

ESTTA Tracking number: **ESTTA539769**

Filing date: **05/24/2013**

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

Proceeding	91197584
Party	Plaintiff Johnson & Johnson
Correspondence Address	MARY PAT WEYBACK DRINKER BIDDLE AND REATH LLP 1500 K STREET NW WASHINGTON, DC 20005-1209 UNITED STATES darren.cahr@dbr.com, jeffrey.baravetto@dbr.com, nancy.martinez-curtin@dbr.com, tmlitdocket@dbr.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jaye S. Campbell
Filer's e-mail	jaye.campbell@dbr.com, darren.cahr@dbr.com, tmlitdocket@dbr.com
Signature	/Jaye S Campbell/
Date	05/24/2013
Attachments	Notice of Reliance - Gitto's Interrogatory Answers.pdf(360064 bytes)

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

In re Ser. No. 79/061,192 - ^{POSITIVE}ageing
Published July 27, 2010

JOHNSON & JOHNSON, :

Opposer, :

v. :

Opposition No. 91-197584

VALENTINO GITTO, :

Applicant. :

NOTICE OF RELIANCE

Pursuant to 37 C.F.R. § 2.120(j) and T.B.M.P. 704.10, Opposer Johnson & Johnson hereby gives notice that it is relying on Applicant's Answers to Opposer's First Set of Interrogatories (captioned by Applicant as "Johnson & Johnson First Set of Interrogatories"), served by Applicant on May 15, 2012. Accompanying this Notice of Reliance are copies of Opposer's First Set of Interrogatories and Applicant's Answers to Opposer's First Set of Interrogatories, all of the foregoing Opposer hereby makes of record in this proceeding.

Dated: May 24, 2013

Respectfully submitted,

By: Jaye S. Campbell

Darren S. Cahr

Jaye S. Campbell

DRINKER BIDDLE & REATH LLP

1500 K Street, N.W., Suite 1100

Washington, DC 20005-1209

Tel: (202) 842-8800

Fax: (202) 842-8465

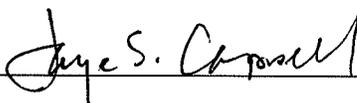
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF RELIANCE was served by international mail, first class, postage prepaid, this 24th day of May 2013:

Valentino Gitto
147 Route de Saint Pierre de Feric
F-06000 Nice
France

An additional courtesy copy was sent via electronic mail to valentin_gitto@yahoo.fr



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

In the Matter of App. Ser. No. 79/061,192)	
)	
JOHNSON & JOHNSON,)	
)	
Opposer,)	
)	Opposition No. 91197584
v.)	
)	
VALENTINO GITTO,)	
)	
Applicant.)	

**JOHNSON & JOHNSON'S
FIRST SET OF INTERROGATORIES**

In accordance with Rule 2.120 of the Trademark Rules of Practice, Rule 33 of the Federal Rules of Civil Procedure, and the definitions and instructions attached hereto in Appendix A, Opposer Johnson & Johnson ("Opposer") hereby requests that Applicant Valentino Gitto ("Applicant") respond to the following Interrogatories under oath within thirty (30) days.

Request No. 1:

For each of Applicant's Goods & Services, identify:

- (a) customers of each of Applicant's Goods & Services;
- (b) the manner of advertising, solicitation and/or targeting of customers and/or potential customers (e.g., advertisements, sales visits, brochures, mailings, trade shows, etc.);
- (c) the publications, directories and broadcasting outlets through which Applicant promotes or advertises Applicant's Goods & Services;
- (d) the recommended retail price of each of Applicant's Goods & Services; and
- (e) the three individuals most knowledgeable about the advertising and promotion of Applicant's Goods & Services.

Request No. 2:

State whether Applicant has commenced use of Applicant's Mark in the United States, and if so, state for each of Applicant's Goods & Services, the period(s) during which Applicant has distributed, offered for sale or sold such goods or services.

Request No. 3:

Identify all communications and inquiries received by Applicant, or anyone acting on Applicant's behalf, relating, directly or indirectly, to Opposer and/or Opposer's Mark.

Request No. 4:

Identify any search, investigation or other evaluation conducted by Applicant relating to Applicant's Mark or Opposer's Mark.

Request No. 5:

Identify the channels of distribution for all goods and services bearing Applicant's Mark.

