

ESTTA Tracking number: **ESTTA567784**

Filing date: **10/29/2013**

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

Proceeding	91206448
Party	Defendant Zoetis Products LLC
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Submission	Answer and Counterclaim
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Signature	/Dale Cendali/
Date	10/29/2013
Attachments	2013-07-10 - Zoetis Products LLC's Amended Answer and Affirmative Defenses and Counterclaim for Cancellation.pdf(866006 bytes)

Registration Subject to the filing

Registration No	4163263	Registration date	06/26/2012
International Registration No.	NONE	International Registration Date	NONE
Registrant	Virbac S.A. 1 Årre Avenue, 2065 m-L.I.D. 06516 Carros, FRX FRX		

Goods/Services Subject to the filing

Class 005. First Use: 0 First Use In Commerce: 0
All goods and services in the class are requested, namely: Veterinary products, namely, an anesthetic in the nature of a general anesthetic

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

<p>VIRBAC S.A.,</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>ZOETIS PRODUCTS LLC</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No.: 91206448</p> <p>Mark: ZOETIS (Serial No. 85/505,740)</p>
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**ZOETIS PRODUCTS LLC'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES
AND COUNTERCLAIM FOR CANCELLATION**

Applicant Zoetis Products LLC (“Zoetis” or “Applicant”) hereby submits its Amended Answer and Affirmative Defenses and Counterclaim for Cancellation in response to the Notice of Opposition filed by Virbac S.A.

1. Applicant admits that it filed the application alleged in paragraph 1 of the Notice of Opposition, and refers to that application for the contents and specifics thereof.
2. Applicant lacks information sufficient to admit or deny the allegations in paragraph 2 of the Notice of Opposition.
3. Applicant lacks information sufficient to admit or deny the allegations in paragraph 3 of the Notice of Opposition. Applicant further asserts that the allegation that “Opposer has priority over Applicant” is a conclusion of law as to which no responsive pleading is required.

4. Applicant denies the allegations in paragraph 4 of the Notice of Opposition.

5. Applicant lacks information sufficient to admit or deny the allegations in paragraph 5 of the Notice of Opposition.

6. Applicant lacks information sufficient to admit or deny the allegations in the first sentence of paragraph 6 of the Notice of Opposition. Applicant denies the allegations in the second sentence of paragraph 6 of the Notice of Opposition.

7. Applicant admits that Opposer has not given Applicant permission or approval to use or register the applied-for Mark, and further asserts that no such approval is necessary for Applicant to lawfully use and register the applied-for mark.

8. Applicant denies the allegations in paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in paragraph 9 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant asserts the following defenses to the Notice of Opposition. By alleging the defenses set forth below, Applicant does not assert or admit that it has the burden of proof and/or persuasion with respect to any of these defenses.

FIRST DEFENSE

The Notice of Opposition fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND DEFENSE

Opposer is not entitled to relief because there is no likelihood of confusion between Applicant's mark and Opposer's mark.

Applicant reserves the right to assert additional affirmative defenses in the event discovery or further analysis reveals additional presently unknown or unstated affirmative defenses.

COUNTERCLAIM FOR CANCELLATION OF REGISTRATION NO. 4,163,263

Zoetis counterclaims for cancellation of Opposer's U.S. Trademark Registration No. 4,163,263 for the mark ZOLETIL (the "Foreign Use-Based Registration"). The grounds for cancellation are as follows:

1. Opposer is a French corporation, with a principal place of business in Carros, France.
2. The Foreign Use-Based Registration is not based on use in United States commerce.
3. The Foreign Use-Based Registration is based on Opposer's French registration for the ZOLETIL word mark.
4. On April 4, 2011, Opposer filed its application to register ZOLETIL for "veterinary products, namely, an anesthetic in the nature of a general anesthetic," pursuant to 15 U.S.C. § 1051(b).
5. On December 28, 2011, Opposer amended the basis for its registration to 15 U.S.C. § 1126(e).
6. Opposer has never sold any ZOLETIL-brand products in the United States.
7. Opposer has never advertised any ZOLETIL-brand products in the United States.
8. Opposer has never issued any press releases to media in the United States that depicted the ZOLETIL mark.
9. Opposer does not use any domain names that include "zoetil."

10. Opposer has not produced any documents showing that it intended to use the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist.

11. Opposer knowingly and falsely represented to the U.S. Patent & Trademark Office (the "PTO") that it had a bona fide intention to use the mark in United States commerce on or in connection with the identified goods and/or services.

12. The PTO relied upon Opposer's false representation when it issued the Foreign Use-Based Registration to Opposer.

13. Opposer has not produced any documents showing that it intends to commence use of the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist.

14. Opposer has not produced any documents showing that it has ever used the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist.

15. Zoetis is harmed by the Foreign Use-Based Registration because, *inter alia*, Opposer is using such registration as a basis to oppose Zoetis's U.S. Trademark Application Serial No.85/505,740 in this proceeding and delaying registration of the mark shown in that application.

16. The Foreign Use-Based Registration should be cancelled for fraud and/or false representations to the PTO that were material and resulted in and caused the Foreign Use-Based Registration to issue.

17. The Foreign Use-Based Registration should be cancelled because Opposer has not used the ZOLETIL mark in United States commerce and does not intend to commence such use,

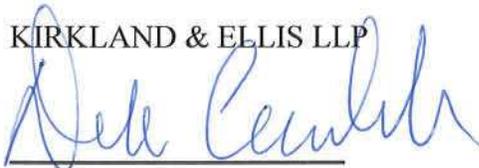
and has thus abandoned the mark.

PRAYER FOR RELIEF

WHEREFORE, Applicant requests judgment as follows:

1. Opposer's Notice of Opposition be dismissed and Applicant's mark be allowed to proceed to registration;
2. Respondent's Registration No. 4,163,263, be cancelled in its entirety;
3. Applicant be awarded its costs incurred herein; and
4. For any other relief the Board deems appropriate.

Dated: July 10, 2013
New York, New York

KIRKLAND & ELLIS LLP


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Attorneys for Zoetis Products LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2013, I caused copies of the foregoing **MOTION TO AMEND ZOETIS PRODUCTS LLC'S ANSWER AND AFFIRMATIVE DEFENSES** to be served via Federal Express and e-mail upon the following individuals:

Elizabeth Stanley
Priscilla Dunckel
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Paul Reilly
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New York, New York 10112-4498

Dated: July 10, 2013


Bonnie L. Jarrett