

TTAB

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

In the Matter of Application Serial No. 78/264,019
Published in the Official Gazette on July 6, 2004
Mark: SUMMER BREEZE

C.B. FLEET COMPANY, INCORPORATED,

Opposer,

v.

MUELHENS GMBH & CO. KG,

Applicant.

Opposition No. 91162545



03-28-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

CERTIFICATE OF EXPRESS MAILING

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March 25, 2005
Date

ANSWER TO NOTICE OF OPPOSITION

BOX TTAB -- NO FEE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Muelhens GmbH & Co. KG ("Applicant") hereby answers the Notice of Opposition of C.B. Fleet Company Incorporated, ("Opposer"). In the preamble, Opposer states that it is a Virginia corporation with addresses in Virginia. Applicant is without knowledge or information sufficient to form a belief as to the truth of these allegations. Applicant denies the allegations that Opposer will be damaged by Applicant's registration of the SUMMER BREEZE mark,

Serial No. 78/264,019. Applicant responds to the averments made in the numbered paragraphs as follows:

1. Applicant admits on information and belief that Opposer is a corporation which distributes feminine hygiene and other personal care products intended for use by women.

2. Applicant admits on information and belief that Opposer markets such products under the trademark SUMMER'S EVE.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 3, and therefore denies them.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 4, and therefore denies them.

5. Applicant admits that Opposer is named as the owner of U.S. Registration No. 973,790 SUMMER'S EVE (a copy of which is attached as Exhibit A to Opposer's Notice of Opposition).

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 6, and therefore denies them.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 7, and therefore denies them. However, Applicant admits that the TARR system on the USPTO website indicates that a declaration under Section 15 was filed and acknowledged for U.S. Registration No. 973,790.

8. Applicant admits that Opposer is named as the owner of U.S. Registration No. 1,519,502 for SUMMER'S EVE (a copy of which is attached as Exhibit B to Opposer's Notice of Opposition).

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 9, and therefore denies them.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 10, and therefore denies them. However, Applicant admits that the TARR system on the USPTO website indicates a declaration under Section 15 was filed and acknowledged for U.S. Registration No. 1,519,502.

11. Applicant admits that Opposer is named as the owner of U.S. Registration No. 1,540,013 for SUMMER'S EVE (a copy of which is attached as Exhibit C to Opposer's Notice of Opposition).

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 12, and therefore denies them.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 13, and therefore denies them. However, Applicant admits that the TARR system on the USPTO website indicates a declaration under Section 15 was filed and acknowledged for U.S. Registration No. 1,540,013.

14. Applicant admits that Opposer is named as the owner of U.S. Registration No. 1,666,226 for SUMMER'S EVE (a copy of which is attached as Exhibit D to Opposer's Notice of Opposition).

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 15, and therefore denies them.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 16, and therefore denies them. However, Applicant admits

that the TARR system on the USPTO website indicates a declaration under Section 15 was filed and acknowledged for U.S. Registration No. 1,666,226.

17. Applicant admits that Opposer is named as the owner of U.S. Registration No. 2,396,413 for SUMMER'S EVE (a copy of which is attached as Exhibit E to Opposer's Notice of Opposition).

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 18, and therefore denies them.

19. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 19, and therefore denies them.

20. Applicant admits that Opposer is named as the owner of U.S. Registration No. 2,396,414 for SUMMER'S EVE (a copy of which is attached as Exhibit F to Opposer's Notice of Opposition).

21. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 21, and therefore denies them.

22. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 22, and therefore denies them.

23. Applicant admits that Opposer is named as the owner of U.S. Registration No. 2,408,646 for SUMMER'S EVE (a copy of which is attached as Exhibit G to Opposer's Notice of Opposition).

24. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 24, and therefore denies them.

25. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 25, and therefore denies them.

26. Applicant admits that Opposer is named as the owner of U.S. Registration No. 2,300,984 for SUMMER'S EVE SPECIALCARE (a copy of which is attached as Exhibit H to Opposer's Notice of Opposition).

27. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 27, and therefore denies them.

28. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 28, and therefore denies them.

29. Applicant admits that Opposer is named as the owner of U.S. Registration No. 2,185,222 for SUMMER'S EVE (a copy of which is attached as Exhibit I to Opposer's Notice of Opposition).

30. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 30, and therefore denies them.

31. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 31, and therefore denies them. However, Applicant admits that the TARR system on the USPTO website indicates a declaration under Section 15 was filed and acknowledged for U.S. Registration No. 2,185,222.

32. Applicant admits that Opposer is named as the owner of U.S. application Serial No. 76/586,525 for SUMMER'S EVE SENSITIVE SKIN FEMININE BATH and DESIGN (a copy of which is attached as Exhibit J to Opposer's Notice of Opposition).

33. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 33, and therefore denies them.

34. Applicant admits that Opposer is named as the owner of U.S. application Serial No. 76/605,448 for SUMMER'S EVE (a copy of which is attached as Exhibit K to Opposer's Notice of Opposition).

35. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 35, and therefore denies them.

36. Applicant admits that Opposer is named as the owner of U.S. application Serial No. 76/605,551 for SUMMER'S EVE and DESIGN (a copy of which is attached as Exhibit L to Opposer's Notice of Opposition).

37. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 37, and therefore denies them.

38. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 38, and therefore denies them.

39. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 39, and therefore denies them.

40. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 40 that Opposer began using the SUMMER'S EVE marks over thirty (30) years ago, and therefore denies these averments. Because Applicant is without knowledge or information sufficient to form a belief as to the truth of Opposer's averments regarding its use of the SUMMER'S EVE marks, Applicant lacks any basis for determining whether the SUMMER'S EVE marks have priority, which is a question of law to be determined The Board.

Applicant and its SUMMER BREEZE Mark

41. Applicant admits the averments set forth in paragraph 41.

42. Applicant denies each and every averment set forth in paragraph 42.
43. Applicant denies each and every averment set forth in paragraph 43.
44. Applicant denies each and every averment set forth in paragraph 44.
45. Applicant admits that it offers or intends to offer products for cosmetic and personal care use by women. Applicant denies the remaining averments in paragraph 45.
46. Applicant denies each and every averment set forth in paragraph 46.
47. Applicant denies each and every averment set forth in paragraph 47.
48. Applicant denies each and every averment set forth in paragraph 48.
49. Applicant is without knowledge or information sufficient to form a belief as to whether Opposer has established considerable good will in its SUMMER'S EVE marks and therefore denies them. Applicant denies each and every remaining averment set forth in paragraph 49.
50. Applicant denies each and every averment set forth in paragraph 50.
51. Applicant denies each and every averment set forth in paragraph 51.
52. Applicant denies each and every averment set forth in "Wherefore" paragraph.

AFFIRMATIVE DEFENSES

53. Opposer has failed to demonstrate its exclusive right to use SUMMER formative marks or marks containing the word SUMMER.
54. There is no likelihood of confusion, mistake or deception between Applicant's mark and Opposer's claimed marks as to source of goods.
55. Applicant's mark and Opposer's claimed marks can coexist in the marketplace without confusion.

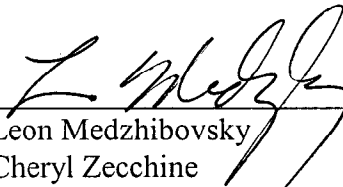
56. Applicant's mark and Opposer's claimed marks are used on goods that are customarily differentiated in the marketplace.

WHEREFORE, Applicant requests that the Opposition be dismissed with prejudice and that the Applicant's mark proceed to registration.

DATED: March 25, 2005

Respectfully submitted,

By



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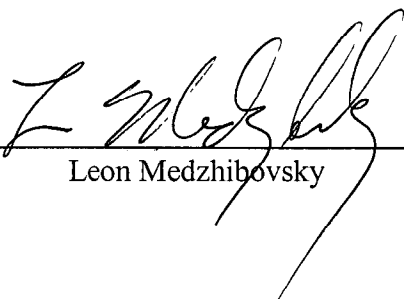
ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2005 a true and correct copy of the foregoing Answer to
Notice of Opposition was served by first class mail to:

Peter S. Reichertz, Esq.
SONNENSCHNEIN NATH & ROSENTHAL LLP
1301 K Street, Suite 600
Washington, DC 20005

Date: March 25, 2005



Leon Medzhibovsky