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1938.5082

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



X
:
NATURAL ORGANICS, INC.,
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:
Opposer,
:
:
v.
:
:
BIOGENTEC INC.,
:
:
Applicant.
:
X

Opposition No.

November 27, 2002

12-02-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #7E

Assistant Commissioner for Trademarks
Attn.: Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

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TRADEMARK TRIAL AND
APPEAL BOARD
02 DEC 16 11 06 AM '02

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Assistant Commissioner for Trademarks, Arlington, VA 22202-3513 on November 27, 2002
(Date of Deposit)

Tila M. Duhaime

(Name of Attorney for Applicant)

Tila M. Duhaime

Signature

11/27/02

Date of Signature

NOTICE OF OPPOSITION

Natural Organics, Inc. ("Opposer"), a corporation organized and existing under the laws of the State of New York, having an office and place of business at 548 Broadhollow Road, Melville, New York 11747-3708, believes it will be damaged by the registration of the mark ALLERATIN, shown in United States Trademark Application

Serial No. 78/107,975 (hereinafter "the '975 Application"), filed on February 11, 2002 by BioGentec Inc. (hereinafter "Applicant"), for "Cyanocobalamin (Vitamin B12) for use in the treatment of allergic disease" in International Class 5, and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Opposer is and has for several years been engaged in the manufacture and sale of a number of vitamin and nutritional dietary supplements, including a dietary supplement sold under the trademark ALLERACTIN®. Opposer's ALLERACTIN® product is scientifically formulated to promote general well-being, particularly respiratory health, and contains Vitamin B-12 (as cyanocobalamin) as one of its primary ingredients.

2. Opposer is the owner of U.S. Registration No. 2,243,541 for ALLERACTIN® for dietary supplements in International Class 5. Opposer began use of this mark at least as early as February of 1998, and has used it exclusively and continuously thereafter. A copy of that registration is attached hereto at Tab A.

3. On February 11, 2002 Applicant filed the '975 Application seeking registration for the proposed mark ALLERACTIN based upon an intent to use the mark for Vitamin B-12 for use in treating allergic disease in International Class 5.

4. Since long prior to the filing date of the '975 Application, Opposer has had valid and enforceable rights in and to its mark ALLERACTIN®.

5. Opposer, since long prior to the filing date of the '975 application, has advertised, promoted, sold and distributed throughout the United States in interstate commerce its goods bearing the ALLERACTIN® trademark. As a result, the aforementioned mark has become identified in the minds of the public and trade as evidencing products that emanate from Opposer.

6. Applicant's goods, intended to be sold under the proposed ALLERATIN trademark, are almost identical to Opposer's, namely, a vitamin-based dietary supplement containing Vitamin B-12. Further, the proposed mark differs from Opposer's registered ALLERACTIN® trademark by only the deletion of a single letter in the middle of the word. Upon information and belief, Applicant's proposed goods would enter and be sold in the same or similar channels of trade and would be marketed to the same or a similar class of consumers as Opposer's goods sold under the ALLERACTIN® trademark.

7. By reason of the substantial similarity of the marks, and the fact that the goods and channels of trade are identical, Applicant's use of the proposed trademark ALLERATIN in association with a vitamin-based dietary supplement or related Vitamin B-12 product is likely to cause confusion with Opposer's registered mark and Opposer's rights in the trademark ALLERACTIN® for dietary supplements containing the same vitamin.

8. The consuming public, upon seeing Applicant's proposed trademark ALLERATIN, in association with its goods, is likely to believe that the goods are made, endorsed or sponsored by Opposer, or that there is a trade connection or affiliation between Opposer and its goods, on the one hand, and Applicant and its goods, on the other.

9. Opposer will be damaged by the confusion which will result to the public if Applicant is permitted to obtain a registration for the proposed trademark ALLERATIN. Any faults or defects which might be found in Applicant's goods would reflect adversely upon and seriously injure the valuable reputation and good will of Opposer.

10. For the foregoing reasons, Opposer would be greatly damaged by the registration of ALLERATIN by Applicant.

WHEREFORE, Opposer respectfully requests that the instant Opposition be sustained, and registration for the '975 Application be refused.

An original and two copies of this Notice of Opposition and fee required under 37 C.F.R. § 2.6(a)(17) are enclosed herewith. Please charge any overpayments or underpayments to Deposit Account No. 06-1205.

Please address all correspondence to Pasquale A. Razzano at Fitzpatrick, Cella, Harper & Scinto, 30 Rockefeller Plaza, New York, New York 10112-3801.

Respectfully submitted,

Dated: New York, New York
November 21, 2002

By: 
Pasquale A. Razzano
Tila M. Duhaime
FITZPATRICK, CELLA, HARPER
& SCINTO
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(212) 218-2100
Attorneys for Opposer,
Natural Organics, Inc.

A

Int. Cl.: 5

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

Reg. No. 2,243,541

United States Patent and Trademark Office

Registered May 4, 1999

**TRADEMARK
PRINCIPAL REGISTER**

ALLERACTIN

**NATURAL ORGANICS INC. (NEW YORK COR-
PORATION)
548 BROADHOLLOW ROAD
MELVILLE, NY 11747**

**FIRST USE 2-0-1998; IN COMMERCE
2-0-1998.**

SN 75-306,548, FILED 6-9-1997.

**FOR: DIETARY SUPPLEMENTS, IN CLASS 5
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).**

JOHN DALIER, EXAMINING ATTORNEY

FITZPATRICK, CELLA, HARPER & SCINTO

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November 27, 2002

Assistant Commissioner for Trademarks
ATTN: Trademark Trial and Appeal Board
BOX: TTAB FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Trademark Application S.N. 78/107,975
Mark: **ALZERATIN**
Our Ref.: 01938.005082.

I hereby certify that this correspondence is being deposited
with the United States Postal Service as first class mail in an
envelope addressed to: Assistant Commissioner for Trademarks,
2900 Crystal Drive, Arlington, Virginia 22202-3513 on 11/27/02
(Date of Deposit)

TILA M. DUHAIME
Name of Attorney for Applicant
Tila M. Duhaime
Signature
11/27/02
Date of Signature

Dear Sir:

We enclose herewith:

1. An original and two copies of a Notice of Opposition; and
2. our check in the amount of \$300.00.

Any underpayment or overpayment of fees may be charged or credited to
our Deposit Account No. 06-1205.

Very truly yours,

FITZPATRICK, CELLA, HARPER & SCINTO

By: Tila M. Duhaime
Tila M. Duhaime

Enclosures