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

Proceeding	91210367
Party	Defendant Arriva Medical, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ROCHE DIAGNOSTICS GMBH and)	
ROCHE DIAGNOSTICS OPERATIONS, INC.,)	Opposition No.91210367
)	
Opposers)	
)	
v.)	
)	Mark: ARRIVA MEDICAL
ARRIVA MEDICAL, LLC,)	Serial No.: 85-339,161
)	
Applicant.)	
)	
)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Arriva Medical, LLC (hereinafter “Applicant”), answers the corresponding numbered paragraphs of the Notice of Opposition filed by Opposers, Roche Diagnostics GmbH and Roche Diagnostics Operations, Inc. (hereinafter “Opposers”), as follows.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and therefore denies same.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies same.

Applicant

3. Applicant admits the allegations set forth in Paragraph 3 of the Notice of Opposition.

4. Applicant admits that it is engaged, *inter alia*, in the sale of blood glucose monitoring supplies for diabetes testing manufactured by third parties, and that its website may be accessed at <http://arrivamedical.com>, but otherwise denies the allegations set forth in Paragraph 4 of the Notice of Opposition.

Opposers' Trademark

5. Applicant denies the allegations set forth in Paragraph 5 of the Notice of Opposition.

6. Applicant admits the allegations set forth in Paragraph 6 of the Notice of Opposition.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Notice of Opposition and therefore denies same.

Applicant's Mark

8. Applicant denies that the goods and services listed in its pending application for registration of ARRIVA MEDICAL, Serial No. 85339161, should be characterized as "Applicant's Listed Goods," but otherwise admits the allegations set forth in Paragraph 8 of the Notice of Opposition.

9. Applicant admits that its aforesaid application Serial No. 85339161 claims a date of first use and first use in commerce of "at least as early as October 23, 2008" for its Class 35 services, and a date of first use and first use in commerce of "at least as early as August 18, 2010" for its Class 10 goods, but otherwise denies the allegations set forth in Paragraph 9 of the Notice of Opposition.

Actual Confusion and Likelihood of Confusion

10. Applicant denies the allegations set forth in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations set forth in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations set forth in Paragraph 13 of the Notice of Opposition.

14. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Notice of Opposition and therefore denies same.

15. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Notice of Opposition and therefore denies same.

16. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Notice of Opposition and therefore denies same.

17. Applicant denies the allegations set forth in Paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations set forth in Paragraph 18 of the Notice of Opposition.

19. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Notice of Opposition and therefore denies same.

20. Applicant denies the allegations set forth in Paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegations set forth in Paragraph 21 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Opposers fail to state a claim upon which relief may be granted.

2. Opposers are barred in whole or in whole or in part by the doctrines of estoppel, laches, acquiescence, and/or waiver from asserting likelihood of confusion between their marks and Applicant's mark ARRIVA MEDICAL, based upon, *inter alia*, the following facts and circumstances:

(a). Applicant has used its mark ARRIVA MEDICAL in commerce in connection with online and telephonic retail store services featuring medical test equipment and diabetes monitoring supplies since at least as early as October 23, 2008.

(b). Applicant has used its mark ARRIVA MEDICAL in commerce in connection with medical test equipment, namely, blood glucose meters, lancing devices and lancets for diabetes monitoring since at least as early as August 18, 2010.

(c). In early 2011, Opposers contacted Applicant in order to object to Applicant's use of the mark ARRIVA in connection with blood glucose meters, lancets and test strips, and

diabetes care products in general, including uses in one or more TV commercials that were then airing.

(d). Opposers did not object to Applicant's use of the mark ARRIVA MEDICAL. Indeed, Opposers communicated to Applicant, in words and/or substance, that they had no objection to Applicant's use of the mark ARRIVA MEDICAL in connection with blood glucose meters, lancets and test strips, and on product packaging and supporting materials. In fact, Opposers expressly demanded that Applicant change its uses of ARRIVA to ARRIVA MEDICAL on blood glucose meters, and insisted that ARRIVA MEDICAL also appear on packaging for test strips and lancets and on supporting materials.

(e). In a letter to Applicant dated February 21, 2011, Opposers stated that they did "not have a problem with the use of Arriva Medical as a company name," but only with Applicant's use of ARRIVA to identify a blood glucose meter.

(f). In a letter to Applicant dated May 9, 2011, Opposers made the following additional representations and demands:

Your letter confirms that the blood glucose meters supplied by Arriva Medical, LLC in the future will prominently feature the words "Arriva Medical" as the source of the products. We assume that the packaging for test strips and lancets will also bear the words "Arriva Medical." Roche requests that any supporting materials sent to consumers with these products clearly indicate Arriva Medical as the source and provide prominent contact information for your client. Please confirm our assumption about packaging, and that Arriva Medical will comply with the materials request, on or before **May 27, 2011**.

As it relates to the commercials showing only the ARRIVA mark on product packaging, Roche hereby reiterates its demand that the image of the featured meter be changed to show the name "Arriva Medical," which is consistent with how the meters themselves will appear. . . .

• • •

Based on the foregoing, Roche is prepared to take action to end the on-going actual confusion if the subject commercial is not edited to show the full “Arriva Medical” name on the meters. Roche is willing to give your client a fair amount of time—up to two (2) months—to make the change.

(g). In its negotiations with Opposers in early 2011, Applicant stated that it was willing to comply with Opposers’ request that it change its uses of ARRIVA to ARRIVA MEDICAL, and thereafter use only ARRIVA MEDICAL, provided that Opposers executed a settlement agreement with Applicant containing a release. Applicant accordingly drafted an appropriate settlement agreement, and forwarded it to Opposers on May 26, 2011.

(h). For reasons unknown, Opposers stopped communicating with Applicant regarding the above issues in June 2011. More particularly, from and after June 2011, Opposers did not pursue their objections to Applicant’s use of ARRIVA standing alone. Similarly, from June 2011 until the filing of the instant Notice of Opposition on April 24, 2013, Opposers did not retract or modify their express representations and demands that Applicant should instead use ARRIVA MEDICAL on its products, packaging and supporting materials.

(i). Since Applicant’s communications with Opposers in early 2011, Applicant has continued to make extensive use of its ARRIVA MEDICAL mark, and has spent in excess of **\$12 million** in advertising and marketing its ARRIVA MEDICAL goods and services. In doing so, Applicant has relied, *inter alia*, upon Opposers’ express and repeated representations that they did not object to Applicant’s use of ARRIVA MEDICAL, including without limitation, their affirmative demands that Applicant use the mark ARRIVA MEDICAL.

3. Applicant reserves the right to assert additional affirmative defenses as may be warranted by discovery in this matter.

WHEREFORE, Applicant prays that this Opposition be dismissed and that judgment in favor of Applicant and against Opposers be entered.

Respectfully submitted,
ARRIVA MEDICAL, LLC

June 3, 2013

Date

/Julia Huston/

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Answer to the Notice of Opposition was served upon Opposers' attorneys of record, namely:

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by e-mail and First Class Mail this date of June 3, 2013.

/Julia Huston/

Julia Huston