

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

In the Matter of U.S. Application No. 78/273,402  
For: "SMILEY TOOTH"  
Filed: July 11, 2003  
Date of Publication: July 6, 2004

FRANKLIN LOUFRANI	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
B. MICHAEL PERLIN	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

In the matter of Trademark Application No. 78/273,402 published for opposition on July 6, 2004, for the mark "SMILEY TOOTH" in International Class 21 by B. Michael Perlin of 4754 Lucille Drive, San Diego, CA 92115; opposer Franklin Loufrani, an individual French citizen with a principal place of business at 114 Eaton Square, London, United Kingdom SW1W 9AA, believes he is or will be damaged by the registration of the mark 78/273,402 and hereby opposes the same, in accordance with Section 13 of the Trademark (Lanham) Act of 1946, 15 U.S.C. §1063.

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As grounds for the opposition, opposer alleges as follows:

1. Upon information and belief, applicant is an individual citizen of the United States with a principal place of business at 4754 Lucille Drive, San Diego, CA 92115.

2. Applicant seeks to register "SMILEY TOOTH" in Serial No. 78/273,402 for "dental floss" in International Class 21, as evidenced by the publication of the mark in the Official Gazette of July 6, 2004.

3. Upon information and belief, applicant has filed its application under Section 1(a) of the Trademark Act [15 U.S.C. §1051(a)], alleging use in commerce of "SMILEY TOOTH" for "dental floss" since December 15, 1999.

4. Opposer is the owner of U.S. Trademark Registration No. 2,747,618 for "SMILEY" for non-medicated cosmetic preparations for slimming purposes, namely, skin creams, skin lotions, and skin pomades; sun-tanning preparations for cosmetic purposes; shaving soap; cotton sticks for cosmetic purposes; skin whitening creams, hair color; hair dyes; hair waxing lotions; artificial eyelashes; cosmetic kits comprised of eyelash pencils; eyelid pencils; shampoos; decolorants for cosmetic purposes, namely, hair decolorants; make-up removing preparations; depilatory creams; toilet water; emery paper; emery cloth; emery boards;

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essential oils for personal use; hair lacquer; hair bleaching preparations; sachets for perfuming linen; hair lotions; false nails; cotton balls for cosmetic purposes; abrasive paper for use on the nails; pumice stones for personal use; adhesives for cosmetic use, namely, adhesives for use in connection with artificial hair and shaving preparations, among other things, in International Class 3, claiming a first use ever date of February 26, 2001 and a first use date in commerce of February 26, 2001; U.S. Trademark Registration No. 2,801,529 "SMILEY" for clothing, namely pullovers, trousers, and shirts, in International Class 25, claiming a first use ever date of 1970 and a first use date in commerce of 1970; and U.S. Trademark Registration No. 2,566,529 for "SMILEY" for toys, namely stuffed plush toys and plastic balls, latex balls and squeezable balls, and sporting goods, namely knee pads, in International Classes 9 and 28, claiming a first use ever date of May 16, 1988 and a first use date in commerce of May 16, 1988.

5. Opposer is also the owner of U.S. Trademark Application Serial No. 78/372,264, with a filing date of February 23, 2004, for "SMILEY" for goods in International Class 9; U.S. Trademark Application Serial No. 78/372,321, with a filing date of February 23, 2004, for "SMILEY WORLD" for goods International class 9; U.S. Trademark Application Serial No. 78/321,611, with a filing

