

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE WITH SUFFICIENT POSTAGE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO **BOX TTAB, FEE, COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3514**, ON JANUARY 23, 2004.

NAME: TODD E. ADLER

SIGNATURE: 

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

In the Matter of Application Serial No. 76/440,248  
Published in the *Official Gazette* on August 26, 2003 at TM 148  
Trademark: **ENLEVE FRESH & WHITE**

Bayer-Roche L.L.C.,  
Opposer

v.

Platinum Products International, Inc.,  
Applicant.

**NOTICE OF OPPOSITION**



**01-26-2004**

U.S. Patent & TMO/c/TM Mail Rpt Dt. #78

Box TTAB, FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

**NOTICE OF OPPOSITION**

Bayer-Roche L.L.C. ("Opposer"), a Delaware limited liability company having a principal place of business at 36 Columbia Road, Morristown, NJ 07962, believes it will be damaged by registration of the mark ENLEVE FRESH & WHITE shown in Serial No. 76/440,248 in International Class 3 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

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1. Opposer has obtained the necessary extensions of time in which to oppose the challenged trademark following publication on August 26, 2003 at page TM 148 of the *Official Gazette*.

2. Platinum Products International, Inc. ("Applicant"), has filed an application to register the mark ENLEVE FRESH & WHITE for "non-medicated mouthwash that also whitens teeth" in International Class 3, as evidenced by the publication of such mark in the *Official Gazette* on August 26, 2003 at page TM 148.

3. Applicant is, upon information and belief, a Florida corporation, having a place of business at 2715 East Oakland Park Boulevard, Suite 200, Ft. Lauderdale, FL 33306-1659.

4. Opposer has, since at least as early as April 25, 1988, used the mark ALEVE in connection with pharmaceutical preparations. Opposer is the owner of, among others, an incontestable registration for the trademark ALEVE (United States Registration No. 1,536,042).

5. There is no issue as to priority. Applicant has not used the mark ENLEVE FRESH & WHITE on its goods prior to August 8, 2002, as evidenced by Applicant's Intent-to-Use application filed on August 8, 2002, which date is subsequent to the issuance of the above-referenced registration for ALEVE.

6. The mark ALEVE is famous throughout the United States and has become closely associated with the goods of Opposer. The ALEVE mark became famous prior to the filing of Applicant's intent-to-use application for ENLEVE FRESH & WHITE.

7. Opposer has sold its goods under the mark ALEVE throughout the United States and has developed exceedingly valuable goodwill with respect to the mark ALEVE.

8. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods, Opposer has gained for its mark ALEVE a most valuable reputation and has created, in the minds of the buying public, an exclusive association between ALEVE and its goods.

9. The trademark proposed for registration by Applicant, namely, ENLEVE FRESH & WHITE, is likely to be confused with Opposer's mark, ALEVE, because the marks are similar in appearance, sound and overall commercial impression.

10. Applicant seeks to register ENLEVE FRESH & WHITE as a mark in connection with goods that are substantially similar to the goods of Opposer and such use so nearly resembles Opposer's use as to be likely to cause confusion, to cause mistake or to deceive within the meaning of 15 U.S.C. § 1052(d).

11. The trademark proposed for registration by Applicant, namely ENLEVE FRESH & WHITE, is likely to dilute and actually dilutes Opposer's ALEVE mark and reduces the capacity of the famous ALEVE mark to identify the goods of Opposer.

12. If Applicant is permitted to use and register the ENLEVE FRESH & WHITE mark for its goods as specified in the opposed application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant's mark is confusingly similar to Opposer's mark. Persons familiar

with Opposer's ALEVE mark would be likely to buy Applicant's ENLEVE FRESH & WHITE goods as goods offered and sold by Opposer. Furthermore, any defect, objection, or fault found with Applicant's goods marketed under its ENLEVE FRESH & WHITE mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its ALEVE-branded goods offered under its ALEVE mark.

13. If Applicant is granted the registration herein opposed, it would obtain thereby at least a prima facie exclusive right to the use of the ENLEVE FRESH & WHITE mark. Such registration would be a source of damage and injury to Opposer.

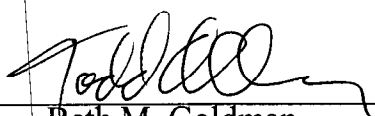
WHEREFORE, Opposer prays that the opposition be sustained and that the application be refused for registration.

A duplicate copy of this Notice of Opposition and the fee required by Section 2.6 are enclosed.

Respectfully submitted,  
HELLER EHRMAN WHITE & McAULIFFE LLP

Dated: January 23, 2004

By: \_\_\_\_\_

  
Beth M. Goldman  
Todd E. Adler

Attorneys for Bayer-Roche L.L.C.

333 Bush Street  
San Francisco, CA 94104  
415-772-6881

Please refer to Our File No.: 24172-0046

TTAB

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**TRANSMITTAL LETTER**

Dear Sir/Madam:

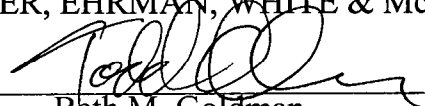
We are attorneys representing Bayer-Roche L.L.C. Enclosed is the original and one copy of a NOTICE OF OPPOSITION, filed by Bayer-Roche L.L.C.

Also enclosed is a check in the amount of \$300.00 for the filing fee. In the event the enclosed amount is insufficient for the fee, the Commissioner is authorized to charge any underpayment or credit any overpayment fees to our deposit account No. 08-1645 (Reference No. 24172-0046), as necessary. A copy of this transmittal letter is enclosed for this purpose.

Please address all correspondence to me at the address below. Please stamp the enclosed postcard to evidence your receipt of this document.

Respectfully submitted,  
HELLER, EHRMAN, WHITE & McAULIFFE LLP

Dated: January 23, 2004

By:   
Beth M. Goldman  
Todd E. Adler  
Attorneys for Bayer-Roche L.L.C.

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