

ESTTA Tracking number: **ESTTA1035462**

Filing date: **02/12/2020**

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	Federici Brands LLC
Granted to Date of previous extension	02/12/2020
Address	195 DANBURY ROAD DAVENPORT BUILDING WILTON, CT 06897 UNITED STATES

Attorney information	JOHN P. MARGIOTTA FROSS ZELNICK LEHRMAN & ZISSU, P.C. 151 WEST 42ND STREET, 17TH FLOOR NEW YORK, NY 10036 UNITED STATES jmargiotta@fzlz.com, skipen@fzlz.com, ttabfiling@fzlz.com 212-813-5900
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Applicant Information

Application No	88428458	Publication date	10/15/2019
Opposition Filing Date	02/12/2020	Opposition Period Ends	02/12/2020
Applicant	Biocare Labs, Inc. 14800 McKinley Ave #B Posen, IL 60469 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Hydrating, anti-inflammatory, and anti-oxidant ingredients sold as a component ingredient of hair care preparations and non-medicated skin care preparations

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4404188	Application Date	05/01/2012
Registration Date	09/17/2013	Foreign Priority Date	02/28/2012

Word Mark	COLOR WOW
Design Mark	COLOR WOW
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2012/10/22 First Use In Commerce: 2013/03/22 Hair care preparations

U.S. Registration No.	5384504	Application Date	06/05/2017
Registration Date	01/23/2018	Foreign Priority Date	12/06/2016
Word Mark	COLOR WOW DREAM COAT		
Design Mark	COLOR WOW DREAM COAT		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2017/06/30 First Use In Commerce: 2017/06/30 Hair care preparations for human use		

U.S. Registration No.	5378556	Application Date	06/06/2017
Registration Date	01/16/2018	Foreign Priority Date	NONE
Word Mark	COLOR WOW STYLE ON STEROIDS		
Design Mark	COLOR WOW STYLE ON STEROIDS		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2017/05/26 First Use In Commerce: 2017/05/26 Hair care preparations for human use		

U.S. Registration No.	5201150	Application Date	02/23/2016
Registration Date	05/09/2017	Foreign Priority Date	02/03/2016
Word Mark	INSTAWOW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2016/12/16 First Use In Commerce: 2017/02/10 Facial masks; non-medicated skin care preparations		

Attachments	85613551#TMSN.png(bytes) 87475861#TMSN.png(bytes) 87477187#TMSN.png(bytes) 86916665#TMSN.png(bytes) F3397611.PDF(83489 bytes)
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Signature	/John Margiotta/
Name	JOHN P. MARGIOTTA
Date	02/12/2020

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

FEDERICI BRANDS LLC,

Opposer,

v.

BIOCARE LABS, INC.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Federici Brands LLC (“Opposer”), a Delaware limited liability company with its principal place of business at 195 Danbury Road, Davenport Building, Wilton, Connecticut 06897, believes that it will be damaged by the issuance of a registration for the trademark WOWOILS! as applied for in Application Serial No. 88/428,458, and therefore opposes the same. As grounds for this opposition, Opposer, by its counsel, Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer is a leading company in the beauty and hair care industry and is known for its innovative products.
2. Since at least as early as 2012, Opposer has used the mark COLOR WOW and various WOW-formative marks (collectively, the “WOW Marks”) in connection with a wide variety of goods in the beauty and hair care industry, including shampoos, conditioners, leave-in hair supplements, styling products, facial masks, and skin care preparations.
3. Each year, Opposer spends a significant budget on advertising to promote the goods offered under its WOW Marks. Significant press coverage of Opposer’s goods, as well as

Opposer’s receipt of over forty beauty industry awards, further bolster public recognition of the WOW Marks. As a result, Opposer’s Wow Marks have become widely known and commercially successful, representing enormous goodwill for Opposer.

