

ESTTA Tracking number: **ESTTA477790**

Filing date: **06/13/2012**

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	Guthy-Renker LLC
Granted to Date of previous extension	06/13/2012
Address	41-550 Eclectic Street Suite 200 Palm Desert, CA 92260 UNITED STATES

Attorney information	Daniel M. Cislo, Esq. Cislo & Thomas LLP 1333 2nd Street Suite 500 Santa Monica, CA 90401 UNITED STATES ttab@cislo.com, dlaronson@cislo.com, ejuarez@cislo.com Phone:310-451-0647
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Applicant Information

Application No	85401645	Publication date	02/14/2012
Opposition Filing Date	06/13/2012	Opposition Period Ends	06/13/2012
Applicant	Pharmasol Corporation One Norfolk Avenue South Easton, MA 02375 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: deodorants for personal use; antiperspirants; sunscreen
Class 005. All goods and services in the class are opposed, namely: dermatological pharmaceutical products; antimicrobial preparations for skin; hand sanitizer; antifungal preparations for skin; insect repellent

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. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	PROACTIV
Goods/Services	For a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products.

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PROACTIV SOLUTION		
Goods/Services	For a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products.		

Attachments	Notice of Opposition for ACTIVE PLUS.pdf (6 pages)(319887 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	/Daniel M. Cislo/
Name	Daniel M. Cislo, Esq.
Date	06/13/2012

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

**IN THE MATTER OF APPLICATION SERIAL NO. 85/401,645
PUBLISHED IN THE OFFICIAL GAZETTE ON FEBRUARY 14, 2012**

GUTHY-RENKER LLC, a Delaware limited liability company,)) OPPOSITION NO. _____
)	
OPPOSER,)	
vs.)	NOTICE OF OPPOSITION
)	
PHARMASOL CORPORATION, a Massachusetts corporation,)	
)	
APPLICANT.)	
)	

Opposer, GUTHY-RENKER LLC, a Delaware limited liability company, having offices at 41-550 Eclectic Street, Suite 200, Palm Desert, California 92260 (“Guthy-Renker”), believes that it will be damaged by registration of the mark shown in Application Serial No. 85/401,645 by PHARMASOL CORPORATION, having a listed business address of One Norfolk Avenue, South Easton Massachusetts 02375, and hereby opposes the same and requests that the registration to the application be refused.

The grounds for opposition are as follows:

1. Applicant seeks to register a mark that consists of the term “ACTIVE PLUS” for deodorants for personal use; antiperspirants; sunscreen in International Class 003 and dermatological pharmaceutical products; antimicrobial preparations for skin; hand sanitizer; antifungal preparations for skin; insect repellent in International Class 005 (hereinafter

“Applicant’s Mark”). Applicant’s Mark is an intent-to-use base application under 15 U.S.C. §1051(b).

2. Opposer has obtained the necessary extension of time in which to file this Notice of Opposition.

3. Since as early as 1991, Opposer, its predecessors, or its related companies have continuously used the terms “PROACTIV” and “PROACTIV SOLUTION” (“Opposer’s Marks”) in interstate commerce as trademarks for a variety of goods and services, including, but not limited to, acne treatment preparations and related cosmetic products (“Opposer’s Goods”). Opposer’s Marks have also continuously appeared in substantial advertising and promotion of Opposer’s skin care and cosmetic products, such that the marks are closely identified with Opposer’s Goods and have gained very valuable public recognition. Opposer has established an outstanding reputation as to the quality of its products sold under the “PROACTIV” and “PROACTIV SOLUTION” marks.

4. Opposer has continuously used its Marks in interstate commerce since long prior to any date upon which Applicant can rely. By virtue of its sales of high-quality products bearing Opposer’s Marks in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Marks and a valuable reputation.

5. Opposer’s trademark rights for the PROACTIV and PROACTIV SOLUTION Marks have priority over Applicant’s Mark, inasmuch as Opposer has continuously used its Marks since it commenced use of its Marks, and Applicant’s application lists a filing date of August 18, 2011, and is listed as an intent-to-use application.

6. Applicant's Mark so resembles Opposer's Marks that have been and are currently used, as to be likely to cause confusion, or cause mistake, or to deceive, in violation of Section 2(d) of The Trademark Act, 15 U.S.C. §1052(d), when used on or in connection with Applicant's Goods.

7. Under the circumstances, registration of Applicant's Mark will injure Opposer by causing the trade and/or purchasing public to be confused, and/or deceived into believing that Applicant's Goods are those of Opposer, or are sponsored by Opposer, to Opposer's damage and will place a cloud over Opposer's title to its PROACTIV and PROACTIV SOLUTION Marks, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d).

8. Opposer's PROACTIV and PROACTIV SOLUTION Marks were well established and famous long before the filing date of Applicant's subject application, and at the time that Applicant filed the subject application. Registration of Applicant's Mark would diminish and dilute the distinctive quality of Opposer's rights in its famous PROACTIV and PROACTIV SOLUTION Marks in violation of 15 U.S.C. §1125(c). Moreover, registration of Applicant's Mark would diminish the advertising value of Opposer's Marks, and such registration would, in the event of any quality problems involving the goods offered by Applicant, tarnish the distinctiveness of Opposer's Marks.

9. Opposer's Marks are distinctive and famous such that the public would associate Opposer's Marks with Opposer when encountering Opposer's Marks apart from Opposer's Goods.

10. Applicant's Mark is the same as, or substantially the same as Opposer's Marks, including in visual appearance and in pronunciation.

11. Applicant's Mark is likely to and/or has diluted and lessened the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

12. Applicant's Mark so resembles Opposer's continuously used, famous and well-known Marks as to be likely, when used in connection with the goods as set forth in Applicant's application, to lessen the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

13. The subject application should be refused because Opposer's rights of continuing its present use of its Marks in commerce are, or would be, threatened by Applicant's registration of Applicant's Mark for Applicant's Goods, and because Opposer's business would otherwise be damaged by Applicant's registration of Applicant's Mark for Applicant's Goods.

14. Upon information and belief, Applicant does not now and, as of the August 18, 2011 filing date of its application, did not have a bona fide intention to use Applicant's Mark in U.S. commerce on the above specified goods, supported by documentary or other objective evidence, when it filed its application covering the ACTIVE PLUS Mark for the goods specified therein.

WHEREFORE, the Opposer prays that Application Serial No. 85/401,645 be rejected, and that the Mark sought for the goods therein to be specified in International Class 003 and International Class 005 be denied and refused.

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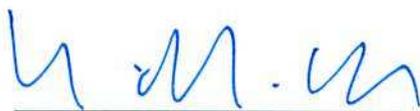
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The required fee for the class of goods, and any additional fees, may be charged to Opposer's representative's deposit account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP



Daniel M. Cislo, Esq.
Reg. No. 32,973

Dated: June 13 2012

ELECTRONIC MAILING CERTIFICATE

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") on the date shown below.

on _____
Daniel M. Cislo, Esq. _____ Date 4/13/12

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Lawrence M. Green, Esq.
Wolf Greenfield
600 Atlantic Avenue
Boston, MA 02210-2211

Dated: 4-13-12 By: Daniel M. Cislo, Esq.

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