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Filing date: **11/06/2015**

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

Proceeding	86506204
Applicant	Gulf Coast Pharmacy, Inc.
Applied for Mark	ELAN FOR HEALTHY PHYSICAL & MENTAL ENERGY
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Submission	Reply Brief
Attachments	Elan Reply Brief.pdf(119283 bytes) Ex-A.pdf(1802742 bytes) Ex-B.pdf(385489 bytes)
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Signature	/gb/
Date	11/06/2015

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

In re Application of:) Law Office 115
)
 Gulf Coast Pharmacy Inc.) Examining Attorney:
) Alison P. Schrody
)
 Serial No.: 86/506,204)
)
 Filed: January 16, 2015)
)

Mark: )

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S REPLY BRIEF

Applicant would like to draw the Board's close attention to the evidence provided by the Examining Attorney that "a full line of pharmaceutical products" is related to "dietary and nutritional supplements". In its main brief, Applicant has explained that much of the third party registration evidence simply does not show both of these goods. The remaining registrations (except for two) were classified by Applicant as "house marks". Whether they fall into the type of house mark that the Board considers irrelevant under *Mucky Duck* is really of no matter when the actual use of these house marks is taken into account. For this reason, Applicant attaches the home pages of the websites for five of the six marks cited as "examples" in the examining attorney's brief. These "examples" are all marks that, according to their own websites, clearly do not i) market both pharmaceutical products and dietary supplements ii) to consumers and iii) under their house mark (one or more of these conditions are true for each mark). **Exhibit A** contains copies of the pages from these websites. Applicant requests that the Board take notice of Exhibit A because it raises no new issue not already argued by Applicant, and will greatly aid the Board in properly considering the argument previously made that the associated registrations are not probative evidence of relatedness. *Mucky Duck* has some value but should not be used willy-nilly when the evidence clearly shows how irrelevant a third party registration may be.

The sixth registration cited as an example in the Examining Attorney's brief, U.S. Reg. No. 2,910,457, was cancelled on June 24, 2015 (see **Exhibit B**).

The Examining Attorney also refers to "examples" of four companies that purportedly

market the goods of Applicant and registrant under the same mark, however they do not. This evidence shows that these companies provide their services to other companies but do not market any products under their own brands.

The Examining Attorney also discusses the recent trend of Big Pharma companies buying their way into the supplement business. This is irrelevant because it is not evidence that these companies use any pharmaceutical brands (much less its house mark) on any supplement products. When one company buys another, it simply takes ownership of the existing company and its existing bands. Indeed it would make no sense for a big pharma company to dilute its house mark by applying it to a dietary supplement product.

Finally, in terms of the trade channels factor, Applicant contends that “pharmaceutical products” refers to those that are dispensed by a pharmacist. As such, these would not, as the Examining Attorney contends, be seen on the same shelf as a dietary supplement at a pharmacy.

Dated this 5thrd day of November, 2015.

Respectfully submitted,

/gb/

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Our Price: 42.15

DHEA 25mg 180
Vegetarian Capsules
Regular Price: 38.95
Our Price: 21.35

DHEA 50mg 180
Vegetarian Capsules
Regular Price: 41.95
Our Price: 29.65

DHEA CREAM
(2oz) 57g
Regular Price: 22.95
Our Price: 17.20

MELATONIN 3mg
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Regular Price: 29.95
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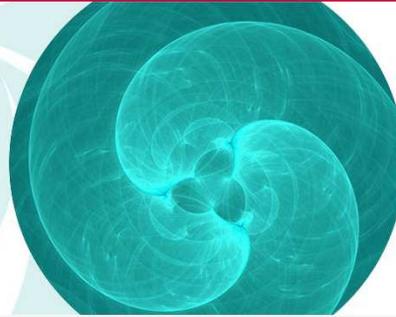
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Regression and stabilization of plaque will likely become the next gold standard in the treatment and prevention of cardiovascular disease^{1, 2}

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About AtheroNova

AtheroNova Inc. is a biotechnology company focused on the research and development of compounds to safely regress atherosclerotic plaque and improve lipid profiles in humans. Cardiovascular plaque reduction – the holy grail of cardiovascular research¹ – is our business. Our lead compound, AHRO-001, has demonstrated remarkable plaque reduction in animals. We have shown a strong safety and tolerability profile for AHRO-001 in a Phase I clinical trial in humans. Our current corporate focus is the preparation and filing of an IND with the US Food & Drug Administration for clinical development in the United States and rest of the world. Atherosclerosis and its complications cost consumers more than \$38 billion annually in the United States alone.

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Focused on Global Health Products

MACPHERSAN GLOBAL HEALTH CO., LTD is a collection of nutrient supplements, health food, health and equipments' global high quality health products provider under the guidance of health management idea.

Enforcing Globalization Procurement

MACPHERSAN has always been adhering to the "the best health products of global serving" business philosophy, its purchasing group is selecting high-quality raw materials around the world, using the world advanced technology, first-class GMP factory to provide natural, safe product selection for global consumer. In order to assure the quality of raw materials, MACPHERSAN cooperation manufacturers cover Europe and the United States and other developed countries and regions of the world, such as the United States, Germany, Denmark, Finland, Japan, Taiwan, etc.

E-mail:

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MacPhersan Dunaliella

MacPhersan

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MacPhersan MACA

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Word Mark M MARTEK

Goods and Services (CANCELLED) IC 001. US 001 005 006 010 026 046. G & S: Diagnostic preparations for scientific or research use, not for medical or veterinary purposes; biochemical reagents for use in the manufacture of pharmaceuticals for lipid related disorders; fluorescent pigments for use in assays and diagnostics for scientific and research use; biochemical reagents used in industry or scientific research for use in micro-arrays, high-throughput screening, drug discovery, diagnostics, and bio-defense; microbiologically produced materials containing lipids for use in the manufacture of dietary supplements and additives, vitamins and vitamin preparations, nutritional supplements and nutritional supplement ingredients; and algal oil for medical research. FIRST USE: 19960731. FIRST USE IN COMMERCE: 19960731

(CANCELLED) IC 005. US 006 018 044 046 051 052. G & S: Algal oil for medical research and medical diagnostic purposes; nutritional supplements for infant formula; nutritional additives for infant formula; vitamins and vitamin preparations; dietary supplements and additives; nutritional supplements and nutritional supplement ingredients; animal feed additive for use as a nutritional supplement. FIRST USE: 19960731. FIRST USE IN COMMERCE: 19960731

(CANCELLED) IC 031. US 001 046. G & S: Animal feed and non-medicated animal feed additives; algae and microalgae for animal food. FIRST USE: 20030331. FIRST USE IN COMMERCE: 20030331

(CANCELLED) IC 042. US 100 101. G & S: Biotechnology research and development services. FIRST USE: 19960731. FIRST USE IN COMMERCE: 19960731

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Serial Number 78247140

Filing Date May 8, 2003

Current Basis 1A

Original Filing Basis 1A

Published for Opposition September 21, 2004

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 2910457

Registration Date December 14, 2004

Owner (REGISTRANT) Martek Biosciences Corporation CORPORATION DELAWARE 6480 Dobbin Road Columbia MARYLAND 21045

Attorney of Record Tracy-Gene G. Durkin

Prior Registrations 1720876

Type of Mark TRADEMARK, SERVICE MARK

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