

ESTTA Tracking number: **ESTTA602586**

Filing date: **05/06/2014**

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

Proceeding	91215688
Party	Defendant Maco Pharma
Correspondence Address	ANDY I. COREA ST. ONGE STEWARD JOHNSTON & REENS LLC 986 BEDFORD ST STAMFORD, CT 06905-5610  tm-pto@ssjr.com
Submission	Answer
Filer's Name	Andy I. Corea
Filer's e-mail	acorea@ssjr.com, litigation@ssjr.com
Signature	/Andy I. Corea/
Date	05/06/2014
Attachments	91215688 Answer.pdf(476389 bytes )

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

THERAKOS, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91215688
	)	
MACO PHARMA,	)	
	)	
Applicant	)	
	)	

**ANSWER TO NOTICE OF OPPOSITION**

Applicant Maco Pharma (“Applicant”) denies that Opposer will be damaged by registration of the opposed mark and answers the numbered grounds for opposition as follows:

1. Applicant denies that its mark THERAFLEX is confusingly similar to Opposer’s asserted mark and is without adequate knowledge to determine the truth of the remaining allegations contained in paragraph 1 and therefore denies the same.

2. Applicant is without adequate knowledge to determine the truth of the allegations contained in paragraph 2 and therefore denies the same.

3. Applicant is without adequate knowledge to determine the truth of the allegations contained in paragraph 3 and therefore denies the same.

4. Applicant admits that Exhibit 1 is a copy of the TESS electronic database of the USPTO for U.S. Registration No. 4,115,195, the contents of which speak for themselves. Applicant is without adequate knowledge to determine the truth of the remaining allegations contained in paragraph 4 and therefore denies the same.

5. Admitted.

6. Omitted in Notice of Opposition

7. Applicant is without adequate knowledge to determine the truth of the allegations contained in paragraph 7 and therefore denies the same.

8. Applicant makes no response to those allegations of paragraph 8 that purport to state legal conclusions. Applicant is without adequate knowledge to determine the truth of the remaining allegations contained in paragraph 8 and therefore denies the same. Applicant denies that its THERFLEX trademark closely resembles the term THERAKOS.

9. Applicant makes no response to those allegations of paragraph 9 that purport to state legal conclusions. Applicant is without adequate knowledge to determine the truth of the remaining allegations contained in paragraph 9 and therefore denies the same.

10. Applicant makes no response to those allegations of paragraph 10 that purport to state legal conclusions. Applicant is without adequate knowledge to determine the truth of the remaining allegations contained in paragraph 10 and therefore denies the same.

11. Applicant makes no response to those allegations of paragraph 11 that purport to state legal conclusions. Applicant is without adequate knowledge to determine the truth of the remaining allegations contained in paragraph 11 and therefore denies the same.

12. Applicant denies that Opposer is entitled to any relief requested in its Notice of Opposition.

13. Applicant denies any allegation in the Notice of Opposition that it has not explicitly admitted.

Applicant asserts the following affirmative defenses and reserves the right to submit further affirmative defenses that may be discovered in the course of this opposition.

**FIRST AFFIRMATIVE DEFENSE**

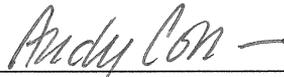
One or more of Opposers' claims fails to state a claim upon which relief may be granted. Concurrent with its answer, Applicant has filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) with respect to claims under Section 43(c).

**SECOND AFFIRMATIVE DEFENSE**

One or more of Opposers' claims are barred by the equitable defenses of laches, acquiescence, waiver, or estoppel.

Respectfully submitted,

May 6, 2014



---

Andy I. Corea  
Stephen S. Zimowski  
ST. ONGE STEWARD JOHNSTON & REENS LLC  
986 Bedford Street  
Stamford, CT 06905  
Tel. (203) 324-6155  
Facsimile (203) 327-1096  
Email: [litigation@ssjr.com](mailto:litigation@ssjr.com)

*Attorneys for Applicant, Maco Pharma*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served via electronic mail and first class mail, postage prepaid, on counsel for the Opposer at the following address:

James G. Goggin  
Verrill Dana, LLP  
One Portland Square P.O. Box 586  
Portland, ME 04112-0586  
[jgoggin@verrilldana.com](mailto:jgoggin@verrilldana.com)

Date: May 6, 2014

*/s/ Joan M. Burnett*  
Joan M. Burnett