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

In the Matter of Application Serial No. 76/292,774
Published: March 19, 2002 at TM 229
Mark: FOLAGRA



07-18-2002
U.S. Patent & TMO/TM Mail Rcpt Dt. #74

-----X
Pfizer Inc,

Opposition No.

Opposer,

v.

Scientific Consulting Service,

Applicant.

-----X

Assistant Commissioner for Trademarks
Attn: BOX TTAB
2900 Crystal Drive
Arlington, VA 22202-3513
FEE

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10

"Express Mail" mailing number EL 733181565 US

Date of Deposit July 17, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the dated indicated above and is addressed to Assistant Commissioner of Patents and Trademarks, 2900 Crystal Drive, Attn: Box TTAB Fee, Arlington, VA 22202.

Name: Jessica Berman

Signature: Jessica Berman

NOTICE OF OPPOSITION

Opposer, Pfizer Inc ("Opposer"), believes that it will be damaged by the registration of the mark FOLAGRA as shown in the above-referenced trademark application and hereby opposes the same. As grounds for opposition, Opposer alleges that:

TRADEMARK TRIAL AND APPEAL BOARD
02 JUL 25 AM 8:53

1. Opposer is a Delaware corporation located and doing business at 235 East 43rd Street, New York, New York 10017 and is engaged in developing and marketing pharmaceutical products worldwide.
2. Opposer has adopted and is using the trademark VIAGRA for a prescription medication for the treatment of erectile dysfunction.
3. Opposer has used the VIAGRA mark on pharmaceutical preparations

continuously since at least April 1998.

4. Opposer's VIAGRA trademark is registered on the Principal Register under U.S. Trademark Registration No. 2,162,548 issued June 2, 1998 for a "compound for treating erectile dysfunction" in International Class 5. (A copy of Registration Number 2,162,548 is attached hereto as Exhibit A.)

5. Said registration is valid and subsisting and Opposer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposer's testimony period.

6. Opposer has sold and continues to sell substantial quantities of VIAGRA (sildenafil citrate) in the United States and has spent substantial time, effort and money promoting the sale of such product under the mark. In addition, since at least April 1998 and earlier, Opposer and the VIAGRA product have received and continue to receive widespread media attention.

7. As a result, Opposer has acquired significant and valuable goodwill in its VIAGRA trademark, and the mark has become famous.

8. Applicant, Scientific Consulting Service ("Applicant"), seeks to register the mark FOLAGRA in International Class 5, for goods described as "Vitamin, Mineral and Herbal Preparations" based on use in commerce.

9. Applicant's mark was published for opposition on March 19, 2002.

10. On March 25, 2002, Applicant filed an Express Abandonment with the PTO (attached hereto as Exhibit B).

11. Despite Applicant's Express Abandonment, the FOLAGRA application remains

active. Opposer has filed a First and Second Request for an Extension of Time to Oppose, and the final deadline is July 17, 2002.

12. If the PTO does not recognize Applicant's Express Abandonment and deem the application withdrawn, Registration should be refused pursuant to Section 2(d) of the Lanham Act of 1946 as amended (15 U.S.C. § 1052(d)) on the grounds that Applicant's FOLAGRA mark so resembles Opposer's prior VIAGRA mark as to cause confusion, mistake and/or deception, all to the damage of Opposer.

13. Opposer's mark has priority over Applicant's mark because the filing date of Opposer's VIAGRA trademark application is April 12, 1996, and Opposer's date of first use is April 6, 1998, whereas Applicant's date of first use is July 15, 2001 and Applicant's filing date is August 2, 2001.

14. Opposer's VIAGRA trademark is inherently distinctive; it is a fanciful and coined term, and the word has no generic, descriptive, or denotative meaning.

15. Opposer's VIAGRA mark and Applicant's FOLAGRA mark are substantially similar in sound and appearance.

16. Applicant's trademark FOLAGRA, if used in conjunction with "Vitamin, Mineral and Herbal Preparations", is likely to cause confusion, mistake or deception with consequent injury to Opposer and the public. Use of such mark will likely lead to the mistaken belief that Applicant's product originates with, is affiliated with, or is sponsored or approved by Opposer.

17. Opposer will be damaged by registration of Applicant's FOLAGRA trademark because such registration will support confusing and misleading use of the FOLAGRA mark, and will give color of exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Opposer.

18. If the PTO does not recognize Applicant's Express Abandonment and deem the application withdrawn, Registration should also be refused pursuant to Section 43(c) of the Lanham Act of 1946 as amended (15 U.S.C. § 1125(c)) on the grounds that Applicant's FOLAGRA mark will cause dilution of the famous and distinctive quality of Opposer's famous VIAGRA trademark.

