

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

Celltech Manufacturing, Inc.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91165420
v.	)	
	)	Application No. 78/395137
Pamlab, LLC	)	
	)	
Applicant.	)	

**ANSWER AND AFFIRMATIVE DEFENSES  
TO THE NOTICE OF OPPOSITION**

**ANSWER**

Applicant, Pamlabs, LLC, by and through its attorneys, hereby answers the Notice of Opposition of Opposer, Celltech Manufacturing, Inc., in the above-captioned case.

1. Applicant lacks knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies the same.

2. Applicant lacks knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies the same.

3. Admitted.

4. Applicant lacks knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies the same.



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5. Applicant lacks knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies the same.

6. Applicant lacks knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies the same.

7. Denied.

8. Denied.

9. Denied.

10. Applicant admits that registration of its mark would give it a prima facie exclusive right to the use of its TUSSX mark. The remaining allegation in this paragraph is denied.

11. Denied.

WHEREFORE paragraph: Applicant denies the allegations in this paragraph.

#### **AFFIRMATIVE DEFENSES**

1. Applicant's mark and Registrant's mark differ with respect to spelling, appearance, pronunciation, and overall commercial impression.

2. Applicant's registration and use of its mark on and in connection with the goods identified in the application will not result in a likelihood of confusion with Opposers mark.

3. TUSSIS is the Latin word for "cough." Trademarks incorporating this term, or a variation of this term, which identify cough medicines, cough suppressants, and/or antitussives are not entitled to a broad scope of protection.

4. There are numerous third party registrations for “TUSSI” marks which identify cough medicines, cough suppressants, and/or antitussives, including:

<u>Mark</u>	<u>Reg. No.</u>	<u>Owner</u>
TUSSIZONE-12	2,891,174	Medpointe Healthcare, Inc.
TUSSI-12	2,324,298	Medpointe Healthcare, Inc.
TUSSI-ORGANIDEIN	1,230,791	Medpointe Healthcare, Inc.
TUSSIBID	2,447,644	Alberto S. Bartolomei
TUSSIBRON	2,508,407	Feltrex, S.A.
TUSSIGON	1,393,762	Daniels Pharmaceuticals, Inc.
WAL-TUSSIN	2,167,641	Walgreen Co.
SUPER TUSSIN	2,353,043	Apothecary Products, Inc.
DIABETIC TUSSIN	1,861,344	Hi-Tech Pharmcal Co., Inc.
CLEAR-TUSSIN	1,965,882	Atlantic Licensing Corporation
SAFE TUSSIN	1,772,195	Atlantic Licensing Corporation
MYTUSSIN DM	1,418,112	Multilan AG
SCOT-TUSSIN	657,674	Scot-Tussin Pharmcal Co., Inc.

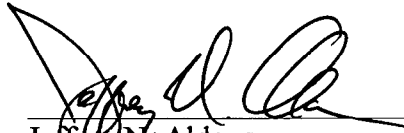
The registrations cited in this paragraph are, upon information and belief, valid and subsisting. Further, Registration Nos. 1,230,791; 1,393,762; 2,167,641; 1,861,344; 1,965,882; 1,772,195; 1,418,112; and 657,674 have been granted incontestable status by the Patent and Trademark Office.

5. Opposer has acquiesced to the registration of the marks in the preceding paragraph, all of which co-exist on the Principal register with Opposer’s mark. Under the

doctrine of estoppel, any rights Opposer may be entitled to with respect to the exclusive use of its mark do not extend to the denial of registration to Applicant's mark.

Respectfully submitted,

Date: July 8, 2005

  
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Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF OPPOSITION was served on Opposer by first class mail, postage prepaid, this 8th day of July, 2005.

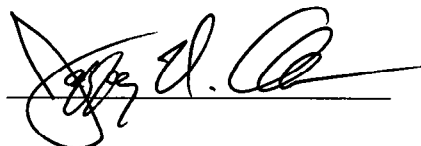
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Trademarks  
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