

ESTTA Tracking number: **ESTTA399742**

Filing date: **03/24/2011**

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

Proceeding	91184978
Party	Defendant Walgreen Co.
Correspondence Address	MARK J. LISS LEYDIG, VOIT & MAYER, LTD. TWO PRUDENTIAL PLAZA, SUITE 4900 CHICAGO, IL 60601 UNITED STATES cstevens@leydig.com
Submission	Defendant's Notice of Reliance
Filer's Name	Michelle L. Calkins
Filer's e-mail	mcalkins@leydig.com, cstevens@leydig.com, mliiss@leydig.com
Signature	/Michelle L. Calkins/
Date	03/24/2011
Attachments	2011.03.24 Walgreen's Notice of Reliance on Discovery Responses.pdf (14 pages)(400656 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

APPLICANT'S NOTICE OF RELIANCE ON DISCOVERY RESPONSES

Applicant, Walgreen Company, by its undersigned attorneys and pursuant to Rule 2.120, of the Trademark Rules of Practice, hereby gives notice that it intends to rely at trial on the following material evidence, relevant to the issues raised by the pleadings herein:

Exhibit 104. Pursuant to 37 C.F.R. § 2.120(j)(3)(i), Opposer's response to Applicant's Interrogatory No. 15, dated October 27, 2010, a true and correct copy of which is attached.

Exhibit 105. Pursuant to 37 C.F.R. § 2.120(j)(5), the general objections lodged to Opposer's definitions and instructions. Opposer included its definitions and instructions as Opposer's Exhibit 119 to Opposer's Notice of Reliance on Discovery Responses, presumably as an aid to the Board, giving the Board the impression that these definitions and instructions were agreed to by the parties. Applicant did enter objections to these definitions and instructions, which it suggests that in fairness be considered by the Board.

Respectfully submitted,

Date: March 24, 2011

A handwritten signature in cursive script, reading "Michelle Calkins", written over a horizontal line.

Mark J. Liss
Caroline L. Stevens
Michelle L. Calkins
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza
180 N. Stetson Avenue, Suite 4900
Chicago, IL 60601-6731
Tel: (312) 616-5600
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached APPLICANT'S NOTICE OF RELIANCE ON DISCOVERY RESPONSES was served on March 24, 2011, via first class mail and email to the following:

Laura Popp-Rosenberg
Fross, Zelnick, Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
lpopp-rosenberg@fzlz.com



Michelle L. Calkins

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that a copy of the attached APPLICANT'S NOTICE OF RELIANCE ON DISCOVERY RESPONSES was electronically filed with the Trademark Trial and Appeal Board's "Electronic System for Trademark Trials and Appeals ("ESTTA") on the date shown below:

Dated: March 24, 2011



Michelle L. Calkins

**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

EXHIBIT 104
TO
APPLICANT'S NOTICE OF RELIANCE ON
DISCOVERY RESPONSES

**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 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.

Interrogatory No. 13 Identify all of Opposer's competitors for goods offered under "ZYRTEC," and identify all documents referring or relating thereto.

Response to Interrogatory No. 13:

Opposer objects to Interrogatory No. 13 on the basis of Specific Objections A, C and F. Opposer further objects to Interrogatory No. 13 to the extent that the requested information is already known to Applicant by virtue of Applicant's own sales of products bearing the ZYRTEC mark and products competitive thereto, including but not limited to Applicant's own WAL-ZYR products. Subject to and without waiving the foregoing objections, all allergy medicines and allergy-symptom relief products compete with Opposer's ZYRTEC products, including but not limited to Applicant's WAL-ZYR product.

Interrogatory No. 14 Identify all facts and circumstances regarding Opposer's awareness of Applicant's use of "WAL-ZYR," and identify all documents referring or relating thereto.

Response to Interrogatory No. 14:

Opposer objects to Interrogatory No. 14 on the basis of Specific Objections A and F. Subject to and without waiving the foregoing objections, Opposer became aware of Applicant's use of WAL-ZYR when some of Opposer's sales representatives saw WAL-ZYR products for sale in Applicant's stores. Responsive documents include MCNEIL 000141-192, 239-697, 853-854, 1025-1054, 2218-4887.

Interrogatory No. 15 Identify each and every instance of consumer confusion or inquiries regarding Applicant or Applicant's Mark and all documents referring or relating thereto and persons most knowledgeable of same.

Response to Interrogatory No. 15:

Opposer objects to Interrogatory No. 15 on the basis of Specific Objections A, D and F. Subject to and without waiving the foregoing objections, Opposer is not aware of any specific

instances of consumers being confused by Applicant's use of Applicant's Mark, but believes that confusion has occurred. Responsive documents include MCNEIL 001534-1550, 1765-2213.

Interrogatory No. 16 Identify any and all surveys, studies, polls or other research undertaken by or on behalf of Opposer regarding "WAL-ZYR" and/or "ZYRTEC" and identify all documents pertaining thereto.

