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

Proceeding	91215688
Party	Plaintiff Therakos, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	05/23/2014
Attachments	Amended Notice of Opposition.pdf(18266 bytes ) Ex. 1 to Amended Notice of Opposition.pdf(138505 bytes )

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

Applicant: Maco Pharma société anonyme )  
)  
Serial No.: 85/808,960 )  
)  
Filing Date: June 21, 2013 )  
)  
Mark: THERAFLEX )  
)  
Published: December 3, 2013 )  
\_\_\_\_\_ )

Therakos, Inc., Opposer

v.

Maco Pharma, Applicant

Opposition No. 91215688

**AMENDED NOTICE OF OPPOSITION**

Opposer: Therakos, Inc.  
a Florida Corporation  
10 North High Street, 3<sup>rd</sup> Floor  
West Chester, PA 19380

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for the opposition are as follows:

1. This is an opposition by Therakos, Inc. (“Therakos”), an international provider of medical devices and services, to stop another from registering the trademark “THERAFLEX,” which is confusingly similar to Therakos’s common law and federally registered “THERAKOS” trademark.

2. Therakos uses the THERAKOS mark on its pharmaceutical preparations, medical devices and services for photopheresis and blood treatment and on materials promoting its

medical devices and services to medical professionals and consumers. The goods are sold to and used by hospitals and medical professionals throughout the United States and worldwide.

3. Therakos first began selling its pharmaceutical preparations under the THERAKOS trademark at least as early as 1999, and first began promoting its medical services under the THERAKOS trademark at least as early as 2009. Such use began with Therakos' predecessor in interest, Johnson & Johnson, and Therakos has continued such use on both goods and services. Since that time, both the prior owner and Therakos have spent significant time and money promoting that trademark to customers nationwide and worldwide. Customers have come to know the THERAKOS mark as a symbol of Therakos' quality products and services. The THERAKOS mark had become famous before Applicant's first use of the THERAFLEX mark.

4. Therakos owns United States Trademark Registration No. 4,115,195, dated March 20, 2012, for the word mark "THERAKOS" for "pharmaceutical preparations for use in extracorporeal photopheresis, extracorporeal photo immune therapy, extracorporeal photo chemotherapy and cellular therapies" in International Class 005; for "therapeutic medical device for extracting blood from the body, separating blood, treating it extra corporally, and returning it to the body, used for extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies" in International Class 010; and "medical services relating to extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies" in International Class 044. A copy of the TESS electronic database of the USPTO for Registration No. 4,115,195, is attached as Exhibit 1.

5. On December 21, 2012, Maco Pharma ("Applicant") filed the instant application to register the trademark THERAFLEX. The application requests registration for

“Pharmaceutical products, namely, solutions for use in connection with the processing of blood and blood components for medical purposes, bags filled with solutions for processing blood for medical purposes; none of the foregoing being preparation of the treatment of colds or influenza” in International Class 005, and “Medical devices for processing blood, namely, medical kits comprised of blood filters, pouches and plastic tubing; pouch and container systems comprising blood collection bags for medical purposes for the processing of blood or blood components” in International Class 10. The application is based on the applicant’s registration of the mark in the European Union.

7. Therakos’ rights in the THERAKOS mark in the U.S. predate the Applicant’s rights (if any) in the THERAFLEX mark in the U.S.

8. The THERAFLEX mark so closely resembles Therakos’ THERAKOS mark when applied to the goods covered by the Application as to cause confusion, mistake or deception as to the source of Applicant’s goods.

9. The goods described in the Application are similar or identical to the goods covered by Therakos’ registration for the THERAKOS mark. As a result of the similarity of goods, the public is likely to be confused about whether Therakos is the source of Applicant’s goods or whether Therakos is affiliated with or the sponsor of Applicant’s goods.

10. Applicant’s use of the THERAFLEX mark will infringe and/or dilute Therakos’ prior rights in the THERAKOS mark.

11. Applicant’s registration and/or use of THERAFLEX will interfere with Therakos’ use of its THERAKOS mark and will harm Therakos.

Therefore, Therakos respectfully requests that the Board refuse registration of the THERAKOS mark.

Respectfully submitted,

VERRILL DANA, LLP

Dated: May 23, 2014

By: James G. Goggin  
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Attorney for Opposer  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Amended Notice of Opposition has been served on Applicant on May 23, 2014 by mailing the true and complete copy via First Class Mail, postage prepaid, to:

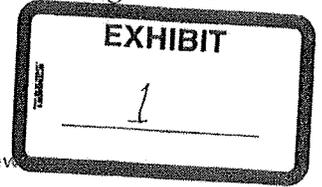
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# THERAKOS

**Word Mark** THERAKOS

**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: pharmaceutical preparations for use in extracorporeal photopheresis, extracorporeal photo immune therapy, extracorporeal photo chemotherapy and cellular therapies. FIRST USE: 19990709. FIRST USE IN COMMERCE: 19990709

IC 010. US 026 039 044. G & S: therapeutic medical device for extracting blood from the body, separating blood, treating it extra corporally, and returning it to the body, used for extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies. FIRST USE: 20090618. FIRST USE IN COMMERCE: 20090618

IC 044. US 100 101. G & S: medical services relating to extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies. FIRST USE: 20091205. FIRST USE IN COMMERCE: 20091205

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 77489277

**Filing Date** June 3, 2008

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** October 28, 2008

**Registration**

**Number** 4115195  
**Registration Date** March 20, 2012  
**Owner** (REGISTRANT) Johnson & Johnson CORPORATION NEW JERSEY 10 N. High Street 3rd Floor West Chester PENNSYLVANIA 19380  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Cheryl L. Foytlin  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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