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Filing date: **07/25/2013**

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	PFIZER INC		
Entity	Corporation	Citizenship	Delaware
Address	235 EAST 42ND STREET NEW YORK, NY 10017 UNITED STATES		

Attorney information	Paul C. Llewellyn Kaye Scholer LLP 425 Park Avenue New York, NY 10022 UNITED STATES paul.llewellyn@kayescholer.com, john.rynkiewicz@kayescholer.com, darya.laufer@kayescholer.com, john.eisheid@kayescholer.com Phone:212-836-8000
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Registration Subject to Cancellation

Registration No	3476220	Registration date	07/29/2008
International Registration No.	NONE	International Registration Date	NONE
Registrant	Ajanta Pharma Ltd AJANTA HOUSE, CHARKOP, KANDIVLI (W) Mumbai, 400-067 INDIA		

Goods/Services Subject to Cancellation

Class 005. All goods and services in the class are cancelled, namely: Pharmaceutical for the treatment of erectile dysfunction

Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2162548	Application Date	04/12/1996
Registration Date	06/02/1998	Foreign Priority	NONE

		Date	
Word Mark	VIAGRA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1998/04/06 First Use In Commerce: 1998/04/06 compound for treating erectile dysfunction		

Attachments	Pfizer _ Kamagra Petition to Cancel.pdf(23799 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	07/25/2013

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

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: PFIZER INC., :
: Petitioner, :
: v. :
: AJANTA PHARMA LTD, :
: Registrant. :
----- X

PETITION FOR CANCELLATION

Registration No: 3,476,220
Mark: KAMAGRA
Filed: December 21, 2007
Registered: July 27, 2008

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Petitioner Pfizer Inc. (“Petitioner” or “Pfizer”), a Delaware corporation with a place of business at 235 East 42nd Street, New York, New York, believes it is or will be damaged by the registration of the mark KAMAGRA in Registration No. 3,476,220 and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner, by and through its undersigned counsel, alleges that:

1. Pfizer is a research-based biomedical and pharmaceutical company in the business of discovering, developing, manufacturing and delivering medicines. Pfizer also sells a variety of consumer products, including over-the-counter medications.

2. Pfizer is the owner of and has used the VIAGRA mark on pharmaceutical preparations continuously since at least April 1998.

3. Pfizer is the owner of U.S. Trademark Registration No. 2,162,548 on the Principal Register for the trademark VIAGRA[®] covering a “compound for treating erectile dysfunction” in International Class 5.

4. Said registration is valid and subsisting and Pfizer 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 Pfizer’s testimony period.

5. The VIAGRA[®] trademark is inherently distinctive; it is a fanciful and coined term with no meaning other than to identify Pfizer’s product.

6. Since introducing its VIAGRA[®] product in 1998, Pfizer has spent substantial time, effort and money to promote the sale of the product in the United States under the VIAGRA[®] mark. Within a very short time of its launch, the VIAGRA[®] product became exceptionally well-known throughout the United States and abroad.

7. Pfizer has sold and continues to sell substantial quantities of VIAGRA[®] (sildenafil citrate) in the United States and has spent substantial time, effort and money promoting the sale of such product under the VIAGRA[®] mark. In addition, since at least April 1998 and earlier, Pfizer and its VIAGRA[®] product have received and continue to receive widespread media attention.

8. By virtue of Pfizer's substantial use, sales, advertising, and promotion of the VIAGRA[®] mark throughout the United States and abroad, the enormous publicity and media attention accorded the mark, and the inherently distinctive nature of the mark, the VIAGRA[®] mark has become a well-known mark, has become distinctive of Pfizer's product, and has become famous within the meaning of Section 43(c) of the Lanham Act, as amended, 15 U.S.C. § 1125(c).

9. Despite Pfizer's long prior common law and statutory rights in the VIAGRA[®] mark, long after Pfizer established rights in and to the VIAGRA[®] mark, and with both constructive and actual notice of Pfizer's federal registration, Ajanta Pharma Ltd ("Registrant") obtained a registration for the mark KAMAGRA for "pharmaceutical for the treatment of erectile dysfunction," as set forth in the Registration No. 3,476,220, pursuant to Section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e).

10. Pfizer's mark has priority over Registrant's mark because the filing date of Pfizer's trademark application is April 12, 1996, and Pfizer's date of first use is April 6, 1998, prior to the priority date of Registrant's registration, Registration No. 3,476,220.

11. Pfizer's VIAGRA[®] trademark became famous long before Registrant filed its application to register the mark KAMAGRA.

12. Registrant's KAMAGRA mark is substantially or highly similar to the mark VIAGRA[®] in sound, appearance and commercial impression.

13. The goods set forth in the subject registration are the same as the goods for which Pfizer's VIAGRA[®] trademark is registered and used, and will be sold and distributed in the same channels of trade, in that many consumers who encounter Registrant's mark are likely to think

that the same company that offers Registrant's product might be authorized by, sponsored by, licensed by, affiliated with or related to the company that offers Pfizer's VIAGRA[®] product.