Response to Interrogatory No. 16:

Opposer objects to Interrogatory No. 16 on the basis of Specific Objections A and F. Subject to and without waiving the foregoing objections, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Opposer will produce documents sufficient to identify any consumer surveys, studies or polls, or any other market research, undertaken by or on behalf of Opposer into any issue relevant to this proceeding. Responsive documents include MCNEIL 000741-852, 1331-1425, 855-1024, 1445-1532.

Interrogatory No. 17 Identify and describe the consumer for Opposer's "ZYRTEC" products and describe the purpose of such products and the care exercised by consumers of such products in purchasing same and identify all documents pertaining thereto.

Response to Interrogatory No. 17:

Opposer objects to Interrogatory No. 17 on the basis of Specific Objections A, B and F. Subject to and without waiving the foregoing objections, Opposer incorporates its Response to Interrogatory No. 12 as if fully set forth herein. Opposer's ZYRTEC products provide effective, 24-hour relief of indoor and outdoor allergy symptoms. Opposer has not studied each and every consumer of ZYRTEC products to identify the care each such customer exercised in purchasing ZYRTEC's products and therefore cannot provide a definite answer to the remainder of Interrogatory No. 17. However, Opposer believes that consumer of the relatively low-cost ZYRTEC products sold over-the-counter are ordinary consumers who have no special knowledge or expertise. Opposer further believes that there is no degree of care that could be exercised by a

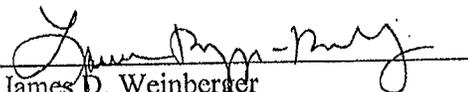
Response to Interrogatory No. 21:

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.

VERIFICATION

I, ROHINISH HOODA, hereby certify under penalty of perjury under the laws of the United States that I am V.P. Marketing of opposer McNEIL-PPC, Inc. ("Opposer"), and that I am authorized to sign this verification on behalf of Opposer. I have read Opposer's foregoing First Amended Objections and Responses to Applicant's First Set of Interrogatories and verify that the statements made in Opposer's responses are true and correct to the best of my knowledge, information and belief, based upon either personal knowledge or the business records of Opposer.

R. Hooda
Date: 2/14/11

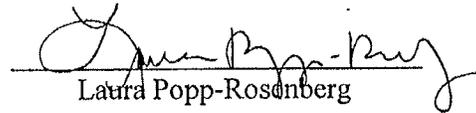
WITNESSED 2-14-11

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Matthew E. Hinkle, Notary Public
Northampton Twp., Bucks County
My Commission Expires July 7, 2013
Member, Pennsylvania Association of Notaries

Matthew E. Hinkle

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposer's Objections and Responses to Applicant's First Set of Interrogatories to be sent by First Class mail, postage pre-paid, in an envelope addressed Applicant's counsel, Caroline L. Stevens, Esq., Leydig, Voit & Mayer, 1420 Fifth Avenue, Suite 3670, Seattle, Washington 98101-4011, this 27th day of October, 2010.


Laura Popp-Rosenberg

**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

EXHIBIT 105
TO
APPLICANT'S NOTICE OF RELIANCE ON
DISCOVERY RESPONSES

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
v.)	
)	Trademark: WAL-ZYR
WALGREEN COMPANY,)	
)	
Applicant.)	

**APPLICANT'S FIRST AMENDED REPOSSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

In accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant Walgreen Company ("Applicant" or "Walgreens"), by and through its attorneys, responds as follows to Opposer's First Set of Interrogatories:

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. Applicant objects to the nearly seven pages of definitions and instructions preceding the Interrogatories. Such definitions and instructions are cumbersome and unduly burdensome in that constant reference back and forth to the lengthy definition and instructions is required. Notwithstanding this objection, Applicant will respond to the Interrogatories using the plain meaning of the words contained therein.

2. Applicant objects to the definitions and instructions to the extent they request either privileged or non-discoverable information.

3. Applicant objections are without prejudice to, and Applicant does not waive, any evidentiary objections relating to any Interrogatory or the response to any Interrogatory.

AS TO OBJECTIONS:

Date: November 5, 2010

Caroline Stevens

Mark J. Liss

Ill. Bar No. 6181002

Caroline L. Stevens

Ill. Bar No. 6274252

LEYDIG, VOIT & MAYER, LTD.

Two Prudential Plaza - Suite 4900

Chicago, Illinois 60601

Telephone: (312) 616-5600

Facsimile: (312) 616-5700

Attorneys for Plaintiff, Walgreen Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of "APPLICANT'S FIRST AMENDED RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES" has been sent by first class mail to the address and on the date indicated below to:

Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
866 UN Plaza at First Avenue & 48th Street
New York, NY
10017

Date: November 5, 2010



Diane Braun