

ESTTA Tracking number: **ESTTA266157**

Filing date: **02/12/2009**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Healthpoint, Ltd.		
Entity	Partnership	Citizenship	Texas
Composed Of:	DFB Pharmaceuticals, Inc. a Texas corporation		
Address	318 McCullough San Antonio, TX 78215 UNITED STATES		

Attorney information	William D. Wiese DuBois, Bryant & Campbell, LLP 700 Lavaca, Suite 1300 Austin, TX 78701 UNITED STATES bwiese@dbcllp.com, alagrone@dbcllp.com Phone:512.381.8028		
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Applicant Information

Application No	77497097	Publication date	01/27/2009
Opposition Filing Date	02/12/2009	Opposition Period Ends	02/26/2009
Applicant	APCO Graphics, Inc. 388 Grant Street, S.E. Atlanta, GA 303122227 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. First Use: 2008/05/21 First Use In Commerce: 2008/06/03
All goods and services in the class are opposed, namely: Dispensers for infection control products in the nature of disinfecting solution, towels, medical gloves, hand sanitizing foam, hand sanitizing gel, hand sanitizing wipes, medical face masks and facial tissues

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1757961	Application Date	07/14/1992
Registration Date	03/16/1993	Foreign Priority Date	NONE
Word Mark	HEALTHPOINT		

Design Mark	HEALTHPOINT
Description of Mark	The letters "H" and "P" in the trademark are joined and create a cross, which is a symbol associated with the medical field.
Goods/Services	Class 005. First use: First Use: 1992/04/23 First Use In Commerce: 1992/04/23 pharmaceutical preparations for the treatment of dermatological, wound or incontinent conditions or diseases

U.S. Registration No.	2936475	Application Date	06/03/1996
Registration Date	03/29/2005	Foreign Priority Date	NONE
Word Mark	HEALTHPOINT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/01/00 First Use In Commerce: 1999/01/00 Wholesale distributorships featuring pharmaceutical, medical, skin care, dermatological		

U.S. Registration No.	3307659	Application Date	01/31/2000
Registration Date	10/09/2007	Foreign Priority Date	NONE
Word Mark	HEALTHPOINT		
Design Mark	HEALTHPOINT		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 ON-LINE ORDERING SERVICES WHOLESALE DISTRIBUTORSHIP AND RETAIL STORE SERVICES IN THE FIELD OF PHARMACEUTICAL, MEDICAL SKIN CARE DERMATOLOGICAL INFECTION TREATMENT AND DENTAL PRODUCTS		

Attachments	74294200#TMSN.gif (1 page)(bytes) 75906342#TMSN.gif (1 page)(bytes) Notice_of_Opposition.pdf (20 pages)(110694 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William D. Wiese/
Name	William D. Wiese
Date	02/12/2009

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

In the Matter of Mark Application Serial No. 77/497097
Published in the Official Gazette on January 27, 2009.

HEALTHPOINT, LTD.
Opposer,

vs.

APCO GRAPHICS, INC.
Applicant.

‘
‘
‘ **Opposition No.** _____
‘
‘
‘
‘

NOTICE OF OPPOSITION

TO THE TRADEMARK TRIAL AND APPEAL BOARD:

Healthpoint, Ltd. (“Opposer”), having its principal place of business at 318 McCullough, San Antonio, Texas 78215, by its attorneys, believes that it will be damaged by registration of United States Trademark Application Serial No. 77/497097, filed June 12, 2008 by APCO Graphics, Inc. (“Applicant”), and hereby opposes the same pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.101(b). As grounds of opposition, it is alleged that:

A. Factual Background

1. Opposer’s HEALTHPOINT Trademark. Opposer is a well established pharmaceutical company that, together with its affiliates, manufactures and distributes various pharmaceutical preparations. Opposer owns the trademark HEALTHPOINT (the “Mark”) which is (i) registered under United States Trademark Registration No. 1,757,961 for “pharmaceutical preparations for the treatment of dermatological, wound or incontinent conditions or diseases” in

