

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

In The Matter Of U.S. Trademark Application
Serial No. 78/349,016 - "PHARMAPORE"
Published in the Official Gazette:
NOVEMBER 9, 2004
TM PAGE 325

T.J SMITH AND NEPHEW, LIMITED)

Opposer,)

v.)

SUKOL SCIENTIFIC, INC.)

Applicant.)

OPPOSITION NO.: _____

NOTICE OF OPPOSITION

To the Assistant Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

SIR:

T. J. SMITH AND NEPHEW, LIMITED, a United Kingdom corporation, with a principal place of business at 101 Hesse Road, Hull, United Kingdom (hereinafter "Opposer"), believes that it would be damaged by registration of the mark "PHARMAPORE", which is shown in U.S. Trademark Application Serial No. 78/349,016 and of which the owner of record is **SUKOL SCIENTIFIC, INC.**, a Florida corporation, with a principal place of business at 8000 Governors Square Boulevard, Suite 105, Miami Lakes, Florida 33016 (hereinafter "Applicant"), and Opposer, by its undersigned attorneys, hereby requests that registration of the mark "PHARMAPORE" be denied on the following grounds:

1. In U.S. Trademark Application Serial No. 78/349,016, Applicant seeks registration of the mark "PHARMAPORE" for "medical bandages, namely adhesive bandages, bandages for skin wounds, and surgical bandages". The application was filed on January 7, 2004, and is based

on Applicant's alleged bona fide intention to use the mark in commerce on said goods under Section 1(b) of the Trademark Act (15 U.S.C. §1051(b)).

2. Opposer has used its mark "PRIMAPORE" for adhesive surgical and medical dressings sold in commerce in the United States continuously since long prior to the filing date of Applicant's application for registration of "PHARMAPORE" and therefore prior to any constructive date of use in commerce of Applicant's mark and, on information and belief, to any actual date of use in commerce of Applicant's mark. Through activities involving its "PRIMAPORE" mark in the United States, Opposer has developed considerable good will and customer recognition in the mark.

3. Opposer is the owner of U.S. Trademark Registration No. 1,400,097 for "PRIMAPORE" for "adhesive surgical and medical dressings with an absorbent pad". Said registration issued on July 8, 1986, which is long prior to any constructive date of use in commerce of Applicant's mark and, on information and belief, to any actual use in commerce of the mark. Said registration is valid, subsisting, and incontestable and is conclusive evidence of the validity of the registered mark, of Opposer's ownership of the mark, and of Opposer's exclusive right to use the mark in commerce on or in connection with the goods specified in the certificate. See 15 U.S.C. § 1115 (b).

4. In view of the similarity of the marks of Applicant and Opposer and the very close relationship, if not identity, of the products to be sold under Applicant's "PHARMAPORE" mark and the medical products sold under Opposer's "PRIMAPORE" mark, purchasers are likely to be confused as to the source of the products and mistakenly to attribute them to the same source.

5. Any defects, objections or faults found with Applicant's medical bandages sold under the "PHARMAPORE" mark could inflict upon and seriously injure the reputation of Opposer and the good will established over the years in its "PRIMAPORE" mark.

6. The grant of a registration to Applicant of the mark "PHARMAPORE" would be in derogation of Opposer's prior rights in its "PRIMAPORE" mark and registration and thereby cause damage and injury to Opposer and cause confusion of the relevant purchasing public.

7. Applicant's "PHARMAPORE" mark so resembles Opposer's previously used and registered "PRIMAPORE" mark as to be likely, when used in connection with Applicant's goods, to cause confusion, mistake or deception and thereby falls within the proscription of Section 2(d) of the statute, 15 U.S.C. § 1052(d) and should be denied registration.

8. On information and belief, the good faith of Applicant's alleged good faith intent to use the mark in commerce is not apparent, and Opposer challenges the nature and sufficiency of Applicant's alleged intent to use the mark in commerce.

9. **WHEREFORE**, Opposer believes that it would be damaged by grant to Applicant of a registration on U.S. Trademark Application Serial No. 78/349,016 and prays that the opposition be sustained and that registration be denied.

Enclosed herewith for filing in the U.S. Patent and Trademark Office are triplicate copies of the Notice of Opposition together with our **credit card payment form** in the amount of **\$300.00** in the government filing fee. **If no payment is enclosed**, the Commissioner is **authorized** to charge **\$300.00** in connection herewith to **Deposit Account No. 12-0555**.

Respectfully Submitted,

STITES & HARBISON, PLLC



Brewster Taylor

January 7, 2005

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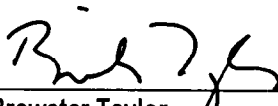
LETTER

Attached hereto for filing in the U.S. Patent and Trademark Office are the following:

- 1. [X] NOTICE OF OPPOSITION (3 Copies)
- 2. [X] Credit Card Payment Form - \$300.00 - (\$300.00 per class x 1 Class = \$300.00)

Enclosed herewith for filing in the U.S. Patent and Trademark Office is a Notice of Opposition together with our credit card payment form in the amount of \$300.00 in the government filing fee. If no payment is enclosed, the Commissioner is authorized to charge \$300.00 in connection herewith to Deposit Account No. 12-0555. A duplicate copy of this sheet is enclosed.

Respectfully Submitted,
STITES & HARBISON PLLC



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