

ESTTA Tracking number: **ESTTA280134**

Filing date: **04/24/2009**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Reckitt Benckiser, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	399 Interpace Parkway Parsippany, NJ 07054-1133 UNITED STATES		

Attorney information	Debra Deardourff Faulk Gray Robinson, P.A. P.O. Box 3324 Tampa, FL 33601 UNITED STATES ptotpa@gray-robinson.com Phone:813-273-5000		
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Registration Subject to Cancellation

Registration No	3086823	Registration date	04/25/2006
Registrant	Capellon Pharmaceuticals, Ltd. 7509 Flagstone Street Fort Worth, TX 76118 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2002/08/00 First Use In Commerce: 2002/08/00

All goods and services in the class are cancelled, namely: Pharmaceutical preparations in pill form for the treatment of respiratory diseases and conditions

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77111490	Application Date	02/20/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of the color blue and white as applied to bi-layer guaifenesin extended-release tablets with blue on top for extended release and white on bottom indicating immediate release.
Goods/Services	Class 005. First use: First Use: 2002/07/01 First Use In Commerce: 2002/07/01 Cough expectorants

Attachments	77111490#TMSN.jpeg (1 page)(bytes) cellcellationpetition.pdf (4 pages)(395442 bytes) ExhibitAorangeblueyellow.pdf (11 pages)(247808 bytes) CapellonRegEXB.pdf (1 page)(643120 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	/debra deardourff faulk/
Name	Debra Deardourff Faulk
Date	04/24/2009

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Reckitt Benckiser, Inc.)	
)	Cancellation No. _____
Petitioner,)	Mark: Design
)	Supplemental Reg. No.:3,086,823
v.)	
)	
Capellon Pharmaceuticals, Ltd.)	
)	
Registrant.)	
_____)	

CANCELLATION PETITION

Reckitt Benckiser, Inc., a Delaware corporation, having a business address of 399 Interpace Parkway, Parsippany, New Jersey 07054-1133 (hereinafter the “Petitioner”) believes that it will be damaged by the continued registration of the blue and white tablet design in Registration No. 3,086,823 (hereinafter the “Registration”) by Capellon Pharmaceuticals, Ltd., a Texas limited liability company having a place of business at 7509 Flagstone Street, Forth Worth, Texas 76118 (hereinafter the “Registrant”), and hereby petitions to cancel said registration. The grounds in support of the petition are as follows:

1. Petitioner for many years has been engaged in the manufacture and sale of cough expectorants under the well-known brand Mucinex.
2. Petitioner is the owner of the family of Mucinex trademarks, including tablet designs for orange and white (Ser. No. 77/112,202), blue and white (Ser. No. 77/111,490) and yellow and white (Ser. No. 77/112,447) tablets which have been used continuously by Petitioner for expectorants sold in intrastate and interstate commerce

throughout the United States since at least as early as July 1, 2002, prior to Registrant's claimed date of first use of August, 2002 of its tablet design. *See* Exhibit A.

3. Registrant's tablet design was registered by Registrant on the Supplemental Register as U.S. Reg. No. 3,086,823 on April 25, 2006 for: "pharmaceutical preparations in pill form for the treatment of respiratory diseases and conditions" in International Class 5. *See* Exhibit B. Registrant claims a first use date of August 2002 for its blue and white tablet design.

4. Prior to any use or application to register the Registrant's alleged tablet in the United States, Petitioner used the trademark as an indication of origin of expectorants sold by Petitioner, and the purchasing public has come to recognize expectorants sold in association with the blue and white tablet trademark as emanating solely from Petitioner.

5. During the time Petitioner has used its blue and white tablet mark in connection with cough expectorants, Petitioner has advertised and sold its goods under the mark and the Mucinex marks so as to popularize such goods with its customers and the purchasing public. As a result, the Petitioner has developed substantial goodwill and public recognition of its mark, and the trade and purchasing public have come to know and recognize the blue and white tablet mark as identifying the goods of Petitioner exclusively.

6. On February 20, 2007, Petitioner filed a use base trademark application pursuant to 15 U.S. C 1051§ (a) for a blue and white tablet color design mark (Ser. No. 77/111,490). Petitioner has been using the blue and white tablet color design mark on its Mucinex tablets in commerce since at least as early as July 1, 2002.