19. Opposer's VIAGRA trademark is famous.

20. Opposer's VIAGRA trademark is inherently distinctive as a fanciful and coined term with no denotative meaning.

21. Opposer's VIAGRA trademark has substantial acquired distinctiveness and is universally recognized and relied upon as identifying Pfizer as the sole source of sildenafil citrate.

22. Opposer's VIAGRA trademark became famous before July 15, 2001, the date of first use of Applicant's FOLAGRA mark.

23. Applicant's trademark FOLAGRA, if used in conjunction with "Vitamin, Mineral and Herbal Preparations" will dilute the distinctiveness of Opposer's famous VIAGRA trademark.

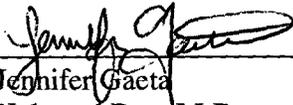
24. Opposer will be damaged by registration of Applicant's FOLAGRA trademark because such registration will support the diluting use of the FOLAGRA mark, and will give color of exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that the application for registration of the FOLAGRA mark be denied.

This Notice of Opposition is filed in triplicate as required by the Trademark Rules of Practice. The Commissioner is hereby authorized to charge the filing fee for this Notice of Opposition and any additional fees to our Deposit Account No. 08-0219.

Opposer appoints as its attorney in this proceeding Nels T. Lippert, Dyan Finguerra-DuCharme and Jennifer Gaeta of the firm Hale and Dorr LLP, 300 Park Avenue, New York, New York 10022, to whom all correspondence in this proceeding should be addressed.

Respectfully submitted,

By: 
Jennifer Gaeta
Hale and Dorr LLP
300 Park Avenue
New York, New York 10022
(212) 937-7200

Attorneys for Opposer Pfizer Inc

DATED: July 17, 2002

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



Bence Lehman

Commissioner of Patents and Trademarks

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,162,548

United States Patent and Trademark Office

Registered June 2, 1998

**TRADEMARK
PRINCIPAL REGISTER**

VIAGRA

PFIZER INC. (DELAWARE CORPORATION)
235 EAST 42ND STREET
NEW YORK, NY 10017

FIRST USE 4-6-1998; IN COMMERCE
4-6-1998.

SN 75-089,201, FILED 4-12-1996.

FOR: COMPOUND FOR TREATING EREC-
TILE DYSFUNCTION, IN CLASS 5 (U.S. CLS. 6,
18, 44, 46, 51 AND 52).

BALDEV SARAI, EXAMINING ATTORNEY

March 25th, 2002

Law Office 105
USPTO
Fax: (703) 872-9825
Re: Request for Abandonment of Trademark

Scientific Consulting Service is requesting the express abandonment of its Trademark application for Folagra, Serial no. 76/292774, initially submitted and filed on August 2nd, 2001 by Law Office 105.

Please respond to inquiry via fax 510-632-8561, telephone 510-632-2370 or email olivia@intensivenutrition.com with approval.

Thank you.

Olivia Balogh

FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

Aug 15, 2001

SCIENTIFIC CONSULTING SERVICE
1972 REPUBLIC AVE
SAN LEANDRO CA 94577-4224

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Preexamination File Receipt Section. Or fax a request to 703-308-9096. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/292774
FILING DATE: Aug 2, 2001
REGISTER: Principal
LAW OFFICE: 105
MARK: FOLAGRA
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers in typed form
FILING BASIS: Sect. 1(a) (Use in Commerce)

OWNER: Scientific Consulting Service (UNITED STATES, Partnership), Bela Balogh, Citizen of the USA
Rosari Balogh, Citizen of the USA
1972 Republic Avenue
San Leandro, CALIFORNIA 94577

FOR: Vitamin, Mineral and Herbal Preparations

INT. CLASS: 005

FIRST USE: Jul 15, 2001 USE IN COMMERCE: Jul 23, 2001

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

HALE AND DORR LLP
C O U N S E L L O R S A T L A W

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July 17, 2002

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



07-18-2002

U.S. Patent & TMOc/TM Mail Rcpt Dt. #74

Re: Pfizer Inc's Notice of Opposition Application Serial No. 76/292,774
for Registration of FOLAGRA Published for Opposition March 19, 2002

Dear Assistant Commissioner:

Enclosed please find Pfizer Inc's Notice of Opposition in the above-referenced matter. Pfizer's Notice of Opposition is submitted in triplicate as required by the Trademark Rules of Practice. The Commissioner is hereby authorized to charge the filing fee for this Notice of Opposition, and any additional fees, to our Deposit Account No. 08-0219.

Please stamp and return the enclosed postcard to acknowledge receipt for our files.

Respectfully submitted,


Jessica Berman
Litigation Assistant

Enclosures

cc: Tiffany Trunko, Esq.
Teresa M. Iannone

Pfizer's Ref: PHR / USA / VIAGRA – FOLAGRA (Scientific Consulting Service)

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