

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

TTAB

January 19, 2011

Partners

- Ronald J. Lehrman
- Stephen Bigger
- Roger L. Zissu
- Richard Z. Lehv
- David Ehrlich
- Susan Upton Douglass
- Janet L. Hoffman
- Peter J. Silverman
- Lawrence Eli Apolzon
- Barbara A. Solomon
- Mark D. Engelmann
- Nadine H. Jacobson
- Andrew N. Fredbeck
- Craig S. Mende
- J. Allison Strickland
- John P. Margiotta
- Lydia T. Gobena
- Carlos Cucurella
- James D. Weinberger
- David Donahue
- Nancy E. Sabarra
- Charles T.J. Weigell III
- Laura Popp-Rosenberg
- Cara A. Boyle

Ann Linnehan, Esq.
 U.S. Patent and Trademark Office
 Trademark Trial and Appeal Board
 P.O. Box 1451
 Alexandria, VA 22313-1451

Re: *McNEIL-PPC, Inc. v. Walgreen Co.*, Opposition No. 91184978
 (Our Ref: J&J USA TC-08/05863)

76682070

Dear Ms. Linnehan:

On January 18, 2011, I deposited with our firm's messenger service the Trial Declaration of Giselle Woo ("Woo Declaration") and exhibits 102-106 (which together total approximately 6,000 pages) to be sent via United States Postal Service – Express Mail, as listed on the first page of the Woo Declaration. (Attached for ease of reference.) Without my knowledge, however, when the messenger arrived at the post office, he changed the method of shipping to Priority Mail. Please let us know if you would like us to resend the documents via Express Mail, or if we can provide any additional information.

Special Counsel

- Michael I. Davis

Counsel

- James D. Silberstein
- Joyce M. Ferraro
- Robert A. Becker
- Michael Chiappetta
- Tamar Niv Bessinger
- Nancy C. DiConza

Associates

- Karen Lim
- Casey M. Daum
- Xiomara Triana
- Jason Jones
- Alexander L. Greenberg
- Lesley J. Matty
- Giselle C. Woo
- Anna Leipsic
- Lisa S. Yao
- Todd Martin

Respectfully,

Yuoseph Karzoan
 Legal Assistant
 212.813.5977
 ykarzoan@fzlz.com

cc: Caroline L. Stevens, counsel for Applicant (by email)



01-26-2011

U.S. Patent & TMO/TM Mail Reg. Et. #72

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

TRIAL DECLARATION OF GISELLE C. WOO

Giselle C. Woo declares under penalty of perjury as follows:

1. I am an associate with the firm Fross, Zelnick, Lehrman & Zissu, P.C., 866 United Nations Plaza, New York 10017, attorneys for Opposer McNEIL-PPC, Inc. ("Opposer"). This declaration is based on my personal knowledge and my review of my firm's business records, and is submitted as my trial testimony as a witness for Opposer in connection with the above-referenced matter.

2. On June 30, 2009, a search for references to the mark ZYRTEC in U.S. media was performed by an employee of my firm using the United States News (database identifier = USNEWS) database of the online legal search service Westlaw. Other than the term "ZYRTEC," no additional search terms or parameters were employed. Attached hereto as **Opposer's Exhibit 102** is a true and correct copy of the search result list from the aforementioned search. Note that Westlaw limits search results to only the first 10,000 documents. Thus, the search result list only shows documents ranging from July 1999 to June 2009 despite no time parameters having been used in connection with the search.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service via Express Mail No. 815845062 and 815845076 in an envelope addressed to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on:

1/18/2011
(Date of Deposit)

Yuoseph Karzoan
(Printed name of person mailing paper or fee)

Yuoseph Karzoan
(Signature)

1/18/2011
(Date of Signature)

3. On September 1, 2010, I conducted a search of Westlaw's United States News database for U.S. media references to the mark ZYRTEC between January 1, 2000 and December 31, 2004. The specific search instruction I used was "ZYRTEC and da(aft 1/1/2000 & bef 12/31/2004)." Attached hereto as **Opposer's Exhibit 103** is a true and correct copy of the search result list from the aforementioned search.

4. Also on September 1, 2010, I conducted a search of Westlaw's United States News database for U.S. media references to the mark ZYRTEC between January 1, 2005 and December 31, 2009. The specific search instruction I used was "ZYRTEC and da(aft 1/1/2005 & bef 12/31/2009)." Attached hereto as **Opposer's Exhibit 104** is a true and correct copy of the search result list from the aforementioned search.

5. Finally on September 1, 2010, I conducted a search of Westlaw's United States News database for U.S. media references to the mark ZYRTEC after January 1, 2009 that did not also reference the word "recall."¹ The specific search instruction I used was "ZYRTEC and da(aft 1/1/2010) %recall." Attached hereto as **Opposer's Exhibit 105** is a true and correct copy of the search result list from the aforementioned search.

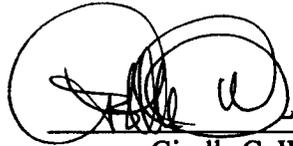
6. Attached hereto as **Opposer's Exhibit 106** is a true and correct copy of the summary of the contents of Westlaw's United States News database, printed on January 14, 2010 from http://web2.westlaw.com/scope/default.aspx?db=USNEWS&RP=/scope/default.wl&RS=WLW11.01&VR=2.0&SV=Split&FN=_top&MT=Westlaw&MST=. Upon information and belief, the contents of Westlaw's United States News database with respect to the

¹ I excluded the word "recall" because the initial search, which included only the terms "ZYRTEC and da(aft 1/1/2010)," yielded a results document that was too voluminous to download due to the inclusion of results referencing the recall of a number of Johnson & Johnson (parent company of Opposer) products unrelated to the underlying proceeding.

type of publications included in the database was the same or similar at the time the searches referenced herein were conducted.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, declares that all statements made of her own knowledge are true, and all statements made on information and belief are believed to be true.

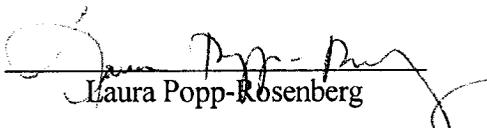
Declared under penalty of perjury this 18th day of January, 2011, at New York, New York.



Giselle C. Woo

CERTIFICATE OF SERVICE

This is to certify that I caused a true and correct copy of the foregoing **Trial Declaration of Giselle C. Woo** to be deposited with the United States Postal Service as First Class mail, postage prepaid, in an envelope addressed to counsel for Walgreen Co., Caroline L. Stevens, Esq., Leydig, Voit & Mayer, Ltd., 1420 Fifth Avenue, Suite 3670, Seattle, Washington 98101-4011, this 18th day of January, 2011.


Laura Popp-Rosenberg