International Class 005; (ii) registered under United States Trademark Registration No. 2,936,475 for “wholesale distributorships featuring pharmaceutical, medical, skin care, dermatological” in International Class 042; and (iii) registered under United States Trademark Registration No. 3,307,659 for “on-line ordering services wholesale distributorship and retail store services in the field of pharmaceutical, medical skin care dermatological infection treatment and dental products” in International Class 035. A copy of Registration No. 1,757,961; Registration No. 2,936,475; and Registration No. 3,307,659 are attached as Exhibit A. The Mark is an incontestable mark that has been federally registered since March 3, 1993 and has been in continuous use since at least as early as April 23, 1992.

2. Opposer’s Use of the Mark. Opposer has expended extensive time and money developing the Mark in connection with its products and services. Opposer has advertised and marketed its products and services in interstate commerce, thereby creating valuable goodwill. Moreover, Opposer has so used the Mark in connection with its products and services that the relevant public has come to associate the Mark with Opposer, and as indicating that the products and services originate with Opposer.

3. Applicant’s Application. On June 12, 2008, Applicant filed United States Trademark Application Serial Number 77/497097 (the “Application”) to federally register the word “HEALTHPOINT,” in typed form, under 15 U.S.C. § 1051(a) based on use of the mark in interstate commerce. A copy of the Application is attached as Exhibit B. According to the Application and information on file with the United States Trademark Office, Applicant is APCO Graphics, Inc., a Georgia corporation having an address at 388 Grant Street, S.E., Atlanta, Georgia 30312-2227. Applicant seeks to register the mark in the Application in International Class 021 for use in connection with “Dispensers for infection control products in the nature of

disinfecting solution, towels, medical gloves, hand sanitizing foam, hand sanitizing gel, hand sanitizing wipes, medical face masks and facial tissues.” The Application was published for opposition in the Official Gazette on January 27, 2009.

4. Opposer’s Senior Rights in the Mark. Applicant has filed the Application based on its use of the mark under Section 1(a) of the Trademark Act, 15 U.S.C. Section 1051(a). Applicant’s priority date goes back to the date of first use, namely, May 21, 2008. Opposer’s priority dates back to at least as early as April 23, 1992. Moreover, the Mark has been continuously developed, offered and advertised in interstate commerce with the goods and services described in its registrations since at least as early as April 23, 1992. Therefore, Opposer has superior rights and priority in the use of the Mark and marks confusingly similar thereto, including the mark in the Application .

5. Likelihood of Confusion. Opposer would show that the mark in the Application so resembles the Mark that, when used on or in connection with Applicant’s goods it is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act. Applicant’s specified goods in International Class 021 are very closely related to the goods and services offered by Opposer under the Mark. Customers of Opposer’s products and services and Applicant’s goods could and would likely be confused as to source or origin of Opposer’s and Applicant’s respective products and services and likely believe Applicant’s goods either originate with Opposer or were affiliated with, sponsored by, or endorsed by Opposer.

6. Opposer’s Injury. If Applicant is granted registration for the Application, Applicant would obtain thereby at least a *prima facie* exclusive right to use the mark in the Application. Such registration would be a source of damage and injury to Opposer and its

customers. Based upon the foregoing, registration of the mark in the Application will cause injury and damage to Opposer.

7. Conclusion. In view of the above, the Application is not entitled to federal registration and should be denied.

WHEREFORE, Opposer requests that registration of Serial No. 77/497097 be denied.

Please charge the required fees to deposit account no. 503468. Please credit any overpayment to the deposit account.