Request No. 6:

Identify the date when Applicant first learned of the existence of Opposer's Mark, the circumstances surrounding Applicant's acquisition of such knowledge, and the source(s) of such knowledge.

Request No. 7:

Describe in detail all goods and/or services that you use or intend to use Applicant's Mark with in the United States.

Request No. 8:

Describe in detail all bases for Applicant's assertion that the "cosmetics" under Applicant's Mark are sold mainly to professionals on a business to business basis, not directly to consumers.

Request No. 9:

Describe in detail the ultimate end consumer of Applicant's Goods & Services, who will actually use the "cosmetics" under Applicant's Mark in the United States.

Request No. 10:

Describe in detail all bases for Applicant's assertion that the meaning of POSITIVELY AGELESS is totally different than the meaning of POSITIVE AGEING.

Request No. 11:

Describe in detail all bases for Applicant's assertion that Applicant's Mark is very different to Opposer's Mark in appearance, sound and meaning..

Request No. 12:

Describe in detail all bases for Applicant's assertion that Applicant's Goods & Services are likely to be sold through different channels of trade than the goods of Opposer.

Request No. 13:

For each person whose testimony Applicant may introduce or rely upon in this proceeding, whether by way of affidavit, declaration, deposition, or otherwise:

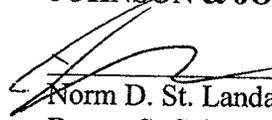
- (a) identify the person, including name, employer, and job title or position;
- (b) state the subject matter on which the person may testify;
- (c) provide a summary of the possible testimony; and
- (d) state whether the person will be offering evidence as an expert.

Request No. 14:

Identify, separately for each interrogatory, each person furnishing information or who was asked to furnish information in answering such interrogatory.

Respectfully submitted,

JOHNSON & JOHNSON



Norm D. St. Landau

Darren S. Cahr

Christen M. English

DRINKER BIDDLE & REATH LLP

1500 K Street, N.W., Suite 1100

Washington, DC 20005

Attorneys for Opposer

Date: 9/16/11

APPENDIX A

DEFINITIONS

A. Reference to any party, including without limitation "Johnson & Johnson," "Applicant," "Valentino Gitto," or "Opposer," herein should be understood as including such party's parents, subsidiaries of parents, subsidiaries, and all divisions, predecessors and successors and assigns of each of the foregoing, and all of their agents, officers, directors, employees, representatives, consultants, and attorneys.

B. As used herein, "communication" shall mean any transmission of information by one or more persons or between two or more persons by any means including, but not limited to, telephone conversations, letters, telegrams, teletypes, telexes, telecopies, computer linkups, electronic mail, written memoranda, and face-to-face conversations.

C. As used herein, "day" or "date" shall mean the exact day, month, and year if ascertainable, or if not, the best available approximation (including relationship to other events).

D. As used herein, "identify" when used in reference to:

- (1) an individual, shall mean to state his or her full name, present or last known residential and business addresses and present or last known position and/or business affiliation;
- (2) a firm, partnership, corporation, proprietorship, joint venture, association or other organization or entity, shall mean to state its full name, present or last known address and place of incorporation or formation and to identify each agent that acted for it with respect to the matters relating to the interrogatory or answer;
- (3) a document, shall mean to state the date, title (if any), each author, each recipient, type of document (i.e. publication, letter, memorandum, book, telegram,

chart, etc.) or some other means of identifying it, and its present location or custodian;

(4) a communication shall mean to state its date and place, the person(s) who participated in it or who were present during any part of it or who have knowledge about it.

E. The term "documents" shall have the same meaning as set forth in Rule 34 of the Federal Rules of Civil Procedure, and includes, without limitation, the original (and every copy of the original that differs in any way from it) of any written, recorded or graphic matter or any medium of any type or description upon which intelligence or information is recorded or from which intelligence or information can be recorded, which is or has been in your possession, control, or custody, or of which you have knowledge, including but not limited to, the original and any non-identical copy (whether different from the original because of notes made on said copy or otherwise) of any advertising literature; agreement; bank record or statement; blueprint; book; book of account; booklet; brochure; calendar; catalog; chart; check; circular; coding form; communication (intra- or inter-company); computer printout; computer-readable form; contract; copy; correspondence; database; diary; display; draft of any document; drawing; e-mail; film; film transparency; flyer; forecast; graph; index; instruction; instruction manual or sheet; invoices; job requisition; letter; license; magnetic media of all kinds (including, but not limited to, disks, tapes, or other media) containing computer software with supporting indices, data, documentation, flow charts, comments, object code, source code, and computer programs relating thereto; manual; map; memoranda; minute; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; price list; print; printed circuit board; promotional literature; receipt; record; recorded Read-Only-Memory (ROM);

