

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

Serial No.: 75/616,663

Filing Date: January 7, 1999

Mark: GEROVITAL H3 PROF. DR. A. ASLAN

Applicant: S.C. Farmec S.A.

Law Office: 105

Trademark Examiner: John E. Michos

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

**MOTION FOR FURTHER SUSPENSION OF APPEAL AND
REQUEST TO REMAND FOR ADDITIONAL EVIDENCE**

On October 9, 2004, applicant filed a Notice of Appeal of the final refusal to register the above-referenced mark. The appeal was instituted in a paper mailed October 27, 2004. On November 22, 2004, applicant filed a paper requesting that the Board suspend action on the appeal pending a final determination in Cancellation No. 92043941. The cancellation proceeding was filed against Registration No. 708319, cited by the Trademark Examining Attorney as a Section 2(d) bar to registration of applicant's mark. The request to suspend was granted in a paper mailed December 13, 2004.

On February 9, 2005, applicant and the owner of Registration No. 708319 entered into an agreement under which the owner of Registration No. 708319 consents to registration and use of the mark that is the subject of the instant appeal. A copy of the consent is attached as Exhibit A.

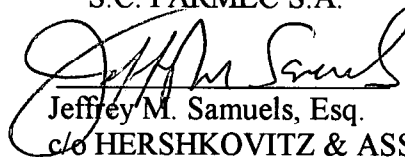
In view thereof, applicant hereby moves that the Board further suspend the instant appeal and, pursuant to Trademark Rule 2.142(d), 37 C.F.R. §2.142(d), requests the Board to remand the case to the Trademark Examining Operation for consideration of the consent to registration and use.

Applicant submits that the requisite "good cause" exists in view of the fact that: (1) it took a great deal of time for the applicant and the owner of Registration No. 708319 to reach agreement on the consent agreement, (2) the Section 2(d) refusal is the only basis of refusal, (3) the consent may be highly persuasive of registrability, (4) the instant request is being made within days after the consent agreement was agreed to, and (5) no final decision on the appeal has been rendered by the Board. ("In addition, because a consent agreement offered in response to a refusal to register under Section 2(d) of the Act ... is inherently difficult and time-consuming to obtain, and may be highly persuasive of registrability, the Board will grant a request to suspend and remand for consideration of a consent agreement if the request, accompanied by the consent agreement, is filed at any time prior to the rendering of the Board's final decision on the appeal.") See §1207.02 of *Trademark Trial and Appeal Board Manual of Procedure*.

Respectfully submitted,

S.C. FARMEC S.A.

Date: 2/15/05



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EXHIBIT A

FROM : INVENTA

FAX NO. : 40213228325

Feb. 14 2005 06:23PM P2

RJK 1/11/11.02.05

NO. 2/10/11.02.05

CONSENT TO REGISTRATION AND USE

WHEREAS, S.C. Farmec S.A. has filed an application (Serial No. 75/616663) seeking registration of the mark "Gerovital H3 Prof. Dr. A. Aslan and Design," as intended to be used on "cosmetics, namely, face and body cream; body lotion; face lotion; and moisturizing cream";

WHEREAS, the above-referenced application has been refused registration, in part, under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), on the basis of U.S. Registration No. 708,319 for the mark GEROVITAL H3 PRODUS ORIGINAL PROF. DR. A. ASLAN, which registration contains the following identification of goods: "Procaine, Acid Solution of Procaine Hydro-Chloride and Micro-Elements for the Therapy and Prophylaxis of Old Age; Substance for the Curative and Preventive Treatment of the Phenomena of Old Age and of other Tropic Disturbances, Psychological and Physical Asthenia; Cerebral and Peripheral Arteriosclerosis; Senile Parkinson; Cerebral Spasms; Post-Hemiplegic Sequelae; Neuralgia; Neuritis; Degenerative Rheumatism; Angina Pectoris; Sequelae of Myocardial Infarction; Arteritis; Acrocyanosis; Cutaneous Dystrophies; Senile Keratosis; Vitiligo; Psoriasis; Eczema; Lichen Planus; Sclerodermia; Trophic Ulcer; Dystrophies of the Hair and Nails; Gastro-Duodenal Ulcer; Bronchial Asthma";

WHEREAS, the record owner of U.S. Registration No. 708,319 is Sicomed S.A.;

WHEREAS, Sicomed S.A. and S.C. Farmec S.A. believe, based on the representations set forth below, that the mark that is subject of Serial Nos. 75/616663 is not likely to cause confusion with the mark that is the subject of U.S. Registration No. 708,319; and

WHEREAS, the parties recognize the validity of each other's use and/or registration of their respective marks on their respective goods and wish to avoid any conflict with the other's use or registration of its mark(s)

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, Sicomed hereby consents to, and agrees that it will not take any action to interfere with or prevent, the registration and use by S.C. Farmec S.A. of the mark that is the subject of Serial No. 75/616663, as intended to be used for the goods identified in the subject application.

The parties represent as follows:

1. Any use of the parties' respective marks will be limited to the goods identified in the above-referenced applications and registration.

FROM : INVENTA
DATE: 11 FEB 05 11:41

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LINCOLN, NE 68502

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2. The goods offered under the parties' respective marks are not competitive and are not likely to be sold in the same channels of trade.
3. The differences in their respective marks, the differences between the manner in which their respective marks are used and presented, and the differences in the marketing practices of the parties are sufficient to preclude any likelihood of confusion in the marketplace.
4. Any likelihood of confusion is further precluded by the fact that the parties target their respective goods to different customers with different purposes and objectives.
5. The parties' respective goods are relatively expensive and would only be purchased after the exercise of due care by prospective purchasers.
6. Should the need arise, the parties will cooperate to take steps necessary to prevent the possibility of customer confusion arising in the future.
7. The parties agree to execute and file with the United States Patent and Trademark Office any and all documents which may be necessary or proper to effectuate the terms of this agreement.
8. This agreement contains the entire agreement between the parties and may only be amended or supplemented in a writing signed by both parties.

S.C. FARMEC S.A.
 By: [Signature]
 (Signature)
 Name: TURBAN LIVIU
 (Printed)
 Title: GENERAL MANAGER
 Date: 9 FEBRUARY, 2005



SICOMED S.A.
 By: [Signature]
 (Signature)
 Name: K.A. Postema
 (Printed)
 Title: CEO
 Date: 7 February, 2005

