ESTTA Tracking number:

ESTTA351261 06/04/2010

Filing date:

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

Proceeding	91193892
Party	Defendant GREEK ISLAND LABS, LLC
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Date	06/04/2010
Attachments	Microsoft Word - Answer to Notice of Opposition FINAL.pdf ( 6 pages )(111992 bytes )

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7	IN THE UNITED STATES PAT	ΓENT A	AND TRADEMARK OFFICE		
8	BEFORE THE TRADEMAR	K TRIA	AL AND APPEAL BOARD		
9	In the Matter of Application Serial No. 76/688	3,686			
10	Application Filing Date: April 17, 2008				
_	Proposed Mark: BROW REVÍVE and Design	1			
11	Date of Publication: October 27, 2009				
12	L 4 M 4 CA 1: 4: G : 1NL 76/600				
	In the Matter of Application Serial No. 76/688,684				
13					
14	Proposed Mark: ADONIA ORGANICS BROW REVÍVE and Design				
_	Date of Publication: December 1, 2009				
15					
16	Gurwitch Products, L.L.C.,	)			
10	Gui when i roducts, L.L.C.,	)			
17	Opposer,	)	Opposition No. 91193892		
	Opposer,	)	Opposition 140. 31133832		
18	X/	)	ANSWER TO NOTICE		
19	V.	)	OF OPPOSITION		
-	Greek Island Labs, L.L.C.,	)	OF OFFICEN		
20	Greek Island Laus, L.L.C.,	)			
21	Applicant.	)			
_	турпсин.	)			
22		/			
23	In Response to the Notice of Opposit	tion issu	ned by the Board on February 24, 2010,		
24	Applicant Greek Island Labs, L.L.C. ("Greek	Island"	) admits, denies, and affirmatively alleges		
25	as follows:				
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1. Applicant admits that Paragraph 1 of the Notice of Opposition.

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2. Applicant lacks any information whatsoever regarding the "respect" of Opposer in the business community. It appears, however, that the products sold by Opposer are not

"specifically for eye care." Rather, Applicant affirmatively alleges that the products sold by Opposer are relegated to acne preparations, and other ameliorative skin care preparations. Indeed, according to Opposer, its products use "egf (Epidermal Growth Factor)" which Opposer claims is a naturally occurring protein found in your skin and is a molecule that increases skin cell renewal." Moreover, Opposer does not sell or market any product for eyebrow use whatsoever, let alone a confusingly similar mark. Accordingly, Applicant denies Paragraph 2 of the Notice of Opposition.

- 3. To the extent that Paragraph 3 of the Notice of Opposition suggests that the Opposer is the owner of any type of "house" mark, Applicant denies same. Applicant lacks information and belief regarding Opposer's ownership of the Marks identified in Paragraph 3 of the Notice of Opposition. Accordingly, Applicant denies same.
- 4. Applicant denies that there is a "Nobel prize" awarded for cosmetics. Applicant's hyperbole aside, Opposer has not identified any preparation sold under a mark confusingly similar to Applicant's Mark for use on brows. Accordingly, Applicant denies paragraph 4 of the Notice of Opposition.
- 5. Applicant denies Paragraph 5 of the Notice of Opposition. In particular, Applicant affirmatively alleges that the Marks identified in Paragraph 3 of the Notice of Opposition were not in use "as early as March 1997." Rather, as Applicant's own Applicant, for instance, Serial No. 77415089, did not begin such Mark in commerce until April 2004, Applicant denies Paragraph 5 of the Notice of Opposition.
- 6. First, Opposer has not sought nor received trademark registrations for the trademarks identified in Paragraph 6 of the Notice of Opposition allegedly for use "in the eye area." Moreover, Applicant denies that the alleged date of first use of any of the products under the marks alleged in Paragraph 6 predate Applicant's use. Accordingly, Applicant denies Paragraph 6 of the Notice of Opposition.
  - 7. Applicant denies Paragraph 7 of the Notice of Opposition.
  - 8. Applicant denies Paragraph 8 of the Notice of Opposition.
  - 9. Applicant denies Paragraph 9 of the Notice of Opposition.

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10. Applicant denies Paragraph 10 of the Notice of Opposition.

