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

Proceeding	91181950
Party	Defendant Huntsman Advanced Materials (Switzerland) GmbH
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Nabaltec AG	)	Opposition No. 91,181,950
	)	Serial No. 79/028,600
Opposer	)	
	)	I hereby certify that this paper is being deposited
v.	)	with the U.S. Patent and Trademark Office
	)	Trademark Trial and Appeal Board at
Huntsman Advanced Materials	)	http://estta.uspto.gov, on this date: 09/12/2008.
(Switzerland) GmbH	)	
	)	
Applicant.	)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Huntsman Advanced Materials (Switzerland) GmbH ("Huntsman" or "Applicant"), having a principal place of business in Switzerland, for its answer to the Notice of Opposition filed by Nabaltec AG (hereinafter "Opposer") against registration of Huntsman's AZYRAL application, Serial No. 79/028,600, having an Application Date of March 31, 2006, and published in the *Official Gazette* of the United States Patent and Trademark Office, September 18, 2007 issue, pleads and avers as follows:

1. Under the trademark and trade name APYRAL Opposer has engaged in the business of selling chemicals since long prior to Applicant's filing date of March 31, 2006. Opposer has continuously used its mark in commerce and has not abandoned use of its mark.

Applicant denies the allegations of Paragraph 1, as Applicant is without knowledge or sufficient information to form a belief as to the truth of these allegations.

2. Opposer has secured valuable rights in the mark APYRAL based on use in U.S. commerce and registration.

Applicant denies the allegations of Paragraph 2, as Applicant is without knowledge or sufficient information to form a belief as to the truth of these allegations.

3. Opposer is the owner of the following trademark registration for APYRAL in the United States Patent and Trademark Office ("USPTO"), which is currently in full force and

effect: Incontestable U.S. Registration No. 2,484,520 duly and legally issued on September 4, 2001 on the Principal Register of the Patent and Trademark Office for the mark APYRAL (International Class 1) as applied to "chemicals, namely, aluminum hydroxide, not including binders for lacquers, for use in the manufacture of carpets, floor coverings, and building materials such as heat relief material, roof coatings, and roof insulation; and chemicals, namely aluminum hydroxide, not including binders for lacquers, for the use in the chemical, rubber, plastic and polyurethane processing, cable, paper, plastic and ceramic industries." Said registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit 1. A certified copy of the referenced registration will be submitted during Opposer's testimony period.

Applicant admits that U.S. Trademark Registration No. 2,484,520 appears to have been registered on September 4, 2001, and appears to cover: "chemicals, namely aluminum hydroxide, not including binders for lacquers, for use in the manufacture of carpets, floor coverings, and building materials such as heat relief material, roof coatings, and roof insulation; and chemicals, namely aluminum hydroxide, not including binders for lacquers, for the use in the chemical, rubber, plastic and polyurethane processing, cable, paper, plastic and ceramic industries." Applicant denies the remaining allegations of Paragraph 3, as Applicant is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations.

4. Opposer has expended, and continues to expend significant amounts of money, time and effort in advertising, promoting and popularizing its APYRAL trademark so that the trade in general, and the consuming public in particular, have come to know and recognize Opposer's trademark and products, and to know that the same originate with, and belong to, Opposer.

Applicant denies the allegations of Paragraph 4, as Applicant is without knowledge or sufficient information to form a belief as to the truth of these allegations.

5. Opposer's mark APYRAL is arbitrary as applied to Opposer's goods. The mark is thus highly distinctive and serves as a strong indicator of origin.

Applicant denies the allegations of Paragraph 5, as Applicant is without knowledge or sufficient information to form a belief as to the truth of these allegations.

6. As a consequence of Opposer's continuous and widespread use since at least September 4, 2001, the promotion and advertising of the mark APYRAL, Opposer has acquired substantial and protectable goodwill in such mark in the United States. The mark has been used for and on Opposer's products for a significant period of time and is therefore instantly recognized by consumers as a symbol of the quality of Opposer's goods.

Applicant denies the allegations of Paragraph 6, as Applicant is without knowledge or sufficient information to form a belief as to the truth of these allegations.

7. There is no issue of priority since Opposer's first use (and registration) of its mark precedes Applicant's filing date.

Applicant denies the allegations of Paragraph 7, as Application is without knowledge or sufficient information to form a belief as to the truth of these allegations.

8. Applicant's AZYRAL and Opposer's APYRAL are substantially identical the only distinction between them being the Z in Applicant's mark and the P in Opposer's mark.

Applicant denies the allegations of Paragraph 8.

