

TTAB

UNITED STATES PATENT AND TRADEMARK
OFFICE

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

Mailed: October 18, 2004

Opposition No 91162535

Serial No. 76544784

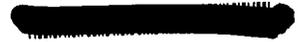
PAUL M. DENK
763 S NEW BALLAS RD
SAINT LOUIS, MO 63141-8704

Cardon Pharmaceuticals SA/NV

v.

Bio Delivery Sciences
International, Inc .

Donald L. Dennison
Dennison Schultz Dougherty & MacDonald
1727 King Street Suite 105
Alexandria, VA 22314-2700



10-26-2004

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

Tracey Fleming, Legal Assistant.

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68

Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: November 07, 2004

Discovery period to close: May 06, 2005

30-day testimony period for party
in position of plaintiff to close: August 04, 2005

30-day testimony period for party
in position of defendant to close: October 03, 2005

15-day rebuttal testimony period
for plaintiff to close: November 17, 2005

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may

be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

TTAB



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

CARDON PHARMACEUTICALS SA/NV,]	
]	
Opposer,]	Opposition No. _____
]	
v.]	
]	
BIO DELIVERY SCIENCES]	
INTERNATIONAL, INC.]	
]	
Applicant.]	
_____]	

NOTICE OF OPPOSITION

Hon. Commissioner for Trademarks
Washington, DC 20231

Sir:

In the matter of the application for registration of the trademark **ORAZYME** for Pharmaceuticals, namely, formulations of lysosomal enzymes for replacement of missing lysosomal enzymes due to genetic defects such as glucocerebrosidase deficiency, delivered orally or by intravenous administration, and for human and veterinary usage in class 5, Serial No. 76/544,784, filed September 15, 2003 by Bio Delivery Sciences

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10/19/2004 ZCLIFT01 00000099 76544784

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10-05-2004

International, Inc., and published for Opposition on June 8, 2004; Cardon Pharmaceuticals SA/NV, a Belgian Company, having its principal place of business at 31 Ryselstraat, 8200 Brugge, Belgium, believes that it would be damaged by such registration and hereby opposes registration of said alleged trademark as it applies to the goods set forth therein in

Opposer has obtained an extension of time through October 6, 2004 in which to file this Notice of Opposition.

As grounds for the opposition, it is alleged that:

1. Applicant, Bio Delivery Sciences International, Inc., is on information and belief a Delaware corporation with an address at 709 The Hamptons, Town & Country, MO 63017, and seeks to register the trademark **ORAZYME** for Pharmaceuticals, namely, formulations of lysosomal enzymes for replacement of missing lysosomal enzymes due to genetic defects such as glucocerebrosidase deficiency, delivered orally or by intervenous administration, and for human and veterinary usage in class 5, as set forth in the above noted application. The application was filed on September 15, 2003 based upon a claim of a bona fide intent to use the mark on said pharmaceutical goods. The application was published on June 8, 2004 in the

Official Gazette of the United States Patent and Trademark Office.

2. Opposer is well known in the field of dietary and hygienic products for human and veterinary medical use as well as related fields of commerce and has and is presently engaged in the manufacture and marketing of its products in the United States as well as throughout the world.

3. Opposer has used its well-recognized trademark **OROZYME** on its medical goods in the United States marketplace. To the best of Opposer's knowledge, no use has yet occurred of the Applicant's mark in commerce.

4. Opposer's mark **OROZYME** is the subject of United States Trademark Application Serial Number 76/476,479, filed December 18, 2002, prior to the filing of the intent-to-use application here opposed.

5. Opposer's application identified in Paragraph 4, supra, covers hygienic products for medical use, namely, medicated

shampoos, creams and lotions,; disinfectants, ointments for medical use; hygienic bandages; hygienic towels; balm for medical use; aseptic cotton; medicinal herbs; gentian for pharmaceutical use; dietetic substances for medical use, namely orally ingestible dietetic substances; veterinary products for the treatment of domestic animal teeth, namely tooth paste, chews, chewing gum and chewing lamella in Class 5.

6. Opposer's application has been allowed and a Statement of Use will be filed in the vary near future.

7. Applicant's mark is so similar to Opposer's mark as to be likely to cause confusion, mistake or deception as to the source of the goods of the Applicant, especially since the Applicant's mark is intended to be used in conjunction with medical and medicinal products that are related to the goods of the Opposer.

8. The marks here in issue are visually and phonetically similar, the only difference being the substitution of the letter "A" for the letter "O" in Opposer's mark.

9. If the Applicant is permitted to use and register the mark herein opposed for the goods specified in it's application, confusion in the trade and for the consumer will likely result, causing damage and injury to the Opposer. Persons familiar with Opposer's mark would be likely to purchase Applicant's products in the mistaken belief that such goods originate with the Opposer. Any such confusion will inevitably result in loss of sales to Opposer. Moreover, any objection or fault found with Applicant's pharmaceutical products sold under the mark **ORAZYME**, herein opposed would necessarily reflect upon and seriously injure the reputation which Opposer has established for its products offered under its mark and thereby erode the valuable goodwill established by Opposer in its mark.

10. Registration of the mark at issue herein to Applicant will be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that Application Serial Number 76/544,784 be rejected, and that registration of the mark shown therein for the goods set forth therein be refused and denied.

A duplicate copy of this Notice of Opposition is enclosed. The fee of \$300.00 required by the Trademark Rules of Practice, 2.6(a)(17) is enclosed.

Respectfully submitted,

October 5, 2004

By 
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