

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

In the Matter of Application Serial No. 78/186,343
Published in the Official Gazette on July 15, 2003

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Elizabeth Arden, Inc. :
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Opposer, :
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vs. :
:
Supre, Inc., :
:
Applicant. :
:
-----X

OPPOSITION NO.:



Box TTAB - FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

Elizabeth Arden, Inc., a Florida corporation having its principal place of business at 14100 NW 60th Avenue, Miami Lakes, Florida 33014, believes that it will be damaged by registration of the mark shown in Serial No. 78/186,343 in Class 3 and hereby opposes the same.

This Notice of Opposition has been timely filed.

As grounds of opposition, it is alleged that:

1. The Applicant seeks to register the word and design CAFÉ BRONZER as a trademark for skin care preparations, namely, non-medicated indoor and outdoor tanning preparations and moisturizers in Class 3, as evidenced by the publication of said mark in the

Official Gazette at page TM 271, Volume 1272, No. 3, of the July 15, 2003 issue.

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2. The Opposer and its predecessors in title have since at least November 17, 1981 used the mark CAFÉ & Design on perfumes and toilet waters.

Opposer is submitting herewith as part hereof and marked as Exhibit A, copy of Registration No. 1,177,730 issued November 17, 1981.

3. There is no issue as to priority. Applicant's date of first use and first use in commerce, namely December 1, 2000 is subsequent to the issuance date of Opposer's Registration No. 1,177,730.

4. Opposer has sold its goods and services listed in the aforesaid registration under the aforesaid mark as hereinbefore referred to throughout the United States. Opposer has developed an exceedingly valuable goodwill in respect to the mark covered by the aforesaid registration.

5. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its products, the Opposer has gained for its above-identified mark a most valuable reputation.

6. The trademark proposed for registration by the Applicant, namely, CAFÉ BRONZER is partially incorporated in and is confusingly similar to Opposer's previously used and registered mark CAFÉ & Design and is applied to substantially similar goods as those sold by Opposer and so nearly resembles the Opposer's mark as to be likely to be confused therewith and mistaken therefor. The Applicant's mark is deceptively similar to Opposer's mark so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing the Applicant's mark.

7. If the Applicant is permitted to use and register its mark for its goods, as specified in the application herein opposed, confusion in trade resulting in damage and injury to the

Opposer would be caused and would result by reason of the similarity between Applicant's and Opposer's mark. Persons familiar with Opposer's mark would be likely to buy Applicant's goods as and for a product made and sold by the Opposer. Any such confusion in trade inevitably would result in loss of sales to Opposer. Furthermore, any defect, objection or fault found with Applicant's products marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its products merchandised under its mark.

8. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

WHEREFORE, the Opposer prays that the Application Serial No. 78/186,343 be rejected and that the mark therein sought for the goods herein specified in International Class 3 be denied and refused.

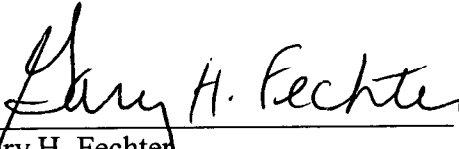
Opposer hereby gives notice under Rule 2.122(d) of the Rules of Practice that it will rely on its above-mentioned registration as evidence in its behalf in this proceeding, and a status copy thereof showing title will be introduced into evidence during Opposer's testimony period.

This Notice of Opposition is herewith submitted in duplicate copies along with authorization to charge Opposer's counsel's deposit account \$300.00 for the filing fee.

Dated: New York, New York
October 10, 2003

Respectfully Submitted,

McCARTER & ENGLISH, LLP

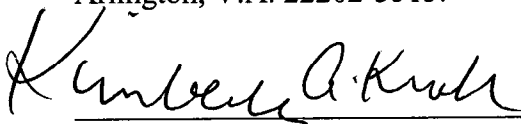
By: 
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New York, New York 10022
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CERTIFICATE OF EXPRESS MAIL
UNDER 37 CFR 1.10

"Express Mail" mailing label number: ER402434535US

Date of Deposit: October 10, 2003

I hereby certify that the original and two copies of the foregoing Notice of Opposition to Application Serial No. 78/186,343, along with authorization to charge our deposit account \$300.00 for the filing fee, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under CFR 1.10 on the date indicated above, addressed to: BOX TTAB - FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, V.A. 22202-3513.


Kimberly A. Knoll

Date: October 10, 2003

NY1: 50984.01



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Record 1 of 1

Reference: 95211/00004 - dd - title history ghf

Database(s): Federal

Registration No.: 1177730



Mark	CAFE (and Design)
Status	Renewed
Status Date	Apr 2, 2002
Register	Principal
Ser./App. No.	73-243476
Registration No.	1177730
Int'l Class	3 - Cosmetics and Cleaning Preparations
Goods/Services	PERFUMES - TOILET WATERS
U.S. Class	51
Filing Date	Dec 19, 1979
Published (Last)	Jun 30, 1981
Registered	Nov 17, 1981
Renewed	Nov 17, 2001
Affidavits	Sec. 8 accepted; Sec. 15 acknowledged
Country	FRANCE
Appln. No.	533,787
Filing Date	Nov 12, 1979
Reg. No.	1,113,073
Reg. Date	Nov 12, 1979
Expir. Date	Nov 12, 1989
Translation	THE ENGLISH TRANSLATION OF THE TERM "CAFE" IS "COFFEE".

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