

ESTTA Tracking number: **ESTTA726299**

Filing date: **02/11/2016**

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	ORYX Verwaltungs GmbH		
Entity	limited liability company	Citizenship	Germany
Address	Marktplatz 1 Baldham, 85598 GERMANY		

Attorney information	William J. Seiter Seiter Legal Studio 2500 Broadway, Bldg F, Suite F-125 Santa Monica, CA 90404 UNITED STATES williamjseiter@seiterlegalstudio.com		
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Applicant Information

Application No	86731363	Publication date	01/12/2016
Opposition Filing Date	02/11/2016	Opposition Period Ends	02/11/2016
Applicant	Nerium Biotechnology, Inc. 11467 Huebner Road, Suite 175 San Antonio, TX 78230 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 preparations used in the treatment of immune system diseases, cancer, HIV/AIDS, Hepatitis C, herpes and other viral diseases; medicated skin care preparations, namely, creams, lotions, ointments, gels, toners, cleansers, and peels; medicated topical skin care preparations, namely, creams, lotions, ointments, gels, toners, cleansers, and peels
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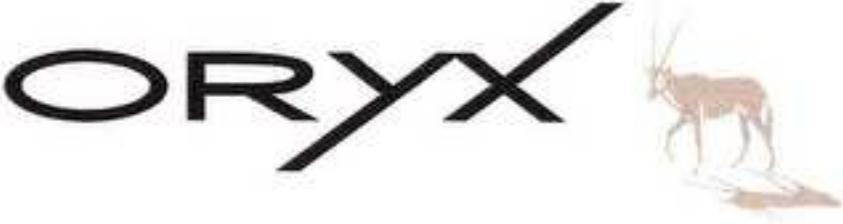
Grounds for Opposition

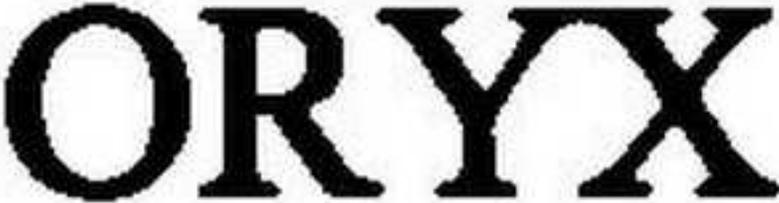
Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4879024	Application Date	10/30/2014
Registration Date	01/05/2016	Foreign Priority Date	04/30/2014
Word Mark	ORYX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system

U.S. Registration No.	4883539	Application Date	10/30/2014
Registration Date	01/12/2016	Foreign Priority Date	04/30/2014
Word Mark	ORYX		
Design Mark			
Description of Mark	The mark consists of the following: The word "ORYX" in dark red; to the right of the wording is the head of an oryx in the color black with a white patch in its face and neck; the background is white.		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system		

U.S. Registration No.	3715363	Application Date	01/17/2008
Registration Date	11/24/2009	Foreign Priority Date	07/19/2007
Word Mark	ORYX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 0 First Use In Commerce: 0 Capital investment, namely, capital investment in scientific research projects; financial sponsorship of scientific research Class 042. First use: First Use: 0 First Use In Commerce: 0		

