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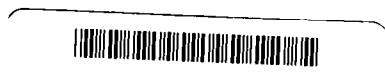
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: :
Trademark Application Serial No.: 76/456,203 :
:
Filed: October 7, 2002 :
:
For The Mark: ZEPRO :
:
Published in the :
Official Gazette: May 6, 2003 :
:
BAYER AKTIENGESELLSCHAFT, :
Opposer, :
:
v. :
:
GEOFFREY FIALA, :
Applicant. :

Opposition No.: _____



07-24-2003
U.S. Patent & TMO/TM Mail Rpt Dt. #22

03 AUG -8 PM 9:32

Attorney Docket No. 1426*1113

08/06/2003 KSONCHNN 00000109 76456203
01 FC:6402 300.00 OP

NOTICE OF OPPOSITION

In the matter of trademark Application Serial No. 76/456,203 filed October 7, 2002 to register the mark ZEPRO for the goods "nutritional supplements for the treatment of sexual dysfunction" in Class 5, which was published for opposition in the Official Gazette for May 6, 2003 on Page TM 141, Bayer Aktiengesellschaft ("Opposer"), a German joint stock company, having a business address of D-51368, Leverkusen, Germany, hereby believes that it will be damaged by registration of the above referenced mark, and having been granted appropriate extensions of time, hereby opposes the same. The required fee for the filing of this Notice of Opposition is attached hereto by check.

As grounds for this opposition it is alleged that:

1. Opposer for many years has been and now is engaged in the development, manufacture, distribution and sale of a wide variety of chemical products including pharmaceutical and health related products. In the United States, Opposer's pharmaceutical and health related products are distributed and

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sold by related or subsidiary companies, including its wholly owned subsidiary Bayer Corporation (Bayer Corp.) and its predecessors and related companies.

2. Applicant seeks to register ZEPRO as its mark for “nutritional supplements for the treatment of sexual dysfunction” in International Class 5, as evidenced by the above referenced publication of said mark.

3. Long before the filing date of October 7, 2002, of Applicant’s opposed intent to use application, Opposer through Bayer Corp. adopted and used CIPRO in interstate commerce as a trademark for anti-infective pharmaceutical preparations for human use since at least 1985, and Opposer duly registered CIPRO as its trademark for such goods at the United States Patent and Trademark Office in Class 5 under Reg. Nos. 1,451,548; 1,584,286; and 1,585,275 based on such use by Bayer Corp. All three CIPRO registrations are in full force and effect, and courtesy copies are attached. Bayer Corp. continues to use CIPRO as a trademark for such goods distributed and sold in the United States, and such use inures to the benefit of Opposer.

4. There is no issue as to priority. Applicant acquired no rights in its ZEPRO mark in the United States prior to October 7, 2002 when Applicant filed its intent to use application for such mark in the United States Patent and Trademark Office.

5. As a result of Bayer Corp.’s continuous use of the CIPRO mark since at least 1985, and in view of Bayer Corp.’s extensive advertising, promotion and sale of the goods in association with the CIPRO mark, that mark has a distinctive quality and is famous. Such fame was achieved prior to the time Applicant filed its ZEPRO application.

6. Applicant has applied to register ZEPRO for “nutritional supplements for the treatment of sexual dysfunction” in Class 5, the same class of goods in which CIPRO is registered. On information and belief, such goods will be distributed to the same classes of consumers and through the same channels of trade as CIPRO. As applied to such goods ZEPRO so resembles CIPRO as to cause confusion, mistake and deception.

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7. Applicant's registration and use of ZEPRO would lessen the capacity of CIPRO to identify and distinguish the goods of Opposer and would blur the unique association which has heretofore existed between the CIPRO mark and the goods associated therewith.

8. Applicant's registration and use of ZEPRO will cause dilution of the distinctive quality of the famous CIPRO mark, all to the irreparable injury to and damage of Opposer.

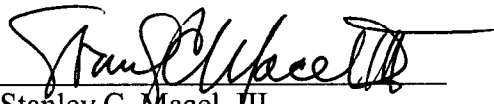
9. Opposer will be damaged by registration to Applicant of ZEPRO for the goods identified in the application as a result of the aforementioned confusion, mistake, deception and dilution.

