

2001 and believes that it will be damaged by registration of the mark OSTEO-FX for nutritional supplements for people in International Class 5, in the above-referenced application filed by Dr. Joel D. Wallach. (hereinafter called "Applicant") and hereby opposes the same.

The grounds for opposition are as follows:

OPPOSER

1. Opposer is the Owner of U.S. Registration No. 2,205,607 for the mark OSTEO-BI-FLEX for dietary and nutritional supplements in International Class 5.
2. The OSTEO-BI-FLEX mark was first used in commerce on April 24, 1997, and a trademark application for the mark was filed on October 7, 1997 (Serial No. 75/369,669).
3. The mark OSTEO-BI-FLEX was published in the Official Gazette without opposition and proceeded to registration on November 24, 1998.
4. Opposer's mark is used on dietary and nutritional supplements marketed to help promote cartilage regeneration and joint flexibility.
5. The goods associated with the mark are widely recommended by medical professionals and is a leading doctor recommended glucosamine/chondroitin supplement.

6. Use of the Opposer's now registered OSTEО-BI-FLEX mark in interstate commerce has been continuous and widespread.
7. Product bearing Opposer's OSTEО-BI-FLEX mark have annual sales in excess of \$100 million and is the number one selling dietary supplement in the bone and joint category at U.S. food, drug, and mass merchandisers.
8. By reason of the foregoing, sales of such goods and advertising and promotional activities relating to the same, the OSTEО-BI-FLEX mark has been widely and favorably known to the public in conjunction with Opposer's goods.
9. As a result, Opposer has acquired considerable and vaulable goodwill symbolized by such mark.

APPLICANT

10. On June 19, 2001, Applicant filed the above-referenced OSTEО-FX mark as an Intent to Use Trademark Application Under Section 1(b) of the Trademark Act ("the Act"), 15 U.S.C. § 1051(b), in International Class 5 for nutritional supplements for people.
11. Applicant's Intent to Use application was filed more than four (4) years after Opposer's first use of the mark in interstate commerce, and almost four (4) years after Opposer filed its Trademark

Application Serial No. 75/369,669 for the mark
OSTEO-BI-FLEX.

12. Applicant's mark OSTEO-FX is confusingly similar in sound, appearance and meaning to Opposer's OSTEO-BI-FLEX mark. Applicant's mark cannot easily be distinguished from Opposer's registered mark.
13. Applicant's OSTEO-FX mark is intended for use on goods that are, on information and belief, used to increase joint flexibility and cartilage repair.

LIKELIHOOD OF CONFUSION

14. The virtual identity of these two marks, in sound, appearance and meaning, and intended for use on similar products for treating the same physical conditions creates a likelihood of confusion.
15. Registration of Applicant's mark would cause serious and irreparable harm to Opposer and to the goodwill of the business symbolized by Opposer's mark.
16. Registration of Applicant's mark is likely to cause consumer confusion as to the origin of the products bearing the respective marks of the parties.

DILUTION

17. The registration of the mark OSTEO-FX will cause dilution of the mark OSTEO-BI-FLEX of Opposer and its ability as a source identifier of Opposer.

APPOINTMENT OF LEGAL COUNSEL

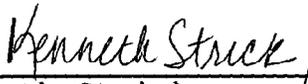
Opposer, Numico Financial Services, S.A., hereby appoints Kenneth Strick, Esq. as its legal counsel for purposes of prosecuting this Opposition proceeding before the United States Patent and Trademark Office, Trademark Trial and Appeal Board, and to transact all business in the Patent and Trademark Office in connection therewith. Direct all telephone calls to Kenneth Strick, Esq., a member of the Bar of the State of Florida, at 561-999-2948. Address all correspondence to Kenneth Strick, Esq., 6111 Broken Sound Pkwy. NW, Boca Raton, Florida 33487.

WHEREFORE, Opposer prays that this opposition be sustained and that registration to Applicant of the mark OSTEO-FX covered by Application Serial No. 76/274,080 be denied.

Opposer hereby files this Notice of Opposition in triplicate and the statutory fee of \$300.00 is submitted herewith.

Respectfully submitted,

Kenneth Strick, Esq.
Counsel for Numico Financial Services, S.A.
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Kenneth Strick



Innovative Nutrition Solutions



02-05-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

February 4, 2002

BY US EXPRESS MAIL

Assistant Commissioner for Patents and Trademarks
Box 5
2900 Crystal Drive
Arlington, VA 22202-3513
Attention: TTAB

Re: Rexall Sundown, Inc. ("Rexall"); OSTEO-FX Notice of Opposition;

To the Commissioner:

On behalf of Numico Financial Services, S.A., enclosed please find a Notice of Opposition to the OSTEO-FX trademark application filed by Dr. Joel Wallach.

This letter also serves to authorize the withdrawal of the prescribed fee in the amount of \$300.00 from Applicant's Deposit Account No. 50-0454.

Kindly direct all correspondence concerning this matter to the undersigned. We are further requesting that the enclosed prepaid postcard be returned to us in acknowledgement of receipt of this filing.

Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Susan Murphy".

Susan Murphy
Trademark and Regulatory Coordinator

Enclosure