9. The goods for which Applicant seeks registration of the AZYRAL mark are highly similar to the goods for which and in connection with which Opposer's APYRAL mark has been used for many years. The goods marketed by Opposer are sold to the same consumers, and are thus in competition with the goods to be marketed and sold by Applicant. In addition, the chemical products sold by Opposer and the goods covered by Applicant's mark may be used in the manufacture of identical goods. Opposer encloses herewith printouts from Opposer's and Applicant's websites, www.nabaltec.de and www.huntsman.com, respectively, as Exhibits 2 and 3 evidencing the high similarity of goods.

Applicant denies the allegations of Paragraph 9.

10. Applicant's mark is confusingly and deceptively similar to Opposer's mark and is likely to cause confusion and mistake in the minds of the purchasing public and to deceive the purchasing public as to the source or origin of Applicant's goods. Persons familiar with Opposer's trademark would be likely to believe that Applicant's goods originate with or are sponsored by Opposer. Any such confusion in the trade could seriously injure Opposer to the extent that any defect, objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon the reputation which the Opposer has established for its products offered and merchandised under its mark.

Applicant denies the allegations of Paragraph 10.

11. If the Applicant were granted registration for the subject mark it would thereby obtain at least a *prima facie* exclusive right to the use of its mark on the goods listed in the published application. Such registration and use would be a source of damage and injury to Opposer.

Applicant denies the allegations of Paragraph 11.

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

Applicant denies the allegations of Paragraph 12.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. Applicant affirmatively alleges that as a result of continuous use of its mark by Applicant since its adoption, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of Applicant's products sold under the mark. Such goodwill and widespread usage has made the mark distinctive to Applicant alone.

2. Applicant affirmatively alleges that there is no likelihood of confusion between Applicant's and Opposer's marks.

Second Affirmative Defense

3. Applicant affirmatively alleges that registration of the mark at issue as a whole is not likely to damage Opposer.

Third Affirmative Defense

4. Applicant affirmatively alleges that Applicant's goods are not confusingly similar to Opposer's goods as they differ in nature, in their intended purpose and in their method of use.

Fourth Affirmative Defense

5. Applicant affirmatively alleges that the target purchaser for Applicant's goods is sufficiently distinct from that of Opposer's goods so as to eliminate any likelihood of confusion.

Fifth Affirmative Defense

6. Applicant affirmatively alleges that the target purchasers of both Applicant's and Opposer's goods are sufficiently sophisticated so as to render a likelihood of confusion as to source or origin highly unlikely.

Sixth Affirmative Defense

7. The Opposition and each count thereof are barred in whole or in part by the doctrine of laches.

Seventh Affirmative Defense

8. The Opposition and each count thereof are barred in whole or in part by the doctrine of estoppel.

Eighth Affirmative Defense

13. The Opposition and each count thereof are barred in whole or in part by the doctrine of acquiescence.

Ninth Affirmative Defense

14. After a reasonable opportunity for further investigation and discovery, there is likely to be evidence that Opposer knew when it filed this opposition that it was objectively baseless.

15. After a reasonable opportunity for further investigation and discovery, there is likely to be evidence that Opposer filed this opposition in bad faith, asserting its alleged rights in its mark in this country for the improper purposes.

16. Because Opposer has misused its trademark in this country for the improper purpose of forcing Applicant to give up its rights in its mark, Opposer's mark is unenforceable under the equitable doctrine of trademark misuse.

17. The Opposition and each count thereof are barred in whole or in part by reason of its own unclean hands.

Tenth Affirmative Defense

18. Applicant affirmatively alleges that it has used its mark at issue in the U.S. for at least 2 years.

Eleventh Affirmative Defense

19. Applicant affirmatively alleges that Opposer lacks standing to bring this Opposition.

Twelfth Affirmative Defense

20. Applicant affirmatively alleges that Opposer does not own any mark comprising AZYRAL.

Thirteenth Affirmative Defense

21. Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception because Opposer does not have rights in the mark AZYRAL or any mark confusingly similar thereto, and Opposer does not presently use the mark AZYRAL or any mark confusingly similar thereto.

WHEREFORE, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has failed to show wherein it will be, or is likely to be, damaged by registration of Applicant's mark; and Applicant prays that this opposition be dismissed and that Applicant be granted registration of its mark.

HUNTSMAN ADVANCED MATERIALS
(SWITZERLAND) GMBH

Dated: September 12, 2008 By: Yolanda M. King

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION is being served on September 12, 2008, on the following counsel for Opposer by United States first class mail, postage prepaid:

Leslie K. Mitchell, Esq.
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Yolanda M. King
One of the Attorneys for Applicant