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

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| Proceeding | 91191924 |
| Party | Defendant Appolos, Inc. |
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January 22, 2010

Proceeding Number: 91191924

DR.BABOR GMBH & CO.KG (Opposer)

v.

Appolos,Inc (Applicant)

ANSWER TO OPPOSITION

Appolos, Inc, Applicant of the trademark "BIOGEM" does not agree with DR.BABOR GMBH & CO.KG (Owner of trademark "BIOGEN"hereinafter, Opposer)'s belief that the registration of the trademark "BIOGEM" would damage Opposer.

The reasons for Applicant's disagreement are the followings:

1. Applicant's mark "BIOGEM" was derived from combining two words "BIO"(meaning a life or living things from English Dictionary) and "GEM"(meaning a jewel or something prized for great beauty and perfection , from English Dictionary) in which Applicant wants to express a meaning of "a living precious jewelry or represent for great beauty and perfection " through its mark. The fact that an expression can be driven out from use of combining these two words in its mark would alone differentiate vigorously its mark from Opposer's mark "BIOGEN" from which Applicant would not guess any meaning out of.
2. Applicant never had intention of using goodwill represented in Opposer's Mark "BIOGEN" as Opposer claimed on the notice of opposition. When typing "BIOGEN"

in the search engine on the internet (such as www.yahoo.com and www.google.com), Applicant would not be able to find Opposer's "BIOGEN"'s products despite the allegation by Opposer that its goodwill represented and symbolized by its mark known to public over substantial period of time. Even Applicant's website comes up on the first page when typing Applicant's mark "BIOGEM" on yahoo search engine.

3. Applicant wants to bring up the similar case of the registration of the trademark "BIOKEN", and use this case to dispute the allegations on the notice of opposition by Opposer as Mark "BIOKEN" owned by Image of Beauty is also one letter different from Opposer's Mark "BIOGEN" and the opposition against this Mark was filed by same Opposer ("BIOGEN"). The details are the following:
 - a) The Mark "BIOKEN" (Registration No. 3464062) owned by Image of Beauty was registered on August 8, 2008 despite the opposition by the same Opposer ("BIOGEN") in case here.
 - b) The trademark of "BIOKEN" is registered for use in connection with cosmetics, namely, hair conditioners, hair treatments, namely, non-medicated scalp treatment cream, hair rinses, hair essences, namely, essential oils as perfume for hair, hair gels, hair sprays, shampoos, soaps, lip sticks, anti-aging cream, anti-wrinkle cream, skin lotions, facial lotions, body lotions, hand lotions, body oils, hair removing lotions, and non-medicated skin peeling lotions as Applicant also

seeks registration on the Principal Register of the trademark "BIOGEM" for almost same goods.

- c) Allegation that Opposer's engagement with providing cosmetic products, namely, facial creams, facial masks, and skin concentrates for trademark "BIOGEN" over a substantial period of time has led to exceedingly valuable goodwill and built up recognition for Opposer's mark "BIOGEN", did not prevent the trademark of "BIOKEN" from using goods that are closely related to those identified in Opposer's registration for the mark "BIOGEN", which also should be applied to the registration of Applicant's "BIOGEM", too.
- d) The date of first use of the trademark of "BIOKEN" is April 1, 2006 compared to Applicant's date of first use of the trademark of "BIOGEM" is September 15, 2007. Despite the allegation that Opposer's use of "BIOGEN" is being more than 20 years prior to the filing date of Applicant's application for "BIOGEM" which also applied to the trademark of "BIOKEN", the trademark of "BIOKEN" is registered after dismissed opposition by Opposer, and Applicant believes that the trademark of "BIOGEM" should be the same.
- e) Allegations of similarities listed on #8 and #9 from notice of opposition by Opposer are also applied to the trademark of "BIOKEN".
- f) By looking at the case of the registered trademark of "BIOKEN", Applicant is confident that Opposer's allegation (#10 on the notice of opposition)

that public will believe that the Applicant's use of "BIOGEM" is approved or sponsored by "Opposer" is exaggerated and is not right.

g) Despite the same allegations of similarities by Opposer, opposition to the trademark of "BIOKEN" was dismissed, which shows that allegation (#11,#12 on the notice of opposition) by Opposer that Applicant's registration of the mark "BIOGEM" on the Principal Register of the United States Patent and Trademark office would cause damage to Opposer would be wrong.

Based on the foregoing and the case from Image of Beauty ("BIOKEN") v DR.BABOR GMBH & CO.KG("BIOGEN") , Applicant strongly insists that Applicant's mark "BIOGEM" be registered and opposition be dismissed.

Sincerely,

Seung H Choi/President

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