

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

TAP Pharmaceutical Products, Inc., )  
First Opposer )  
 )  
and )  
 )  
Novartis AG, )  
Second Opposer )  
 )  
versus )  
 )  
Zyber Pharmaceuticals, Inc. )  
Applicant )

*Misc. Potential*

Application No. 78/740,746

Published: July 4, 2006

Trademark: PREVIQUID

**TTAB**

**RESPONSE RE RELATIONSHIP**

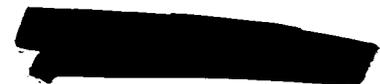
Box TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

This paper is filed to provide an explanation of the relationship between TAP Pharmaceutical Products, Inc., and Novartis AG, as requested in a paper dated November 8, 2006, and posted on TTABVUE.

“A party in privity with a potential opposer may step into the potential opposer’s shoes and file a notice of opposition or may join with the potential opposer as a joint opposer.” TMBP ¶§ 305.05(b). As noted by the Board, an extension of time filed in the name of one party inures to persons in privity with that party. Under the Lanham Act, privity may be established between “related companies.” See 15 U.S.C. § 1055.

“The term of ‘related company’ means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.” 15 U.S.C § 1127.

As pleaded in the Notice of Opposition, TAP Pharmaceutical Product, Inc., is the owner of the mark PREVACID (Reg. No. 1,685,731) upon which the Notice of Opposition is based. As further pleaded in paragraph 4 of the Notice of Opposition, TAP Pharmaceuticals Product, Inc. has licensed Novartis AG to sell in the U.S. a non-prescription pharmaceutical product under the same trademark registration for PREVACID. Novartis AG’s use of the mark is controlled by the



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mark's owner, TAP Pharmaceutical Products, Inc., with respect to the nature and quality of the goods on or in connection with which the PREVACID mark is used.

Therefore, pursuant to the Lanham Act, Novartis AG is a related company, and is in privity with, TAP Pharmaceutical Products, Inc. with respect to the PREVACID trademark.

Thus, it is respectfully submitted, that the Request for an Extension of Time to Oppose that was granted to TAP Pharmaceutical Products, Inc. inures to the benefit of Novartis AG as a related company, and the Notice of Opposition should go forward in the name of both parties.

Respectfully submitted,

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December 7, 2006

**CERTIFICATE OF MAILING**

I hereby certify that this RESPONSE RE RELATIONSHIP (in connection with the Notice of Opposition filed on November 1, 2006) is being mailed by Express Mail, Post Office to Addressee, under Express Mail Mailing Label No. EV961932699US, and addressed to Box TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on December 7, 2006.

By Allen J. Hoover  
Allen J. Hoover

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of this RESPONSE RE RELATIONSHIP (in connection with the Notice of Opposition filed on November 1,

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2006) is being served on Applicant by being mailed by Express Mail, Post Office to Addressee, under Express Mail Mailing Label No. 961932711US, and addressed to Zyber Pharmaceuticals, Inc., 208 East Bank Drive, Gonzales, Louisiana 70737, on December 7, 2006.

By Allen J. Hoover  
Allen J. Hoover