WHEREFORE, Opposer prays that this Opposition be sustained, and the registration sought by Applicant be refused.

Respectfully submitted,

BAYER AKTIENGESELLSCHAFT

Dated: _____

By: 
Stanley C. Macel, III
Connolly Bove Lodge & Hutz LLP
P. O. Box 2207
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(302) 658-9141
Attorneys for Opposer

CB:/277916v1

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Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office **Reg. No. 1,451,548**
Registered Aug. 4, 1987

**TRADEMARK
SUPPLEMENTAL REGISTER**

CIPRO

**BAYER AKTIENGESELLSCHAFT (FED REP
GERMANY JOINT STOCK COMPANY)
LEVERKUSEN-BAYERWERK, FED REP GER-
MANY**

**FOR: ANTI-INFECTIVE PHARMACEUTICAL
PREPARATIONS FOR HUMAN USE, IN CLASS
5 (U.S. CL. 18).**

**FIRST USE 5-22-1985; IN COMMERCE
5-22-1985.**

**SER. NO. 596,677, FILED P.R. 5-5-1986; AM.
S.R. 5-6-1987.**

**ROBERT C. CLARK JR., EXAMINING ATTOR-
NEY**

Sec. 8, acc.

08/08/2003TTAB

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office **Reg. No. 1,584,286**
Registered Feb. 27, 1990

**TRADEMARK
PRINCIPAL REGISTER**

CIPRO

**BAYER AKTIENGESELLSCHAFT (FED REP
GERMANY JOINT STOCK COMPANY)
LEVERKUSEN-BAYERWERK, FED REP GER-
MANY**

**FOR: ANTI-INFECTIVE PHARMACEUTICAL
PREPARATIONS FOR HUMAN USE, IN CLASS
5 (U.S. CL. 18).**

**FIRST USE 5-22-1985; IN COMMERCE
5-22-1985.
OWNER OF U.S. REG. NOS. 1,451,548 AND
1,466,137.**

SER. NO. 73-768,249, FILED 12-5-1988.

FRED MANDIR, EXAMINING ATTORNEY

Ser. 8415, acc.

08/08/2003TTAB

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office

Reg. No. 1,585,275

Registered Mar. 6, 1990

**TRADEMARK
PRINCIPAL REGISTER**

Cipro

**BAYER AKTIENGESELLSCHAFT (FED REP
GERMANY JOINT STOCK COMPANY)
LEVERKUSEN-BAYERWERK, FED REP GER-
MANY**

**FOR: ANTI-INFECTIVE PHARMACEUTICAL
PREPARATIONS FOR HUMAN USE, IN CLASS
5 (U.S. CL. 18).**

**FIRST USE 11-2-1987, FIRST USED IN AN-
OTHER FORM ON MAY 22, 1985; IN COM-**

**MERCE 11-2-1987, FIRST USED IN COM-
MERCE IN ANOTHER FORM ON MAY 22, 1985**

**OWNER OF U.S. REG. NOS. 1,451,548 AND
1,466,137.**

SER. NO. 73-779,045, FILED 2-6-1989.

FRED MANDIR, EXAMINING ATTORNEY

Succ. 8 + 15, acc.

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July 24, 2003

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* RESIDENT WASHINGTON OFFICE

DELAWARE BAR UNLESS OTHERWISE
DESIGNATED



07-24-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

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

Dear Madame:

The documents set forth below are enclosed herewith. Please file these documents in the United States Patent and Trademark Office. A check for the government filing fees is enclosed.

The Commissioner is hereby authorized to charge any additional fees that may be required or credit any overpayment that may have occurred with respect to this filing to Deposit Account No. 03-2775. Two extra copies of this letter are enclosed for accounting purposes.

Sincerely,

Stan Macel
Stanley C. Macel, III

Enclosures: Notice of Opposition (0+2)
to App. Serial No.: 76/456,203 (ZEPRO)
Fee: \$300.00
Attorney Docket No.: 1426*1113

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