

EV961933473US

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

TAP Pharmaceutical Products, Inc.,)	
First Opposer)	Application No. 78/740,746
)	
and)	Published: July 4, 2006
)	
Novartis AG,)	Trademark: PREVIQUID
Second Opposer,)	
)	ESTTA Tracking No. ESTTA 97571
<i>versus</i>)	
)	
Zyber Pharmaceuticals, Inc.)	
Applicant)	

TTAB

NOTICE OF OPPOSITION

Box TTAB Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Having obtained an extension of time until November 1, 2006, to oppose Application No. 78/740,746 of Zyber Pharmaceuticals, Inc. ("Applicant") to register the mark PREVIQUID for goods identified as "[p]harmaceutical preparations, namely, a drug delivery system comprising polymer-based oral tablets for the continuous release of a wide variety of therapeutic agents," TAP Pharmaceutical Products, Inc., a Delaware corporation having a postal address at 675 North Field Drive, Lake Forest, Illinois 60045 ("First Opposer") believes that it will be damaged by the registration of said Application, and hereby opposes said Application on the grounds alleged below.



11-01-2006

Being in privity with TAP Pharmaceutical Products, Inc., *supra*, Novartis AG, a Swiss corporation having a postal address at CH-4002, Basel, Switzerland (“Second Opposer”) believes that it will be damaged by registration of said Application and joins in opposing its registration on the grounds alleged hereinbelow.¹

Herein, TAP Pharmaceutical Products, Inc., *supra*, and Novartis AG, *supra*, may be collectively called “Opposers.”

This Notice of Opposition is being submitted in duplicate, original and one copy.

Grounds of Opposition

1. First Opposer owns Registration No. 1,685,731 for the mark PREVACID for "pharmaceutical preparation, namely, an anti-ulcer preparation" in Class 5, registered on May 5, 1992. The right of First Opposer to use the mark PREVACID, as registered in Registration No. 1,685,731, in commerce has become incontestable. See 15 U.S.C. §1065.

2. First Opposer has licensed Second Opposer to sell in commerce, under the mark PREVACID, a non-prescription version of the goods identified in Registration No. 1,685,731.

3. First Opposer has been, and is now engaged in developing, manufacturing, marketing, distributing and selling pharmaceutical products under the PREVACID

¹You are authorized to charge the opposition fees for both Opposers and any other fee that may be now or later due to Deposit Account No. 23-0785.

trademark throughout the United States, since a date at least as early as October 2, 1991 and long prior to the October 26, 2005 filing date of the subject application.

4. The trademark PREVACID is now, and ever since its date of first use in 1991, has been applied to labeling, packaging materials, product literature, promotional materials and advertisement for a pharmaceutical product sold in a form for oral consumption.

5. Since a date prior to the filing date of the opposed application, First Opposer has advertised, promoted and marketed the mark PREVACID extensively to medical professionals and consumers.

6. As a result of First Opposer's advertising, promotional and marketing efforts, medical professionals and consumers recognize the registered mark PREVACID as being distinctive of a source for the goods identified in Registration No. 1,685,731.

7. The mark PREVIQUID which Applicant seeks to register for pharmaceutical preparations, is so similar to First Opposer's trademark PREVACID for pharmaceutical preparations, that it is likely to cause confusion, mistake and/or deception as to the source of origin of the goods and will injure the First Opposer's goodwill in its trademark PREVACID.

8. The likelihood of confusion is exacerbated by the nearly identical goods. The goods identified in the opposed application, *i.e.*, "[p]harmaceutical preparations, namely, a drug delivery system comprising polymer-based oral tablets for the continuous release of a wide

variety of therapeutic agents" in Class 5, are virtually identical to the goods identified in Registration No. 1,685,731, namely, "pharmaceutical preparation, namely, an anti-ulcer preparation" in Class 5. The pharmaceutical products marketed and sold by First Opposer under the mark PREVACID are, by their nature, oral tablets utilizing drug delivery systems. Applicant's use and registration of PREVIQUID for these goods is likely to cause the public to assume erroneously that Applicant's goods are made or sponsored by or through the Opposers, or that the goods are in some other way connected with the Opposers, all to Opposers' irreparable damage.

Requested Relief

Accordingly, Opposers believe and assert that there is a likelihood of confusion between PREVACID and PREVIQUID, and that the goodwill First Opposer holds in the PREVACID trademark will be damaged if the subject mark is registered. Thus, Opposers respectfully request the Board to find that the mark PREVIQUID of the opposed application is not registrable by Applicant because said mark consists of or comprises a mark which so resembles the mark PREVACID, as registered in Registration No. 1,685,731, as to be likely, when used or in connection with the goods of Applicant, to cause confusion, to cause mistake, or to deceive.

NOTICE OF OPPOSITION
Application No. 78/740,746
Page 5

Wherefore, Opposers pray that this opposition be sustained and that Application
Serial No. 78/740,746 be refused registration.

Respectfully submitted,

By Allen J. Hoover
Allen J. Hoover
Lisa V. Mueller
Attorneys for Opposers

Wood, Phillips, Katz, Clark & Mortimer
500 West Madison Street, Suite 3800
Chicago, Illinois 60661-2511
Telephone: (312) 876-1800
Facsimile: (312) 876-2020
November 1, 2006

NOTICE OF OPPOSITION
Application No. 78/740,746
Page 6

CERTIFICATE OF MAILING

I hereby certify that this Notice of Opposition in duplicate (original and one copy) is being mailed by Express Mail, Post Office to Addressee, under Express Mail Mailing Label No. EV 961933473 US, and addressed to Box TTAB Fee, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on November 1, 2006.

By Allen J. Hoover
Allen J. Hoover