- 11. Applicant denies Paragraph 11 of the Notice of Opposition.
- 12. Applicant denies Paragraph 12 of the Notice of Opposition.
- 13. Applicant does not deny that Applicant holds a registration on the principal Register of the United States Patent and Trademark Office for "RÉ-VIVE under Registration No. 25394034" "in medicated skin products" and "creams, lotions, gels, toners, cleaners and peels." Applicant affirmatively alleges that such mark is not in use—and has not been used—for brow products. Applicant does not deny that Opposer holds a Registration under No. 2875712 for "creams, lotions, gels, toners, cleaners and peels," and not brow related products. Applicant does not deny that Opposer has filed a trademark application under No. 77/415,089 for "creams, lotions, gels, toners, cleaners and peels," under the Mark "RÉ-VIVE ACNE REPARATIF." Applicant denies all other allegations of Paragraph 13 of the Notice of Opposition.
- 14. Applicant denies that Opposer has a registration for marks other than 2539403 and 2875712. Accordingly, Applicant denies Paragraph 14 of the Notice of Opposition.
  - 15. Applicant does not deny Paragraph 15 of the Notice of Opposition.
  - 16. Applicant does not deny Paragraph 16 of the Notice of Opposition.
  - 17. Applicant denies Paragraph 17 of the Notice of Opposition.
  - 18. Applicant admits Paragraph 18 of the Notice of Opposition.
  - 19. Applicant admits Paragraph 19 of the Notice of Opposition.
  - 20. Applicant denies Paragraph 20 of the Notice of Opposition.
  - 21. Applicant denies Paragraph 21 of the Notice of Opposition.
  - 22. Applicant denies Paragraph 22 of the Notice of Opposition.
  - 23. Applicant denies Paragraph 23 of the Notice of Opposition.
  - 24. Applicant denies Paragraph 24 of the Notice of Opposition.
  - 25. Applicant denies Paragraph 25 of the Notice of Opposition.
  - 26. Applicant denies Paragraph 26 of the Notice of Opposition.
  - 27. Applicant denies Paragraph 27 of the Notice of Opposition.

- 28. Applicant denies Paragraph 28 of the Notice of Opposition.
- 29. Applicant denies Paragraph 29 of the Notice of Opposition.
- 30. Applicant denies Paragraph 30 of the Notice of Opposition.
- 31. Applicant denies Paragraph 31 of the Notice of Opposition.
- 32. Applicant denies Paragraph 32 of the Notice of Opposition.
- 33. Applicant denies Paragraph 33 of the Notice of Opposition.
- 34. Applicant denies Paragraph 34 of the Notice of Opposition.
- 35. Applicant denies Paragraph 35 of the Notice of Opposition.
- 36. Any allegation of the Notice of Opposition not expressly admitted herein is denied.

## **AFFIRMATIVE DEFENSES**

- 37. For its first affirmative defense, Applicant asserts that the Opposer lacks standing and has failed to state a claim for which relief can be granted.
- 38. For its second affirmative defense, Applicant asserts that opposition is barred under the equitable doctrine of acquiescence, abandonment, laches, and or estoppels, due to the Opposer's unreasonable delay in asserting its alleged trademark rights against the Applicant.
- 39. For its third affirmative defense, Applicant asserts that it has prior rights in the BROW REVÍVE trademark and the ADONIA ORGANICS BROW REVÍVE trademark for use in connection with the sale of eyebrow preparations. In particular, Applicant's rights in such Marks have priority over any alleged marks contained in Paragraph 6 of the Notice of Opposition.
- 40. For its fourth affirmative defense, the Applicant has no proprietary right in Opposer's Marks, or in the alternative, the Applicant's own rights in its own Marks are narrow and limited in scope because the Mark "REVÍVE" standing alone, is a weak mark and more than forty (40) registrations currently exist on the principal Register of the United States Patent and Trademark Office containing such term, and more than one hundred (100) records of applications and registrations on the principal Register of the United States Patent and Trademark Office currently exist.

41. Applicant asserts any other affirmative defense that exists in common law or pursuant to any statute or regulation as if fully set forth herein.

**WHEREFORE**, having fully answered the Notice of Opposition, Applicant respectfully requests that the Board deny the Notice of Opposition with prejudice and allow Applicant's Mark to proceed to registration.

**RESPECTFULLY SUBMITTED** this  $4^{th}$  day of June, 2010.

## MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.

By /Scot Claus/
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1	CERTIFICATE OF MAILING
2	
3	I, Scot Claus, do hereby certify that the foregoing original document is being sent through the
4	Electronic System for Trademark Trials and Appeals on June 4, 2010 8, and a copy of the foregoing document is being deposited with the United States Postal
5	Service on the same day to:
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19	U:\ATTORNEYS\SLC\Earthspring LLC\Greek Island Labs\Brow Revise & Adonia Organics Brow Revive\adv Gurwitch Products LLC\USPTO Pleadings\Answer to Notice of Opposition (Draft 03-23-10).doc
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