

TRADEMARK
"BYETOX"

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

In the matter of Trademark Application Serial No.: 76478571
Published in the Official Gazette (Trademarks) on February 24, 2004

ALLERGAN, INC.,)	
Opposer,)	
)	Opposition No:
vs.)	
)	
BEILIS DEVELOPMENT CORPORATION,)	
Applicant.)	

NOTICE OF OPPOSITION

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

Allergan, Inc., a corporation organized and existing under the laws of Delaware, located and doing business at 2525 Dupont Drive, Irvine, California 92612, believes it will be damaged by registration of the mark shown above in the above identified application and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer is, and has been, for many years engaged in the manufacture, development, sale and advertising of an extensive array of pharmaceutical, ophthalmic and dermatological products. Since 1990, Opposer has marketed its pharmaceutical for the therapeutic treatment of neurological disorders and muscle dystonias under the trademark BOTOX® in the United States and globally. In 2002, Opposer started marketing its product under the BOTOX® mark for certain cosmetic indications.

2. Opposer owns all right, title and interest in and to the BOTOX® mark, as well as the following U.S. registrations of its BOTOX® mark on the Principal Register:

- A) Registration No. 1,692,384 granted June 9, 1992 for the mark **BOTOX** in International Class 5 for "pharmaceutical preparations; namely, ophthalmic muscle relaxants";
- B) Registration No. 1,709,160 granted August 18, 1992 for the mark **BOTOX** in International Class 5 for "pharmaceutical preparations for the treatment of neurologic disorders";
- C) Registration No. 2,510,675 granted November 20, 2001 for the mark **BOTOX** in International Class 5 for "pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhidrosis, sports injuries, cerebral palsy, spasms, tremors and pain".

All of these registrations are valid and subsisting, and Registration Nos. 1,692,384 and 1,709,160 have become incontestable. Copies of these certificates are attached.

3. From a time long prior to the filing of the Application at issue, Opposer has used the BOTOX® mark in commerce in the United States on and in connection with the foregoing goods, for which the mark has become extremely well known. Moreover, by virtue of the excellence of the products sold under the BOTOX® mark, the mark has a valuable reputation. The valuable reputation and extensive goodwill associated with the BOTOX® mark is exemplified by the amount of sales of products under the mark for the years 1999 to 2003:

1999	\$ 175,800,000
2000	\$ 239,500,000
2001	\$ 309,500,000
2002	\$ 439,700,000
2003	<u>\$ 563,900,000</u>
Total:	\$1,728,400,000

4. Notwithstanding Opposer's long prior rights in and to the BOTOX® trademark, Applicant, on information and belief, on December 26, 2002, filed an application for registration of the trademark BYETOX for "Pharmaceutical preparations, namely, topical ointments for use in dermatology" in International Class 5.

5. Applicant's application was given Serial No. 76478571 and the mark was published for opposition in the Trademark Official Gazette of February 24, 2004.

6. The BYETOX mark shown in the opposed Application so resembles Opposer's registered BOTOX® mark as to be likely, when used on or in connection with the goods identified in the opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under Section 2(d) of the United States Trademark Act. As amended, 15 U.S.C. §1052(d).

7. Opposer will be damaged by registration of the mark shown in the opposed Application because registration will give Applicant prima facie evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's registered mark.

POWER OF ATTORNEY

Applicant hereby appoints Martin A. Voet, a member of the Bar of the State of California at the mailing address of Allergan, Inc., Corporate Trademark Department, 2525 Dupont Drive, Irvine, California 92612 (telephone: 714/246-4500), its Attorneys with full power of substitution and revocation, to transact all business in the Patent and Trademark Office in connection therewith.

It is requested that all correspondence be directed to Susan J. Hinchey, Allergan, Inc., Corporate Trademark Department, 2525 Dupont Drive, Irvine, California 92612.

ALLERGAN vs. BEILIS DEVELOPMENT CORPORATION
Opposition page 5
cont'd.

Any fees related to this Opposition may be charged to Opposer's deposit account #01-0885.

DATED: February 23, 2004

Respectfully Submitted,
ALLERGAN, INC.

/MARTIN A. VOET/
MARTIN A. VOET
Assistant Secretary

Please direct all correspondence to:
Susan J. Hinchey
Corporate Trademark Manager
ALLERGAN, INC.
2525 Dupont Drive
Irvine, California 92612
Phone:(714) 246-5507
E-mail: hinchey_susan@allergan.com



UNITED STATES DEPARTMENT OF COMMERCE
 Patent and Trademark Office
 OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS
 2900 Crystal Drive
 Arlington, Virginia 22202-3513

REGISTRATION NO: 1692384 SERIAL NO: 74126661
 REGISTRATION DATE: 06/09/1992
 MARK: BOTOX
 REGISTRATION OWNER: ALLERGAN, INC.
 CORRESPONDENCE ADDRESS:

MAILING DATE: 04/05/2002



ALLERGAN, INC.
 2525 DUPONT DRIVE
 IRVINE, CA 92612

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF RENEWAL

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE REGISTRATION IS RENEWED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
 005.

