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

Proceeding	91184978
Party	Plaintiff McNeil-PPC, Inc.
Correspondence Address	LAURA POPP-ROSENBERG FROSS ZELNICK LEHRMAN & ZISSU, P.C. 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES lrosenberg@fzlz.com
Submission	Other Motions/Papers
Filer's Name	Laura Popp-Rosenberg
Filer's e-mail	lpopp-rosenberg@fzlz.com,ykarzoan@fzlz.com,mortiz@fzlz.com
Signature	/Laura Popp-Rosenberg/
Date	05/13/2011
Attachments	Opposer's Rebuttal Notice of Reliance on Discovery Responses (F0796725).PDF ( 8 pages )(253760 bytes )

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

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

**Opp. No. 91184978**

**OPPOSER'S REBUTTAL NOTICE OF RELIANCE  
ON DISCOVERY RESPONSES**

Pursuant to Rule 2.120(j)(5) of the Trademark Rules of Practice, Opposer McNEIL-PPC, Inc. ("Opposer") hereby makes of record and notifies Applicant Walgreen Co. ("Applicant") of its reliance on the following:

The General and Specific Objections from Opposer's First Amended Objections and Responses to Applicant's First Set of Interrogatories, a true and correct copy of which is attached hereto as **Opposer's Exhibit 121**. Applicant's Notice of Reliance on Discovery Responses, dated March 24, 2011, relied on Opposer's response to Applicant's Interrogatory No. 15. However, Opposer's response to Applicant's Interrogatory No. 15 incorporated a number of objections, yet Applicant failed to include the text of those objections in its referenced Exhibit 104. As these objections are part of the response Applicant offered in reliance, the objections, in fairness, should be considered so as not to make misleading that which Applicant wishes to rely upon.

Dated: New York, New York  
May 13, 2011

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:  \_\_\_\_\_  
Laura Popp-Rosenberg

Giselle C. Woo

866 United Nations Plaza

New York, New York 10017

Tel: (212) 813-5900

Email: lpopp-rosenberg@frosszelnick.com

gwoo@frosszelnick.com

*Attorneys for Opposer McNEIL-PPC, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **Opposer's Rebuttal Notice of Reliance on Discovery Responses** to be served via First Class U.S. Mail, postage prepaid, in an envelope addressed to counsel for Applicant, Caroline L. Stevens, Esq., Leydig, Voit & Mayer, 1420 Fifth Avenue, Suite 3670, Seattle, WA 98101, this 13<sup>th</sup> day of May, 2011.

  
\_\_\_\_\_  
Laura Popp-Rosenberg

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McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

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**EXHIBIT 121  
TO  
OPPOSER'S REBUTTAL NOTICE OF RELIANCE  
ON DISCOVERY RESPONSES**

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

McNEIL-PPC, INC.,

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-against-

WALGREEN CO.,

Applicant.

**Opp. No. 91184978**

**OPPOSER'S FIRST AMENDED OBJECTIONS AND  
RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer McNeil-PPC, Inc. ("Opposer"), by its counsel Fross Zelnick Lehrman & Zissu, P.C., responds as follows to Applicant's First Set of Interrogatories (the "Interrogatories," and each interrogatory individually, an "Interrogatory"):

**GENERAL OBJECTIONS**

The following general objections are incorporated in full into each response as if fully set forth therein, and all responses are subject to these general objections.

1. Opposer objects to the requirement that responses be provided within thirty (30) days. As the Interrogatories were served by mail, the applicable rules provide that Opposer has thirty-five (35) days to respond.
2. Opposer objects to the Instructions and Definitions set forth in the Interrogatories to the extent they seek to impose greater burdens on Opposer than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

3. Opposer objects to the definition of “Opposer” to the extent that the definition purports to require Opposer to seek or obtain information that is not in its possession, custody or control.

4. Opposer objects to every Interrogatory to the extent that it is not limited to information concerning activities in the United States. Except as otherwise specifically stated, Opposer’s responses are limited to activities in the United States.

5. Opposer’s responses and objections are without prejudice to, and Opposer does not waive, any evidentiary objections relating to any Interrogatory or the response to any Interrogatory.

6. Opposer has not concluded its investigation of the facts relating to this case and has not completed formal discovery or preparation for trial. Accordingly, there may exist information responsive to the Interrogatories that Opposer does not yet have knowledge of or has not yet located, identified or reviewed. All of the following responses are therefore based on such information currently known or available to Opposer after a reasonable inquiry. Opposer reserves the right to alter, amend or supplement its responses.

7. Nothing contained in any response to any Interrogatory shall be construed as an admission by Opposer relative to the existence or non-existence of any information, and no such response shall be construed as an admission respecting the relevance or admissibility of any information, or the truth or accuracy of any statement or characterization contained in any Interrogatory.

#### SPECIFIC OBJECTIONS

The following specific objections may be incorporated in Opposer’s response to a particular Interrogatory. Opposer’s decision not to specifically reference one or more of the following

objections in its response to a particular Interrogatory is not an admission that the Interrogatory is not objectionable on that basis.

A. The Interrogatory exposes Opposer to undue burden or expense in relation to its likely benefit, taking into account the needs of the case, the property in controversy, Opposer's resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

B. The Interrogatory is unreasonably cumulative or duplicative, or the requested information can be obtained from some other source that is more convenient, less burdensome, or less expensive.

C. The Interrogatory is not reasonably calculated to lead to the discovery of admissible or relevant evidence.

D. The Interrogatory is not reasonably particular, or seeks information merely tangential to the matters at issue in the case, or is not limited to a particular time period.

E. The Interrogatory seeks information that is not within Opposer's possession, custody or control.

F. The wording of the Interrogatory is vague and/or ambiguous including, without limitation, due to use of undefined terms.

#### SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 1 State the process through which Opposer chose the mark "ZYRTEC," including information regarding any searches or surveys that were done, any opinions sought, any internal discussions had, and any other marks considered for use in connection with the goods referenced, the meaning intended to convey, as well as the timeline during which this process occurred and identify all documents referring or relating thereto.

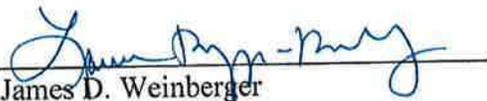
Response to Interrogatory No. 21:

Opposer objects to Interrogatory No. 21 on the basis of Specific Objections A and F. Opposer further objects to Interrogatory No. 21 to the extent that Federal Rule of Civil Procedure 26(a)(2)(B) does not require the identification of the requested information except in the written expert report. Subject to and without waiving the foregoing objections, Opposer has not yet retained any expert to testify on its behalf in connection with this proceeding.

Dated: New York, New York  
October 27, 2010

AS TO OBJECTIONS:

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

James D. Weinberger

Laura Popp-Rosenberg

866 United Nations Plaza

New York, New York 10017

(212) 813-5900

*Attorneys for Opposer McNEIL-PPC, Inc.*