

03-13-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

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

In re Application of Bausch & Lomb Incorporated

Mark: BAUSCH & LOMB MILLENNIUM

Application Serial No.: 78/058,107

Appeal Date: October 30, 2002

Filing Date: April 12, 2001

Trademark Attorney
Tonja Gaskins

Trademark Law Office: 112

BOX TTAB/NO FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

03 MAR 26 AM 9:30
TRADEMARK TRIAL AND
APPEAL BOARD

APPLICANT'S REQUEST FOR SUSPENSION OF APPEAL

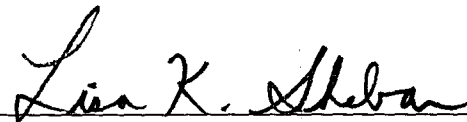
Applicant, Bausch & Lomb Incorporated, hereby requests that the Trademark Trial and Appeal Board (the "TTAB") suspend the above-captioned appeal proceeding and, in support thereof, Applicant states:

1. On October 30, 2002, Applicant filed its Notice of Appeal from the Examining Attorney's final refusal, dated May 4, 2002, to register Applicant's mark, BAUSCH & LOMB MILLENNIUM, which refusal is the subject of this appeal. Such refusal was based on the Examining Attorney's belief that Applicant's mark creates a likelihood of confusion with the mark that is the subject of U.S. Registration No. 2,219,279 for the mark MILLENNIUM for cutting devices for medical use, namely, laser and other electromagnetic energy activated cutting devices used with liquids for cutting and/or ablating hard and soft tissues ("Registrant's Mark").

2. On December 30, 2002, Applicant filed its Amended Appeal Brief For Applicant, and, on January 25, 2003, the Examining Attorney mailed to Applicant the Examining Attorney's Appeal Brief. Applicant's reply brief, if any, must be filed by March 17, 2003.

3. On March 12, 2003, Applicant filed in the TTAB a Petition to Cancel, a copy of which is attached hereto as Exhibit A, seeking the cancellation of Registrant's Mark on the ground that Registrant has abandoned the mark. Accordingly, Applicant respectfully requests that the TTAB suspend this appeal, pending the outcome of the cancellation proceeding.

Respectfully submitted,



Lisa K. Shebar
Attorney for Applicant
Katten Muchin Zavis Rosenman
525 West Monroe Street
Suite 1600
Chicago, Illinois 60661
(312) 902-5200

Date: March 13, 2003

50098873

EXHIBIT A

2. Petitioner has invested many hundreds of thousands of dollars in the research, development, production and marketing of Petitioner's Products. As a result of Petitioner's use and promotion of Petitioner's MILLENNIUM Marks in interstate commerce, and as a result of the care and skill exercised by Petitioner, Petitioner's MILLENNIUM Marks have acquired a distinctiveness, strength and secondary meaning signifying Petitioner and Petitioner's Products. Petitioner has built up and now owns valuable goodwill which is symbolized by Petitioner's MILLENNIUM Marks.

3. On May 14, 1996, Registrant filed an intent-to-use application in the U.S. Patent and Trademark Office ("USPTO") to register the mark MILLENNIUM for cutting devices for medical use, namely, laser and other electromagnetic energy activated cutting devices used with liquids for cutting and/or ablating hard and soft tissues. On January 19, 1999, Registrant was issued U.S. Registration No. 2,219,279 for the mark MILLENNIUM for the same goods ("Registrant's Mark").

4. Petitioner filed a Lanham Act Section 1(b) application for federal registration of its BAUSCH & LOMB MILLENNIUM mark on April 12, 2001, Serial No. 78/058,107, which has been preliminarily refused registration by the USPTO on the basis that Registrant's mark is allegedly confusingly similar to Petitioner's BAUSCH & LOMB MILLENNIUM mark.

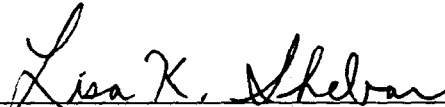
5. Upon information and belief, Registrant has, for an extended period of time, ceased use of Registrant's Mark in connection with each and every good identified in Registration No. 2,219,279 with the intention not to resume such use. Registrant's Mark and registration should therefore be deemed abandoned, and the registration cancelled under Section 14 of the Lanham Act, 15 U.S.C. § 1064.

WHEREFORE, Petitioner requests cancellation of Registrant's MILLENNIUM registration.

Petitioner submits herewith the requisite filing fee in the amount of \$300.00.

Please address all communications to Lisa K. Shebar, Katten Muchin Zavis Rosenman, 525 West Monroe Street, Suite 1600, Chicago, Illinois 60661-3693; phone (312) 902-5200.

Respectfully submitted,



Lisa K. Shebar
Attorney for Petitioner
Katten Muchin Zavis Rosenman
525 West Monroe Street
Suite 1600
Chicago, Illinois 60661
(312) 902-5200

Date: March 12, 2003

50098866


"Express Mail" mailing label number:

EV106947475US

Date of Deposit: March 12, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

March 12, 2003
Date

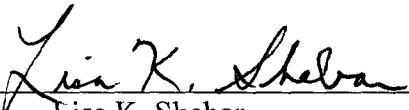

Linda S. Sallee Adams

"Express Mail" mailing label number: EV106947461US

Date of Deposit: March 13, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Box TTAB – BOX NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.

Date: March 13, 2003

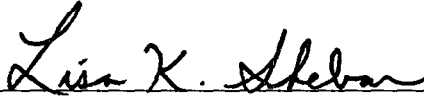
By: 
Lisa K. Shebar

CERTIFICATE OF SERVICE

I, Lisa K. Shebar, hereby certify that on this 13th day of March, 2003, a true copy of the foregoing Applicant's Request for Suspension of Appeal was served on the Trademark Examining Attorney of record by depositing a true and correct copy thereof in the United States mail in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Tonja M. Gaskins
United States Patent and Trademark Office
Law Office 112
2900 Crystal Drive
Arlington, VA 22202-3514

Executed on March 13, 2003.



Lisa K. Shebar