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TRADEMARK
TNW FILE NO.: 23947

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Opposed Mark: CHLOROZYME (Class 5)
U.S. Trademark Application Serial Number 78/296,804

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

Cardon Pharmaceuticals SA/NV Opposer, v. Health Education Corporation Applicant.	Opposition No. 91/162,320
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Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

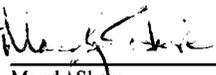
Health Education Corporation (hereinafter "Applicant") answers the Notice of Opposition filed by Cardon Pharmaceuticals SA/NV (hereinafter "Opposer") against the

CERTIFICATE OF DEPOSIT

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Service," on the date indicated below in an envelope addressed to: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451.

Date of Deposit

11/30/04



Mandy Skare



11-10-2004

registration of Applicant's CHLOROZYME trademark in Class 5, Serial No. 78/296,804 (hereinafter Applicant's mark), published in the Official Gazette on May 25, 2004, and believes that it is entitled to registration of said published mark, and pleads and avers as follows:

In response to the introductory paragraph of the Notice of Opposition, Applicant denies that Opposer will be damaged by the issuance of the registration of Applicant's mark, and Applicant admits only that its application speaks for itself. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations, and therefore denies the same.

1. In response to paragraph 1 of the Notice of Opposition, Applicant states that it is located in Draper, Utah rather than Sandy, Utah, and admits only that its application speaks for itself. Applicant admits that Opposer obtained an extension of time to file the Notice of Opposition until September 22, 2004. Applicant denies any remaining allegations contained therein.

2. In response to paragraph 2 of the Notice of Opposition, Applicant denies the allegations contained therein.

3. In response to paragraph 3 of the Notice of Opposition, Applicant denies each of the allegations contained therein. Applicant specifically denies that Opposer's mark is well-recognized for its goods in the United States marketplace. Applicant also specifically denies that Applicant has not used its mark in commerce.

4. In response to paragraph 4 of the Notice of Opposition, Applicant admits only that U.S. Trademark Application, Serial No. 76/476,479 (hereinafter "Opposer's application") speaks for itself. Applicant denies the remainder of the allegations contained therein.

5. In response to paragraph 5 of the Notice of Opposition, Applicant admits only that Opposer's application speaks for itself. Applicant denies the remainder of the allegations contained therein.

6. In response to paragraph 6 of the Notice of Opposition, Applicant admits only that Opposer's application speaks for itself. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained therein and therefore denies the same.

7. In response to paragraph 7 of the Notice of Opposition, Applicant denies each of the allegations contained therein.

8. In response to paragraph 8 of the Notice of Opposition, Applicant admits only that Applicant's mark is CHLOROZYME and Opposer's mark is OROZYME. Applicant specifically denies that the marks are visually and phonetically similar. Applicant denies the remaining allegations contained therein.

9. In response to paragraph 9 of the Notice of Opposition, Applicant denies each of the allegations contained therein.

10. In response to paragraph 10 of the Notice of Opposition, Applicant denies each of the allegations contained therein.

In further response to the Notice of Opposition, Applicant avers the following:

FIRST DEFENSE (DISSIMILAR MARKS)

The marks themselves are sufficiently dissimilar such that confusion is highly unlikely. Specifically, the marks differ substantially in appearance, meaning, connotation, and commercial impression such that there is no likelihood of confusion. In particular, the prefix to Opposer's mark "ORO" is intended to connote "oral," whereas Applicant's prefix CHLORO is intended to connote "chlorophyll." As such, the marks have substantially different commercial connotations.

SECOND DEFENSE (DISSIMILAR GOODS)

The goods identified in connection with Applicant's mark differ substantially from the goods identified by Opposer's marks, thereby eliminating a likelihood of

confusion. Moreover, the type of goods actually sold by Opposer, namely oral care products for dogs and cats, is vastly different from Applicant's goods, which are nutraceuticals for use as a dietary supplement. Applicant's goods are generally intended for systemic administration in humans.

THIRD DEFENSE (SOPHISTICATION OF BUYERS)

The purchasers of products in connection with the Applicant and Opposer's marks are sophisticated and take great care in purchasing such products, thereby eliminating any likelihood of confusion.

