

TTAB



08-27-2002

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

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

Amiteé Cosmetics, Inc.,

Opposer,

v.

Joico Laboratories, Inc.,

Applicant.

Opposition No. _____

Application Serial No. 78/100,622

Mark: SPIKER WHATEVER WHITE

Published for Opposition: June 25, 2002

Docket No.: 57095-9104

NOTICE OF OPPOSITION

Commissioner for Trademarks
Box TTAB/Fee
2900 Crystal Drive
Arlington, Virginia 22202-3513

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail, postage prepaid, in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on August 23, 2002

By: G. Erskine
GEORGEANN ERSKINE

Opposer Amiteé Cosmetics, Inc., a California corporation ("Opposer"), having a place of business at 151 Kalmus Drive, Costa Mesa, California 92626, believes that it is and will be damaged by the registration on the Principal Register of "SPIKER WHATEVER WHITE" in connection with "non-medicated hair care preparations" in International Class 3, which is the subject of Application Serial No. 78/100,622 owned by Joico Laboratories, Inc., a California corporation ("Applicant"), having a place of business at 345 Baldwin Park Boulevard, City of Industry, California 91746, and Opposer hereby opposes registration thereof. Opposer

requested and was granted an extension of time to respond until August 24, 2002.

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As grounds for the opposition, it is alleged that:

1. Opposer manufactures and distributes a line of hair care preparations, including a spiking glue and a colored spiking styling glue. "Spiking" and its derivations such as "spiker" are well-known terms, meaning to style one's hair so that it stands up in spiked sections.
2. Applicant has threatened Opposer with trademark infringement based upon Opposer's use of the term "SPIKER" in connection with its colored spiking styling glue. Opposer believes the term "SPIKER WHATEVER WHITE" is generic for a spiking gel that is "white" in color. At best, the term is merely descriptive of Applicant's products, and Opposer believes the term has not achieved the requisite secondary meaning. Moreover, "SPIKER WHATEVER WHITE" as used by Applicant does not function as a trademark.
3. Opposer therefore believes that it is likely to be damaged by the registration of "SPIKER WHATEVER WHITE" in connection with "non-medicated hair care preparations" within the meaning of Section 13(a) of the Trademark Act (15 U.S.C. §1063(a)).
4. If Applicant is granted registration of "SPIKER WHATEVER WHITE" in connection with hair care preparations, it would thereby obtain at least a prima facie exclusive right to use "SPIKER WHATEVER WHITE" for such goods. Such registration is likely to be a source of damage and injury to Opposer.

WHEREFORE, in accordance with Section 13 of the Trademark Act (15 U.S.C. §1063), Opposer prays that this Opposition be sustained and that "SPIKER WHATEVER WHITE," the subject of Application Serial No. 78/100,622, be refused registration in connection with the goods identified in said application.

The required fee of three hundred dollars (\$300) is enclosed. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0440.

A duplicate copy of the Notice of Opposition is filed herewith.

Respectfully submitted,
JEFFER, MANGELS, BUTLER & MARMARO LLP

Dated: August 23, 2002

By: 

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On September 9, 2002,
our new address will be:
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Phones, faxes and e-mail will remain the
same
