

ESTTA Tracking number: **ESTTA325963**

Filing date: **01/08/2010**

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	Sepracor Inc.
Granted to Date of previous extension	01/10/2010
Address	84 Waterford Drive Marlborough, MA 01752 UNITED STATES

Attorney information	Perry J. Viscounty Latham & Watkins LLP 650 Town Center Drive Suite 2000 Costa Mesa, CA 92626 UNITED STATES ipdocket@lw.com
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Applicant Information

Application No	77689736	Publication date	07/14/2009
Opposition Filing Date	01/08/2010	Opposition Period Ends	01/10/2010
Applicant	Cal India Foods International 13591 Yorba Avenue Chino, CA 91710 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2252782	Application Date	10/20/1997
Registration Date	06/15/1999	Foreign Priority Date	NONE
Word Mark	SEPRACOR		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1996/07/00 First Use In Commerce: 1996/07/00 pharmaceutical preparations for the treatment and/or alleviation of respiratory disorders including asthma [and allergy; and for the treatment and/or alleviation of incontinence]

U.S. Registration No.	3482065	Application Date	09/29/2004
Registration Date	08/05/2008	Foreign Priority Date	NONE

Word Mark	SEPRACOR
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1999/04/16 First Use In Commerce: 1999/04/16 pharmaceutical preparations, namely, analgesics; anti-infective; anti-inflammatory; pharmaceutical preparations for the prevention and treatment of disorders and diseases of the central nervous, peripheral nervous, respiratory and urogenital systems; pharmaceutical preparations for the prevention and treatment of sleep disorders

Attachments	78491661#TMSN.jpeg (1 page)(bytes) Notice of Opposition SERRACOR-NK.pdf (5 pages)(25130 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	/pjr/
Name	Perry J. Viscounty
Date	01/08/2010

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

In re the Application of Cal India Foods International DBA Specialty Enzymes and
Biotechnologies

Serial No.: 77/689736

Filed: March 12, 2009

Trademark: **SERRACOR-NK**

Published: July 14, 2009

Sepracor Inc.,)
a Delaware corporation,)
)
Opposer,)
v.)
)
Cal India Foods International DBA)
Specialty Enzymes and Biotechnologies,)
a California corporation,)
)
Applicant.)
_____)

OPPOSITION NO.: _____

NOTICE OF OPPOSITION

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Sepracor Inc. (“Sepracor”), a Delaware corporation, with a place of business located at 84 Waterford Drive, Marlboro, Massachusetts 01752, believes that it will be damaged by registration of the mark **SERRACOR-NK** Serial Number 77/689736 for *Dietary and nutritional supplements* in Class 5.

Therefore, in accordance with the provisions of Section 13 of the Trademark Act (15 U.S.C. § 1063), Sepracor hereby opposes the application of Cal India Foods International

DBA Specialty Enzymes and Biotechnologies (“Applicant”) for the mark **SERRACOR-NK**.

As grounds for the opposition, Sepracor alleges as follows:

1. Sepracor, founded in 1984, is a research-based pharmaceutical company dedicated to treating and preventing human disease by discovering, developing and commercializing innovative pharmaceutical products that are directed toward serving unmet medical needs. Sepracor markets and sells several well-known drugs, including drugs sold under the brands LUNESTA[®] and XOPENEX[®]. Sepracor operates a website at *sepracor.com*.

2. Prior to March 12, 2009, the filing date of Applicant’s trademark application, Sepracor adopted and used the mark **SEPRACOR** in connection with *pharmaceutical preparations*. Sepracor first adopted and used the mark **SEPRACOR** in connection with pharmaceutical preparations at least as early as July 1996.

3. Sepracor owns two federal trademark registrations with the U.S. Patent and Trademark Office for the **SEPRACOR** mark:

TRADEMARK	CLASS: GOODS/SERVICES	REGISTRATION NO. REGISTRATION DATE
SEPRACOR	Class 5: pharmaceutical preparations for the treatment and/or alleviation of respiratory disorders including asthma	2,252,782 June 15, 1999
SEPRACOR	Class 5: pharmaceutical preparations, namely analgesics; anti-infective; anti-inflammatories; pharmaceutical preparations for the prevention and treatment of disorders and diseases of the central nervous, peripheral nervous, respiratory and urogenital systems; pharmaceutical preparations for the prevention and treatment of sleep disorders	3,482,065 August 5, 2008

4. Sepracor’s above registrations are valid, unrevoked, uncancelled, and in full force and effect. Sepracor owns these registrations and the trademarks shown thereby and all

the business and goodwill connected with those marks in the United States.

5. Since the adoption and first use of its **SEPRACOR** mark, Sepracor has made substantial and continuous use of its **SEPRACOR** mark in connection with pharmaceutical preparations.

6. The **SEPRACOR** mark is strong, well known, and of great value to Sepracor, based on Sepracor's extensive use and advertising of the company and its various drug products under the **SEPRACOR** mark. The **SEPRACOR** name has developed a very strong reputation among consumers as being associated with a well-respected source of pharmaceutical products. In the mind of the trade and of the public, the **SEPRACOR** mark identifies and designates Sepracor's goods and services and distinguishes them from the goods and services of others.

7. By the application herein opposed, Applicant seeks to register **SERRACOR-NK** for *Dietary and nutritional supplements* in Class 5.

8. Applicant's mark closely resembles Sepracor's previously used and registered **SEPRACOR** mark and is therefore likely, when used in connection with Applicant's described goods (which are similar to Sepracor's), to cause confusion, mistake, or deception with consequent injury to Sepracor and the public.

9. The **SEPRACOR** mark has become famous and well-known among the general public in the United States, and gained this general fame prior to the filing of Applicant's application. The registration and/or use of Applicant's mark is therefore also likely to dilute Sepracor's mark.

10. Sepracor will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing, misleading, and deceptive use of Applicant's mark and would give to Applicant color of exclusive statutory rights to such designation in violation of Sepracor's superior rights.

WHEREFORE, Sepracor believes that it will be damaged by the registration of Applicant's mark and prays that it be denied.

Please recognize as attorneys for Sepracor Perry J. Viscounty, Michael Woodrow De Vries, Julie L. Dalke, Jennifer L. Barry, and the law firm of Latham & Watkins LLP, 650 Town Center Drive, Suite 2000, Costa Mesa, California 92626-1925, ipdocket@lw.com. Please address all communications to Michael Woodrow De Vries of Latham & Watkins LLP at the address set forth below.

Dated: January 8, 2010

Respectfully submitted,

LATHAM & WATKINS LLP

By: 
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Sepracor Inc.

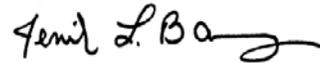
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Applicant Cal India Foods International DBA Specialty Enzymes and Biotechnologies by mailing said copy on January 8, 2010 via First Class Mail, postage prepaid to Applicant's Address of Record:

Cal India Foods International
13591 Yorba Avenue
Chino, CA 91710

I further certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Applicant's Attorney/Correspondent of Record by mailing said copy on January 8, 2010 via First Class Mail, postage prepaid to:

Charles C. Valauskas
Valauskas & Pine LLC
150 S. Wacker Dr., Ste. 620
Chicago, IL 60606-4102



Jennifer L. Barry