

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

SmithKline Beecham Corporation,

Opposer,

v.

TherOx, Inc.,

Applicant.

Opposition No.: \_\_\_\_\_



06-01-2004

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

NOTICE OF OPPOSITION

Opposer, SmithKline Beecham Corporation, a Pennsylvania corporation with a business address of 709 Swedeland Road, UW2221, King of Prussia, Pennsylvania 19406 hereby opposes the registration of the mark OXIUM which is the subject of Application Serial No. 78/116,976 filed by TherOx, Inc.

As grounds in support of this opposition, Opposer alleges that:

1. SmithKline Beecham Corporation (hereinafter "Opposer") has, for many years manufactured, sold and distributed various skin care products including, but not limited to, acne medications, skin care preparations, skin wash and skin cleansers.

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2. Opposer, for many years and since long prior to any date of first use upon which

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Applicant can rely, has adopted and used various trademarks which comprise or include the term OXY, either alone or combined with another word or words, to identify its various skin care products.

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Adjustment date: 06/04/2004 EPINA1  
06/03/2004 EPINA1 00000094 78116976

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-300.00 OP

**Notice Of Opposition**  
**Mark: OXIUM**  
**Serial No.: 78/116,976**

3. Opposer is the owner, among others, of the following United States Principal Register registrations which are valid, subsisting, unrevoked and unexpired:

<b>MARK</b>	<b>REGISTRATION NUMBER</b>	<b>ISSUE DATE</b>	<b>GOODS</b>
OXY	1,869,207	12/27/94	Acne medication
OXY (Stylized)	1,873,555	01/17/95	Acne medication
OXY BALANCE	2,093,711	09/15/96	Acne medication
OXY 10	1,141,969	12/02/80	Medication for treatment of Acne
THINK OXY, THINK OXYGEN	2,582,225	06/18/02	Acne Medication

4. As a result of Opposer's long and extensive use and promotion of its various OXY marks in the skin care products field, the term OXY, used both by itself and together with other words, has become a renowned, well known and famous designation for such skin care products, indicating products that exclusively originate with and are exclusively associated with Opposer.

5. Applicant has applied to register the mark OXIUM for goods described as "Oxygenated skin care preparations, namely, creams, masks, gels and lotions for the face, hands, feet and body, not including acne preparations." This application has been assigned Serial No. 78/116,976 and was published for opposition on February 3, 2004. The application is based on Applicant's bona fide intention to use the mark in commerce.

6. Applicant's mark so resembles Opposer's previously used and registered OXY and OXY formative marks as to be likely, when applied to Applicant's goods, to cause confusion,

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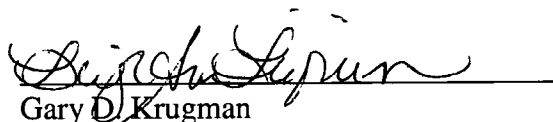
mistake or deception for purposes of Section 2(d) of the Trademark Act, thereby resulting in damage to Opposer.

WHEREFORE, Opposer prays that registration to Applicant be refused and that the opposition be sustained.

Respectfully submitted,

**SMITHKLINE BEECHAM CORPORATION**

By:



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Date: June 1, 2004



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June 1, 2004

VIA HAND DELIVERY



06-01-2004

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

Honorable Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Re: Opposition to Registration of Application Serial No.: 78/116,976  
Mark opposed: OXIUM  
Applicant: Therox, Inc.  
Our Ref.: 201-091

Dear Sir:

Enclosed herewith in duplicate is a Notice of Opposition against the registration of the OXIUM mark which is the subject of Application Serial No. 78/116,976. Please institute the opposition and send notice of the institution to the undersigned in due course.

Also enclosed is a check in the amount of \$300.00, believed to be the fee in connection with the filing of this Notice of Opposition. You are authorized to charge any difference or credit any overpayment to the undersigned's Deposit Account No. 19-4880.

Please ensure that all communications in connection with the above-identified matter are directed to the undersigned.

Respectfully submitted,

Gary D. Krugman  
Leigh Ann Lindquist  
Attorneys for Opposer  
SUGHRUE MION, PLLC  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037  
Telephone: 202-663-7484  
Facsimile: 202-293-7860

LAL/kcl

Enclosures: Notice of Opposition (in duplicate)  
Check in the amount of \$300.00

cc: Christopher A. Sidoti

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