

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

SmithKline Beecham, P.L.C.

:

Opposer :

Vs.

: Opposition No. 91-163502

Wagner Nutraceuticals, Inc.

:

Applicant :

ANSWER TO NOTICE OF OPPOSITION

To: Commissioner for Trademarks
Attention: Trademark Trial and Appeal Board
PO Box 1451
Alexandria, Virginia 22313-1451

Wagner Nutraceuticals, Inc., an Ohio corporation having an address of 1661 Waycross Road, Cincinnati, Ohio 45240-2820 (“Applicant”), without waiving any right due to any insufficiency in this “Answer to Notice of Opposition and saving to itself all defenses in law and equity, in answer to the Notice of Opposition of SmithKline Beecham, P.L.C. (“Opposer”), responds to each of the specific allegations of Opposer’s Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 1 of the Notice of Opposition and so denies those averments.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 2 of the Notice of Opposition and so denies those averments, except that Applicant admits that the Office’s “TESS” and “TARR” databases indicate that Opposer is the registrant for U.S. Reg. No. 1,060,597 for

PANADOL and for U.S. Reg. Nos. 2,123,421 and 2,125,323 for CHILDREN'S PANADOL.

3. Applicant admits the allegations of paragraph 3 of the Notice of Opposition.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 4 of the Notice of Opposition and so denies those averments.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 5 of the Notice of Opposition and so denies those averments.
6. Applicant denies the allegations of paragraph 6 of the Notice of Opposition.
7. Applicant denies the allegations of paragraph 7 of the Notice of Opposition.
8. Applicant denies the allegations of paragraph 8 of the Notice of Opposition.
9. Applicant denies the allegations of paragraph 9 of the Notice of Opposition.
10. Applicant denies the allegations of paragraph 10 of the Notice of Opposition.
11. Applicant denies the allegations of paragraph 11 of the Notice of Opposition.

For the foregoing reasons, Applicant prays that the Notice of Opposition be dismissed, that the within Applicant be allowed for registration, and that Applicant be afforded such further relief as provided for by law and the rules of practice in trademark cases.

Should any fees be required, please charge them to the deposit account of Ulmer & Berne, LLP (50-1884).

Respectfully submitted,

Ulmer & Berne, LLP

By: Michael A. Marrero

Michael A. Marrero

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served upon counsel for the Opposer at the following address of record, by first-class U.S. mail, postage prepaid, this 18th day of January, 2005.

Pasquale A. Razzano
Fitzpatrick, Cella, Harper & Scinto
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Michael A. Marrero

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January 18, 2005

Commissioner for Trademarks
U.S. Patent & Trademark Office
PO Box 1451
Arlington, Virginia 22202-3514

RE: SmithKline Beecham, PLC v. Wagner Nutraceuticals, Inc.
Opp. 91-163502

Dear Sir or Madam:

I enclose an "Answer to Notice of Opposition" in the above matter for filing, plus a self-addressed stamped postcard. Please mark the postcard with the date of filing and return it to the undersigned. Thank you.

Very truly yours,



Michael A. Marrero

MAM/mlb
Enclosure



01-24-2005

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #64

298322.1 (30341-0002)
1/18/2005

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