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Filing date: **12/05/2012**

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 PC 866 UNITED NATIONS PLAZA, 6TH FLOOR NEW YORK, NY 10017 UNITED STATES lrosenberg@fzlz.com, jweinberger@fzlz.com, ghuron@fzlz.com
Submission	Other Motions/Papers
Filer's Name	Laura Popp-Rosenberg
Filer's e-mail	lpopp-rosenberg@fzlz.com
Signature	/Laura Popp-Rosenberg/
Date	12/05/2012
Attachments	F1132311.PDF (12 pages)(6562183 bytes)

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

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opposition No. 91184978

COMMUNICATION TO THE BOARD

Pursuant to a request by the Trademark Trial and Appeal Board (Board), Opposer submits herewith copies of Exhibits 4 and 5 to the Deposition of Rohinish Hooda.

The Exhibits were previously filed with the Board, Opposer believes as part of a submission with a cover sheet reading:

EXHIBITS

1-3, 6-9, 20, 27, 45 – 62, 70, 72-76,
80 – 83, 85 – 86, 101

To The January 13, 2011
Deposition of Rohinish Hooda

(FILED UNDER SEAL)

The cover sheet was intended to convey that the identified exhibits were not included, having been filed under seal. Opposer regrets any confusion the wording of the cover sheet may have caused.

Dated: December 5, 2012

Respectfully Submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: /Laura Popp-Rosenberg/

James D. Weinberger

Laura Popp-Rosenberg

Giselle C.W. Huron

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New York, New York 10017

Tel.: (212) 813-5900

Email: jweinberger@fzlz.com

lpopp-rosenberg@fzlz.com

ghuron@fzlz.com

EXHIBIT 4

<<Date>>

<<Employee Name>>

<<Address>>

<<Address>>

<<City, State>> <<Zip>>

Dear <<First Name>> <<Last Name>>:

We are writing to provide you with important information regarding ZYRTEC® (cetirizine HCl) products. Medco is the company chosen to manage your prescription drug benefits.

In the past, your doctor has prescribed a ZYRTEC® allergy medication for you. If this was for indoor or outdoor upper respiratory allergies, you should know that the same 24-hour, original prescription-strength ZYRTEC®—the #1 prescribed¹ medicine for relieving indoor or outdoor upper respiratory allergy symptoms—is available without a prescription in stores where over-the-counter (OTC) products are sold. Prescription ZYRTEC® is no longer available or covered under your pharmacy plan.

You can save \$5.00 on your next purchase.

ZYRTEC®, manufactured by McNeil Consumer Healthcare, is available OTC. Choose from:

- ~ ZYRTEC® Tablets
- ~ Children's ZYRTEC® Syrup
- ~ Children's ZYRTEC® Chewable Tablets

In addition, ZYRTEC-D® 12-HOUR® Extended Release Tablets are available without a prescription in most states. You can ask for ZYRTEC-D® at the retail or pharmacy counter where you buy OTC products.

The enclosed Question & Answer sheet on ZYRTEC® provides more information and includes a special manufacturer's coupon for \$5.00 off your next purchase of ZYRTEC® products. This coupon may be redeemed wherever OTC products are sold.

Sincerely,



Tracy L. Furguele, R.Ph.
Vice President of Pharmacy Practice

1. IMS Total Prescriptions 2004-2007.

ZYRTEC® is approved for use in children 2 years of age and above for upper respiratory allergy symptoms and for ages 6 years and above for hives. Any other use in children requires a prescription. This mailing was funded by McNeil Consumer Healthcare, a Division of McNEIL-PPC, Inc., which is the maker of ZYRTEC®. Beyond sponsoring this communication, McNeil Consumer Healthcare has no responsibility for the prescription drug benefit management services provided by Medco Health Solutions, Inc., including but not limited to, Medco By Mail and the drug utilization review services under which Medco By Mail pharmacists check your order against potential drug interactions. No patient information has been provided to McNeil. The ZYRTEC® trademark is used under license from UCB S.A. Prices subject to change without notice. All applicable sales taxes will be added to your order.

ZYRTEC® is available without a prescription.

Save \$5.00 on your next purchase.



Medco manages your prescription drug benefit for your health plan.

Improving health while lowering cost keeps Medco® at the Heart of Health™

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

McNeil-PPC, Inc.,

Opposer,

Opp. No. 91184978

2Medco_ZYR_Fall08_749A_061508

v.

