

TTAB

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

-----X
THE HEBREW UNIVERSITY OF :
JERUSALEM, : Opposition No. _____
: :
 Opposer, :
: :
 v. :
: :
PATRICK MOONEY, :
: :
 Applicant. :
: :
-----X


10-30-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #72

NOTICE OF OPPOSITION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Dear Sir:

In the matter of the application filed by Patrick Mooney, an individual with an address at 100 Santa Rosa Avenue, Pacifica, California 94044, namely, Application No. 76/453,178 for EINSTEIN'S FAVORITE in International Class 5 covering "Dietary Food Supplements" which application was published for opposition on April 1, 2003, with extensions of time to file a Notice of Opposition granted up to, and including, July 25, 2003.

The Hebrew University of Jerusalem (the "Opposer"), a corporation organized and existing under the laws of Israel, with an address at Givat Ram, P.O. Box 34165, Jerusalem 91341, Israel, believes that it is or will be damaged by the issuance to registration of EINSTEIN'S FAVORITE Application No. 76/453,178

and hereby opposes registration of EINSTEIN'S FAVORITE to Applicant.

The grounds for opposing the registration of EINSTEIN'S FAVORITE are as follows:

1. Opposer is the owner of the intellectual property rights of the late, famous scientist and genius, Albert Einstein, including the publicity rights in his name and likeness, service marks and trademarks. Albert Einstein is also known, and commonly referred to, as EINSTEIN.

2. The names and marks ALBERT EINSTEIN and EINSTEIN have been used by those licensed or otherwise authorized by Opposer on or in connection with a broad variety of goods and services prior to Applicant's filing date, including, but not limited to, candy, beverages, bottled water, tee-shirts, hats, mugs, posters, computers, software applications and products, CD-ROMS with books sold as a unit, and providing access to an on-line computer data base and video games.

3. Opposer owns numerous EINSTEIN and EINSTEIN formative marks, including, *inter alia*, incontestable U.S. Registration No. 1,479,104 for EINSTEIN in connection with "providing access to an online computer database for use by high school students and teachers" in International Class 42; U.S. Registration No. 2,497,731 for EINSTEINET in connection with "providing temporary use of on-line non-downloadable software to subscribers for use

in word-processing, database management, accounting, and inventory control, in the field of business management" in International Classes 39 and 42; U.S. Registration No. 2,599,880 for THE ULTIMATE EINSTEIN in connection with "interactive educational CD-ROMS, in the field of history, sold individually and together as a unit with history books and instructional manuals therefor" in International Class 9 and U.S. Application No. 75/519,755 for EINSTEIN in connection with, *inter alia*, "debit card services, credit card services [and] telephone calling card services".

4. Applicant has applied, under Serial No. 76/453,178, to register EINSTEIN'S FAVORITE in connection with "Dietary Food Supplements". Applicant's EINSTEIN'S FAVORITE is confusingly similar to Opposer's EINSTEIN and ALBERT EINSTEIN marks. Applicant's applied-for mark wholly incorporates Opposer's EINSTEIN mark, adding only the term FAVORITE in a manner so as to convey possessiveness to ALBERT EINSTEIN, namely that this is a favorite product of ALBERT EINSTEIN.

5. In addition, the use of EINSTEIN'S FAVORITE, in connection with "Dietary Food Supplements", in particular, supposed human brain function enhancing supplements, is likely to conjure up an association with Albert Einstein, who is well known as the preeminent genius of the twentieth century.

6. Due to the enormous and longstanding fame of the late

scientist and genius named ALBERT EINSTEIN, including the licensed and otherwise authorized use of the names and marks ALBERT EINSTEIN and EINSTEIN in connection with a broad variety of goods and services, Applicant's EINSTEIN'S FAVORITE falsely suggests a connection with the late ALBERT EINSTEIN.

7. On information and belief, Applicant is well aware of and seeks to foster that false connection with the late, well known scientist and genius, ALBERT EINSTEIN.

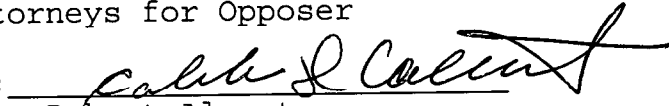
8. Since prior to Applicant's filing date and Applicant's use, if any, of EINSTEIN'S FAVORITE, the names and marks ALBERT EINSTEIN and EINSTEIN have become associated with Opposer, such that Applicant's EINSTEIN'S FAVORITE mark, when used in connection with the applied-for goods are likely to confuse the consuming public to believe that Applicant's goods are authorized, sponsored, licensed or controlled by Opposer, or are in some way, related to Opposer.

WHEREFORE, Opposer respectfully requests that Application No. 76/453,178 be refused registration.

Respectfully submitted,

LADAS & PARRY
Attorneys for Opposer

Date: October 28, 2003

By: 
Robert Alpert
Ralph H. Cathcart
26 West 61st Street
New York, New York 10023
(212) 708-1800
(Our Ref: 960268)

CERTIFICATE OF FILING

I, Sandy Chum, hereby certify that the foregoing **NOTICE OF OPPOSITION** has been deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed as follows:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Date: October 28, 2003



Sandy Chum

CERTIFICATE OF SERVICE

I, Sandy Chum, certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served on the person(s) listed below by first class mail, postage prepaid:

Mr. Patrick Mooney
ForEver Young/Super Nutrition
100 Santa Rosa Avenue
Pacifica, CA 94044

Date: October 28, 2003



Sandy Chum

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

IN THE MATTER OF :
Application No. : 76/453,178
Filed : September 26, 2002
By : Mooney, Patrick
Published : April 1, 2003
Trademark : EINSTEIN'S FAVORITE
Class No. : 5

NOTICE OF OPPOSITION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

10-30-2003
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #72

Dear Sir:

Attached hereto are two copies of the Notice of Opposition against the subject application.

We attach our Check No. 15704, dated October 28, 2003, in the amount of \$300.00, covering the filing fee for the subject opposition. If any additional charges are incurred, please charge Deposit Account No. 12-0425.

Kindly acknowledge receipt of this Notice of Opposition by returning the attached postcard.

11/19/2003 KGIBBONS 00000228 76453178

01 FC:6402

300.00.OP

Respectfully submitted,

LADAS & PARRY
Attorneys for Opposer

Dated: October 28, 2003

By: 

Robert Alpert
Ralph H. Cathcart
26 West 61st Street
New York, NY 10023
(212) 708-1860
(Our Ref: 960268)