

TTAB

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

IN THE MATTER OF

MARK: PET DEFENSE

APPLICANT: Garden of Life, Inc.

SERIAL NO: 76-403,896

FILING DATE: May 3, 2002

CLASS: 05

PUBLISHED: November 5, 2002

HONORABLE ASSISTANT COMMISSIONER FOR TRADEMARKS
ARLINGTON, VA 22202-3513

03-03-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #70

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TRADEMARK TRIAL AND
APPEAL BOARD

NOTICE OF OPPOSITION

Schering-Plough Animal Health Corporation, a Delaware Corporation, located and doing business at 1095 Morris Avenue, Union, New Jersey 07083, and Schering-Plough Veterinary Corporation, a Nevada Corporation, located and doing business at 12125 Moya Boulevard, Reno, Nevada 89506-2600, believe that it will be damaged by registration of the above mark PET DEFENSE, shown in application Serial No. 76-403,896, published in the Official Gazette of November 5, 2002 and hereby opposes the same.

As grounds for opposition, it is alleged:

1. Garden of Life, Inc. filed an application on May 3, 2002 to register the trademark PET DEFENSE, Serial No. 76-403,896, claiming a first use date in commerce of March 1, 2002 for the following goods: Dietary food supplements.

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2. Since April 14, 1992, prior to the date of first use claimed by application Serial No. 76-403,896 and long prior to the filing date of the application for PET DEFENSE, Opposer and its predecessors have continuously used in interstate commerce the trademark DEFEND on insecticides and ectoparasiticides for use on livestock and domestic pets.

3. Opposer has registered its trademark DEFEND, under No. 1731994, issued on November 10, 1992, in the United States Patent and Trademark Office. Said registration is valid and subsisting and is owned by Opposer.

4. The trademarks DEFEND and PET DEFENSE are confusingly similar.

5. The goods identified in applicant's PET DEFENSE application are related to the goods identified in Opposer's trademark DEFEND.

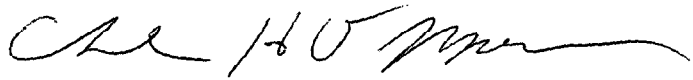
6. The use of Applicant's PET DEFENSE is likely to cause confusion and may result in the mistaken belief that Applicant's products are made by Opposer or are in some way connected with, sponsored by or approved by Opposer.

7. The registration of the trademark PET DEFENSE would be in derogation of Opposer's rights in the trademark DEFEND and would be in violation of Section 2(d) of the Lanham Act (15 USC 1052(d)).

Wherefore, Opposer requests that this opposition be sustained and the application of Garden of Life, Inc. for registration of PET DEFENSE, Serial No. 76-403,896 be refused.

Date: March 3, 2002

Respectfully submitted,



Of Counsel:

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Notice of Opposition
Trademark: PET DEFENSE
Serial No.: 76-403,896

Certificate of Express Mail:

I, Phyllis Richey, do hereby certify that the foregoing documents are being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to

Box TTAB
FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

on this date of March 3, 2003

Phyllis Richey
Signature

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Express Mail Label Number



Schering-Plough

Schering-Plough Corporation
Law Department
2000 Galloping Hill Road
Kenilworth, New Jersey 07033-0530
Telephone (908) 298-4000

March 3, 2003

VIA EXPRESS MAIL

United States Patent and Trademark Office
Box TTAB - FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

03-03-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #70

Re: Notice of Opposition against Application No. 76-403,896
PET DEFENSE in the United States

Dear Sir:

Enclosed herewith is an original and duplicate copy of the Notice of Opposition against Application No. 76-403,896 for PET DEFENSE in the name of Garden of Life, Inc. and a self-addressed prepaid postal card for acknowledging receipt of said Notice of Opposition.

Please charge our USPTO Account no. 19.0361 for all expenses in connection with this opposition. Attached is a duplicate of this letter for use in this regard.

Thank you for your cooperation in this matter.

Respectfully submitted,

Charles H. Oppenheimer
Legal Director
Trademarks

Enclosures