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

TTAB

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

AMITEÉ COSMETICS, INC.,

Opposer,

v.

JOICO LABORATORIES, INC.,

Applicant.

Opposition No. 91152808

App. No. 78/100,622

Mark: SPIKER WHATEVER WHITE

TTAB AND
APPEAL BOARD
OCT 24 PM 9:30

ANSWER TO NOTICE OF OPPOSITION

Box TTAB-No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Dear Sir:

The following is an Answer to the above-referenced Notice of Opposition, pursuant to a notice from the Trademark Trial and Appeal Board mailed September 7, 2002. Any allegations in the Notice of Opposition not specifically admitted herein, are denied by Applicant.

With respect to the preamble of the Notice of Opposition, Applicant admits the identity of the opposed Application, but Applicant is without knowledge or information as to all other allegations in the preamble and, therefore, denies the same, leaving Opposer to its proof thereof. Applicant specifically denies the allegation of damage in the preamble.

Amiteé Cosmetics, Inc. v. Joico Laboratories, Inc.

Opposition No. 91152808

App. No. 78/100,622

Mark: SPIKER WHATEVER WHITE

Page 2

In further answer to the Notice of Opposition, Applicant pleads as follows:

1. In answering the allegations of the first sentence of paragraph 1, Applicant is without knowledge or information sufficient to form a belief as to the truth thereof, and Applicant therefore denies the same, and will leave Opposer to its proof thereof. In answering the allegations of the second sentence of paragraph 1, Applicant specifically denies any inference that "spiker" is a generic term. Except as specifically admitted herein, Applicant denies each and every allegation contained in paragraph 1.
2. In answer to the allegations of paragraph 2, Applicant denies the same.
3. In answer to the allegations of paragraph 3, Applicant denies the same.
4. In answer to the allegations of paragraph 4, Applicant denies the same.

AFFIRMATIVE DEFENSES

5. Applicant's mark, SPIKER WHATEVER WHITE, is not generic or merely descriptive of Applicant's hair care preparations. There is no dictionary meaning for "Spiker," "Whatever," "Spiker Whatever," "Spiker White" or "Whatever White" in relation to hair care preparations. Further, it is highly unlikely a consumer would use the phrase SPIKER WHATEVER WHITE instead of generic words such as hair colorant or hair coloring agent when referring to a hair coloring product.

Amiteé Cosmetics, Inc. v. Joico Laboratories, Inc.

Opposition No. 91152808

App. No. 78/100,622

Mark: SPIKER WHATEVER WHITE

Page 3

6. Applicant is the owner of Registration No. 2,453,761 dated May 22, 2001 on ICE SPIKER for non-medicated hair care preparations. The term "Spiker" was not deemed to be a descriptive or generic word by the Patent and Trademark Office, nor was a disclaimer required.

7. Applicant is the owner of Application Serial No. 76/232,393 filed March 29, 2001 on SPIKER COLORZ for non-medicated hair care preparations. This Application has been allowed, and a disclaimer was required on "colors" apart from the mark as shown. As a result, it can be inferred that not only is "Spiker" not descriptive, it is the distinctive feature of the overall mark.

8. Applicant's mark is deemed sufficiently unique and distinctive that when a consumer sees the subject phrase in relation to Joico branded hair care products, they will think that the product comes only from Applicant, Joico Laboratories, Inc. Thus, it cannot be said that Opposer will be damaged by registration of the subject mark.

Amiteé Cosmetics, Inc. v. Joico Laboratories, Inc.

Opposition No. 91152808

App. No. 78/100,622

Mark: SPIKER WHATEVER WHITE

Page 4

WHEREFOR, Applicant most respectfully requests that the Notice of Opposition be dismissed, and that a registration issue to Applicant for its mark, SPIKER WHATEVER WHITE.

Respectfully submitted,

Dated: October 14, 2002

By Kenneth J. Hovet
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PROOF OF SERVICE BY MAIL

I hereby certify that a copy of the foregoing **Answer to Notice of Opposition** is being deposited with the United States Postal Service as First Class mail, postage prepaid, in an envelope addressed to Rod S. Berman and Christina Harvell Brown, Attorneys for Opposer at Jeffer, Mangels, Butler & Marmaro LLP, 1900 Avenue of the Stars, Suite 700, Los Angeles, California 90067 on October 14, 2002.

Tawny Bryant-Schreck
Tawny Bryant-Schreck

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, in an envelope addressed to Box TTAB-No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on October 14, 2002.

Tawny Bryant-Schreck
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