

ESTTA Tracking number: **ESTTA155600**

Filing date: **08/08/2007**

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

Notice of Opposition

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

Opposer Information

Name	Rising Pharmaceuticals, Inc.		
Entity	Corporation	Citizenship	New Jersey
Address	3 Pearl Court Allendale, NJ 07401 UNITED STATES		

Attorney information	Michael F Sarney KATTEN MUCHIN ROSENMAN LLP 575 Madison Avenue New York, NY 10022 UNITED STATES michael.sarney@kattenlaw.com Phone:(212) 940-8698		
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Applicant Information

Application No	77060983	Publication date	07/10/2007
Opposition Filing Date	08/08/2007	Opposition Period Ends	08/09/2007
Applicant	Pedinol Pharmaceutical, Inc. 30 Banfi Plaza North Farmingdale, NY 11735 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 1992/06/17 First Use In Commerce: 1992/06/17 All goods and services in the class are opposed, namely: Medicated lotions for use in treatment of dry, scaly, itching skin; Pharmaceutical skin lotions
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Grounds for Opposition

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant claims rights in the subject mark based upon unlawful use in commerce.

Attachments	Rising Opposition.pdf (4 pages)(122052 bytes)
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Signature	/michael sarney/
Name	Michael F Sarney
Date	08/08/2007

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

In re the Application of
Pedinol Pharmaceutical, Inc.
Serial No.: 77/060983
Filed: December 11, 2006
Mark: **LACTINOL**

Published: July 10, 2007

Rising Pharmaceuticals, Inc.

v.

Pedinol Pharmaceutical, Inc.

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

NOTICE OF OPPOSITION

Rising Pharmaceuticals, Inc. a corporation of the State of New Jersey, with a place of business at 3 Pearl Court, Allendale, New Jersey 07401 (“Opposer”), believes that it will be damaged by registration of the trademark shown in Serial No. 77/060,983, filed December 11, 2006, and hereby opposes the same.

As grounds for the opposition, Opposer alleges that:

1. Opposer is a pharmaceutical company which has been selling prescription lactic acid 10% drug products since 2002. Opposer sells its prescription lactic acid 10% under the descriptive name “Lactic Acid 10%.”
2. Applicant is a competing pharmaceutical company which is using the LACTINOL mark in connection with its lactic acid 10% prescription drug product.

3. Lactic acid 10% is a common substance not protected by a patent or otherwise unique.
4. Applicant's use of the LACTINOL mark, alleged to have been since June 17, 1992, has been predicated upon unlawful use in commerce in violation of the United States Food Drug and Cosmetic Act , 21 U.S.C. §355(a), *et seq.*, and the regulations and guidance promulgated thereunder, which require prescription drug products to be pre-approved by the FDA prior to marketing.
5. Applicant has not sought or obtained such FDA approval for its Lactic acid 10% product and its use of the LACTINOL name in connection therewith is therefore predicated on unlawful commerce.
6. Registration of the LACTINOL mark by Applicant would likely result in purchasers and prospective purchasers being misled into believing that Applicant's prescription drug product is approved for use by the FDA, when in fact it has no such approval.
7. Opposer would be injured by the granting to Applicant of a Certificate of Registration for the mark LACTINOL because Applicant would thereby be granted exclusive rights in such mark based upon unlawful use, in violation of the Trademark Act, Title 15 U.S.C., and the grant of such registration would provide Applicant with the unfair benefits of the imprimatur of approval of a "brand name" in order to represent and imply, and thereby confuse Opposer's customers, potential customers and the market in general, into mistakenly believing that Applicant's prescription lactic acid 10% drug products are FDA-approved branded items.

8. Applicant's use is further predicated on unlawful commerce in violation of 21 C.F.R. §201.10 (g)(1) because Applicant has used the mark as a proprietary name for a prescription drug without providing the established name corresponding to such proprietary name each time it is featured on the label or in the labeling for the drug product.
9. Registration of the mark LACTINOL by Applicant will likely harm Opposer because Applicant's unlawful use of a proprietary name without providing the established name for a prescription drug is likely to confuse Opposer's customers and the marketplace into believing that the drug or ingredient has some unique effectiveness or composition when, in fact, the drug is a common substance, sold by Opposer and others under the established name, the limitations of which would be readily recognized if Applicant properly disclosed the established drug or ingredient name.
10. Applicant has otherwise violated the Trademark laws by using the ® symbol in connection with the LACTINOL mark when no such registration has been granted by the United States Patent and Trademark Office or any other authority.
11. Upon information and belief, Applicant used the ® symbol with the mark for the purpose of misrepresenting and falsely implying that Applicant's prescription lactic acid 10% drug products are FDA-approved branded items, and to divert sales from other sellers of prescription lactic acid 10% products, including Opposer, thereby causing injury to Opposer.

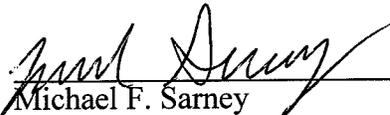
WHEREFORE, Opposer, respectfully prays that said application Serial No. 77/060,983 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

Katten Muchin Rosenman, LLP
Attorneys for Opposer

Date: August 8, 2007

By:


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