

ESTTA Tracking number: **ESTTA164570**

Filing date: **09/24/2007**

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

Proceeding	91178825
Party	Defendant Pedinol Pharmaceutical, Inc.
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Date	09/24/2007
Attachments	20070924 Answer to Opp.pdf (4 pages)(20571 bytes)

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

<u>RISING PHARMACEUTICALS, INC.</u>	§	
	§	Opposition No.: 91178825
Opposer,	§	
	§	Serial No.: 77/609,983
vs.	§	
	§	APPLICANT'S ANSWER TO NOTICE
PEDINOL PHARMACEUTICAL, INC.	§	OF OPPOSITION
	§	
<u>Applicant.</u>	§	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Subject to “Applicant’s Partial Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted,” Applicant, Pedinol Pharmaceutical, Inc., by its attorney, hereby answers the allegations set forth in the Notice of Opposition as follows. To the extent not specifically admitted, the allegations of Opposer are denied.

1. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, denies said allegation.
2. Applicant admits paragraph 2 of the Notice of Opposition.
3. Applicant admits that its product is not patented and but denies that medical grade lactic acid is a mere common product and the remaining allegations of paragraph 3 of the Notice of Opposition.
4. Applicant denies paragraph 4 of the Notice of Opposition.
5. Applicant denies paragraph 5 of the Notice of Opposition.
6. Applicant denies paragraph 6 of the Notice of Opposition.
7. Applicant denies paragraph 7 of the Notice of Opposition.

8. Applicant denies Paragraph 8 of the Notice of Opposition.
9. Applicant denies Paragraph 9 of the Notice of Opposition.
10. Applicant denies Paragraph 10 of the Notice of Opposition.
11. Applicant denies Paragraph 11 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

12. Opposer fails to state a claim upon which relief can be granted.
13. Alternatively and/or in addition, Applicant affirmatively alleges that Opposer does not own or has not acquired any lawful rights in the word “LACTINOL” alone as a trade name or trademark or service mark.
14. Alternatively and/or in addition, Opposer’s claims are barred by the doctrine of laches.
15. Alternatively and/or in addition, Applicant’s mark is not famous.
16. Alternatively and/or in addition, Opposer’s claims are barred by the doctrine of waiver.
17. Alternatively and/or in addition, Opposer’s claims are barred by the doctrine of acquiescence.
18. Alternatively and/or in addition, Opposer’s claims are barred by the doctrine of estoppel.
19. Alternatively and/or in addition, Opposer’s claims are barred by the doctrine of unclean hands.
20. Alternatively and/or in addition, Plaintiff’s product sold under the trademark LACTINOL has been reported to the United States Food and Drug Administration (“FDA”) and

the manufacturing facility and warehouse facility for Plaintiff's LACTINOL brand product has been regularly inspected by the FDA since about 1991.

21. Alternatively and/or in addition, the FDA inspectors have observed the manufacturing of Plaintiff's LACTINOL brand product and its storage and labeling in Application warehouse.

22. Alternatively and/or in addition, the FDA has never found Plaintiff's LACTINOL brand product and its storage and labeling in violation of any FDA laws.

23. Alternatively and/or in addition, Plaintiff is the owner of incontestable registration No. 1,688,80 registered May 26, 1992 for the trademark LACTINOL-E for a medicated cream that has 10% lactic acid as an active ingredient.

24. Alternatively and/or in addition, the FDA has primary jurisdiction to determine whether Applicant's products violate the FDA laws and regulations.

Wherefore, Applicant respectfully requests that the opposition be dismissed and that its mark be registered.

Respectfully submitted,



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Attorneys for Applicant
PEDINOL PHARMACEUTICAL, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via electronic notification through the Trademark Trial and Appeal Board and by first class mail to:

Michael F Sarney
Attorney for Opposer Rising Pharmaceuticals, Inc.
KATTEN MUCHIN ROSENMAN LLP
575 Madison Avenue
New York, NY 70022

on this the 24th day of September, 2007.



CHARLES W. HANOR