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Filing date: **11/24/2015**

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	Glaxo Group Limited
Granted to Date of previous extension	12/06/2015
Address	980 Great West Road Brentford, Middlesex, TW8 9GS UNITED KINGDOM
Attorney information	Paul C. Llewellyn Kaye Scholer LLP 250 West 55th Street New York, NY 10019-9710 UNITED STATES paul.llewellyn@kayescholer.com, john.rynkiewicz@kayescholer.com, tmdocketing@kayescholer.com Phone:212-836-7828

**Applicant Information**

Application No	86336849	Publication date	06/09/2015
Opposition Filing Date	11/24/2015	Opposition Period Ends	12/06/2015
Applicant	Ansun Biopharma, Inc. 3030 Callan Road San Diego, CA 92121 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pharmaceutical preparation for the prevention, prophylaxis, and treatment of respiratory viral illness, namely, influenza and parainfluenza
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**Grounds for Opposition**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1870977	Application Date	05/11/1993
Registration Date	01/03/1995	Foreign Priority	NONE

		Date	
Word Mark	FLONASE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 pharmaceutical preparations and substances for the treatment and/or alleviation of respiratory diseases		

Attachments	FLUDASE.pdf(17366 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	/paul c llewellyn/
Name	Paul C. Llewellyn
Date	11/24/2015

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

GLAXO GROUP LIMITED,

Opposer,

v.

ANSUN BIOPHARMA, INC.

Applicant.

Opposition No. \_\_\_\_\_

Mark: FLUDASE  
Serial No: 86/336,849  
Filed: July 14, 2014  
Published: June 9, 2015

**NOTICE OF OPPOSITION**

Opposer, Glaxo Group Limited (“Opposer” or “Glaxo”), a company organized under the laws of England and Wales with a place of business at 980 Great West Road, Brentford, Middlesex, United Kingdom, TW8 9GS, believes it will be damaged by the registration of the mark FLUDASE shown in Application Serial No. 86336849, and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Glaxo is part of GSK, an international group of science-led global healthcare companies that researches and develops a broad range of innovative medicines and brands, focusing on pharmaceuticals, vaccines and consumer healthcare.

2. Glaxo is the owner of U.S. Trademark Registration No. 1,870,977 on the Principal Register for the trademark FLONASE® covering “pharmaceutical preparations and substances for the treatment and/or alleviation of respiratory diseases” in International Class 5.

3. Glaxo and its licensees have used the mark FLONASE on pharmaceutical preparations in the United States continuously since at least 1995.

4. The foregoing registration is valid and subsisting and Glaxo hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence

in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Glaxo's testimony period.

5. The FLONASE mark is inherently distinctive; it is a fanciful and coined term with no meaning other than to identify Glaxo's respiratory pharmaceutical products.

6. Since introducing its FLONASE products in 1995, Glaxo has spent substantial time, effort and money to promote the sale of pharmaceutical products in the United States under the FLONASE mark, and has sold and continues to sell substantial quantities of FLONASE pharmaceutical products in the United States.

7. By virtue of Glaxo's substantial use, sales, advertising, and promotion of the FLONASE mark throughout the United States and abroad, and the inherently distinctive nature of the mark, the FLONASE mark has become a well-known mark, has become distinctive of Glaxo's respiratory pharmaceutical products, and has become famous within the meaning of Section 43(c) of the Lanham Act, as amended, 15 U.S.C. § 1125(c).

8. Despite Glaxo's prior common law and statutory rights in the FLONASE mark, and long after Glaxo established rights in and to the FLONASE mark, and with at least constructive notice of Glaxo's federal trademark registration, Ansun Biopharma, Inc. ("Applicant") applied to register the mark FLUDASE for "Pharmaceutical preparation for the prevention, prophylaxis, and treatment of respiratory viral illness, namely, influenza and parainfluenza" in International Class 5, as set forth in Application Serial No. 86/336,849 (the "Subject Application").

9. Glaxo's FLONASE mark has priority over Applicant's FLUDASE mark because the filing date of Glaxo's trademark application was May 11, 1993, and Glaxo's date of first use was at least as early as 1995, well prior to the priority date of the Subject Application.

10. Applicant's FLUDASE mark is substantially or highly similar to the FLONASE mark in sound, appearance and commercial impression.

11. The goods set forth in the Subject Application are legally identical to the goods for which Glaxo's FLONASE mark is registered and used. On information and belief, the goods will be sold and distributed through the same channels of trade.

12. As a result, if Applicant begins using the mark FLUDASE in commerce in conjunction with the goods set forth in the Subject Application, in light of the similarity of the FLONASE and FLUDASE marks and the similarity of the parties' respective goods, channels of trade and target patient populations (among other reasons), many consumers, patients, prescribers and others who encounter Applicant's mark are likely to think that the goods offered under the FLUDASE mark, or the company that offers Applicant's products, is authorized by, sponsored by, licensed by, affiliated with or related to the company that offers Glaxo's FLONASE products, or that the FLONASE and FLUDASE products are the same or are otherwise related.

13. Accordingly, Applicant's FLUDASE mark, if used in conjunction with the goods set forth in the Subject Application, is likely to cause confusion, mistake, or to deceive as to the origin, source, sponsorship or affiliation of Applicant's goods.

14. Applicant's FLUDASE mark so resembles Glaxo's previously used and registered FLONASE mark as to be likely, when applied to the goods set forth in the Subject Application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

15. Glaxo previously has used throughout the United States, in connection with pharmaceutical preparations for the treatment and/or alleviation of respiratory diseases, the trademark FLONASE, such that FLONASE became a name or identity of substantial reputation

that is closely identified with Glaxo. Accordingly, Applicant's applied-for mark FLUDASE is likely, when applied to the goods set forth in the Subject Application, to point uniquely to Glaxo and to falsely suggest a connection with the Glaxo within the meaning of 15 U.S.C. § 1052(a).

16. Applicant's applied-for mark FLUDASE is substantially similar in sound and appearance to Glaxo's distinctive and famous FLONASE trademark. As such, Applicant's FLUDASE mark impairs and is likely to impair the distinctiveness of the FLONASE trademark and causes and is likely to cause dilution by blurring of that mark.

17. Glaxo will be damaged by registration of Applicant's FLUDASE trademark because such registration will support Applicant's dilution of the famous FLONASE trademark, and will give color of exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Glaxo.

18. Applicant's applied-for mark FLUDASE is likely to cause dilution by blurring of Opposer's famous, distinctive and federally-registered mark FLONASE within the meaning of 15 U.S.C. § 1125(c) and 15 U.S.C. § 1063(a), as amended by the Trademark Dilution Revision Act of 2006.

**WHEREFORE**, for all of the foregoing reasons and for such other reasons as the Board determines are appropriate, Glaxo respectfully prays that this Opposition be sustained and that the Subject Application be refused.

The Patent and Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Glaxo's attorneys, Kaye Scholer LLP, Deposit Account No. 11-0228.

Dated: November 24, 2015

Respectfully submitted,

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*Attorneys for Opposer  
Glaxo Group Limited*

## **CERTIFICATE OF SERVICE**

I certify that the foregoing Notice of Opposition is being electronically filed with the United States Patent and Trademark Office on November 24, 2015 and that a true and correct copy of the foregoing was served by first-class mail, postage prepaid, on the correspondent of record for Applicant, namely:

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