Respectfully submitted,

Date: February 12, 2009

/William D. Wiese/
William D. Wiese
DUBOIS, BRYANT & CAMPBELL, LLP
700 Lavaca Street, Suite 1300
Austin, Texas 78701
(512) 457-8000
(512) 457-8008 (fax)
ATTORNEYS FOR OPPOSER

EXHIBIT A

REGISTRATIONS OF HEALTHPOINT

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-07-01 12:18:34 ET

Serial Number: 74294200 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1757961

Mark

HEALTHPOINT

(words only): [HEALTHPOINT](#)

Standard Character claim: No

Current Status: [This registration has been renewed.](#)

Date of Status: [2003-05-17](#)

Filing Date: [1992-07-14](#)

Transformed into a National Application: No

Registration Date: [1993-03-16](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 11](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [900 -File Repository \(Franconia\)](#)

Date In Location: [2003-06-17](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [HEALTHPOINT, LTD.](#)

Address:

[HEALTHPOINT, LTD.](#)
[2600 Airport Freeway](#)
[Fort Worth, TX 761112330](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Texas](#)

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

pharmaceutical preparations for the treatment of dermatological, wound or incontinent conditions or diseases

Basis: 1(a)

First Use Date: 1992-04-23

First Use in Commerce Date: 1992-04-23

ADDITIONAL INFORMATION

Description of Mark: The letters "H" and "P" in the trademark are joined and create a cross, which is a symbol associated with the medical field.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-07-10 - Attorney Revoked And/Or Appointed

2007-07-10 - TEAS Revoke/Appoint Attorney Received

2006-10-16 - Attorney Revoked And/Or Appointed

2006-10-16 - TEAS Revoke/Appoint Attorney Received

2005-07-26 - TEAS Change Of Correspondence Received

2004-09-13 - TEAS Change Of Correspondence Received

2003-05-17 - First renewal 10 year

2003-05-17 - Section 8 (10-year) accepted/ Section 9 granted

2003-03-11 - Combined Section 8 (10-year)/Section 9 filed

2003-03-11 - TEAS Section 8 & 9 Received

1999-06-03 - Section 8 (6-year) accepted & Section 15 acknowledged

1999-03-12 - Response received for Post Registration action

1999-03-12 - Section 8 (6-year) and Section 15 Filed

1999-04-14 - Post Registration action mailed Section 8 & 15

1998-11-24 - Section 8 (6-year) and Section 15 Filed

1997-02-07 - Counter claim opp. for Proceeding No.

1993-03-16 - Registered - Principal Register

1992-12-22 - Published for opposition

1992-11-20 - Notice of publication

1992-09-16 - Approved for Pub - Principal Register (Initial exam)

1992-09-15 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

William D. Wiese

Correspondent

William D. Wiese

DuBois, Bryant & Campbell LLP

700 Lavaca, Suite 1300

Austin TX 78701

Phone Number: 512.381.8028

Fax Number: 512.457.8008

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-07-01 12:19:23 ET

Serial Number: 75112645 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2936475

Mark (words only): HEALTHPOINT

Standard Character claim: No

Current Status: [Registered](#).

Date of Status: 2005-03-29

Filing Date: 1996-06-03

Transformed into a National Application: No

Registration Date: 2005-03-29

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 102](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 652 -Publication And Issue

Date In Location: 2005-03-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [HEALTHPOINT, LTD.](#)

Address:

[HEALTHPOINT, LTD.](#)
[307 E. JOSEPHINE STREET](#)
[SAN ANTONIO, TX 78215](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Texas](#)

GOODS AND/OR SERVICES

International Class: [042](#)

Class Status: [Active](#)

Wholesale distributorships featuring pharmaceutical, medical, skin care, dermatological

Basis: 1(a)

First Use Date: 1999-01-00

First Use in Commerce Date: 1999-01-00

ADDITIONAL INFORMATION

Prior Registration Number(s):

1757961

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-07-10 - Attorney Revoked And/Or Appointed

