

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

Inamed Corporation,

Opposer,

v.

Medicis Aesthetics Holdings Inc.,

Applicant.

No. 91169583

ANSWER TO NOTICE OF
OPPOSITION

Applicant Medicis Aesthetics Holdings Inc. hereby answers the Notice of Opposition filed by Opposer Inamed Corporation as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition, and therefore denies the allegations.

2. Admitted.

3. Applicant denies that its mark is merely a slight misspelling of "subcu." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 3 of the Notice of Opposition, and therefore denies the allegations.

4. Applicant denies that it has merely taken a highly descriptive term and slightly changed the spelling. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4 of the Notice of Opposition, and therefore denies the allegations.

5. No response to Paragraph 5 is necessary to the extent that it calls for a legal conclusion. Applicant denies that its mark is merely a slight misspelling of "subcu." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 5 of the Notice of Opposition, and therefore denies the allegations.



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6. Applicant admits that its products offered under the mark include, among other things, tissue augmentation kits consisting of syringes prefilled with tissue augmenting preparations. Applicant further admits that its product information describes the intended uses of its products, including subcutaneous and supraperiosteal injections where more volume is required, for instance to contour cheeks and chins. Applicant denies the remaining allegations of paragraph 6 of the Notice of Opposition.

7. Applicant admits that its pending application seeks registration of the mark SUBQ in, among other classes, International Class 41 for "providing medical education classes and seminars in the field of aesthetic enhancement." Applicant further admits that such classes and seminars in the field of aesthetic enhancement may relate to Applicant's goods offered under the mark SUBQ. Applicant denies the remaining allegations of paragraph 7 of the Notice of Opposition.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Notice of Opposition, and therefore denies the allegations.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Notice of Opposition, and therefore denies them, and Applicant explicitly denies the allegation that Opposer has "filed for the mark JUVEDERM SUBQ." On information and belief, Opposer has filed for the mark JUVEDERM SUB Q, in the United States.

10. Applicant denies that Opposer will be damaged in any way by registration of the mark SUBQ and denies that it will use the registration for the mark SUBQ unfairly. Applicant admits that registration of its SUBQ mark will create certain presumptions. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 of the Notice of Opposition, and therefore denies the allegations.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Applicant reserves the right to assert additional defenses that may be developed through discovery in this action.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition to registration of SUBQ be dismissed with prejudice and that Application Serial No. 78/456,841 be permitted to register.

RESPECTFULLY SUBMITTED this 17th day of May 2006.

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Daiva K. Tautvydas, Reg. No. 36,077
David Shenk
Attorneys for Applicant Medicis
Aesthetics Holdings Inc.

CERTIFICATE OF MAILING

I hereby certify that this ANSWER TO NOTICE OF OPPOSITION is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on the below date.

Date: May 17, 2006 Stacey K. Kalata

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May 2006, a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on counsel for Opposer via first-class mail to:

John M. Kim, Esq.
IP Legal Advisors, P.C.
600 West Broadway, Suite 1520
San Diego, CA 92101

Executed on: May 17, 2006
Stacey K. Kalata