

ESTTA Tracking number: **ESTTA396997**

Filing date: **03/08/2011**

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

Proceeding	91198021
Party	Defendant American International Industries
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Submission	Answer and Counterclaim
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Signature	/mdk/
Date	03/08/2011
Attachments	2011-03-08 Answer and Counterclaim to Notice of Opposition(1).pdf (5 pages) (164213 bytes)

Registration Subject to the filing

Registration No	3929986	Registration date	03/08/2011
Registrant	Arminex International, Inc. 4200 Verdant, Suite A Los Angeles, CA 90039 UNITED STATES		

Goods/Services Subject to the filing

Class 003. First Use: 2010/10/06 First Use In Commerce: 2010/10/06

All goods and services in the class are requested, namely: Nail care preparations; Nail enamels; Nail hardeners; Nail polish base coat; Nail polish top coat; Nail strengtheners

In the United States Patent and Trademark Office
Before The Trademark Trial and Appeal Board

Arminex International, Inc.,

Opposer,

v.

American International Industries,

Applicant.

Serial No. 85080615

Mark: GELIQUE

Proceeding No. 91198021

ANSWER AND COUNTERCLAIM TO NOTICE OF OPPOSITION

Applicant, American International Industries (“AII”), as and for its Answer, and Counterclaim to the Notice of Opposition of Arminex International, Inc., (“Arminex”), alleges as follows:

Answer to Notice of Opposition

1. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations in this paragraph, and accordingly denies the same.
2. AII denies the allegations asserted in paragraph 2 of the Notice of Opposition.
3. AII admits the allegations asserted in paragraph 3 of the Notice of Opposition.

4. AII denies the allegations asserted in paragraph 4 of the Notice of Opposition.

5. AII denies the allegations asserted in paragraph 5 of the Notice of Opposition.

6. AII denies the allegations asserted in paragraph 6 of the Notice of Opposition.

7. AII denies the allegations asserted in paragraph 7 of the Notice of Opposition.

8. AII denies the allegations asserted in paragraph 8 of the Notice of Opposition.

Counterclaim Against

U.S. Trademark Registration No. 3,929,986

Counterclaimant, AII, hereby petitions to cancel Trademark Registration No. 3,929,986 asserted in the Opposition by Counterclaim Defendant, Arminex. The grounds on which this Petition for Cancellation is based are as follows:

1. AII is a general partnership organized under the laws of California, with its principal place of business in Commerce, CA.

2. In its Notice of Opposition, Arminex asserts it is a California corporation with its principal place of business at Los Angeles, CA.

3. Arminex has opposed AII's U.S. Trademark Application Serial No. 85/080615 for the mark GELIQUE based on Arminex's U.S. Trademark Registration No. 3,929,986 for the mark GELICURE.

4. The grounds for Arminex's Opposition are priority and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

5. Arminex's GELICURE mark was registered on March 8, 2011.

6. Arminex is in the business of selling nail care products to be used as part of manicure or pedicure procedures, namely Nail care preparations, Nail enamels, Nail hardeners, Nail polish base coat, Nail polish top coat, and Nail strengtheners.

7. One of the more recent advances in the nail care industry has been the invention of a gel like polish which is applied to the nail and cured under UV light.

8. The mark, GELICURE, as applied to Arminex's goods is functional and merely descriptive.

9. The mark GELICURE, is not distinctive of the registrant Arminex's goods in commerce.

WHEREFORE, AII respectfully requests that the Notice of Opposition be dismissed with prejudice and AII believes it is and will be damaged by the continued existence of Arminex's registration and prays that it be cancelled.

Dated: March 8, 2011

Mark D. Kremer
Kevin R. Keegan, members of
CONKLE, KREMER & ENGEL
Professional Law Corporation

By: 

Kevin R. Keegan
Attorneys for Applicant American
International Industries

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 3130 Wilshire Boulevard, Suite 500, Santa Monica, California 90403-2351.

On March 8, 2011, I served true copies of the following document(s) described as on the interested parties in this action as follows:

Jay Geller
12100 Wilshire Bl., Suite 500
Los Angeles, CA 90025
UNITED STATES

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Conkle, Kremer & Engel's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2011, at Santa Monica, California.



Kevin R. Keegan