Walgreen Co.,

Applicant.

McNeil 001217

<<Date>>

<<Employee Name>>

<<Address>>

<<Address>>

<<City, State>> <<Zip>>

Refill your over-the-counter antihistamine
through *Medco By Mail*
and you could enjoy more savings from a
special manufacturer's coupon.

Dear <<First Name>> <<Last Name>>:

We are writing to provide you with important information regarding 10-mg ZYRTEC® and generic cetirizine HCl tablets.

Our records show that in the past you have relied on **Medco By Mail** to provide allergy relief with ZYRTEC® 10-mg tablets or generic cetirizine HCl for indoor or outdoor upper respiratory allergies. For your continued care and convenience—and in time for the upcoming fall allergy season—Medco is continuing to make these products available to you by mail **at a special price.**



What you'll pay. And what you'll save.

📌 **\$38.99[†] for 90 tablets of brand-name ZYRTEC®**

This represents a savings of \$15 on your next order with manufacturer's savings coupon.

📌 **\$25.99[‡] for 100 tablets of generic cetirizine HCl**

Refilling ZYRTEC® or generic cetirizine HCl is easy.

Choose the option that's best for you.

- **Online**—Visit us online at www.medco.com. If you haven't already registered, be sure to have your prescription ID card and a recent prescription number available.
- **By phone**—Call **1 800 4REFILL** and have your order number handy to automatically refill your ZYRTEC® or generic cetirizine HCl or call **1 800 903 8642** to speak to a representative. Representatives are available Monday through Friday, 8:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 6:00 p.m., Eastern Time.
- **By mail**—Complete and mail the enclosed order form.

ZYRTEC® 10-mg and generic cetirizine HCl are also available where OTC products are sold. Please see the enclosed Question-and-Answer sheet for additional information and special \$5 or \$15 manufacturer's savings for ZYRTEC® that can be used at these stores.

You can stay with the medication you trust—with added convenience.

You can continue using ZYRTEC[®]—the #1 prescribed¹ medicine for relieving indoor or outdoor upper respiratory allergy symptoms—and continue to receive the many benefits of mail order such as Medco By Mail pharmacists checking your order for any potential drug interactions and you will get free delivery on standard shipping. When it's time to reorder, you can either call or visit us online at www.medco.com.

For the allergy medicine you depend on, depend on Medco By Mail.

And remember—regardless of how you order brand-name ZYRTEC[®] 10-mg tablets your one-time \$15 manufacturer's savings coupon will be activated.

Sincerely,



Tracy L. Furgiuele, R.Ph.
Vice President of Pharmacy Practice

1. IMS Total Prescriptions 2004-2007.

† Coupon offer expires on December 31, 2008.

‡ Prices subject to change without notice. All applicable sales taxes will be added to your order.

ZYRTEC[®] is approved for use in children 2 years of age and above for upper respiratory allergy symptoms and for ages 6 years and above for hives. Any other use in children requires a prescription. This mailing was funded by McNeil Consumer Healthcare, a Division of McNEIL-PPC Inc., which is the maker of ZYRTEC[®]. Beyond sponsoring this communication, McNeil Consumer Healthcare has no responsibility for the prescription drug benefit management services provided by Medco Health Solutions, Inc., including but not limited to, Medco By Mail and the drug utilization review services under which Medco By Mail pharmacists check your order against potential drug interactions. No patient information has been provided to McNeil. The ZYRTEC[®] trademark is used under license from UCB S.A. Prices subject to change without notice. All applicable sales taxes will be added to your order.

Medco manages your prescription drug benefit for your health plan.

Improving health while lowering cost keeps Medco[®] at the Heart of Health[™]

2Medco_ZYR_Fall08_749B_061908

McNeil 001219

<<Date>>
<<Employee Name>>
<<Address>>
<<Address>>
<<City, State>> <<Zip>>

10-mg ZYRTEC® tablets are available
without a prescription.

Call 1 800 903 8642 and ZYRTEC® will be
delivered right to you—with savings
from a special manufacturer's coupon.

Dear <<First Name>> <<Last Name>>:

We are writing to provide you with important information regarding 10-mg ZYRTEC® (cetirizine HCl) tablets. Medco is the company that was chosen to manage your prescription drug benefit.

