

ESTTA Tracking number: **ESTTA229266**

Filing date: **08/08/2008**

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

Proceeding	91184978
Party	Defendant Walgreen Co.
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Submission	Answer
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Date	08/08/2008
Attachments	Answer to NOA.pdf (8 pages)(1353404 bytes)

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

McNEIL-PPC, Inc.)	In re Trademark Application
)	Serial No. 76/682,070
Opposer,)	Opposition No. 91184978
)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

In the matter of Application Serial No. 76/682,070 for registration of the mark "WAL-ZYR" by Walgreen Company (hereinafter "Applicant"), which was filed on September 19, 2007, Applicant hereby submits its Answer to the Notice of Opposition filed by McNeil-PPC, Inc. (hereinafter "Opposer) as follows:

Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the corporate allegations relating to Opposer as contained in the un-numbered introductory Paragraph of the Notice of Opposition and, therefore, denies each and every allegation therein. Answering further, Applicant denies that Opposer will be damaged by registration of Applicant's mark as alleged in the un-numbered introductory Paragraph of the Notice of Opposition. Applicant admits that it has sought to register Application Serial No. 76/682,070 for the mark "WAL-ZYR," and said application was filed on September 19, 2007 as alleged in the un-numbered opening Paragraph of the Notice of Opposition and that Opposer has initiated this Opposition proceeding.

1. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Notice of Opposition and, therefore, denies each and every allegation therein.

2. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Notice of Opposition and, therefore, denies each and every allegation therein.

3. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of the Notice of Opposition and, therefore, denies each and every allegation therein.

4. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 of the Notice of Opposition and, therefore, denies each and every allegation therein.

5. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of the Notice of Opposition and, therefore, denies each and every allegation therein.

6. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Notice of Opposition and, therefore, denies each and every allegation therein.

7. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Notice of Opposition and, therefore, denies each and every allegation therein.

8. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Notice of Opposition and, therefore, denies each and every allegation therein.

9. Applicant admits that an allergy medication known as ZYRTEC is available over-the-counter as alleged in Paragraph 9 of the Notice of Opposition. Answering further, Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 9 of the Notice of Opposition and, therefore, denies each and every allegation therein.

10. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of the Notice of Opposition and, therefore, denies each and every allegation therein.

11. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of the Notice of Opposition and, therefore, denies each and every allegation therein.

12. Applicant denies that ZYRTEC is well known and famous as alleged in Paragraph 12 of the Notice of Opposition. Answering further, Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 12 of the Notice of Opposition and, therefore, denies each and every allegation therein.

13. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in the first sentence of Paragraph 13 of the Notice of Opposition concerning Opposer's alleged status as an exclusive licensee of UCB and, therefore, denies each and every such allegation. Applicant lacks sufficient information with which to

form a belief as to the truth or falsity of the remaining allegations contained in the first sentence of Paragraph 13 of the Notice of Opposition and, therefore, denies each and every allegation therein. Answering further, Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in the second sentence of Paragraph 13 of the Notice of Opposition relating to whether the registration is valid, subsisting and in full force and effect and, therefore, denies those allegations. Answering further, the remaining allegations contained in the second sentence of Paragraph 13 of the Notice of Opposition are legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies those allegations. Applicant admits that a document purporting to be Exhibit A was attached to the Notice of Opposition as alleged in the third sentence of Paragraph 13 of the Notice of Opposition. Applicant further admits that said document appears to be a printout from the USPTO TARR web server, but lacks knowledge of the remaining allegations in the third sentence of Paragraph 13 and therefore denies the same.

14. Applicant admits the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant admits the allegations contained in Paragraph 15 of the Notice of Opposition.

COUNT I—LIKELIHOOD OF CONFUSION

16. Applicant repeats and reasserts its answers to Paragraphs 1-15 above as its answers to Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in Paragraph 17 of the Notice of Opposition.

18. Applicant admits that it uses its WAL-ZYR mark in connection with allergy medicine as alleged in Paragraph 18 of the Notice of Opposition. Answering further, Applicant denies the remaining allegations contained in Paragraph 18 of the Notice of Opposition.

19. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 19 of the Notice of Opposition concerning how Opposer has targeted or intends to target customers for its ZYRTEC product and, therefore, denies those allegations. Answering further, Applicant admits that it has targeted and intends to target customers who require allergy medications for its WAL-ZYR product. Answering further, Applicant denies the remaining allegations contained in Paragraph 19 of the Notice of Opposition.

20. Applicant admits that one of the ways it markets and intends to market its WAL-ZYR product is next to or in close proximity to Opposer's product on Applicant's shelves as alleged in Paragraph 20 of the Notice of Opposition. Answering further, Applicant denies that it intends to market its WAL-ZYR product "in Opposer's in-store display units" as alleged in Paragraph 20 of the Notice of Opposition.

21. Applicant denies each and every allegation contained in Paragraph 21 of the Notice of Opposition.

22. Applicant denies each and every allegation contained in Paragraph 22 of the Notice of Opposition.

23. Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 23 of the Notice of Opposition relating to UCB's adoption and use of the ZYRTEC mark and, therefore, denies each and every allegation therein.

24. Applicant admits it has sold ZYRTEC in its retail pharmacies since about when the product was first available. Answering further, Applicant lacks sufficient information with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 24 of the Notice of Opposition and, therefore, denies each and every allegation therein.

25. Applicant denies each and every allegation contained in Paragraph 25 of the Notice of Opposition.

COUNT II--DILUTION

26. Applicant repeats and reasserts its answers to Paragraphs 1-25 above as its answers to Paragraph 26 of the Notice of Opposition

27. Applicant denies the allegations contained in Paragraph 27 of the Notice of Opposition.

28. Applicant admits that it adopted and applied to register WAL-ZYR with some general awareness of the ZYRTEC mark. Answering further, Applicant denies that it adopted and applied to register WAL-ZYR with full knowledge of the prior use and alleged fame of the ZYRTEC mark as alleged in Paragraph 28 of the Notice of Opposition.

29. The allegations contained in Paragraph 29 of the Notice of Opposition are legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies those allegations.

30. Applicant denies each and every allegation contained in Paragraph 30 of the Notice of Opposition.

AFFIRMATIVE DEFENSE

Applicant has developed a family of marks using the prefix "WAL-," including such marks as "WAL-DRYL," Registration Number 2,167,642 and "WAL-HIST," Registration Number 2,167,643, among others. The public has come to know Applicant and its goods by marks using the distinctive "WAL-" prefix. Further, Applicant's own "WALGREENS" mark has become famous and associated in the minds of consumers with quality goods due to extensive use, advertising and marketing of that mark and products bearing such mark. Consumer awareness of Applicant and its famous "WALGREENS" and family of "WAL-" marks like "WAL-HIST," "WAL-DRYL" and others negates any potential confusion with Opposer and its mark.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing Applicant's Answer to Notice of Opposition was mailed by first class mail, postage prepaid on this 8th day of August, 2008 to:

James D. Weinberger
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