	<p>Scientific and technological services and research and design relating thereto, namely, scientific research</p> <p>Class 045. First use: First Use: 0 First Use In Commerce: 0</p> <p>[Intellectual property watch services; licensing of intellectual property rights and copyrights; development of concepts for the exploitation of intellectual property, namely, intellectual property consultation; development of concepts for the exploitation of intellectual property rights, namely, providing information about intellectual and industrial property rights]</p>
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U.S. Registration No.	3950103	Application Date	05/27/2010
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Registration Date	04/26/2011	Foreign Priority Date	12/02/2009
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Word Mark	ORYX
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Description of Mark	The mark consists of the word "ORYX" in stylized letters, followed by a design of an antelope with its shadow.
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Goods/Services	<p>Class 035. First use: First Use: 0 First Use In Commerce: 0</p> <p>Advertising and marketing; market research; market analysis; public opinion polling; public relations; business management services; business administration; business consultancy; professional business consultancy; personnel consultancy and personnel management consultancy; office functions; organization of job fairs and advertising-related fairs; compilation of data in databases, namely, electronic databases; development of usage concepts for intellectual property with regard to professional business matters, namely, consulting services in the field of managing intellectual property</p> <p>Class 036. First use: First Use: 0 First Use In Commerce: 0</p> <p>Financial affairs, namely, financial analysis, financial consultation and financial asset management; monetary affairs, namely, monetary exchange and financial information; financial management; fund investments and mutual funds, namely, mutual fund investment and mutual fund distribution; development of usage concepts for intellectual property with regard to financial matters, namely, intellectual property valuation services, intellectual property venture capital fund management services; financial sponsorship of scientific research</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0</p> <p>Scientific and technological services and research and design relating thereto, namely, scientific research</p> <p>Class 045. First use: First Use: 0 First Use In Commerce: 0</p> <p>Intellectual property watching services; licensing of industrial property rights and copyright</p>
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U.S. Registration No.	4883515	Application Date	10/27/2014
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Registration Date	01/12/2016	Foreign Priority Date	04/30/2014
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Word Mark	ORYX ALPHA
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Design Mark	ORYX Alpha
Description of Mark	NONE
Goods/Services	<p>Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0 Advertising; marketing services; marketresearch; market analysis; public opinion polling; public relations; business management; business administration; business consultancy and advisory services; business consulting services; personnel consultancy and personnel management consultancy; office functions; organizationof trade fairs for commercial or advertising purposes; Consulting services in the field of managing intellectual properties, namely, advising others concerninginvestments in intellectual property assets and intangible business assets, both directly and indirectly through other entities</p> <p>Class 036. First use: First Use: 0 First Use In Commerce: 0 Financial and monetary affairs, namely,financial information, management and analysis services; financial management; investment of funds and mutual funds investment; development of usage concepts for intellectual property with regard to financial matters, namely, advising others regarding intellectual property investments; financial sponsorship of research and development of pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Scientific and technological services, namely, scientific research, analysis and testing in the field of pharmaceuticaland veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system</p> <p>Class 045. First use: First Use: 0 First Use In Commerce: 0 Monitoring intellectual property rightsfor legal advisory purposes; licensing of industrial property rights and copyright</p>

U.S. Registration No.	4879040	Application Date	10/27/2014
Registration Date	01/05/2016	Foreign Priority Date	04/30/2014

Word Mark	ORYX ALPHA
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Description of Mark	The mark consists of the word "ORYX" indark red with the word "ALPHA" in dark red beneath it; to the right of the wording is the head of an oryx in the color black
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	with a white patch in its face and neck; the background is white.
Goods/Services	<p>Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0 Advertising; marketing services; market research; market analysis; public opinion polling; public relations; business management; business administration; business consultancy and advisory services; business consulting services; personnel consultancy and personnel management consultancy; office functions; organization of trade fairs for commercial or advertising purposes; Consulting services in the field of managing intellectual properties, namely, advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities</p> <p>Class 036. First use: First Use: 0 First Use In Commerce: 0 Financial and monetary affairs, namely, financial information, management and analysis services; financial management; investment of funds and mutual funds investment; development of usage concepts for intellectual property with regard to financial matters, namely, advising others regarding intellectual property investments; financial sponsorship of research and development of pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Scientific and technological services, namely, scientific research, analysis and testing in the field of pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system</p> <p>Class 045. First use: First Use: 0 First Use In Commerce: 0 Monitoring intellectual property rights for legal advisory purposes; licensing of industrial property rights and copyright</p>

Attachments	<p>79157476#TMSN.png(bytes) 79159622#TMSN.png(bytes) 79054488#TMSN.png(bytes) 79084411#TMSN.png(bytes) 79158903#TMSN.png(bytes) 79159154#TMSN.png(bytes) Notice of Opposition (US TM App 86731363).pdf(170542 bytes)</p>
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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	/wjs/
Name	William J. Seiter
Date	02/11/2016

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

In the Matter of Application Serial No.86731363
Mark: ORX & Design
Published: January 12, 2016

ORYX Verwaltungs GmbH)
a German limited liability company)
)
Opposer,)
)
v.) Opposition No. _____
)
Nerium Biotechnology, Inc.)
a Canadian corporation)
)
Applicant.)