recording; report; solicitation; statement; statistical compilation; stenographic notes, records, or summary of any (a) telephone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference; telegram; telephone calling card; telephone log; tickets; ticket sales records; travel or expense records; video recording; video tape; voice recording; voucher; worksheet or working paper; writing or other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information required may be obtained, or any other documentary material of any nature, in the possession, custody or control of Applicant.

F. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.

G. As used herein, "person" shall mean an individual, firm, partnership, corporation, proprietorship, joint venture, group, association or any other organization or entity.

H. A document or communication "referring," "relating" or "related" to any given subject shall mean, without limitation, any document or communication that constitutes, contains, embodies, reflects, identifies, states, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

I. As used herein, "trademark," "trademarks," and "marks" shall mean trademarks, trade names, service marks, or other trade designations.

J. As used herein, "Opposer's Mark" shall mean refer to the POSITIVELY AGELESS mark.

K. As used herein, "Applicant's Mark" shall refer to the POSITIVE AGEING mark.

L. As used herein, "Applicant's Goods & Services" shall refer to the goods and services that are identified by Applicant's Trademark Application Ser. No. 79/061,192

INSTRUCTIONS

A. In answering each interrogatory, identify each person who assisted or participated in preparing or supplying any of the documents or information given in response to or relied upon in preparing answers to that request.

B. If any interrogatory is objected to on the ground of privilege or work product, or for any other reason, with respect to each such interrogatory state the basis upon which it is being withheld, including sufficient facts from which the court and Applicant can assess and determine the validity of such assertion of privilege, work product, or other immunity.

C. Where appropriate, the singular form of a word should be interpreted in the plural and vice versa, to obtain the broadest possible meaning.

D. As used herein, "and" and "or" shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

E. These interrogatories shall be deemed continuing and supplemental answers should be provided as additional information becomes available.

CERTIFICATE OF SERVICE

The undersigned certifies that on 9/16, 2011, a copy of the foregoing **JOHNSON & JOHNSON'S FIRST SET OF INTERROGATORIES** was sent by first class mail, postage pre-paid, upon on Applicant, Valentino Gitto:

Valentino Gitto
147 Route de saint Pierre de Feric
F-06000 Nice
FRANCE



CH01/25773079.1

JOHNSON & JOHNSON
FIRST SET OF INTERROGATORIES

Request N°1:

- (a) Customers of the applicants are distributors in the field of aesthetic, medical, spa, beauty salon
- (b) Advertising and soliciting is done through professional shows, internet, direct prospection and mailing. To promote the products and services, brochures have been printed.
- (c) Non
- (d) See attachment called price list
- (e) Valentino Gitto

Request N°2:

The Applicant's never used the Mark in the United States

Request N°3:

Non

Request N°4:

Non

Request N°5:

Beauty salons, spa chains, aesthetic doctors

Request N°6:

The date the Applicant received the opposition

Request N°7:

Devices for professional use in the arena of ageing treatment.
Cosmetics used during the treatments and used at home in between two treatments.
Centers bearing the Mark
Services such as training, consulting.

Request N°8:

Right now, the products are sold mainly to distributors selling to professionals. Most of the products are meso-cosmetics used during the treatment with a Mesotransduction machine

Request N°9:

The end consumer is the customer of the doctor, beauty salon or spa using our technologies.

Request N°10:

The difference between Positively ageless and Posi+ive Ageing lies simply in the semantic

Request N°11:

J&J mark Positively ageless is for the name of one product under Aveeno brand. Posi+ive Ageing is the main brand of a concept including services, technologies and cosmetics. They all have the same brand name. The concept is to help people to age better in a positive way.

Request N°12:

The Applicant, does not sell into retail chains store, when the oppose sells mainly through these channels.

Request N°13:

Non in the United States

Request N°14:

All answers have been done by the Applicant