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04-07-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

**BOX: 11AB/FEE**

Express Mail No. EL539959653US

Serial No. 76/435,646

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

SOLARAY, INC., )  
 )  
 Opposer, )  
 )  
 v. )  
 )  
 EURO PHARMA, INC., )  
 )  
 Applicant )

Opposition No. \_\_\_\_\_  
Serial No. 76/435,646  
Published March 4, 2003

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**NOTICE OF OPPOSITION**

SOLARAY, INC., a corporation duly formed under the laws of the State of Utah, having its principal place of business located at 1500 Kearns Boulevard, Suite B-200, Park City, Utah 84060 ("Opposer"), believes that it will be damaged by the registration of Serial No. 76/435,646, and consequently opposes that application. EURO PHARMA, INC. ("Applicant") filed Serial No. 76/435,646 for SOLAIRE for "dietary supplements for use in suntanning" in International Class 5 on July 29, 2002. The application was published for opposition in the Official Gazette on March 4, 2003.

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Enclosed is a check in the amount of \$300.00 for the requisite government filing fee for this Notice of Opposition. Please charge any remaining amount owing against Holland & Hart LLP's Deposit Account No. 08-2623. This Notice is filed in triplicate.

The grounds for this Opposition are as follows:

1. Opposer, Solaray, Inc. is a corporation duly formed under the laws of the State of Utah, having its principal place of business located at 1500 Kearns Boulevard, Suite B-200, Park City, Utah 84060.
2. Opposer is in the business of manufacturing, marketing and selling dietary supplement and nutritional products including herbs, vitamins and minerals and combinations thereof and uses and has continuously used SOLARAY as the primary brand for its goods within the United States since at least 1979.
3. In 1982, Opposer was granted a federal trademark registration involving the mark SOLARAY for "*Herbs, Vitamins, Vitamin/Herb Combinations, Pollen, Pectin, Bran, Pepsin, Vegetable Powders, Kelp and Lactose for Dietary Use in Capsule Tablet and Powdered Form; and Gelatin Capsules*" in Class 5 and "*Herbs for Seasoning and Flavor Additives in Liquid Form for Use as Food Flavoring,*" in Class 30, Registration No. 1,221,385.
4. Opposer's registration has become incontestable, pursuant to Section 15, and continues in full force and effect.

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5. Opposer's registration and use of the mark SOLARAY precedes the July 29, 2002 filing date of the Applicant's intent-to-use application.
6. Opposer has expended considerable expense and effort in advertising and promoting its mark SOLARAY and the goods that it offers and sells under the SOLARAY mark.
7. Opposer has acquired substantial good will in connection with the mark SOLARAY within the nutritional supplement business.
8. Since the introduction of Opposer's SOLARAY products, consumers have come to know and appreciate the qualities and effectiveness of these products and Opposer's mark has become famous.
9. Applicant filed U.S. Trademark Application Serial No. 76/435,646 to register SOLAIRE for "*dietary supplements for use in suntanning.*"
10. Applicant's mark SOLAIRE is likely to be pronounced by consumers in a fashion that is phonetically identical to Opposer's longstanding SOLARAY trademark.
11. Applicant's goods are likely to be sold to the same class of potential consumers and through the same or similar marketing channels.
12. Applicant's goods are closely similar to or identical to the goods described in Opposer's incontestable registration.

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13. Opposer will be injured or damaged by registration of Applicant's mark SOLAIRE because that mark is likely to cause consumer mistake and confusion as to the affiliation, connection, sponsorship, or relationship between Applicant and Applicant's goods and Opposer and Opposer's goods, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. 1052(d).

14. Opposer will be injured or damaged by registration of Applicant's mark SOLAIRE because the mark SOLAIRE will lessen the capacity of the mark SOLARAY to identify and distinguish the goods of Opposer and will cause dilution of the distinctive quality of Opposer's famous mark SOLARAY, in violation of Section 43(c), 15 U.S.C. 1124(c).

15. Consequently, Opposer would be irreparably damaged by the registration of Application Ser. No. 76/435,646.

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WHEREFORE, Opposer respectfully requests that Application Serial  
No. 76/435,646 be rejected, that no registration be issued thereon to the Applicant, and  
that this Opposition be sustained in favor of Opposer.

Respectfully Submitted:



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**CERTIFICATE OF MAILING BY EXPRESS MAIL**

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

The undersigned hereby certifies that the attached Notice of Opposition (in triplicate), check in the amount of \$300.00, return card and Certificate of Mailing, were deposited as "Express Mail," Mailing Label No. EL539959653US, with the United States Postal Service, addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on April 7, 2003.

April 7, 2003  
Date

Jane Sun  
Mailer

April 7, 2003  
Date

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