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NOTICE OF OPPOSITION

Opposer ORYX Verwaltungs GmbH, a limited liability company organized under the laws of Germany, located and doing business at Marktplatz 1, 85598 Baldham, Germany, believes that it would be damaged by the issuance of a registration for the trademark ORX & Design as applied for by Applicant Nerium Biotechnology, Inc., a Canadian corporation, and therefore opposes the application as to all of the applied for goods. As grounds for its opposition, Opposer, by its attorneys Seiter Legal Studio, alleges as follows:

1. Opposer is the owner of the following trademarks (hereinafter, “Opposer’s Marks”):
 - (i) U.S. Trademark Registration No. 4879024, with a priority date of April 30, 2014, registered January 5, 2016, for the mark ORYX for “Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases

and diseases of the central nervous system,” in International Class 5, which registration is valid and subsisting; and

(ii) U.S. Trademark Registration No. 4883539, with a priority date of April 30, 2014, registered January 12, 2016, for the mark ORYX & Design, for “Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system,” in International Class 5, which registration is valid and subsisting; and

(iii) U.S. Trademark Registration No. 3715363, with a priority date of July 19, 2007, registered November 24, 2009, for the mark ORYX for “Capital investment, namely, capital investment in scientific research projects; financial sponsorship of scientific research,” in International Class 36, and “Scientific and technological services and research and design relating thereto, namely, scientific research,” in International Class 42, which registration is valid, subsisting, incontestable, and constitutes conclusive evidence of the validity of the mark and of the registration, and of Opposer’s ownership of and exclusive right to use the mark in connection with the services set forth in the registration; and

(iv) U.S. Trademark Registration No. 3950103, with a priority date of December 2, 2009, registered April 26, 2011, for the mark ORYX for “Advertising and marketing; market research; market analysis; public opinion polling; public relations; business management services; business administration; business consultancy; professional business consultancy; personnel consultancy and personnel management consultancy; office functions; organization of job fairs and advertising-related fairs; compilation of data in databases, namely, electronic databases; development of usage concepts for

intellectual property with regard to professional business matters, namely, consulting services in the field of managing intellectual property,” in International Class 35, “Financial affairs, namely, financial analysis, financial consultation and financial asset management; monetary affairs, namely, monetary exchange and financial information; financial management; fund investments and mutual funds, namely, mutual fund investment and mutual fund distribution; development of usage concepts for intellectual property with regard to financial matters, namely, intellectual property valuation services, intellectual property venture capital fund management services; financial sponsorship of scientific research,” in International Class 36, “Scientific and technological services and research and design relating thereto, namely, scientific research,” in International Class 42, and “Intellectual property watching services; licensing of industrial property rights and copyright,” in International Class 45, which registration is valid and subsisting; and

(v) U.S. Trademark Registration No. 4883515, with a priority date of April 30, 2014, registered, January 12, 2016, for the mark ORYX ALPHA for “Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system,” in International Class 5, “Advertising; marketing services; market research; market analysis; public opinion polling; public relations; business management; business administration; business consultancy and advisory services; business consulting services; personnel consultancy and personnel management consultancy; office functions; organization of trade fairs for commercial or advertising purposes; Consulting services in the field of managing intellectual properties, namely, advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities, in International Class 35,

