

ESTTA Tracking number: **ESTTA448660**

Filing date: **12/28/2011**

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

Proceeding	91202898
Party	Defendant Levitin, Mikhail
Correspondence Address	LEVITIN, MIKHAIL PO BOX 102 REEDERS, PA 18352-0102 vitality@ptd.net
Submission	Answer
Filer's Name	Mikhail Levitin
Filer's e-mail	vitality@ptd.net
Signature	/Mikhail Levitin/
Date	12/28/2011
Attachments	IN THE UNITED STATES PATENT AND TRADEMARK OFFICE12.27.11.pdf (4 pages)(19643 bytes)

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

L'Oréal S.A. and L'Oréal USA, INC.,
Opposer,

In the Matter of Application
Serial No: 85/270,272

vs.

Re: Mark: FOREAL FOR'EAL
BY MIKHAIL

MIKHAIL LEVITIN T/A
MIKHAIL LEVITIN INSTITUTE,
Applicant

ANSWER TO NOTICE OF OPPOSITION

1. Admitted. Upon submitted information and believe the allegation is admitted.
2. Admitted. Upon submitted information and believe the allegation is admitted.
3. Admitted. It admitted as events but irrelevant to the issue.
4. Admitted. Upon submitted information and believe the allegation is admitted.
5. Admitted. Upon submitted information and believe the allegation is admitted.
6. Denied. Opposer has been advised that the averments of Paragraph 4 constitute legal conclusions to which no answer is required nor made but never was any claim made for an “anti-aging cream” by **L'Oréal**.
7. Admitted in part and denied in part.
Admitted. L'Oréal has rights for all marked L'Oréal's products.

Denied. Applicant's act is protected by Antitrust law that seeks to make businesses compete fairly and forbid the pursuit or maintenance of monopoly power.

8. Admitted. Upon submitted information and believe the allegation is admitted.
9. Admitted. Upon submitted information and believe the allegation is admitted.
10. Admitted. Upon submitted information and believe the allegation is admitted.
11. Admitted. Upon submitted information and believe the allegation is admitted.
12. Admitted. Upon submitted information and believe the allegation is admitted.
13. Admitted. Upon submitted information and believe the allegation is admitted.
14. Admitted. Upon submitted information and believe the allegation is admitted.
15. Admitted in part and denied in part.
Admitted. L'Oréal has rights for all marks and received the awards.

Denied. The awards are irrelevant to the issue in question because:

- L'Oréal Paris Skin Genesis are skin maintenance products;
- L'Oréal Paris True Match are make up products;

- L'Oréal Paris Colour Riche Lipcolour are lipstick products;
- L'Oréal Paris True Match are make up products;

As a matter of fact, none of these products have ever been applied to the category of “anti-aging cream”.

16. Admitted. It admitted these as events but they are irrelevant to the issue facts.

17. Admitted. Upon submitted information and believe the allegation is admitted.

18. Admitted. Upon submitted information and believe the allegation is admitted.

19. Denied. The “anti-aging cream” as a “good” was never mentioned in the list of products covered by the application that is outlined in the paragraph 4.

20. Denied.

The Applicant assumed that English grammar has not been changed for the last 50 years.

Applicant specifically rebuts alleged fact by Opposer that FOREAL FOR'EAL BY MIKHAIL is causing “confusion or mistake, or has any intent to deceive” because:

- The applicant is applying the commonly used English word “for real” with commonly used abbreviation “foreal” on the territory of the country where it has been used for quite a while before **L'Oréal** came into this market and we never heard any complaints from English rhetoric specialists to the effect that it caused a problem in communications, or that there was any confusion or misunderstanding about the meaning of the English words in connection with the French name **L'Oréal**;
- **L'Oréal** is a noun that has NO meaning in the English language;
- FOREAL FOR'EAL BY MIKHAIL is a prepositional phrase with an emphasis on the word “real” as dictated by the grammar;
- **L'Oréal** and FOREAL FOR'EAL BY MIKHAIL are different in spelling, meaning, and pronunciation.

21. Denied.

Any one who has even a slight acquaintance with English grammar will see the difference between **L'Oréal** and FOREAL FOR'EAL BY MIKHAIL. The only possible resembling, for arguments sake, could be applied to people with a hearing impairment.

There are words in the English language like “bill” and “kill” that both are verbs and have one letter different in spelling but no one would justify the action “kill me” if they misheard. No one would construe that there was a conspiracy to cause “confusion or mistake or to deceive” by mishearing the word “bill me”.

According to the Opposer, the current movie, "Meet the Fockers" would be rejected for profanity. But this did not happen because we know that there is the last name "Focker" existing in English language.

According to English Urban Dictionary:

1. fo real:

said in conversations to confirm that one is serious and NOT kidding around this time. Often said in anger but can be said kidding around and you are NOT fo real.. your just kidding... and it is oddly ironic.

2. fo real:

A phrase:

A) to ask if one is serious

B) to agree with

Meaning A:

K: Shorty was backing out of the driveway and ran over my foot with her car!

P: Fo real?

Meaning B:

K: Man, Shorty sure do look fine in that dress!

C: Fo real!

In conclusion, **L'Oréal** and FOREAL FOREAL BY MIKHAIL have different roots in spelling, meanings, and pronunciations.

22. Denied.

The opposition for filing a mark FOREAL FOR'EAL BY MIKHAIL by MIKHAIL LEVITIN T/A MIKHAIL LEVITIN INSTITUTE has no legal grounds as the Applicant's act is protected by Antitrust law that seeks to make businesses compete fairly and "forbid(s) the pursuit or maintenance of monopoly power".

The Sherman Anti-Trust Act of 1890 (15 U.S.C.A. § 1 et seq.) is the basis for antitrust law, and many states have modeled their own statutes upon it. As weaknesses in the Sherman Act became evident, Congress added amendments to it at various times through 1950. The most important are the Clayton Act of 1914 (15 U.S.C.A. § 12 et seq.) and the Robinson-Patman Act of 1936 (15 U.S.C.A. § 13 et seq.). Congress also created a regulatory agency to administrate and enforce the law, under the Federal Trade Commission Act of 1914 (15 U.S.C.A. §§ 41--58). In an

ongoing analysis influenced by economic, intellectual, and political changes, the U.S. Supreme Court has had the leading role in shaping how these laws are applied.

23. Admitted. Upon submitted information and believe the allegation is admitted.

24. Denied.

The Applicant is pleading for the Honorable Trial Judge to consider the above statements and to approve the right to use FOREAL FOR'EAL BY MIKHAIL as it is not infringing in any meaningful way with L'Oréal.

Sincerely,

/Mikhail Levitin/

12.27.2011