

TTAB

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

In the Matter of Application Serial No. 78/228,707
Published in the *Official Gazette* of November 18, 2003
Atty. Ref.: 312.0957

AstraZeneca AB,

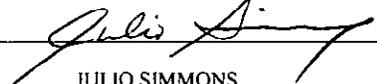
Opposer,

-against-

Gastropal Partners, Palafox
Laboratories, Inc., a Texas corporation,
and Vital Needs Products, Inc., a Texas
corporation, General Partners (a Texas
partnership),

Applicant.

Opposition No.:

"EXPRESS MAIL." Label No.: EV118885849US	
I hereby certify that this paper or fee is being deposited with the United Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.	
Signature	 JULIO SIMMONS
Printed Name	December 3, 2003
Date	

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

BOX TTAB FEE

NOTICE OF OPPOSITION

AstraZeneca AB, a Swedish corporation, with a place of business located at Västra Mälarehamnen 9, Södertälje, Sweden [hereinafter "Opposer"], believes that it will be damaged by registration of the trademark "IBIXIUM", as shown in Application Serial No. 78/228,707, filed March 21, 2003, and hereby opposes same.

As grounds for opposition, it is alleged that:

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U.S. Patent & TMO/TM Mail Rcpt Dt. #77

1. Gastropal Partners, Palafox Laboratories, Inc., a Texas corporation, and Vital Needs Products, Inc., a Texas corporation, General Partners (a Texas partnership) [hereinafter "Applicant"] has filed an application in the United States Patent and Trademark Office, Serial No. 78/228,707, filed March 21, 2003, for registration of the word "IBIXIUM" as a trademark on the Principal Register in respect of "pharmaceutical preparations for use in treatment of peptic ulcers, gastritis, peptic esophagitis, gastric hyperacidity, and hiatal hernias" (Int'l. Class 5), on the basis of an alleged bona fide intention to use said mark in commerce.

2. Upon information and belief, Applicant did not use its alleged trademark "IBIXIUM" anywhere in the United States, or in commerce, prior to its aforementioned application filing date.

3. Opposer is a leading worldwide producer and distributor of high-quality pharmaceutical products.

4. Opposer has registered the trademark "NEXIUM" on the Principal Register of the United States Patent and Trademark Office, Reg. No. 2,483,060, dated August 28, 2001, in respect of "pharmaceutical preparations for the treatment of gastrointestinal diseases" (Int'l. Cl. 5). Said registration is valid and subsisting, and Opposer hereby gives notice, in accordance with Trademark Rule 2.122(d)(2), that it will rely on said registration as evidence on its behalf in this proceeding, and that a status copy thereof showing present title will be introduced into evidence during Opposer's testimony period.

5. Opposer has used the trademark "NEXIUM" in commerce for pharmaceutical preparations for the treatment of gastrointestinal diseases since prior to the filing date of the application to register "IBIXIUM", and prior to any use of said mark by Applicant, and

Opposer's use of the trademark "NEXIUM" has been nationwide, substantial and continuous until the present date.

6. There is no issue of priority since the filing date of Applicant's "IBIXIUM" trademark application is subsequent to the filing date of Opposer's "NEXIUM" trademark registration and to the date of first use of Opposer's trademark. Also, there is no issue of priority if an Applicant's mark is likely to cause confusion, mistake and/or deception with regard to a mark registered in the Patent and Trademark Office by an Opposer.

7. Opposer's pleaded trademark possesses a high degree of inherent and acquired distinctiveness and represents an extremely valuable asset and symbol of the goodwill of its business by identifying goods which have their source of origin exclusively with Opposer, and by distinguishing such goods from those of others.

8. Applicant's alleged trademark "IBIXIUM" is confusingly similar to Opposer's pleaded trademark in sound, appearance and/or commercial impression.

9. The respective goods of the Opposer and the Applicant are identical or closely related and would travel through the same channels of trade for sale to and/or use by the same general class of purchasers and/or users of pharmaceuticals.

10. Under the "doctrine of greater care", Applicant had a duty to adopt a trademark for its aforementioned pharmaceutical preparations which is clearly distinguishable from Opposer's trademark for the same or related pharmaceutical preparations.

11. Under the "doctrine of greater care", Applicant's alleged trademark "IBIXIUM" is likely to cause confusion, mistake and/or deception with respect to Opposer's trademark "NEXIUM".

12. As a result of the distinctive nature of Opposer's trademark "NEXIUM" and the extensive sales and advertising in commerce of goods bearing said trademark, Opposer's mark became famous prior to the filing date of Applicant's alleged mark "IBIXIUM" and prior to any use of said mark by Applicant.

13. Famous trademarks such as Opposer's mark "NEXIUM" are accorded a wide latitude of protection by the Trademark Trial and Appeal Board.

14. Applicant's alleged trademark is calculated or likely to cause confusion, mistake and/or deception of purchasers as to the respective marks of Opposer and Applicant, and also as to the source of origin or sponsorship of the goods for which such marks are used, or are intended to be used.

15. Applicant's alleged trademark is calculated or likely to cause irreparable loss, injury and damage to Opposer's business and to the goodwill thereto appertaining as symbolized and recognized by its aforementioned trademark.

16. Applicant's alleged trademark is a colorable imitation or misappropriation of Opposer's pleaded trademark, and will enable Applicant to reap where it has not sown by trading on the goodwill of Opposer's business as symbolized and recognized by its aforementioned trademark.

17. Applicant adopted its alleged trademark "IBIXIUM" and applied to register said mark with constructive notice of Opposer's trademark "NEXIUM", pursuant to Section 22 of the U.S. Trademark Act.

18. Upon information and belief, Applicant adopted its alleged trademark "IBIXIUM" and applied to register said mark with actual notice of Opposer's trademark "NEXIUM".

19. Applicant adopted its alleged trademark "IBIXIUM" and applied to register said mark without the approval, authorization or acquiescence of Opposer.

IN CONCLUSION, Opposer, by its undersigned attorneys, prays that its opposition to Application Serial No. 78/228,707 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Opposer that the Board finds to be necessary and just in the circumstances.

A duplicate copy of this *Notice of Opposition* is enclosed, along with a check for \$300 in payment of the official filing fee. The Commissioner is authorized to charge our Deposit Account No. 20-1439, for any other fees required to be paid in connection with this proceeding.

Respectfully submitted,

TRADEMARK & PATENT COUNSELORS
OF AMERICA, P.C.

Dated: December 3, 2003

By  _____

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