4. Along with its robust common-law rights in the WOW Marks, Opposer also owns several U.S. trademark registrations for the WOW Marks for a wide variety of beauty and hair care goods, including but not limited to the following:

<i>Mark</i>	<i>Reg’n No.</i>	<i>Reg’n Date</i>	<i>International Class; Goods and/or Services</i>
COLOR WOW	4,404,188*	09/17/2013	IC 3: Hair care preparations
COLOR WOW DREAM COAT	5,384,504	01/23/2018	IC 3: Hair care preparations for human use
COLOR WOW STYLE ON STEROIDS	5,378,556	01/16/2018	IC 3: Hair care preparations for human use
INSTAWOW	5,201,150	05/09/2017	IC 3: Facial masks; non-medicated skin care preparations

These registrations are valid, subsisting, and in full effect and serve as *prima facie* evidence of the validity of the registered marks and of Opposer’s exclusive right to use these marks in connection with the goods identified therein, pursuant to Section 33(a) of the Lanham Act, 15 U.S.C. § 1115(a). In addition, U.S. Registration No. 4,404,188 has become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and therefore serves as conclusive evidence of Opposer’s exclusive right to use that mark in commerce on or in connection with the goods identified in the registration, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

5. Upon information and belief, applicant Biocare Labs, Inc. (“Applicant”) is an Illinois corporation with an address of 14800 McKinley Ave #B, Posen, Illinois 60469.

6. On May 13, 2019, Applicant filed with the United States Patent and Trademark Office (“USPTO”) Application Serial No. 88/428,458 to register the mark WOWOILS! (“Applicant’s Mark”) for “Hydrating, anti-inflammatory, and anti-oxidant ingredients sold as a component ingredient of hair care preparations and non-medicated skin care preparations” in International Class 3, on the basis of Applicant’s claimed intent to use the mark in United States commerce.

7. Opposer used and acquired rights in the WOW Marks long prior to any date on which Applicant can rely to register Applicant’s Mark.

8. The Application was filed long after Opposer first used the WOW Marks in the United States and long after Opposer’s first registration of the WOW Marks with the USPTO.

9. Opposer’s rights in the WOW Marks are prior and superior to any rights Applicant may claim in Applicant’s Mark.

10. Applicant is not connected to Opposer in any way, and has not been authorized by Opposer to use Applicant’s Mark.

11. The goods identified in the Application are identical and/or highly related to goods Opposer offers under its WOW Marks and, upon information and belief, will be offered to the same customers or types of customers to whom goods offered under Opposer’s WOW Marks are being offered.

12. Upon information and belief, Applicant had actual knowledge of Opposer’s prior rights to and interest in the WOW Marks before seeking to register Applicant’s Mark. At a minimum, as a matter of law, Applicant was on constructive notice of Opposer’s rights in the WOW Marks based on Opposer’s registrations therefor.

13. Applicant's Mark, which, like Opposer's WOW Marks, incorporates the term WOW as its dominant part, is closely similar in sound, meaning, appearance, and commercial impression to Opposer's WOW Marks.

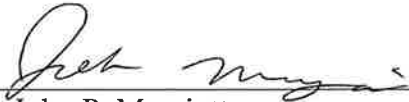
14. By virtue of Opposer's longstanding and continuous use of the WOW Marks, the goodwill associated with the marks, and Opposer's registrations therefor, the registration of Applicant's Mark for goods identical or closely related to Opposer's goods is likely to cause confusion or cause mistake or to deceive the purchasing public into mistakenly believing that goods offered under Applicant's Mark originate from Opposer, or are endorsed or sponsored by Opposer, or are otherwise connected to Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. As a result of the foregoing, registration of Applicant's Mark would be inconsistent with Opposer's prior exclusive rights in the WOW Marks, and would threaten destruction of Opposer's investment and goodwill in its longstanding and valuable WOW Marks. Opposer therefore is likely to be harmed by registration of the Application for Applicant's Mark.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Applicant in Application Serial No. 88/428,458 be refused.

Dated: New York, New York
February 12, 2020

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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