

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

Applicant: **MacroMed, Incorporated** International Class: 5
Serial No.: 76/458,908 Published for Opposition: April 22, 2003
Filed: October 17, 2002 Official Gazette: Page TM 148
Mark: ASCENTRA Attorney Docket No.: ASPE62471
Goods: Pharmaceutical preparation, namely, Human Growth Hormone.

Ascent Pediatrics, Inc.,

Opposer,

v.

MacroMed, Incorporated,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION



07-21-2003
U.S. Patent & TMO/TM Mail Room

03 AUG - 8 11:53:32

NOTICE OF OPPOSITION

Seattle, Washington 98101

July 17, 2003

TO THE COMMISSIONER FOR TRADEMARKS
TRADEMARK TRIAL AND APPEAL BOARD:

Ascent Pediatrics, Inc. (hereinafter "Opposer"), a corporation of the State of Delaware, having a principal place of business at 8125 North Hayden Road, Scottsdale, Arizona 85258, believes that it will be damaged by registration of the mark ASCENTRA, shown in U.S.

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08/08/2003TTAB

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Trademark Application Serial No. 76/458,908, filed on October 17, 2002, and hereby opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. On information and belief, MacroMed, Incorporated (hereinafter "Applicant") is a corporation of the State of Utah, having an address of 9520 South State Street, Sandy, Utah 84070.

2. On information and belief, Applicant is the owner of U.S. Application Serial No. 76/458,908, filed on October 17, 2002, for the mark ASCENTRA, for a pharmaceutical preparation, namely, Human Growth Hormone, in International Class 5.

3. U.S. Application Serial No. 76/458,908 was filed based on Applicant's intent to use the mark ASCENTRA in commerce in the United States.

4. Opposer is the owner of the trademark ASCENT and U.S. Registration No. 1,884,185 for the mark ASCENT.

5. The mark ASCENT was registered in the U.S. Patent and Trademark Office on March 14, 1995, U.S. Registration No. 1,884,185, for pharmaceutical preparations for the treatment of infections, respiratory diseases, pain, fever, cough, colds, skin diseases, allergies, and gastrointestinal disturbances, in International Class 5. A copy of U.S. Registration No. 1,884,185 is attached hereto as Exhibit A.

6. The mark ASCENT was first used in commerce in the United States by Opposer at least as early as February of 1993.

7. Opposer has used the mark ASCENT in commerce in connection with pharmaceutical preparations for the treatment of infections, respiratory diseases, pain, fever, cough, colds, skin diseases, allergies, and gastrointestinal disturbances, continuously and since a date long prior to any date upon which Applicant can rely.

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8. Upon information and belief, the goods of Applicant are pharmaceutical preparations, which will be offered to the same customers as the goods of Opposer.

9. The mark ASCENTRA, shown in Application Serial No. 76/458,908, so resembles Opposer's mark ASCENT in sight, sound and commercial impression, previously used by Opposer in conjunction with pharmaceutical preparations, as to be likely, when applied to the goods of Applicant, to cause confusion or to cause mistake or to deceive, within the meaning of Section 2(d) of The Lanham Act, 15 U.S.C. § 1052(d).

10. The mark ASCENTRA, shown in Application Serial No. 76/458,908, so resembles Opposer's mark ASCENT, previously used by Opposer in conjunction with pharmaceutical preparations, as to falsely suggest a connection with Opposer when applied to the goods of Applicant, within the meaning and in violation of Section 2(a) of The Lanham Act, 15 U.S.C. § 1052(a).

11. Opposer will be damaged by the registration sought by Applicant insofar as the registration will be *prima facie* evidence of the validity of the registration, Applicant's ownership of the mark ASCENTRA, and Applicant's exclusive right to use the mark ASCENTRA when, in fact, Applicant is not entitled to such rights by virtue of Opposer's prior and continuous use of the mark ASCENT and Opposer's prior rights established in and to the mark ASCENT for pharmaceutical preparations.

12. Based upon the foregoing, registration of the mark ASCENTRA, shown in Application Serial No. 76/458,908, is likely to cause injury and damage to Opposer.