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date of October 31, 2003, for "SMILEY" for a variety of goods and services in International Class 3; U.S. Trademark Application Serial No. 78/007,506, with a filing date of May 10, 2000, for "SMILEY" for a variety of goods and services in International Classes 11 and 25; U.S. Trademark Application Serial No. 75/630,514, with a filing date of January 29, 1999, for "SMILEY BABIES and Design" for a variety of goods and services in International Classes 16, 25 and 28; U.S. Trademark Application Serial No. 75/302,439, with a filing date of June 3, 1997, for "SMILEY and Happy Face Design" for a variety of goods and services in International Classes 16, 25, 28, 29, 30, 41 and 42; U.S. Trademark Application No. 75/977,376, with a filing date of June 3, 1997, for "SMILEY and Happy Face Design" for toothbrushes in International Class 21 and dentifrices in International Class 3, among other goods and services in International Classes 3, 5, 8, 9, 14, 18, 21, 24, 31, 32, 33, 34, 35, 36, 38, and 39; U.S. Trademark Application Serial No. 75/630,513, with a filing date of January 29, 1999, for "SMILEY FOR KIDS and Design" for a variety of goods and services in International Classes 16, 25, and 28; U.S. Trademark Application Serial No. 75/550,943, with a filing date of September 10, 1998, for "SMILEY JEANS" for bags in International Class 18 and Clothing in International Class 25; U.S. Trademark Application Serial No. 75/514,593, with a filing

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date of July 7, 1998, for "SMILEY BABIES" for a variety of goods and services in International Classes 3, 5, 6, 8, 9, 14, 16, 18, 20, 24, 25, 27, 28, 29, 30, 32, 35, and 38; and U.S. Trademark Application Serial No. 75/512,770, with a filing date of July 2, 1998, for "SMILEY FOR KIDS" for a variety of goods and services in International Classes 3, 5, 6, 8, 9, 14, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 32, 35, and 38.

6. Applicant's mark "SMILEY TOOTH" so resembles opposer's "SMILEY" mark and other marks that contain "SMILEY" as an element that, when used on or in connection with applicant's goods, it is likely to cause confusion or to cause mistake or to deceive within the meaning of Section 2(d) of The Trademark (Lanham) Act of 1946, 15 U.S.C. § 1052(d).

7. By reason of all the foregoing, opposer will be gravely damaged by the registration of applicant's "SMILEY TOOTH" mark, because registration of that mark would be in violation of opposer's trademark rights.

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WHEREFORE, Franklin Loufrani prays that this Notice of Opposition be sustained in favor of opposer and that Serial No. 78/273,402 be denied registration. Opposer submits herewith a copy of this Notice of Opposition, along with a check to cover its filing fee of \$300.00, as required by 37.C.F.R. §2.6(a)(17).

Respectfully Submitted,

FRANKLIN LOUFRANI

Date: November 2, 2004 By: Mary Catherine Merz<sup>AMS</sup>

Mary Catherine Merz, Esq.  
MERZ & ASSOCIATES, P.C.  
1140 Lake Street, Suite 304  
Oak Park, Illinois 60301-1051  
(708) 383-8801 (phone)  
(708) 383-8897 (fax)  
mmerz@merz-law.com (e-mail)

Attorney for Opposer

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number: EV 469193227 US

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I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-145

- (1) Notice of Opposition, in duplicate
- (2) Check No. 7095 for \$300.00

Mary Catherine Merz<sup>AMS</sup>

COMMISSIONER FOR TRADEMARKS  
P.O. Box 1451  
Alexandria, VA 22313-1451

TTAB

Transmitted herewith is the:

- Trademark
- Service Mark
  
- Application
- Notice of Opposition
- Office Action Response
- Petition to Cancel
- Request to Lift Suspension
- Statement of Use
- Combined Sections 8 and 15 Declaration

Opposer: Franklin Loufrani

For: "SMILEY TOOTH"

Also enclosed is:

- Notice of Opposition, in duplicate
- Check 7095 for \$300.00

In the unlikely event that insufficient funds are submitted herewith to cover the filing fee in this correspondence, please charge such funds against Deposit Account No. 50-0277.

Respectfully submitted,

Enclosure

By: 

MERZ & ASSOCIATES, P.C.  
Attorneys at Law  
1140 Lake Street, Suite 304  
Oak Park, Illinois 60301-1051  
(708) 383-8801 (phone)  
(708) 383-8897 (fax)  
mmerz@merz-law.com (E-mail)



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