

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

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IVAX RESEARCH, INC.,
Opposer,

v.

Opposition
No.:

ENTpro HB,
Applicant.

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NOTICE OF OPPOSITION

07-19-2004
U.S. Patent & TMO/TM Mail Rpt Dt. #22

This Notice of Opposition is brought in the matter of pending trademark application Serial No. 76371804, filed on February 15, 2002 by ENTpro HB (hereinafter "Applicant"), for the registration of the mark NASALINE for goods in International Classes 5 and 10. The application was published in the Official Gazette of May 18, 2004 at page TM 22. Opposer Ivax Research, Inc. (hereinafter "Opposer"), believes it will be damaged by the registration of such trademark and hereby opposes same.

The grounds for opposition are as follows:

1. Opposer, Ivax Research, Inc. is a Florida corporation having a principal place of business at 4400 Biscayne Boulevard, Miami, Florida 33137.
2. Opposer is a well known manufacturer, distributor and researcher of a wide range of proprietary pharmaceutical products.

3. Prior to the filing of the instant application, Opposer adopted and has continuously used the marks NASALIDE in connection with steroid pharmaceutical preparations.

4. Opposer is the owner of United States Trademark Registration No. 1120854 of June 26, 1978 for the mark NASALIDE for "steroid pharmaceutical preparations".

5. Applicant has applied to register the mark NASALINE, Serial No. 76/371804 for "pharmaceutical preparations for irrigating and rinsing the ear, nose and throat; medical apparatus and instruments, namely, syringes, injectors, sprays, bottles and bellows containing pharmaceutical preparations for therapeutic use in the ear, nose and throat conditions" in International Class 5 and "medical apparatus and instruments, namely syringes, injectors, sprays, bottles and bellows sold empty for use with pharmaceutical preparations for therapeutic use in the ear, nose and throat" in International Class 10. Consumers would be easily confused into believing that Applicant's products are related to Opposer's products due to the adoption of the term NASALINE by Applicant.

6. Upon information and belief, goods bearing Applicant's NASALINE trademark will be sold and offered for sale in the same channels of trade and to the same classes of consumers as are the goods bearing Opposer's NASALIDE trademark.

7. Applicant's trademark so resembles Opposer's trademark that, when applied to its products, there is a strong likelihood that confusion will result wherein the public will believe that there is some connection, sponsorship, affiliation or association between the source of Applicant's products and that of Opposer's products.

8. If Applicant is permitted to register its NASALINE trademark, Opposer's rights in its trademark NASALIDE and the rights appurtenant to the registration referred to in paragraph 4, *supra*, will be placed in jeopardy, as well as its right to enjoy the use of its trademark in connection with the sale of its goods, all to the injury of Opposer.

9. Based on the foregoing, Opposer believes that it will be damaged by the registration of Applicant's trademark.

WHEREFORE, Opposer respectfully requests that the registration sought by Applicant be refused and that this Opposition be sustained.

Respectfully submitted,

KIRSCHSTEIN, OTTINGER,
ISRAEL & SCHIFFMILLER

By: 
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Dated: New York, New York
July 15, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service, postage prepaid, as First Class Mail in an envelope addressed to: Commissioner of Trademarks, 2900 Crystal Drive, Box TTAB FEE, Arlington, Virginia 22202-3513 on

July 15, 2004 By 
Anne Rafferty