2007-07-10 - TEAS Revoke/Appoint Attorney Received

2006-10-16 - Attorney Revoked And/Or Appointed

2006-10-16 - TEAS Revoke/Appoint Attorney Received

2005-07-26 - TEAS Change Of Correspondence Received

2005-03-29 - Registered - Principal Register

2004-09-28 - Law Office Registration Review Completed

2004-09-27 - Assigned To LIE

2004-09-19 - Allowed for Registration - Principal Register (SOU accepted)

2004-09-13 - TEAS Change Of Correspondence Received

2004-08-17 - Assigned To Examiner

2004-08-09 - Assigned To Examiner

2004-08-06 - Statement of use processing complete

2004-07-19 - Amendment to Use filed

2004-07-19 - TEAS Statement of Use Received

2004-07-01 - Case File In TICRS

2004-02-17 - Extension 5 granted

2004-01-30 - Extension 5 filed

2004-01-30 - TEAS Extension Received

2003-08-12 - Extension 4 granted

2003-07-31 - Extension 4 filed

2003-07-31 - TEAS Extension Received

2003-04-08 - Extension 3 granted

2003-01-31 - Extension 3 filed

2003-01-31 - TEAS Extension Received

2002-07-25 - Extension 2 granted

2002-07-12 - Extension 2 filed

2002-07-12 - TEAS Extension Received

2002-02-13 - Extension 1 granted

2002-01-30 - Extension 1 filed

2001-07-31 - Notice of allowance - mailed

2001-05-08 - Published for opposition

2001-04-25 - Notice of publication

2000-11-10 - Approved for Pub - Principal Register (Initial exam)

2000-06-15 - Communication received from applicant

2000-04-06 - Letter of suspension mailed

1999-10-12 - Communication received from applicant

1999-09-14 - Letter of suspension mailed

1999-04-26 - Communication received from applicant

1998-10-22 - Assigned To Examiner

1997-06-17 - Letter of suspension mailed

1997-03-21 - Communication received from applicant

1996-10-09 - Non-final action mailed

1996-09-24 - Assigned To Examiner

1996-09-16 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

William D. Wiese

Correspondent

William D. Wiese

DuBois, Bryant & Campbell LLP

700 Lavaca, Suite 1300

Austin TX 78701

Phone Number: 512.381.8028

Fax Number: 512.457.8008

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-07-01 12:19:51 ET

Serial Number: 75906342 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3307659

Mark

HEALTHPOINT

(words only): [HEALTHPOINT](#)

Standard Character claim: [Yes](#)

Current Status: [Registered](#).

Date of Status: [2007-10-09](#)

Filing Date: [2000-01-31](#)

Transformed into a National Application: [No](#)

Registration Date: [2007-10-09](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 102](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2007-09-06](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Healthpoint, LTD.](#)

Composed Of:

[DFB Holding, Inc. A Texas Corporation Limited Partners: John Feik Paul Dorman John Mason United States United States United States](#)

Address:

Healthpoint, LTD.
318 McCullough
San Antonio, TX 78215
United States

Legal Entity Type: Partnership**State or Country Where Organized:** Texas

GOODS AND/OR SERVICES

International Class: 035**Class Status:** Active

ON-LINE ORDERING SERVICES WHOLESALE DISTRIBUTORSHIP AND RETAIL STORE
SERVICES IN THE FIELD OF PHARMACEUTICAL, MEDICAL SKIN CARE
DERMATOLOGICAL INFECTION TREATMENT AND DENTAL PRODUCTS

Basis: 1(a)**First Use Date:** 1999-01-01**First Use in Commerce Date:** 1999-01-01

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-10-09 - Registered - Principal Register

2007-09-06 - Law Office Registration Review Completed

2007-09-06 - Assigned To LIE

2007-07-31 - Allowed for Registration - Principal Register (SOU accepted)

