ESTTA Tracking number: **ESTTA154798**

Filing date: **08/03/2007**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Dial Brands, Inc.
Granted to Date of previous extension	08/11/2007
Address	15501 North Dial BoulevardSuite 2214 Scottsdale, AZ 85260-1619 UNITED STATES

Attorney information	A. Kate Huffman Dial Brands, Inc. 15501 North Dial Boulevard , Suite 2214 Scottsdale, AZ 85260-1619 UNITED STATES lisa.wolters@us.henkel.com

Applicant Information

Application No	79031552	Publication date	06/12/2007
Opposition Filing Date	08/03/2007	Opposition Period Ends	08/11/2007
International Registration No.	0890751	International Registration Date	06/20/2006
Applicant	After the Rain SA 40 Rue du Stand CH-1204 Genève SWITZERLAND		

Goods/Services Affected by Opposition

Class 003.
All goods and services in the class are opposed, namely: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations for general purpose use; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2560400	Application Date	03/06/2001
Registration Date	04/09/2002	Foreign Priority Date	NONE

Word Mark	AFTER THE RAIN
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2001/08/20 First Use In Commerce: 2001/08/20 Laundry detergents and fabric softeners

U.S. Registration No.	2886827	Application Date	04/24/2000
Registration Date	09/21/2004	Foreign Priority Date	NONE
Word Mark	AFTER THE RAIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 Candles		

U.S. Registration No.	1885524	Application Date	08/15/1991
Registration Date	03/21/1995	Foreign Priority Date	NONE
Word Mark	AFTER THE RAIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1994/08/01 First Use In Commerce: 1994/08/01 air fresheners		

U.S. Registration No.	2509864	Application Date	12/18/2000
Registration Date	11/20/2001	Foreign Priority Date	NONE
Word Mark	AFTER THE RAIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1994/06/00 First Use In Commerce: 1994/06/00 Carpet Freshener		

Attachments	76220122#TMSN.gif (1 page)(bytes) 76032245#TMSN.gif (1 page)(bytes) 76182476#TMSN.gif (1 page)(bytes) Opposition-After the Rain SA.pdf (4 pages)(411298 bytes)

Signature	/A. Kate Huffman/
Name	A. Kate Huffman
Date	08/03/2007

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

In the matter of Application Serial No. 79031552

Published in the Official Gazette on June 12, 2007

Dial Brands, Inc. Opposer	)	
vs.	)	Opposition No. _____
After the Rain SA Applicant	)	

NOTICE OF OPPOSITION

Dial Brands, Inc., an Arizona corporation, having its principal place of business at 15501 North Dial Boulevard, Scottsdale, Arizona 85260-1619, believes that it will be damaged by registration of the mark shown in the above-identified application and hereby opposes the same.

Application Serial No 79031552 was filed on September 26, 2006 for registration of the mark AFTER THE RAIN SPA PRESCRIPTIONS (and Design) under Section 66A of the Trademark Act of 1946 as a Request for Extension of Protection of International Registration No. 0890751 dated June 20, 2006, and was published for opposition on June 12, 2007 with the identification of goods reading "BLEACHING PREPARATIONS AND OTHER SUBSTANCES FOR LAUNDRY USE; CLEANING, POLISHING, SCOURING AND ABRASIVE PREPARATIONS FOR GENERAL PURPOSE USE; SOAPS; PERFUMERY, ESSENTIAL OILS, COSMETICS, HAIR LOTIONS; DENTRIFICES in Class 3, with "SPA PRESCRIPTIONS" disclaimed apart from the mark as shown.

As grounds for opposition, Opposer alleges as follows:

1. Since a date long prior to any date to which Applicant is entitled, Opposer, through its related company, The Dial Corporation, has continuously used the mark

AFTER THE RAIN in commerce in connection with air fresheners, candles, carpet fresheners, laundry detergents and fabric softeners.