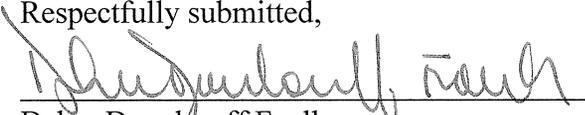
7. On October 24, 2008, the examining attorney prosecuting Petitioner's blue and white tablet design mark (Ser. No. 77/111,490), issued an office action rejecting Petitioner's trademark application and cited Registrant's tablet design (U.S. Supp. Reg. No. 3,086,823) based on a likelihood of confusion between Petitioner's blue and white tablet design (Ser. No. 77/111,490) and Registrant's blue and white tablet design (U.S. Supp. Reg. No. 3,086,823).

8. Because the Registrant's tablet design is used on the same or closely related goods, *e.g.* "pharmaceutical preparations in pill form for the treatment of respiratory diseases and conditions," as those of Petitioner (cough expectorants), and is confusingly similar to the Petitioner's blue and white tablet mark, confusion and deception as to the origin of Registrant's goods bearing the Registrant's claimed mark is likely.

9. Petitioner has priority of use in its blue and white tablet design. If this petition is not granted, Registrant would continue to have at least a *prima facie* exclusive right to use its tablet on pharmaceutical preparations in pill form for the treatment of respiratory diseases and conditions, and such registration would be a source of damage and injury to Petitioner and a source of confusion to Petitioner's many customers who rely upon the reputation of Petitioner and the high quality of Petitioner's goods as reflected by Petitioner's valuable trademark.

WHEREFORE, Petitioner prays that the Registration be cancelled and that this Petition be sustained.

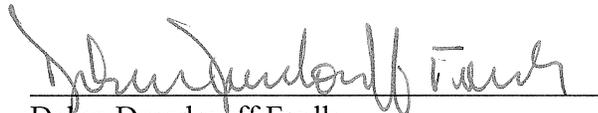
Date: 4/24/2009

Respectfully submitted,

Debra Deardourff Faulk

GrayRobinson, P.A.
201 North Franklin Street, Suite 2200
Tampa, Florida 33601
Attorneys for Petitioner
Telephone: 813-273-5000
Facsimile: 813-273-5145
E-Mail: ptotpa@gray-robinson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing CANCELLATION PETITION was provided via U.S. mail this 24th day of April, 2009 to: Capellon Pharmaceuticals, Ltd., c/o Kenneth C. Hill, Esquire, Hill & Hunn LLP, 201 Main Street, Suite 1440, Fort Worth, Texas 76102 the attorney of record.


Debra Deardourff Faulk

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Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2009-04-23 11:29:25 ET

Serial Number: 77112202 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark



Standard Character claim: No

Current Status: [Allowed for Registration on the Supplemental Register](#)

Date of Status: [2009-04-23](#)

Filing Date: [2007-02-21](#)

Filed as TEAS Plus Application: [Yes](#)

Currently TEAS Plus Application: [Yes](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Supplemental](#)

Law Office Assigned: [LAW OFFICE 116](#)

Attorney Assigned:
[BENMAMAN ALICE MEDINA](#)

Current Location: [M7X -TMO Law Office 116 - Examining Attorney Assigned](#)

Date In Location: [2009-04-23](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [RECKITT BENCKISER, INC.](#)

Address:
[RECKITT BENCKISER, INC.](#)
[399 INTERPACE PARKWAY](#)

Exhibit "A"

PARSIPPANY, NJ 07054

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Expectorants

Basis: 1(a)

First Use Date: 2005-10-01

First Use in Commerce Date: 2005-10-01

ADDITIONAL INFORMATION

Color(s) Claimed: The color(s) The applicant claims color as a feature of the mark, namely, Orange and White. is/are claimed as a feature of the mark.

Description of Mark: The mark consists of of the colors orange and white as applied to the bi-layer guaifenensin and pseudoephedrine extended-release tablets with orange on top for extended release and white on bottom indicating immediate release, the broken lines only serve to show the positioning of the mark on the product and that the shape of the product is not claimed as part of the mark.

Design Search Code(s):

10.09.01 - Capsules, medicinal/nonmedicinal; Pills; Tablets, medicines; Tablets, nonmedical products in tablet form

29.05.07 - Orange (Multiple colors used on the entire goods)

29.05.09 - White (Multiple colors used on the entire goods)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-04-23 - APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER

2009-04-06 - Teas/Email Correspondence Entered

2009-04-06 - Communication received from applicant

2009-04-03 - TEAS Request For Reconsideration Received

2009-02-23 - TEAS Change Of Correspondence Received

2008-10-24 - Notification Of Subsequent Final Emailed

Exhibit "A"

