

ESTTA Tracking number: **ESTTA97798**

Filing date: **09/05/2006**

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

Proceeding	91172018
Party	Defendant ESTABLECIMIENTOS ANCALMO S.A. DE C.V. ESTABLECIMIENTOS ANCALMO S.A. DE C.V. Blvd. Walter Deininger SVX Antiguo Cuscatlan,
Correspondence Address	RICHARD J. WARD, JR. CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068
Submission	Answer and Counterclaim
Filer's Name	Gary J. Nelson
Filer's e-mail	pto@cph.com
Signature	/Gary J. Nelson/
Date	09/05/2006
Attachments	A825.110.2-1.pdf (6 pages)(201689 bytes)

Registration Subject to Cancellation

Registration No	2932141	Registration date	03/08/2005
Registrant	MENPER DISTRIBUTORS INC. 6500 NW 35TH. AVE. MIAMI, FL 33147 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 1999/11/01 , First Use In Commerce: 1999/11/01 Goods/Services: Oral electrolytes liquid and concentrated powder		

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

MENPER DISTRIBUTORS INC.

Opposer,

v.

ESTABLECIMIENTOS ANCALMO S.A.
DE C.V.

Applicant.

Opposition No. 91172018

**ANSWER TO NOTICE OF
OPPOSITION; COUNTERCLAIM**

Mark: SUERO ORAL ANCALMO

Serial No. 76/605,405

Filed: August 2, 2004

Applicant Establecimientos Ancalmo S.A. de C.V. ("Applicant" or "Ancalmo"), an El Salvador corporation, submits its Answer to Opposer Menper Distributors, Inc.'s ("Opposer" or "Menper") Notice of Opposition in the above-identified Opposition proceeding pending before the United States Trademark Trial and Appeal Board. The numbers of the following paragraphs correspond to the paragraph numbers in the Notice of Opposition:

1. Applicant is without knowledge or sufficient information 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. Applicant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition, and therefore denies the allegations.

3. Applicant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition regarding use of Opposer's trademark, and therefore denies the allegations. Applicant denies the allegation that Opposer has acquired substantial goodwill in its alleged trademark. Applicant denies all

remaining allegations in Paragraph 3 of the Notice of Opposition.

4. Applicant admits Opposer is listed as the owner of United States Trademark Registration No. 2,932,141 for the mark SUERO ORAL for certain goods listed in International Class 005, and that this registration has been placed on the Supplemental Register. Applicant denies all remaining allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition, and therefore denies the allegations.

6. Applicant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition, and therefore denies the allegations.

7. Applicant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice of Opposition, and therefore denies the allegations.

8. Applicant is without knowledge or sufficient information to form a belief as to the truth of the allegation contained in Paragraph 8 of the Notice of Opposition regarding Opposer's claim of prior use, and therefore denies the allegation. Applicant denies that its SUERO ORAL ANCALMO trademark is a counterfeit mark. Applicant admits the filing basis for its SUERO ORAL ANCALMO trademark application is based, in part, on section 1B of the Trademark Act. Applicant denies all remaining allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of

Opposition.

11. Applicant admits United States Trademark Application Serial No. 76/605,405 lists "pharmaceutical preparations, namely, oral serums in powder form for gelatins, in liquid form, and in granular form for the treatment of symptoms due to diarrhea, and/or vomiting" in International Class 005. Applicant denies all remaining allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations contained in Paragraph 13 of the Notice of Opposition.

WHEREFORE, Applicant requests that this Opposition be dismissed with prejudice and that United States Trademark Application Serial No. 76/605,405 be allowed to issue as a registration.

AFFIRMATIVE DEFENSES

1. Opposer is barred from the relief sought by the equitable doctrine of laches.
2. Opposer is barred from the relief sought by the equitable doctrine of acquiescence.
3. Opposer is barred from the relief sought by the equitable doctrine of estoppel.

COUNTERCLAIM

Establecimientos Ancalmo S.A. de C.V. ("Applicant/Petitioner" or "Ancalmo"), an El Salvador corporation, believes it is being damaged by, and will continue to be damaged by, the registration of the mark SUERO ORAL (Registration No. 2,932,141) and petitions to cancel the registration of this mark.

As grounds for the cancellation, Applicant alleges:

1. Opposer/Respondent Menper Distributors Inc. ("Opposer/Respondent" or "Menper") is the listed owner of United States Trademark Registration No. 2,932,141 for SUERO ORAL for "oral electrolytes liquid and concentrated powder" in International Class 005, with a filing date of November 25, 2003, an issuance date of August 24, 2004, and an alleged date of first use in commerce of November 1, 1999 ("the '141 Registration").

2. Applicant/Petitioner has filed United States Trademark Application Serial No. 76/605,405 (SUERO ORAL ANCALMO for "pharmaceutical preparations, namely, oral serums in powder form for gelatins, in liquid form, and in granular form for the treatment of symptoms due to diarrhea, and/or vomiting" in International Class 005) ("the '405 Application"). The '405 Application was filed on August 2, 2004, with a filing basis pursuant to 15 U.S.C. §§1051(b) (Section 1) and 1126(e) (Section 44).

3. Opposer/Respondent has filed a Notice of Opposition designed to prevent the registration of the subject mark of the '405 Application. Opposer/Respondent has based the pending opposition on the '141 Registration.

4. On information and belief, the subject mark of the '141 Registration is generic for the goods listed in the '141 Registration. The English translation of the subject mark of the '141 Registration (i.e., SUERO ORAL) is oral serum. The goods listed in the '141 Registration are

oral serums.

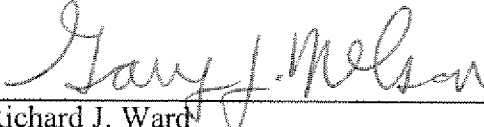
5. Continued registration of the '141 Registration is causing injury to Applicant/Petitioner's business plans, and is impairing Applicant/Petitioner's rights in its SUERO ORAL ANCALMO trademark. Such injury will continue until the '141 Registration is canceled.

WHEREFORE, Applicant/Petitioner requests the cancellation of United States Trademark Registration No. 2,932,141.

Respectfully submitted,

DATED: September 5, 2006

By


Richard J. Ward
Gary J. Nelson
CHRISTIE, PARKER & HALE, LLP
350 West Colorado Blvd., Suite 500
Post Office Box 7068
Pasadena, California 91109-7068
Phn: (626) 795-9900
Fax: (626) 577-8800

Attorneys for Applicant/Petitioner

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CERTIFICATE OF TRANSMISSION AND SERVICE


I certify that on September 5, 2006, the foregoing **ANSWER TO NOTICE OF OPPOSITION; COUNTERCLAIM** is being electronically filed with:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on September 5, 2006, the foregoing **ANSWER TO NOTICE OF OPPOSITION; COUNTERCLAIM** is being served by mailing a copy thereof by first-class mail addressed to:

Jesus Sanchelima
Amaury Cruz
SANCHELIMA & ASSOCIATES, P.A.
235 S.W. Le Jeune Road
Miami, Florida 33134

Attorneys for Opposer

By: 

Tammy L. Lightman
CHRISTIE, PARKER & HALE, LLP
350 W. Colorado Blvd., Suite 500
Pasadena, CA 91109-7068