2007-07-25 - Statement of use processing complete

2007-04-24 - Amendment to Use filed

2007-07-10 - Attorney Revoked And/Or Appointed

2007-07-10 - TEAS Revoke/Appoint Attorney Received

2007-04-24 - TEAS Statement of Use Received

2006-11-21 - Notice of allowance - mailed

2006-10-16 - Attorney Revoked And/Or Appointed

2006-10-16 - TEAS Revoke/Appoint Attorney Received

2006-08-29 - Published for opposition

2006-08-09 - Notice of publication

2006-07-05 - Law Office Publication Review Completed

2006-06-30 - Assigned To LIE

2006-06-26 - Approved for Pub - Principal Register (Initial exam)

2006-06-26 - Examiner's Amendment Entered

2006-06-26 - EXAMINERS AMENDMENT E-MAILED

2006-06-26 - Examiners Amendment -Written

2005-12-24 - Report Completed Suspension Check Case Still Suspended

2005-11-10 - Amendment From Applicant Entered

2005-09-30 - Communication received from applicant

2005-09-30 - PAPER RECEIVED

2005-09-28 - TEAS Change Of Correspondence Received

2005-06-29 - Report Completed Suspension Check Case Still Suspended

2004-12-01 - Report Completed Suspension Check Case Still Suspended

2004-03-19 - Case File In TICRS

2001-06-18 - Letter of suspension mailed

2001-02-05 - Communication received from applicant

2000-08-01 - Non-final action mailed

2000-07-11 - Assigned To Examiner

2000-06-27 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

[William D. Wiese](#)

Correspondent

[William D. Wiese](#)

[DuBois, Bryant & Campbell LLP](#)

[700 Lavaca, Suite 1300](#)

[Austin TX 78701](#)

[Phone Number: 512.381.8028](#)

[Fax Number: 512.457.8008](#)

EXHIBIT B

APPLICATION FOR HEALTHPOINT

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2009-02-04 11:44:57 ET

Serial Number: 77497097 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

HEALTHPOINT

(words only): [HEALTHPOINT](#)

Standard Character claim: [Yes](#)

Current Status: [Application has been published for opposition.](#)

Date of Status: [2009-01-27](#)

Filing Date: [2008-06-12](#)

The Information will be/was published in the Official Gazette on [2009-01-27](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 103](#)

Attorney Assigned:
[KUNG KAELIE ELIZABETH](#)

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2008-12-23](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [APCO Graphics, Inc.](#)

Address:

APCO Graphics, Inc.
388 Grant Street, S.E.
Atlanta, GA 303122227
United States

Legal Entity Type: Corporation
State or Country of Incorporation: Georgia

GOODS AND/OR SERVICES

International Class: 021

Class Status: Active

Dispensers for infection control products in the nature of disinfecting solution, towels, medical gloves, hand sanitizing foam, hand sanitizing gel, hand sanitizing wipes, medical face masks and facial tissues

Basis: 1(a)

First Use Date: 2008-05-21

First Use in Commerce Date: 2008-06-03

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-01-27 - Published for opposition

2009-01-07 - Notice of publication

2008-12-23 - Law Office Publication Review Completed

2008-12-18 - Approved for Pub - Principal Register (Initial exam)

2008-12-17 - Amendment From Applicant Entered

2008-12-17 - Communication received from applicant

2008-12-17 - Assigned To LIE

2008-12-03 - PAPER RECEIVED

2008-08-12 - Notification Of Non-Final Action E-Mailed

2008-08-12 - Non-final action e-mailed

2008-08-12 - Non-Final Action Written

2008-08-11 - Assigned To Examiner

2008-06-17 - Notice Of Pseudo Mark Mailed

2008-06-16 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Paul S. Weidlich

Correspondent

PAUL S. WEIDLICH
CHAMBLISS, BAHNER & STOPHEL, P.C.
1000 TALLAN BUILDING
TWO UNION SQUARE
CHATTANOOGA, TN 37402
Phone Number: 423-757-0232
Fax Number: 423-508-1232