“Financial and monetary affairs, namely, financial information, management and analysis services; financial management; investment of funds and mutual funds investment; development of usage concepts for intellectual property with regard to financial matters, namely, advising others regarding intellectual property investments; financial sponsorship of research and development of pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system,” in International Class 36, “Scientific and technological services, namely, scientific research, analysis and testing in the field of pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system,” in International Class 42, and “Monitoring intellectual property rights for legal advisory purposes; licensing of industrial property rights and copyright,” in International Class 45, which registration is valid and subsisting; and

(vi) U.S. Trademark Registration No. 4879040, with a priority date of April 30, 2014, registered January 5, 2016, for the mark ORYX ALPHA & Design, for ““Pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system,” in International Class 5, “Advertising; marketing services; market research; market analysis; public opinion polling; public relations; business management; business administration; business consultancy and advisory services; business consulting services; personnel consultancy and personnel management consultancy; office functions; organization of trade fairs for commercial or advertising purposes; Consulting services in the field of managing intellectual properties, namely, advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other

entities, in International Class 35, “Financial and monetary affairs, namely, financial information, management and analysis services; financial management; investment of funds and mutual funds investment; development of usage concepts for intellectual property with regard to financial matters, namely, advising others regarding intellectual property investments; financial sponsorship of research and development of pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system,” in International Class 36, “Scientific and technological services, namely, scientific research, analysis and testing in the field of pharmaceutical and veterinary preparations for the treatment of cancer and autoimmune and neurodegenerative diseases and diseases of the central nervous system,” in International Class 42, and “Monitoring intellectual property rights for legal advisory purposes; licensing of industrial property rights and copyright,” in International Class 45, which registration is valid and subsisting.

2. Opposer’s Marks have been promoted extensively and are well known to the consuming public. Opposer has invested substantial time, effort and money in promoting Opposer’s Marks. As a result, Opposer’s Marks have become distinctive of Opposer’s goods and services, and have come to represent substantial goodwill for Opposer, widely recognized by the consuming public as a designation of source of the goods and services of Opposer.

3. On August 20, 2015, Applicant filed Application Serial No. 86731363 for the mark ORX & Design (hereinafter, “Applicant’s Mark”), based solely on intent to use in United States commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), for “Pharmaceutical preparations used in the treatment of immune system diseases,

cancer, HIV/AIDS, Hepatitis C, herpes and other viral diseases; medicated skin care preparations, namely, creams, lotions, ointments, gels, toners, cleansers, and peels; medicated topical skin care preparations, namely, creams, lotions, ointments, gels, toners, cleansers, and peels,” in International Class 5.

4. Upon information and belief, Applicant made no use of the mark in Application Serial No. 86731363 on or before July 19, 2007.

5. Upon information and belief, Applicant made no use of the mark in Application Serial No. 86731363 on or before April 30, 2014.

6. Upon information and belief, Applicant made no use of the mark in Application Serial No. 86731363 on or before August 20, 2015, the filing date of Applicant’s Mark.

7. The mark which Applicant seeks to register is similar in appearance, meaning and commercial impression to Opposer’s Marks, and Applicant’s Mark could be used in connection with goods the same as or closely related to Opposer’s goods and services. Given the confusing similarity of Applicant’s mark with Opposer’s marks and the sameness or relatedness of the parties’ respective goods and services, the public is likely to associate the goods of Applicant under Applicant’s Mark with Opposer and/or its licensees or with Opposer’s and/or its licensees’ goods and services under Opposer’s Marks, or to believe that Applicant’s goods are sponsored, endorsed or licensed by Opposer or its licensees, or that there exists some relationship between Applicant and Opposer and/or its licensees.

8. For the above reasons, any use of Applicant’s Mark by Applicant is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition has been forwarded via First Class Mail, postage prepaid, to the Applicant to the Applicant, to its attorney of record:

William B. Nash, Esq.
Haynes and Boone LLP
2323 Victory Ave Ste 700
Dallas, Texas 75219-7673

on this 11th day of February, 2016.

/s/
William J. Seiter