2008-10-24 - Subsequent Final Emailed
2008-10-24 - Subsequent Final Refusal Written
2008-09-13 - Notification Of Final Refusal Emailed
2008-09-13 - Final refusal e-mailed
2008-09-13 - Final Refusal Written
2008-08-07 - Teas/Email Correspondence Entered
2008-08-07 - Communication received from applicant
2008-08-07 - TEAS Response to Office Action Received
2008-07-16 - Automatic Update Of Assignment Of Ownership
2008-02-07 - Notification Of Non-Final Action E-Mailed
2008-02-07 - NON-FINAL ACTION E-MAILED
2008-02-07 - Non-Final Action Written
2008-01-03 - Teas/Email Correspondence Entered
2008-01-03 - Communication received from applicant
2008-01-03 - Assigned To LIE
2007-11-20 - TEAS Response to Office Action Received
2007-05-21 - Non-final action e-mailed
2007-05-21 - Non-Final Action Written
2007-05-16 - Assigned To Examiner
2007-02-27 - Notice Of Design Search Code Mailed
2007-02-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Debra Deardourff Faulk

Correspondent

Debra Deardourff Faulk
GrayRobinson, P.A.
P.O. Box 3324
Tampa FL 33601-3324
Phone Number: 813-273-5000

Exhibit "A"

Fax Number: 813-273-5145

Exhibit "A"

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2009-04-23 11:27:02 ET

Serial Number: [77111490 Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark



Standard Character claim: [No](#)

Current Status: [A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.](#)

Date of Status: [2008-10-24](#)

Filing Date: [2007-02-20](#)

Filed as TEAS Plus Application: [Yes](#)

Currently TEAS Plus Application: [Yes](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 116](#)

Attorney Assigned:
[BENMAMAN ALICE MEDINA](#)

Current Location: [M7X -TMO Law Office 116 - Examining Attorney Assigned](#)

Date In Location: [2008-10-24](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [RECKITT BENCKISER, INC.](#)

Address:

Exhibit "A"

RECKITT BENCKISER, INC.
399 INTERPACE PARKWAY
PARSIPPANY, NJ 07054

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Cough expectorants

Basis: 1(a)

First Use Date: 2002-07-01

First Use in Commerce Date: 2002-07-01

ADDITIONAL INFORMATION

Color(s) Claimed: The color(s) blue and white is/are claimed as a feature of the mark.

Description of Mark: The mark consists of the color blue and white as applied to bi-layer guaifenesin extended-release tablets with blue on top for extended release and white on bottom indicating immediate release.

Section 2(f)

Design Search Code(s):

10.09.01 - Capsules, medicinal/nonmedicinal; Pills; Tablets, medicines; Tablets, nonmedical products in tablet form

29.05.03 - Blue (multiple colors used on the entire goods)

29.05.09 - White (Multiple colors used on the entire goods)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-02-23 - TEAS Change Of Correspondence Received

2008-10-24 - Notification Of Non-Final Action E-Mailed

2008-10-24 - NON-FINAL ACTION E-MAILED

2008-10-24 - Non-Final Action Written

2008-09-13 - Notification Of Final Refusal Emailed

2008-09-13 - Final refusal e-mailed

Exhibit "A"

2008-09-13 - Final Refusal Written
2008-08-08 - Teas/Email Correspondence Entered
2008-08-07 - Communication received from applicant
2008-08-07 - TEAS Response to Office Action Received
2008-07-16 - Automatic Update Of Assignment Of Ownership
2008-02-07 - Notification Of Non-Final Action E-Mailed
2008-02-07 - NON-FINAL ACTION E-MAILED
2008-02-07 - Non-Final Action Written
2008-01-03 - Teas/Email Correspondence Entered
2008-01-03 - Communication received from applicant
2008-01-03 - Assigned To LIE
2007-11-21 - TEAS Response to Office Action Received
2007-05-21 - Non-final action e-mailed
2007-05-21 - Non-Final Action Written
2007-05-16 - Assigned To Examiner
2007-02-24 - Notice Of Design Search Code Mailed
2007-02-23 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Debra Deardourff Faulk

Correspondent

Debra Deardourff Faulk

GrayRobinson, P.A.

