

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

IN THE MATTER OF :  
Application No. : 78/124,603  
Filed : April 27, 2002  
By : Poe, Richard  
Published : January 13, 2004  
Trademark : THE EINSTEIN FACTOR  
Class No. : 16

TTAB

NOTICE OF OPPOSITION

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

Dear Sir:

Attached hereto is a copy of the Notice of Opposition against the subject application. Registration "inadvertently" issued to Application No. 78/124,603 on April 6, 2004. On May 7, 2004 Opposer filed a request with the Board that the registration file be forwarded to the Commissioner of Trademarks for cancellation.

We attach our Check No. 3163, dated June 25, 2004, 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.

Respectfully submitted,

LADAS & PARRY LLP  
Attorneys for Opposer  
The Hebrew University of  
Jerusalem

Dated: June 25, 2004

By: *Robert Alpert*

Robert Alpert  
Ralph H. Cathcart  
26 West 61st Street  
New York, NY 10023  
(212) 708-1800  
(Our Ref: 040075)



06-28-2004

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. : :  
: :  
RICHARD POE, : :  
: :  
Applicant. : :  
: :  
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**NOTICE OF OPPOSITION**

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

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Dear Sir:

In the matter of the application filed by Richard Poe, an individual with an address at 18-24 21<sup>st</sup> Road, Astoria, New York 11105, namely, Application No. 78/124,603 for THE EINSTEIN FACTOR in International Class 16 covering "[p]rinted matter, namely books and pamphlets in the nature of accelerated learning, increasing intelligence and motivation", with extensions of time to file a Notice of Opposition requested up to, and including, July 11, 2004. Registration inadvertently issued to the subject application on April 6, 2004, despite Opposer's timely filed request for an extension of time to oppose. On May 7, 2004 The Hebrew University of Jerusalem (the "Opposer") filed a request with the Board that the registration file be forwarded to the Commissioner of Trademarks for cancellation.

Opposer is 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 THE EINSTEIN FACTOR Application No. 78/124,603 and hereby opposes registration of THE EINSTEIN FACTOR to Applicant.

The grounds for opposing the registration to THE EINSTEIN FACTOR 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 name and mark ALBERT 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 educational CD-ROMS with books sold as a unit, providing access to an on-line computer data base to students, computers, software applications, and products, video games, candy, beverages, bottled water, tee-shirts, hats, mugs and posters.

3. Opposer owns numerous EINSTEIN and EINSTEIN formative marks, including, *inter alia*, incontestable 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; 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; and 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;

4. Applicant has applied, under Serial No. 78/124,603, to register THE EINSTEIN FACTOR in connection with "[p]rinted matters, namely books and pamphlets in the nature of accelerated learning, increasing intelligence and motivation". Applicant's THE EINSTEIN FACTOR is confusingly similar to Opposer's EINSTEIN and ALBERT EINSTEIN marks and the applied-for goods are closely related to goods and services provided by Opposer and/or its licensees.

5. Applicant's applied-for mark wholly incorporates Opposer's EINSTEIN mark, and connotes an affiliation or connection to Albert Einstein.

6. Applicant's "[p]rinted matters, namely books and pamphlets in the nature of accelerated learning, increasing intelligence and motivation", are closely related to Opposer's education related goods and services. Applicant's "educational

goods" are also likely to conjure up an association with Albert Einstein, who is well known as the preeminent genius of the twentieth century.

7. 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 THE EINSTEIN FACTOR falsely suggests a connection with the late ALBERT EINSTEIN.

8. 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.

9. Since prior to Applicant's filing date and Applicant's use, if any, of THE EINSTEIN FACTOR, the names and marks ALBERT EINSTEIN and EINSTEIN have become associated with Opposer, such that Applicant's THE EINSTEIN FACTOR mark, when used in connection with the applied-for goods are likely to confuse the consuming public to believe that Applicant's goods are

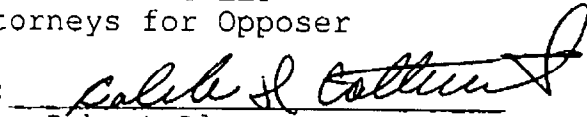
authorized, sponsored, licensed or controlled by Opposer, or are in some way, related to Opposer.

WHEREFORE, Opposer respectfully requests that Application No. 78/124,603 be refused registration.

Respectfully submitted,

LADAS & PARRY LLP  
Attorneys for Opposer

Date: June 25, 2004

By:   
Robert Alpert  
Ralph H. Cathcart  
26 West 61<sup>st</sup> Street  
New York, New York 10023  
(212) 708-1800  
(Our Ref: 040075)

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: June 25, 2004



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Sandy Chum