence of actual service in accordance with the statements contained in the proof of service. The requirement of the rules is for proof of service, not a promise to make service at some time in the future. In the instant case, as discussed above, the notice of opposition included proof of service, but there was no actual service upon applicant. Thus, opposer did not comply with the service requirement of the rules. Accordingly, opposer's notice of opposition should not have received a filing date, and this proceeding should not have been instituted.” *Springfield, Id.* (Emphasis added).

Here, as in *Springfield*, opposer's failure to effectuate service prior to filing the Opposition with the Board rendered service invalid.

While the opposer in *Springfield* attempted service after the last day, and opposer in this case attempted service later on the last day after filing the Opposition (which applicant received by U.S. mail 7 days later) — the timing of “when” opposer failed to comply with *Trademark Rules §§ 2.101(a) and 2.101(d)* --- is irrelevant. The fact remains that it did not comply with the rules pertaining to service.

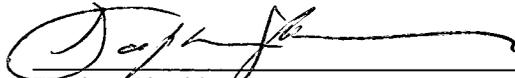
Here, as in *Springfield*, opposers' notice of opposition should not have received a filing date, and the proceeding should not have been instituted. The invalid service should prevent this Opposition from proceeding.

#### **Conclusion**

For all of the foregoing reasons, applicant respectfully requests that the instant opposition proceeding be declared a nullity and that Application Serial No. 77150306 be forwarded for issuance of a notice of allowance.

Dated: March 14, 2009

Respectfully submitted,



Daphne Sheridan Bass  
LAW OFFICES OF DAPHNE SHERIDAN BASS  
921 26<sup>TH</sup> Street, Santa Monica, CA 90403  
Telephone (310) 829-2805  
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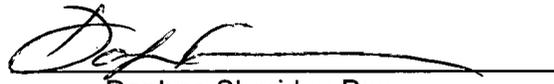
Attorney for Applicant  
Anastasia Marie Laboratories, Inc.

**CERTIFICATE OF SERVICE BY EXPRESS MAIL**

Mark : ANASTASIA  
Serial No. : 76/372999  
Opposition No.: 91188736

I hereby certify that copies of the attached MOTION TO DISMISS AND DECLARE OPPOSITION NO. 91188736 A NULLITY AND SUPPORTING MEMORANDUM OF LAW AND DECLARATION is addressed to the Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 and is being deposited with the United States Postal Service by Express Mail, postage prepaid, on March 16, 2009.

Dated: March 16, 2009

  
Daphne Sheridan Bass

**DECLARATION OF DAPHNE SHERIDAN BASS**

I, Daphne Sheridan Bass do declare:

1. I am the attorney representing the applicant herein. I have personal knowledge of the following facts and would competently testify as to their truth if called upon to do so.
  
2. On January 31, 2009, I received a letter by certified mail from Opposers' attorneys transmitting the subject Notice of Opposition; a true copy of which is attached hereto.

Date: March 14, 2009



Daphne Sheridan Bass

24 January 2009

Daphne Sheridan Bass  
Law Offices Of Daphne Sheridan Bass  
921 26th St  
Santa Monica, Ca 90403-2203

Re: Notice of Opposition re  
Anastasia Marie Labs SN 77150306

**John M May**

Member of California Bar  
Registered Patent Attorney

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Sierra Madre CA 91024  
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✉ LAW@MAY.US

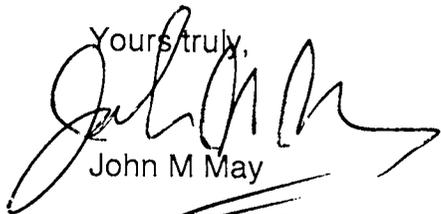
Dear Ms Bass

Enclosed is Anastasia Marie Labs' service copy of a Notice of Opposition and attached grounds.txt which was filed earlier today on behalf of Anastasia Beverly Hills, Inc. et al.

I believe you have already been in contact with the Opposers' general counsel, Mr Darin Chavez. Please feel free to direct any questions you may have concerning this matter directly to him, at the below address and telephone number.

I suggest that in the future we correspond and make any required service of pleadings etc in this matter by email. Please let us know if this is acceptable, also if you wish us to copy your client or any other person on such correspondence. In the meantime, all pleadings and other official correspondence should be directed to the address set forth in the Notice.

Yours truly,



John M May

cc: ~~John M May~~ Darin Chavez, esq.  
Law Offices of Darin Chavez  
1801 Century Park East, Suite 2300  
Century City CA 90067  
+1 (310) 470-8855

**EXHIBIT A**

**CERTIFICATE OF SERVICE BY EXPRESS MAIL**

Mark : ANASTASIA  
Serial No. : 76/372999  
Opposition No.: 91188736

I hereby certify that copies of the attached MOTION TO DISMISS AND DECLARE OPPOSITION NO. 91188736 A NULLITY AND SUPPORTING MEMORANDUM OF LAW AND DECLARATION was addressed to the following parties and deposited with the United States Postal Service by Express Mail, postage prepaid, on March 16, 2009:

1. John M. May, Esq.  
Anastasia Beverly Hills, Inc.  
438 N. Bedford Dr.  
Beverly Hills, CA 90210
2. Anastasia Beverly Hills, Inc.  
438 N. Bedford Dr.  
Beverly Hills, CA 90210

Dated: March 16, 2009

  
\_\_\_\_\_  
Daphne Sheridan Bass