P.O. Box 3324

Tampa FL 33601-3324

Phone Number: 813-273-5000

Fax Number: 813-273-5145

Exhibit "A"

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2009-04-23 11:28:54 ET

Serial Number: 77112447 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark



Standard Character claim: No

Current Status: [Allowed for Registration on the Supplemental Register](#)

Date of Status: [2009-04-23](#)

Filing Date: [2007-02-21](#)

Filed as TEAS Plus Application: [Yes](#)

Currently TEAS Plus Application: [Yes](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Supplemental](#)

Law Office Assigned: [LAW OFFICE 116](#)

Attorney Assigned:
[BENMAMAN ALICE MEDINA](#)

Current Location: [M7X -TMO Law Office 116 - Examining Attorney Assigned](#)

Date In Location: [2009-04-23](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [RECKITT BENCKISER, INC.](#)

Address:
[RECKITT BENCKISER, INC.](#)
[399 INTERPACE PARKWAY](#)

Exhibit "A"

PARSIPPANY, NJ 07054

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Expectorants

Basis: 1(a)

First Use Date: 2004-08-01

First Use in Commerce Date: 2004-08-01

ADDITIONAL INFORMATION

Color(s) Claimed: The color(s) Yellow & White is/are claimed as a feature of the mark.

Description of Mark: The mark consists of of the colors yellow and white as applied to the bi-layer guaifenesin and pseudoephedrine extended-release tablets with yellow on top for extended release and white on bottom indicating immediate release, the broken lines only serve to show the positioning of the mark on the product and that the shape of the product is not claimed as part of the mark.

Design Search Code(s):

10.09.01 - Capsules, medicinal/nonmedicinal; Pills; Tablets, medicines; Tablets, nonmedical products in tablet form

29.05.08 - Yellow or gold (Multiple colors used on the entire goods)

29.05.09 - White (Multiple colors used on the entire goods)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-04-23 - APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER

2009-04-06 - Teas/Email Correspondence Entered

2009-04-06 - Communication received from applicant

2009-04-03 - TEAS Request For Reconsideration Received

2009-02-24 - TEAS Change Of Correspondence Received

2008-10-24 - Notification Of Subsequent Final Emailed

2008-10-24 - Subsequent Final Emailed

Exhibit "A"

2008-10-24 - Subsequent Final Refusal Written
2008-09-13 - Notification Of Final Refusal Emailed
2008-09-13 - Final refusal e-mailed
2008-09-13 - Final Refusal Written
2008-08-08 - Teas/Email Correspondence Entered
2008-08-07 - Communication received from applicant
2008-08-07 - TEAS Response to Office Action Received
2008-07-16 - Automatic Update Of Assignment Of Ownership
2008-02-07 - Notification Of Non-Final Action E-Mailed
2008-02-07 - NON-FINAL ACTION E-MAILED
2008-02-07 - Non-Final Action Written
2008-01-03 - Teas/Email Correspondence Entered
2008-01-03 - Communication received from applicant
2008-01-03 - Assigned To LIE
2007-11-20 - TEAS Response to Office Action Received
2007-05-21 - Non-final action e-mailed
2007-05-21 - Non-Final Action Written
2007-05-16 - Assigned To Examiner
2007-02-27 - Notice Of Design Search Code Mailed
2007-02-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

/debra deardourff faulk/

Correspondent

Debra Deardourff Faulk

Gray Robinson, P.A.

P.O. Box 3324

Tampa FL 33601-3324

Phone Number: 813-273-5000

Fax Number: 813-273-5145

Exhibit "A"

Exhibit "A"

Int. Cl.: 5

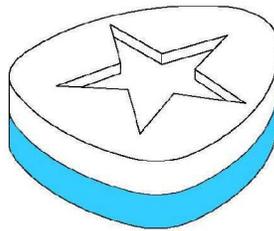
Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 3,086,823

United States Patent and Trademark Office

Registered Apr. 25, 2006

**TRADEMARK
SUPPLEMENTAL REGISTER**



CAPELLON PHARMACEUTICALS, LTD. (TEXAS
LTD LIAB CO)
7509 FLAGSTONE STREET
FORT WORTH, TX 76118

FOR: PHARMACEUTICAL PREPARATIONS IN
PILL FORM FOR THE TREATMENT OF RESPIRA-
TORY DISEASES AND CONDITIONS, IN CLASS 5
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 8-0-2002; IN COMMERCE 8-0-2002.

THE COLOR(S) WHITE AND LIGHT BLUE IS/
ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A PILL THAT IS
TRIANGULAR WITH ROUNDED CORNERS; THE
BOTTOM PORTION OF THE PILL IS COLORED
LIGHT BLUE, AND THE UPPER PORTION IS
WHITE WITH A FIVE POINTED STAR ENGRAVED
IN THE UPPER SURFACE.

SER. NO. 78-392,843, FILED P.R. 3-29-2004; AM. S.R.
2-27-2006.

MARK T. MULLEN, EXAMINING ATTORNEY

EXHIBIT "B"