2. Opposer owns the following U.S. registrations which are in full force and effect:

Mark	Reg. No.	Date	Int'l Cl.	Goods
AFTER THE RAIN	2,560,400	4/9/02	003	Laundry detergents and fabric softeners
AFTER THE RAIN	2,886,827	9/21/04	004	Candles
AFTER THE RAIN	1,885,524	3/21/95	005	Air fresheners
AFTER THE RAIN	2,509,864	11/20/01	005	Carpet freshener

All of the foregoing were used and registered on the Principal Register on dates prior to the earliest priority date claimed by the Applicant. Registration No. 2,560,400 is incontestable.

3. The mark AFTER THE RAIN is arbitrary and distinctive as applied to Opposer's goods and no other mark combing both "AFTER" and "RAIN" exists on the register for goods in Classes 003, 004 or 005, except the Applicant's mark which is the subject of this opposition.

4. Opposer, through its related company, The Dial Corporation, has expended substantial effort and millions of dollars in advertising and promoting its goods under the AFTER THE RAIN mark. As a result, the trade and general public have come to know, recognize, and identify goods using the aforesaid mark as those of Opposer, and Opposer has established extensive common law rights in the AFTER THE RAIN mark.

5. Applicant's mark is closely similar to Opposer's AFTER THE RAIN mark. The salient element of Applicant's mark – AFTER THE RAIN – is identical in appearance, pronunciation and meaning to Opposer's mark. Applicant has taken Opposer's mark in its entirety and merely added a common design and the descriptive words "spa prescriptions", which it has been required to disclaim.

6. Applicant's goods as described in its application are identical to, or closely related to, Opposer's products. Applicant's "substances for laundry use" are the same as Opposer's laundry detergents and fabric softeners. Applicant's "cleaning, polishing,

scouring and abrasive preparations for general purpose use" are in the same category as Opposer's carpet fresheners and air fresheners; and Applicant's "soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices" are within the scope of the expected expansion of Opposer's products.

7. Opposer, through its related company, The Dial Corporation and its various business entities and divisions, is actively involved in the provision of products in the personal care and household care industries. In addition to the laundry detergents, fabric softeners, candles, air fresheners, and carpet fresheners referred to above, Opposer and its related companies are actively involved in manufacture, sale and distribution of cleaning, polishing, scouring and abrasive preparations for general purpose use, as well as soaps, products containing perfumery, essential oils and cosmetics and the like, the very category of goods for which Applicant seeks to register its confusingly similar mark.

8. In the personal and household care industries, cross-over use of trademarks by companies like Opposer, having active businesses in the various consumer products market segments, is commonplace. It is very common for trademark owners to use identical marks for laundry detergents, fabric softeners, candles and air freshener type products as for personal care/toiletry products as well as household cleaning products.

9. Applicant seeks to register the mark AFTER THE RAIN SPA PRESCRIPTIONS in connection with goods which are in the natural zone of expansion of, and thus related to, Opposer's goods.

10. Opposer avers that Applicant's mark so resembles Opposer's mark as to be likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive, with resulting damage to Opposer.

11. Allowing registration of Applicant's mark would allow Applicant to unfairly trade upon Opposer's substantial goodwill developed in its aforesaid AFTER THE RAIN marks.

12. Allowing registration of Applicant's mark would run counter to the public interest with respect to the ability to accurately ascertain the source of goods and services in the marketplace. Opposer does not have control over the quality of the goods sold by Applicant, nor any other connection with such goods; Applicant's use and registration of the mark applied for will cause the public to believe that Applicant is in some way

associated with, or sponsored or authorized by, Opposer, and any faults or deficiencies in Applicant's goods will reflect adversely on Opposer unless this opposition is sustained.

13. Registration of Applicant's mark on the Principal Register would be inconsistent with Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such a registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that its opposition to Application Serial No. 79031552 be sustained and that Applicant be denied registration for the mark applied for.

Respectfully submitted,

DIAL BRANDS, INC.

Frank T. Barber

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