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CERTIFICATE OF MAILING PURSUANT TO 37 C.F.R. §1.8

I hereby certify that the below-identified Notice of Opposition and attached documents are being deposited with the United States Postal Service as first-class mail in an envelope addressed to Commissioner for Trademarks, Box TTAB FEE, 2900 Crystal Drive, Arlington, VA 22202-3513, on:

Date: Monday May 20, 2002 By Pat S. Daniels

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

In the matter of application Serial No. 76/214,608

Published in the *Official Gazette* of November 20, 2001 at page TM 107



GEL TECH, L.L.C.,

Opposer,

vs.

TWENTY-FIRST CENTURY
LABORATORIES, INC.,

Applicant.

05-23-2002

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #34

Opposition No.: _____

NOTICE OF OPPOSITION

GEL TECH, L.L.C., a limited liability company organized and existing under the laws of the State of Arizona, with a mailing address at 2375 E. Camelback Road, Phoenix, Arizona 85016 (hereinafter referred to as "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 76/214,608 in International Class 5, and hereby opposes the same.

As grounds for opposition, including grounds under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063, as amended, it is alleged that:

1. Since at least as early as December 1998, several years prior to the filing date of Applicant's intent-to-use application that is the subject of this Notice of Opposition, the

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Opposer Gel Tech, L.L.C. has used its ZICAM[®] mark on and in connection with pharmaceutical and homeopathic preparations for the relief of colds and allergy symptoms.

2. Opposer has spent substantial sums of money in advertising and promoting the goods sold by Opposer under its ZICAM mark.

3. In addition, Opposer is the owner of United States Trademark Registration No. 2,517,404 for its mark ZICAM registered December 11, 2001 for pharmaceutical and homeopathic preparations for the relief of colds and allergy symptoms, specifically excluding preparations to assist in smoking cessation or to treat smoking-related conditions other than colds and allergy symptoms in International Class 5, which registration is valid and subsisting and in full force and effect; a photocopy of the current "TESS" Federal trademark database record for this registration is attached hereto as Exhibit 1.

4. Twenty-First Century Laboratories, Inc. (hereinafter "Applicant") seeks to register, on the basis of its intent to use, the mark ZICAL as a trademark in International Class 5 for dietary and nutritional supplements, as evidenced by the publication of said mark in the *Official Gazette* on page TM 107 of the November 20, 2001 issue.

5. The trademark proposed for registration by Applicant is confusingly similar to Opposer's ZICAM mark; accordingly, Applicant's proposed mark is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of the products bearing Applicant's mark. If Application Serial No. 76/214,608 is permitted to be registered on the Principal Register, Opposer will suffer great injury in violation of 15 U.S.C. §1125(a).

6. If Applicant is permitted to register the ZICAL mark for its goods, as specified in the application herein opposed, confusion in trade resulting in damage and injury to Opposer and/or its licensees would be caused and would result because Applicant's mark is confusingly similar to Opposer's mark. Persons familiar with Opposer's mark would be likely to purchase Applicant's goods and services as and for goods and services provided by Opposer.

7. Upon information and belief, allowing registration of Applicant's mark would allow Applicant to unfairly trade upon Opposer's substantial goodwill developed in its

aforesaid mark. Registration of the mark would run counter to the public interest with respect to the ability to accurately ascertain the source of goods and services in the marketplace.

WHEREFORE, the Opposer prays that application Serial No. 76/214,608 be rejected, that no registration be issued thereon, and that this opposition be sustained in favor of Opposer.

This Notice of Opposition is timely filed within an extension of time requested of the Trademark Trial and Appeal Board, extending Opposer's time to oppose to and including May 19, 2002, which fell on a Sunday. This Notice of Opposition is timely filed pursuant to 37 C.F.R. §1.7 on the following Monday, May 20, 2002. Snell & Wilmer's check no. 287262 covering the fee of \$200.00 required under Section 2.6(a)(17) is enclosed herewith (37 C.F.R. §2.101(c)-(d)).

A duplicate copy of this Notice of Opposition also is enclosed herewith (37 C.F.R. §2.104(a)).

Respectfully submitted,

SNELL & WILMER L.L.P.

By  for
Daniel J. Noblitt

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Phoenix, Arizona 85004-2202
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Attorneys for Opposer Gel Tech, L.L.C.



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Sat May 18 04:10:51 EDT 2002

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	Browser Desc	BOTTOM	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR **Jump** to record: **Record 1 out of 3**

Check Status (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark ZICAM

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: PHARMACEUTICAL AND HOMEOPATHIC PREPARATIONS FOR THE RELIEF OF COLDS AND ALLERGY SYMPTOMS, SPECIFICALLY EXCLUDING PREPARATIONS TO ASSIST IN SMOKING CESSATION OR TO TREAT SMOKING-RELATED CONDITIONS OTHER THAN COLDS AND ALLERGY SYMPTOMS. FIRST USE: 19981200. FIRST USE IN COMMERCE: 19981200

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76261513

Filing Date May 22, 2001

Published for Opposition September 18, 2001

Registration Number 2517404

Registration Date December 11, 2001

Owner (REGISTRANT) GEL TECH, L.L.C. LIMITED LIABILITY COMPANY ARIZONA
246 East Watkins Phoenix ARIZONA 85004

Attorney of Record TOD R. NISSLE

Type of Mark TRADEMARK

Register PRINCIPAL
Live/Dead
Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DOC	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

Snell & Wilmer
L.L.P.
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Arlington, VA 22202-3513

TRADEMARK TRIAL AND
APPEAL BOARD

02 JUN -5 AM 8:23

May 20, 2002

PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

SALT LAKE CITY, UTAH

DENVER, COLORADO



05-23-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #34

Re: **Gel Tech, L.L.C.** — Notice of Opposition re:
Applicant: Twenty-First Century Laboratories, Inc.
Serial No.: 76/214,608
Mark: **ZICAL**
Published: November 20, 2001 at page TM 107
Attorney Ref. No.: 36145.0011

Honorable Commissioner:

Enclosed is the Notice of Opposition, original and duplicate copy, of Gel Tech, L.L.C. with respect to the captioned application of Twenty-First Century Laboratories, Inc. for the mark ZICAL in International Class 5.

Also enclosed is Snell & Wilmer's check no. 287262 in the amount of \$200.00 to cover the filing fee. Should there be a deficiency in the fee enclosed, please charge our deposit account (19-2814) for the difference, **for which purpose a duplicate copy of this sheet is enclosed.**

Please stamp and date the enclosed blue postcard to acknowledge receipt of the above materials and return it to us.

Very truly yours,

SNELL & WILMER

Daniel J. Noblitt
Attorneys for Opposer

Enclosures
cc: Carl Johnson

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