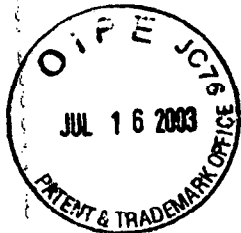


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Attorney Docket: 07871.0153



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



07-16-2003

U.S. Patent & TMOfo/TM Mail Ropt. Dt. #40

SMITHKLINE BEECHAM PLC and)
SMITHKLINE BEECHAM CORPORATION)
)
Opposers,)
)
v.)
)
TOPOTARGET APS CORPORATION)
)
Applicant.)

Opposition No. _____

NOTICE OF OPPOSITION

Applicant Serial No.: 78/064,912
Filed: May 22, 2001
Published for Opposition: April 29, 2003
Mark: TOPOTECT

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BOX TTAB FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Dear Sir:

Opposers, SmithKline Beecham plc and SmithKline Beecham Corporation,
through their undersigned counsel, believe that they would be damaged by the
registration of the mark TOPOTECT shown in Application Serial No. 78/064,912, and
hereby oppose the same.

As grounds for opposition, Opposers alleges that::

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Opposers

1. Opposer, SmithKline Beecham plc ("SB"), is a company registered under the laws of England, having a place of business at 980 Great West Road, Brentford, Middlesex, England, TW8 9GS.

2. Opposer, SmithKline Beecham Corporation ("SKB"), is a corporation of Pennsylvania, having a principal place of business at One Franklin Plaza, P.O. Box 7929, Philadelphia, Pennsylvania 19101.

3. SB, and its wholly owned subsidiary SKB, comprise one of the world's leading pharmaceutical companies. SKB manufactures, distributes, sells, and promotes a full line of pharmaceutical preparations in the United States, including but not limited to pharmaceuticals for the treatment of cancer and other conditions.

4. SB is the owner U.S. Registration No. 2,030,440, issued January 14, 1997, for the mark HYCAMTIN for "pharmaceutical and medicinal preparations used to treat cancer" in International Class 5. The registration is valid and subsisting, and Section 8 and 15 affidavits have been filed and accepted.

5. SKB, as the wholly-owned subsidiary of SB, markets the "topotecan" pharmaceutical preparation in the United States for the treatment small cell lung cancer and ovarian cancer under the trademark HYCAMTIN.

6. SKB is required by the Federal Drug Administration to include the generic term "topotecan" on its labels for the HYCAMTIN pharmaceutical preparation.

Applicant and Applicant's Mark

7. Upon information and belief, TopoTarget ApS Corporation ("Applicant") is a company organized and existing under the laws of Denmark, having a business address at MAGLEHØJ 100, 3520 Farum.

8. Upon information and belief, on May 22, 2001, Applicant filed a trademark application at the U.S. Patent and Trademark Office under Serial No. 78/064,912, seeking registration of the mark TOPOTECT, based on an intent-to-use under Section 1(b) and under Section 44 of the Trademark Act, 15 U.S.C. § 1126(e).

9. Applicant seeks to register TOPOTECT for pharmaceutical preparations for the treatment of cancer and pharmaceutical preparations for neutralizing the negative effects of cancer treatment; veterinary preparations, namely, preparations for the treatment of cancer in animals and veterinary preparations for neutralizing the negative effects of cancer treatment of animals.

TOPOTECT is Generic

10. Opposers repeat and reallege the allegations contained in Paragraphs 1-9 above.

11. "Topotecan" is the generic term for a pharmaceutical preparation that is used in the treatment for some types of cancer. The most common use of the "topotecan" pharmaceutical preparation is for small cell lung cancer and ovarian cancer.

12. Applicant's mark TOPOTECT is a slight misspelling of the generic term "topotecan."

13. Because the difference in appearance and pronunciation between Applicant's mark TOPOTECT and "topotecan" is so de minimus, TOPOTECT is the virtual equal of the generic term "topotecan." Accordingly, the primary significance of TOPOTECT to the relevant public is the generic name of a pharmaceutical preparation.

TOPOTECT is Deceptively Misdescriptive or Deceptive

14. Opposers repeat and reallege the allegations contained in Paragraphs 1-13 above.

15. Applicant claims in its application that it intends to use the mark TOPOTECT for pharmaceutical preparations for the treatment of cancer and pharmaceutical preparations for neutralizing the negative effects of cancer treatment, and for veterinary preparations, namely, preparations for the treatment of cancer in animals and veterinary preparations for neutralizing the negative effects of cancer treatment of animals.

16. Applicant's TOPOTECT mark is deceptively misdescriptive of Applicant's products under Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1), to the extent that the products are not "topotecan" pharmaceutical preparations or that the products are different in composition from the generic "topotecan" pharmaceutical preparations.

17. Applicant's TOPOTECT mark is comprised of deceptive matter under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), to the extent that the products are not "topotecan" pharmaceutical preparations or that the products are different in composition from the generic "topotecan" pharmaceutical preparations.

18. Due to the close similarity in appearance, pronunciation and meaning of Applicant's mark TOPOTECT and the generic term "topotecan," patients, doctors, and pharmacists would be deceived or at least confused by the misdescriptiveness of Applicant's mark to believe that Applicant's products are "topotecan" pharmaceutical preparations.

19. Considering the nature of the products involved, the potential for serious deception and adverse consequences resulting from the mistaken belief that Applicant's products sold under the mark TOPOTECT is "topotecan" is considerable and must be avoided.

Likelihood of Confusion

20. Opposers repeat and reallege the allegations contained in Paragraphs 1-19 above.

21. Opposers have used the generic term "topotecan" on the labels for the HYCAMTIN pharmaceutical preparation prior to the filing date of Application Serial No. 78/064,912.

22. Due to the close similarity in appearance, pronunciation and meaning of Applicant's mark TOPOTECT and the generic term "topotecan" which Opposers use on labels for its HYCAMTIN pharmaceutical preparations, Applicant's mark is likely to cause confusion, mistake, or to deceive.

For the foregoing reasons, Opposers, as well as the public, would be damaged by the registration of the mark TOPOTECT.

WHEREFORE, Opposers request that registration of the mark TOPOTECT, Application Serial No. 78/064,912, be refused and that the opposition be sustained.

A duplicate copy of this Notice of Opposition and a check in the amount of \$600.00 constituting the filing fee are enclosed. Any deficiency in the fee should be charged to our Deposit Account No. 06-0916.

Respectfully submitted,

Date: July 16, 2003

By: 

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