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U.S. Patent & TMO/TM Mail Rcpt Dt. #70

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

IN THE MATTER OF APPLICATION SERIAL NO. 75/923,877  
PUBLISHED IN THE OFFICIAL GAZETTE ON JANUARY 30, 2001

DUDLEY PRODUCTS, INC.

Opposer,

v.

DON SHAW, INC.

Applicant.

) Opposition No.:

CERTIFICATE OF MAILING

) I hereby certify that this correspondence is being  
) deposited with the United States Postal Service as First  
) Class Mail addressed to the Assistant Commissioner for  
) Trademarks, U.S. Trademark Office, 2900 Crystal Drive,  
) Arlington VA 22202-3513 on December 3, 2001

Lia Willett  
Lia Willett

NOTICE OF OPPOSITION

In the matter of the trademark application of DON SHAW, INC., for the registration of the mark **O+ PLUS and Design** for goods in International Class 3, **Application Serial No. 75/923,877**, filed on February 22, 2000, published in the Official Gazette on January 30, 2001, page TM 148;

Opposer DUDLEY PRODUCTS, INC., a North Carolina corporation with a principal place of business at 1080 Old Greensboro Road, Kernersville, North Carolina 27284, believes it will be damaged by the registration of the mark shown in the application and hereby opposes same.

The grounds for the opposition are:

1. Continuously since long prior to February 22, 2000, the Applicant's filing date for its application, the Opposer or its

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predecessors in interest have marketed, advertised and sold and continues to sell throughout the United States under the names and marks **Q+**; **DUDLEY'S Q+ and Design**; **DUDLEY Q+ LOVES COSMETOLOGISTS**; and **Q NAILS and Design** an extensive line of hair and skin and personal care products, including hair care products that are identical or similar to those described in the Applicant's trademark application.

2. Opposer's products sold under the above names and trademarks **Q+**; **DUDLEY'S Q+ and Design**; **DUDLEY Q+ LOVES COSMETOLOGISTS**; and **Q NAILS and Design** have been extensively promoted throughout the United States to the relevant trade and to the consuming public.

3. By reason of Opposer's aforesaid extensive promotion and sale of its products, Opposer's names and trademarks **Q+**; **DUDLEY'S Q+ and Design**; **DUDLEY Q+ LOVES COSMETOLOGISTS**; and **Q NAILS and Design** have acquired great recognition and renown, and the relevant trade and public have come to recognize the names and trademarks **Q+**; **DUDLEY'S Q+ and Design**; **DUDLEY Q+ LOVES COSMETOLOGISTS**; and **Q NAILS and Design** as signifying Opposer exclusively.

4. Opposer has duly registered in the United States Patent and Trademark Office and owns the following registrations:

<u>REGISTRATION NUMBER</u>	<u>TRADEMARK</u>
1,286,716	<b>DUDLEY'S Q+ and Design</b>
1,600,004	<b>DUDLEY'S Q+ and Design</b>

1,602,925	<b>DUDLEY'S Q+ and Design</b>
1,755,790	<b>DUDLEY Q+ LOVES COSMETOLOGISTS</b>
1,821,228	<b>DUDLEY Q+ LOVES COSMETOLOGISTS</b>
75/358,283	<b>Q NAILS and Design</b>

5. Each of the registrations referenced in paragraph No. 4 for the above marks are valid subsisting registrations in full force and effect. Furthermore, Registration Nos. 1,286,716; 1,600,004; 1,602,925; 1,755,790; and 1,821,228 have achieved "incontestible" registration status thereby constituting conclusive prima facie evidence of Opposer's exclusive right to use said marks in commerce.

6. The Opposer holds a family of marks which use "Q+" as a portion of a mark associated with various lines of hair and skin care products disseminated or sold by the Opposer.

7. Applicant's claimed trademark **O+ and Design**, as proposed for use in connection with goods in International Class 3, is so similar to Opposer's names and trademarks **Q+**; **DUDLEY'S Q+ and Design**; **DUDLEY Q+ LOVES COSMETOLOGISTS**; and **Q NAILS and Design** or under the Family of Marks of Opposer which include **Q+**, used for a wide range of hair and skin products, including hair care products identical or similar to those products identified in the Applicant's application herein being opposed, as to be likely to create confusion, mistake or

deception, all to the damage of Opposer, and to the damage of Opposer's rights in its names and trademarks, which names and marks have been in use long prior to the filing of the Applicant's trademark application.

8. Based upon information and belief the goods identified in the Applicant's application for the trademark **O+ and Design** and those products sold under the Opposer's names and marks, or under the Opposer's Family of Marks which include **Q+** could be sold to the same potential consumers or end-users as the Applicant's products.

9. Certain products designed or intended for sale under the Applicant's mark **O+ and Design** and under Opposer's marks **Q+**; **DUDLEY'S Q+ and Design**; **DUDLEY Q+ LOVES COSMETOLOGISTS**; and **Q NAILS and Design**, on information and belief, could move through the same or similar channels of trade or could be promoted to the same classes of prospective purchasers.

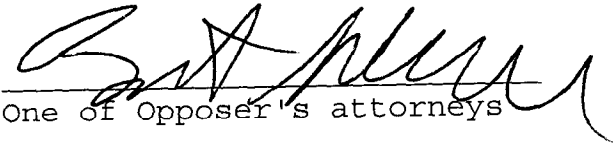
10. Applicant's mark so resembles Opposer's above listed marks and Opposer's Family of Marks for the above listed goods associated with lines of skin care and hair care products as to be likely, when applied to the goods of the Applicant, to cause confusion or to cause mistake or deception.

11. The Applicant's design mark shows a partial plus symbol "+" attached to the letter "O". The impression of the Applicant's mark of having the plus symbol attached to the letter

Please address all correspondence to Burton S. Ehrlich,  
Brezina & Ehrlich, Dearborn Station Tower, 47 West Polk Street,  
Suite 333, Chicago, IL 60605-2092, telephone (312) 408-0077.

Respectfully submitted,

By:

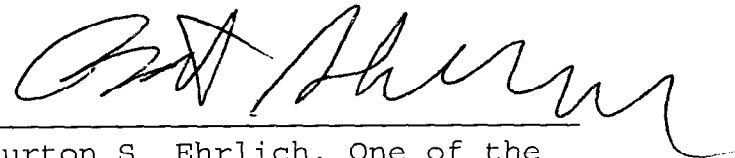
  
One of Opposer's attorneys

Burton S. Ehrlich  
Brezina & Ehrlich  
Dearborn Station Tower  
47 West Polk Street  
Suite 333  
Chicago, IL 60605-2092  
(312) 408-0077

(IN TRIPLICATE)

**CERTIFICATE OF MAILING**

I hereby certify that this paper is being deposited (in triplicate) with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Trademarks, U.S. Trademark Office, 2900 Crystal Drive, Arlington, VA 22202-3513 on this 3rd day of December, 2001.

  
Burton S. Ehrlich, One of the  
Attorneys for Opposer