FOURTH DEFENSE (DIFFERENT CHANNELS OF TRADE)

The channels of trade and marketing methods through which the Applicant and Opposer's marks are likely to be used are dissimilar. In particular, Opposer is likely to sell its products to veterinarians and/or pet stores. In contrast, Applicant's goods are likely to be sold to health stores. Consequently, no likelihood of confusion exists.

FIFTH DEFENSE (PRIORITY)

On information and belief, Opposer has made no use of the OROZYME mark in commerce for the United States, and their filing date is December 18, 2002. However, Applicant's date of first use of the CHLOROZYME mark in commerce for the United States precedes Opposer's filing date as well as Opposer's first use. Accordingly, Applicant has priority over Opposer for the use of the CHLOROZYME mark.

SIXTH DEFENSE (NO BONA FIDE INTENT TO USE)

Based on the type of products described by Opposer's website, Applicant believes that Opposer may not have a bona fide intent to use the OROZYME mark on each of the goods/services listed in Opposer's application.

SEVENTH DEFENSE (MISUSE OF ®)

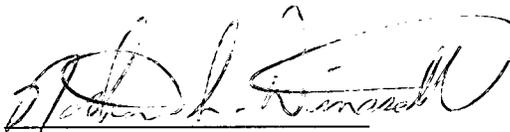
The attached printout from Applicant's website shows several misuses of the statutory ® notice by Opposer. Applicant believes that this misuse may be an intentional effort to deceive the public. Accordingly, Opposer's right to registration of its intent-to-use application should be denied, and this inequitable conduct should bar Opposer from maintaining this Notice of Opposition due to its unclean hands.

WHEREFORE, Applicant prays:

1. That the Notice of Opposition be dismissed in its entirety with prejudice.
2. That Applicant's mark be allowed on the Principal Register for the mark as set forth in Application Serial No. 78/296,804.

Dated this 8th day of November, 2004.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served on Opposer by depositing said true and correct copy with the United States Postal Service, First Class Mail, postage prepaid, this 8th day of November, 2004, in an envelope addressed to Opposer's attorney of record as follows:

Donald L. Dennison
DENNISON SCHULTZ DOUGHERTY & MACDONALD
1727 King Street Suite 105
Alexandria, VA 22314



CARDON Pharmaceuticals

Development,

and marketing

health care products for companion animals

Company Profile

General info

Company history

Products:

Oral care

Ear treatment

Gastro-intestinal

disorders

Treatment Compliance

Business Development &
Distribution

Contact

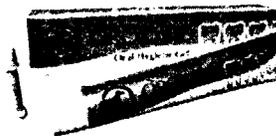
Home

Oral care

Oral Care for dogs & cats :

OROZYME[®] gel & strips contain a patented enzyme-formula that boosts the anti-microbial function of the saliva of dogs and cats. Furthermore, extra antiseptic agents have been added to help protect against the bacteria that cause bad breath and the build-up of plaque and tartar.

Products:



OROZYME[®] oral hygiene gel for dogs and cats

Gel based on a patented enzyme-formula that attacks dental plaque. Mild abrasives in the gel along with the mechanical action of the saliva and the animal's tongue help remove plaque.



OROZYME[®] oradental collagen strips for dogs

Thanks to the same patented enzyme-formula and the intensive scrubbing contact between the strip and the dog's teeth plaque is removed.

The strips are designed to prevent splitting up while the dog chews it. Very easy administration because the strip satisfies the natural chewing instinct of dogs in a playing way.

Strips come in three sizes : small, medium, large.

Indications :

- preventative dental care products against bacteria, fungi, virus
- reduce dental plaque & tartar, bleeding gums, bad breath

Advantages OROZYME[®] range of products:

- Highly effective patented enzyme-formula that attacks dental plaque
- Easy to use gel: with or without brushing
- Easy to use strips: just chew !
- Edible hypo-allergic products (easily digestible, low fat)
- No fluoride, no added sugar, no artificial colours or flavours
- Approved and recommended by veterinarians