Our records show that you have used 10-mg ZYRTEC® in the past for indoor or outdoor upper respiratory allergies. This is why you should know that the same 24-hour, original prescription-strength product—and generic cetirizine HCl—are being sold as over-the-counter (OTC) medications. Prescription ZYRTEC® is no longer available or covered under your pharmacy plan.

For your convenience in treating your allergy symptoms during the upcoming Fall allergy season, Medco is making ZYRTEC® and generic cetirizine HCl available to you through **Medco By Mail**—your plan's mail-order pharmacy. ZYRTEC® is manufactured by McNeil Consumer Healthcare.

What you'll pay. And what you'll save.

> **\$38.99⁺ for 90 tablets of brand-name ZYRTEC®.**

This represents a savings of \$15 on your next order with manufacturer's savings coupon.

> **\$25.99⁺ for 100 tablets of generic cetirizine HCl**

Ordering ZYRTEC® or cetirizine HCl is easy.

Choose the ordering option that's best for you:

- **By mail:** Simply complete and mail the enclosed order form.
- **By phone:** Call **1 800 903 8642**. You can reach a Medco Representative Monday through Friday, 8:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 6:00 p.m., Eastern Time.

Regardless of how you order brand-name ZYRTEC® 10-mg tablets, your \$15 manufacturer's savings coupon will be activated.



SAVE \$15

ON YOUR NEXT
90-TABLET ORDER
OF ZYRTEC®

Call toll-free
1 800 903-8642.

See enclosed
sheet. Offer
expires 12/31/08

You can stay with the medication you trust—with added convenience.

You can continue using ZYRTEC[®]—the #1 prescribed¹ medicine for relieving indoor or outdoor upper respiratory allergy symptoms—and enjoy the many benefits of mail order. **Medco By Mail** Pharmacists will check your order for any potential drug interactions, you get free delivery on standard shipping and, when it's time to reorder, you can either call or visit us online at www.medco.com. If you are a first-time visitor to the site, please take a moment to register. Please have your member ID and prescription number available.

ZYRTEC[®] 10-mg tablets and generic cetirizine HCl are also available where OTC products are sold. Please see the enclosed Question-and-Answer sheet for additional information and special \$5 or \$15 ZYRTEC[®] manufacturer's savings that can be used at these stores.

For the allergy medicine you depend on, depend on Medco By Mail.

Simply return the enclosed order form or call toll-free **1 800 903 8642**, Monday to Friday, 8:00 a.m. to 8:00 p.m., and Saturday, 9:00 a.m. to 6:00 p.m., Eastern time.

Sincerely,



Tracy L. Furgiuele, R.Ph.
Vice President of Pharmacy Practice

1. IMS Total Prescriptions 2004-2007.

† Coupon offer expires on December 31, 2008.

‡ Prices subject to change without notice. All applicable sales taxes will be added to your order.

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Medco manages your prescription drug benefit for your health plan.

Improving health while lowering cost keeps Medco[®] at the Heart of Health[™]

Get a \$15.00 REFUND On Your Next Purchase Of (2) 45 Count of ZYRTEC®
Official Mail In Certificate Offer Expires 12/31/08

OR SAVE \$5.00
on your next retail purchase of ZYRTEC®

See Reverse Side For Details

Please print your name and address clearly

Name _____

Street Address _____ (No P.O. Boxes)

City _____ State _____ Zip _____

Price paid for this Purchase \$ _____
748F08

In order to receive your refund for \$15, you must do the following:

1. Complete this original mail-in certificate
2. Locate the entire original store-identified receipt dated on or between 9/1/08 and 12/31/08
3. Write the UPC number from the ZYRTEC® package on the receipt
4. Circle the price paid on the original receipt
5. Send this original certificate, original store-identified receipt and written UPC number as described above to:

ZYRTEC® \$15.00 Refund Offer,
PO Box 3255, Lancaster, PA 17604

Not to be combined with any other offer.