WHEREFORE, Opposer respectfully requests that registration of the mark ASCENTRA, shown in Application Serial No. 76/458,908, be denied under Sections 2(a) and 2(d) of the Trademark Act of 1946, and that this Opposition be sustained.

08/08/2003TTAB

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Please direct all correspondence regarding this opposition to Daiva K. Tautvydas of Christensen O'Connor Johnson Kindness ^{PLLC} at the following address:

Christensen O'Connor Johnson Kindness ^{PLLC}
1420 Fifth Avenue, Suite 2800
Seattle, WA 98101

Please direct all telephone calls to Daiva K. Tautvydas at 206-695-1727.

Accompanying the duplicate signed copies of this Notice of Opposition is our Check No. 149474 for the required filing fee in the amount of \$300.00 (\$300.00 per class). Please charge any excess fees to Deposit Account No. 03-1740 of Opposer's counsel noted below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Daiva K. Tautvydas
Registration No. 36,077
Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this Notice of Opposition is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3514, on the below date.

Date: July 17, 2003 Stacey K. Kalata

DKT:skk

08/08/2003TTAB

08/08/1993TAS

Int. Cl.: 5

Prior U.S. Cl.: 18



Reg. No. 1,884,185

United States Patent and Trademark Office Registered Mar. 14, 1995

**TRADEMARK
PRINCIPAL REGISTER**

ASCENT

ASCENT PHARMACEUTICALS, INC. (DELA-
WARE CORPORATION)
9 LINNELL CIRCLE
BILLERICA, MA 01821

GASTROINTESTINAL DISTURBANCES, IN
CLASS 5 (U.S. CL. 18).

FIRST USE 2-0-1993; IN COMMERCE
2-0-1993.

FOR: PHARMACEUTICAL PREPARATIONS
FOR THE TREATMENT OF INFECTIONS, RES-
PIRATORY DISEASES, PAIN, FEVER, COUGH,
COLDS, SKIN DISEASES, ALLERGIES, AND

SN 74-252,933, FILED 3-5-1992.

JOHN MICHOS, EXAMINING ATTORNEY

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2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 Applicant: **MacroMed, Incorporated** International Class: 5
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17 Seattle, Washington 98101

18 July 17, 2003

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20 TO THE COMMISSIONER FOR TRADEMARKS

21 TRADEMARK TRIAL AND APPEAL BOARD:

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23 having a principal place of business at 8125 North Hayden Road, Scottsdale, Arizona 85258,
24 believes that it will be damaged by registration of the mark ASCENTRA, shown in U.S.
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08/08/2003TAB

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2 the same.

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5 corporation of the State of Utah, having an address of 9520 South State Street, Sandy, Utah
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9 preparation, namely, Human Growth Hormone, in International Class 5.

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24 date long prior to any date upon which Applicant can rely.

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1 8. Upon information and belief, the goods of Applicant are pharmaceutical
2 preparations, which will be offered to the same customers as the goods of Opposer.

3 9. The mark ASCENTRA, shown in Application Serial No. 76/458,908, so
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6 goods of Applicant, to cause confusion or to cause mistake or to deceive, within the meaning of
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10 pharmaceutical preparations, as to falsely suggest a connection with Opposer when applied to the
11 goods of Applicant, within the meaning and in violation of Section 2(a) of The Lanham Act,
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13 11. Opposer will be damaged by the registration sought by Applicant insofar as the
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15 of the mark ASCENTRA, and Applicant's exclusive right to use the mark ASCENTRA when, in
16 fact, Applicant is not entitled to such rights by virtue of Opposer's prior and continuous use of
17 the mark ASCENT and Opposer's prior rights established in and to the mark ASCENT for
18 pharmaceutical preparations.

19 12. Based upon the foregoing, registration of the mark ASCENTRA, shown in
20 Application Serial No. 76/458,908, is likely to cause injury and damage to Opposer.

21 WHEREFORE, Opposer respectfully requests that registration of the mark ASCENTRA,
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CHRISTENSEN O'CONNOR
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