14. As a result, if Registrant begins using the mark KAMAGRA in commerce in conjunction with the goods set forth in the subject registration, in light of the similarity of the KAMAGRA and VIAGRA[®] 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 Registrant's mark are likely to think that the goods offered under the KAMAGRA mark, or the company that offers Registrant's products, is authorized by, sponsored by, licensed by, affiliated with or related to the company that offers Pfizer's VIAGRA[®] medicine, or that the KAMAGRA and VIAGRA[®] products are the same or are otherwise related.

15. Accordingly, Registrant's mark KAMAGRA, if used in conjunction with the goods set forth in the registration, is likely to cause confusion, mistake, or to deceive as to the origin, source, sponsorship or affiliation of Registrant's goods.

16. Registrant's KAMAGRA mark so resembles Pfizer's VIAGRA[®] trademark as to be likely, when applied to the goods set forth in Registrant's registration, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

17. Registrant's KAMAGRA mark so resembles the term VIAGRA as to be likely, when applied to the goods set forth in Registrant's registration, to falsely suggest a connection with Pfizer within the meaning of 15 U.S.C. § 1052(a), because:

- a. Petitioner's VIAGRA[®] mark has become so well known among the relevant consuming population that the term VIAGRA serves as an identity for Petitioner among a substantial portion of the public;

- b. KAMAGRA is a close approximation of Petitioner's name or identity, would be recognized as such, and points uniquely and unmistakably to Petitioner;
- c. Petitioner is not connected with any goods that might be sold by Registrant under the KAMAGRA mark; and
- d. Petitioner's name or identity is of sufficient fame or reputation that if the KAMAGRA mark were used on the goods specified in the subject registration, a connection with Petitioner would be presumed.

18. Registrant's KAMAGRA mark is substantially similar in sound and appearance to Pfizer's distinctive and famous VIAGRA[®] trademark. As such, Registrant's KAMAGRA mark impairs and is likely to impair the distinctiveness of the VIAGRA[®] trademark and causes and is likely to cause dilution by blurring of that mark, and Registrant's KAMAGRA mark harms and is likely to harm the reputation of the VIAGRA[®] trademark and causes and is likely to cause dilution by tarnishment of that mark.

19. Accordingly, Registrant's KAMAGRA mark is likely to dilute the distinctive quality of Pfizer's distinctive and famous VIAGRA[®] trademark within the meaning of 15 U.S.C. § 1125(c)(1).

20. Registrant, a company organized under the laws of India, obtained its registration pursuant to Section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e), based on a registration it had obtained in India. On information and belief, Registrant had not made *bona fide* use in commerce of the mark KAMAGRA on the specified goods when the mark was issued, it has not made *bona fide* use of the mark in commerce since Registration No. 3,476,220 was issued, and it does not intend to make *bona fide* use the mark in commerce. Accordingly, the subject registration for KAMAGRA should be cancelled.

21. Registrant has not claimed that it made *bona fide* use of the KAMAGRA mark in commerce in connection with the goods that are the subject of Registration No. 3,476,220 before the registration was issued on July 27, 2008.

22. On information and belief, Registrant has not made *bona fide* use of the KAMAGRA mark in commerce in connection with the goods that are the subject of Registration No. 3,476,220, for the mark KAMAGRA, since the registration was issued on July 27, 2008.

23. Registrant's non-use of the KAMAGRA mark for almost five consecutive years is *prima facie* evidence of abandonment.

24. In order to distribute in United States commerce a pharmaceutical product for the treatment of erectile dysfunction, as a matter of law, Registrant would need to obtain the approval of the United States Food & Drug Administration ("FDA") of a New Drug Application or Abbreviated New Drug Application covering the pharmaceutical.

25. Registrant has not obtained FDA approval to distribute in United States commerce any pharmaceutical for the treatment of erectile dysfunction.

26. Upon information and belief, Registrant has not applied to the FDA for approval to distribute in United States commerce any pharmaceutical for the treatment of erectile dysfunction.

27. In order to distribute in United States commerce a pharmaceutical product for the treatment of erectile dysfunction under the brand name KAMAGRA, as a matter of law, Registrant would need to obtain the approval of the FDA of the brand name KAMAGRA.

28. Registrant has not obtained FDA approval to distribute in United States commerce any pharmaceutical under the brand name KAMAGRA.

29. Upon information and belief, Registrant has not applied to the FDA for approval to

distribute in United States commerce any pharmaceutical under the brand name KAMAGRA.

30. Accordingly, Registrant has abandoned the KAMAGRA mark and, pursuant to 15 U.S.C. § 1064(c), Registration No. 3,476,220 should be cancelled.

WHEREFORE, for all of the foregoing reasons and for such other reasons as the Board determines are appropriate, Petitioner respectfully prays that this Petition be sustained and that Registrant's subject registration be cancelled.

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

Date: July 25, 2013

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Attorneys for Petitioner Pfizer Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2013, I caused a true and correct copy of the foregoing Petition for Cancellation to be served by United States first class mail, postage prepaid, upon the following domestic representative:

Dr. Ramesh Jhavar
Ajanta Pharma Inc
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Raritan, NJ 08869-1346

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Mumbai 400-067
India

/Paul C. Llewellyn/
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