Offer expires on 12/31/08. All requests must be received by 1/30/09. Offer limited to 1 request per family, household, or address. Please allow 6-8 weeks for processing refund request. This original certificate and store-identified receipt must be the original and may not be reproduced. No clubs, groups, or organizations may participate. Offer valid only in USA and/or FPOs and APOs. McNEIL Consumer Healthcare Division of McNEIL-PPC, Inc. is not responsible for late, lost, misdirected, or damaged mail. Duplicate requests will not be honored or acknowledged. Void where prohibited, taxed or restricted. This offer is only for the original retail purchaser of the product specified. United States Postal Service prohibits the use of the U.S. Mail service to attempt to defraud, or obtain money, refunds or property by fraudulent means, such as the use of fictitious names or addresses. Multiple or fraudulent submissions could result in federal prosecution under mail fraud statutes (Title 18, United States Code, Sections 4674 and 1342 and/or 1348). Cash redemption value 1/100 of \$ 01. For questions regarding this offer, call 1-800-848-0027

MAIL-IN OFFER ONLY — NOT REDEEMABLE AT RETAIL

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MANUFACTURER'S COUPON EXPIRES 12/31/08

SAVE \$5.00

when you buy



ZYRTEC®
30 ct or higher

OR



ZYRTEC-D® 24 ct
Use only as directed.

OR



any
CHILDREN'S
ZYRTEC®

2Medco_F08_001103

Visit www.myhealthyseasons.com for more information and special offers

CONSUMER: Limit one coupon per purchase specified. Any other use constitutes fraud. Void if copied, transferred or expired.

RETAILER: We will pay you for the face value of this coupon, plus 8¢ handling, if submitted in compliance with the McNeil Consumer Healthcare Division of McNEIL-PPC, Inc. Coupon Redemption Policy, available upon request. Void where prohibited, taxed or restricted by law. Cash value 1/100¢. Mail coupons to: McNeil Consumer Healthcare Division of McNEIL-PPC, Inc., NCH, P.O. Box #880142, El Paso, TX 88588-0142. Expires 12/31/08. For questions regarding this coupon, call 1-800-648-0027.

© McNEIL-PPC, Inc. 2008



Zyrtec Medco \$15 Refund

	Project #: U8AC24105-1-ZYR-CPN-MMKT			Creative Concept Approval* Approved By: _____ Date: _____ Name: Joan Lamensdorf Approved By: _____ Date: _____ Name: Keith Monse Approved By: _____ Date: _____ Name: Cara Snell *Sign-off required for Tier 1 & Tier 2 prior to routing
	Description: Zyrtec MEDCO Refund			
	Designer: Randee A		Phone: 7745	
Date	Rev #	Artist	Nature of Revisions	
6/12/08	0	RA	New layout	
CREATIVE CHECKLIST				
Yes <input type="checkbox"/>	N/A <input type="checkbox"/>	• Appropriate Slug & Filled Out Accurately	Yes <input type="checkbox"/> N/A <input type="checkbox"/> • "Use as Directed" or "Use All Products as Directed"	
Yes <input type="checkbox"/>	N/A <input type="checkbox"/>	• Appropriate Legends Included	Yes <input type="checkbox"/> N/A <input type="checkbox"/> • Update © Year	
Yes <input type="checkbox"/>	N/A <input type="checkbox"/>	• Provided Printouts of Reference Packaging	Yes <input type="checkbox"/> N/A <input type="checkbox"/> • Accuracy of Grammar, Punctuation & Spelling	
Yes <input type="checkbox"/>	N/A <input type="checkbox"/>	• Verify Trademarks, Logos & Brand Names	Yes <input type="checkbox"/> N/A <input type="checkbox"/> • Create PDF(s)	
For Administrative Use Only				
<input type="checkbox"/> Ready for ARC/LARC Review				

EXHIBIT 5



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

McNeil-PPC, Inc.,

Opposer,

Opp. No. 91184978

v.

Walgreen Co.,

Applicant.

Rohinish Hooda; Opposer Test. Dep. Ex. 5

Active ingredient (in each tablet): cetirizine HCl 10 mg. Cetirizine HCl temporarily relieves the symptoms of seasonal allergic rhinitis (runny nose, itchy nose or throat) and allergic conjunctivitis (itchy, watery eyes). Do not use if you are hypersensitive to cetirizine HCl or to any of the other ingredients. Your doctor should be consulted before use if you have kidney disease. Your doctor should be consulted if you are pregnant or breastfeeding. Drowsiness may occur. An increase in drowsiness may occur if you take cetirizine HCl with alcohol. Ask a doctor if an allergic reaction occurs.

McNeil 001314

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing
Communication to the Board to be served on counsel for Walgreen Co., Mark Liss,
Esq., and Caroline Stephens, Esq., Leydig, Voit & Mayer, Ltd., by email, this 5th day of
December, 2012.

/Laura Popp-Rosenberg/
Laura Popp-Rosenberg