WILSON, JAMES D
 PARALEGAL SPECIALIST
 POST-REGISTRATION DIVISION
 (703)308-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office **Reg. No. 1,692,384**
Registered June 9, 1992

**TRADEMARK
PRINCIPAL REGISTER**

BOTOX

ALLERGAN, INC. (DELAWARE CORPORATION)
2525 DUPONT DRIVE
IRVINE, CA 92715

FIRST USE 9-0-1990; IN COMMERCE
1-22-1992.

SN 74-126,661, FILED 12-21-1990.

FOR: PHARMACEUTICAL PREPARATIONS;
NAMELY, OPHTHALMIC MUSCLE RELAX-
ANTS, IN CLASS 5 (U.S. CL. 18).

RACHEL BLUE, EXAMINING ATTORNEY



UNITED STATES DEPARTMENT OF COMMERCE
 Patent and Trademark Office
 OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS
 2900 Crystal Drive
 Arlington, Virginia 22202-3513

REGISTRATION NO: 1709160 SERIAL NO: 74136930 MAILING DATE: 04/05/2002
 REGISTRATION DATE: 08/18/1992
 MARK: BOTOX
 REGISTRATION OWNER: ALLERGAN, INC.
 CORRESPONDENCE ADDRESS:

ALLERGAN, INC.
 2525 DUPONT DRIVE
 IRVINE, CA 92612

NOTICE OF ACCEPTANCE
 15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.



NOTICE OF RENEWAL
 15 U.S.C. Sec. 1059(a)

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ACCORDINGLY, THE REGISTRATION IS RENEWED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
 005.

WILSON, JAMES D
 PARALEGAL SPECIALIST
 POST-REGISTRATION DIVISION
 (703)308-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office **Reg. No. 1,709,160**
Registered Aug. 18, 1992

**TRADEMARK
PRINCIPAL REGISTER**

BOTOX

ALLERGAN, INC. (DELAWARE CORPORATION)
2525 DUPONT DRIVE
IRVINE, CA 92715

FIRST USE 9-0-1990; IN COMMERCE
1-22-1992.

SN 74-136,930, FILED 2-6-1991.

FOR: PHARMACEUTICAL PREPARATIONS
FOR THE TREATMENT OF NEUROLOGIC
DISORDERS, IN CLASS 5 (U.S. CL. 18).

HOWARD B. LEVINE, EXAMINING ATTORNEY

Int. Cl.: 5

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

United States Patent and Trademark Office

Reg. No. 2,510,675

Registered Nov. 20, 2001

**TRADEMARK
PRINCIPAL REGISTER**

BOTOX

ALLERGAN, INC. (DELAWARE CORPORATION)
2525 DUPONT DRIVE
IRVINE, CA 92612

FOR: PHARMACEUTICAL PREPARATIONS FOR
THE TREATMENT OF NEUROLOGICAL DISOR-
DERS, MUSCLE DYSTONIAS, SMOOTH MUSCLE
DISORDERS, AUTONOMIC NERVE DISORDERS,
HEADACHES, WRINKLES, HYPERHYDROSIS,
SPORTS INJURIES, CEREBRAL PALSY, SPASMS,

TREMORS AND PAIN, IN CLASS 5 (U.S. CLS. 6, 18,
44, 46, 51 AND 52).

FIRST USE 9-30-1990; IN COMMERCE 1-22-1992.

OWNER OF U.S. REG. NOS. 1,692,384, 1,709,160
AND OTHERS.

SER. NO. 78-041,618, FILED 1-3-2001.

JENNIFER KRISP, EXAMINING ATTORNEY



Electronic System for Trademark Trials and Appeals

PTO-2152 (Exp. 5/51/2004)
 OMB No. 0651-0040 (Exp. 5/31/2004)

Notice of Opposition.

Validate

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

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Name	Allergan, inc.		
Opposer Entity	Corporation	Citizenship of Opposer	Delaware
Opposer Address	2525 Dupont Drive Irvine, CA 92612 UNITED STATES		

Correspondence information	Susan J. Hinchey Corporate Trademark Manager Allergan, inc. 2525 Dupont Drive Irvine, CA 92612 UNITED STATES hinchey_susan@allergan.com Phone:714-246-5507
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Applicant Information

Application No	76478571	Publication date	02/24/2004
Opposition Filing Date	Not assigned yet	Opposition Period Ends	03/25/2004
Applicant	Beilis Development Corporation		
Address	65 Oriental Boulevard, Suite 7K Brooklyn, NY 11235		

UNITED STATES

Goods/Services Affected by Opposition

Class 005. First Use: First Use In Commerce:
All goods and services in the class are opposed, namely: Pharmaceutical preparations,
namely, topical ointments for use dermatology

Attachments	BOTOXCert.pdf (5 pages) BYE-TOX_.pdf (5 pages)
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Fee calculated according to USPTO fee table	
Fee code	7402
amount	300.00
description	Notice of Opposition, per Class, Electronically Filed
Serial # 76478571	# of Classes Opposed 1
Total	300.00

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