

ESTTA Tracking number: **ESTTA306383**

Filing date: **09/16/2009**

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	Dr. Babor GmbH & Co. KG
Granted to Date of previous extension	09/16/2009
Address	Neuenhofstraße 180 Aachen, 52078 GERMANY

Attorney information	Michael J. Bevilacqua, Esquire Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 UNITED STATES michael.bevilacqua@wilmerhale.com
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**Applicant Information**

Application No	77265407	Publication date	05/19/2009
Opposition Filing Date	09/16/2009	Opposition Period Ends	09/16/2009
Applicant	Appolos, Inc. 3345 E. Miraloma Ave., #130 Anaheim, CA 92806, CA 92806 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. All goods and services in the class are opposed, namely: Cosmetic products, namely, lotions for skin, anti-wrinkle creams, skin moisturizers, facial scrubs, lipsticks, lip balms, shower gels, soaps, shampoos, hair conditioners, liquid soap for hands and facial cleansing lotions
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1635907	Application Date	09/19/1989
Registration Date	02/26/1991	Foreign Priority Date	NONE
Word Mark	BIOGEN		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1981/08/00 First Use In Commerce: 1985/00/00 FACIAL CREAMS, FACIAL MASKS AND SKIN CONCENTRATES

Attachments	BIOGEM NOP.PDF ( 4 pages )(147980 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/barbara a. barakat/
Name	Barbara A. Barakat, Esq.
Date	09/16/2009

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

In the matter of Application Serial No. 77/265407

Published in the Official Gazette at TM 314 on May 19, 2009

DR. BABOR GMBH & CO. KG,

Opposer

v.

Appolos, Inc.,

Applicant

Opposition No.

BOX TTAB/FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

DR. BABOR GMBH & CO. KG, a partnership organized and existing under the laws of Germany, located and doing business at Neuenhofstrabe 180, Aachen, 52078, Germany, believes that it will be damaged by the registration of the trademark "BIOGEM" as shown in Application Serial No. 77/265407, filed August 27, 2007, by Appolos, Inc. (hereinafter "Applicant"), and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Applicant seeks registration on the Principal Register of the trademark "BIOGEM" for use in connection with cosmetic products, namely, lotions for skin, anti-wrinkle creams, skin moisturizers, facial scrubs, lipsticks, lip balms, shower gels, soaps, shampoos, hair

conditioners, liquid soap for hands and facial cleansing lotions, as evidenced by the publication of said trademark in the May 19, 2009 issue of the Official Gazette.

2. Opposer is now, and has been for some time, engaged in providing cosmetic products, namely, facial creams, facial masks and skin concentrates.

3 Opposer adopted the mark "BIOGEN" in connection with providing the goods set forth in paragraph 2 at least as early as August 1981, began to provide the goods in interstate commerce at least as early as 1985, and has been using the mark in connection with those goods ever since. Such use has been valid and continuous since the date of first use and has not been abandoned.

4. Opposer is the owner of the following United States registration, Registration No. 1,635907 for the mark "BIOGEN" in connection with facial creams, facial masks and skin concentrates.

5. Opposer's mark "BIOGEN" is symbolic of the extensive goodwill and recognition built up by Opposer through continuous use of said mark over a substantial period of time.

6. Opposer has expended considerable effort and expense in promoting its mark "BIOGEN" and the goods sold under such mark, with the result that the purchasing public has come to know, rely upon, and recognize the services of Opposer by such mark. Opposer has exceedingly valuable goodwill established in its mark.

7. Application Serial No. 77/265407 for registration of the mark "BIOGEM" was filed on August 27, 2007, based upon Applicant's bona fide intent to use said mark. Thus, Opposer actually began using its BIOGEN mark more than 20 years prior to the filing date of

Applicant's application. Opposer's registration cited in paragraph 4 for the mark "BIOGEN" issued in February 1991, more than 15 years before the filing date of Applicant's application.

8. Opposer's mark "BIOGEN" and Applicant's mark "BIOGEM" are confusingly similar, as the only difference between the two marks is the last letter.

9. The goods which are identified in Opposer's registration for the mark "BIOGEN" are closely related to the goods identified in the Applicant's application to register "BIOGEM," and on information and belief, will be marketed through the same or similar channels of trade or to the same or similar class of consumers.

10. By reason of Opposer's extensive use of the "BIOGEN" mark, the public will believe that the Applicant's use of its mark "BIOGEM" is sponsored or approved by Opposer and that the quality of the goods bearing the Applicant's mark has been approved and/or maintained by Opposer.

11. In view of these similarities, Applicant's use of the mark "BIOGEM" is likely to cause confusion, mistake, or deception with respect to Opposer's mark "BIOGEN" and to damage the goodwill represented and symbolized by the mark.

12. Based on the foregoing, Applicant's registration of the mark "BIOGEM" on the Principal Register of the United States Patent and Trademark Office would clearly cause injury and damage to the Opposer.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of Applicant's mark "BIOGEM" as shown in Application Serial No. 77/265407 be refused.

Respectfully submitted,

DR. BABOR GMBH & CO. KG



Michael J. Bevilacqua

Reg. No. 31,091

Barbara A. Barakat

Reg. No. 32,190

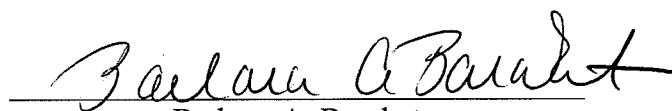
Attorneys for Opposer

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60 State Street  
Boston, Massachusetts 02109  
(617) 526-6154  
September 16, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition was served by first-class mail, postage-prepaid, this 16<sup>th</sup> day of September, 2009 upon:

APPOLOS, INC.  
3345 E. MIRALOMA AVE.  
#130  
ANAHEIM, CA 92806



Barbara A. Barakat