

ESTTA Tracking number: **ESTTA105428**

Filing date: **10/20/2006**

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

| | |
|------------------------|---|
| Proceeding | 91172821 |
| Party | Defendant Xanthone Plus International, LLC Xanthone Plus International, LLC 11504 Front Field Lane , MD 20854 |
| Correspondence Address | ALAN J. HOWARTH CLAYTON, HOWARTH & CANNON, P.C. PO BOX 1909 SANDY, UT 84091-1909 |
| Submission | Answer |
| Filer's Name | Alan J. Howarth |
| Filer's e-mail | ahowarth@chcpat.com, docketclerk@chcpat.com, ttetzi@chcpat.com |
| Signature | /Alan J. Howarth/ |
| Date | 10/20/2006 |
| Attachments | Answer.pdf (5 pages)(122665 bytes) |

ALAN J. HOWARTH
CLAYTON, HOWARTH & CANNON, P.C.
P.O. Box 1909
Sandy, Utah 84091-1909
Telephone: (801) 255-5335
Facsimile: (801) 255-5338

TRADEMARK
Attorney Docket No. T10793

Attorney for Applicant
XANTHONE PLUS INTERNATIONAL, LLC
Opposed Mark: XPI FACTOR
U.S. Application No. 78/715,502

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

| | | |
|----------------------------------|---|-------------------------|
| PHYTOCEUTICAL RESEARCH, LLC |) | |
| |) | |
| Opposer, |) | |
| |) | ANSWER |
| v. |) | |
| |) | |
| XANTHONE PLUS INTERNATIONAL, LLC |) | Opposition No. 91172821 |
| |) | |
| Applicant. |) | |
| |) | |

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Applicant, Xanthone Plus International, LLC ("XPI"), through its counsel, hereby answers the Notice of Opposition filed in this action by Phytoceutical Research, LLC ("Opposer").

In response to the preamble introductory paragraph in the Notice of Opposition, XPI denies that Opposer will be damaged by registration of the mark shown in Application No. 78/715,502.

In response to the specifically numbered paragraphs set forth in the Notice of Opposition, XPI hereby responds as follows:

1. XPI lacks sufficient information to either admit or deny the allegations contained in paragraph 1 of the Notice of Opposition and therefore denies the same.
2. XPI lacks sufficient information to either admit or deny the allegations contained in paragraph 2 of the Notice of Opposition and therefore denies the same, except that XPI admits that it has not been granted a license to use Opposer's alleged mark.
3. XPI lacks sufficient information to either admit or deny the allegations contained in paragraph 3 of the Notice of Opposition and therefore denies the same.
4. XPI denies the allegations contained in paragraph 4 of the Notice of Opposition.
5. XPI lacks sufficient information to either admit or deny the allegations contained in paragraph 5 of the Notice of Opposition and therefore denies the same.
6. XPI lacks sufficient information to either admit or deny the allegations contained in paragraph 6 of the Notice of Opposition and therefore denies the same.
7. XPI denies the allegations contained in paragraph 7 of the Notice of Opposition.
8. XPI lacks sufficient information to either admit or deny the allegations contained in paragraph 8 of the Notice of Opposition and therefore denies the same.
9. XPI lacks sufficient information to either admit or deny the allegations contained in paragraph 9 of the Notice of Opposition and therefore denies the same.
10. XPI denies the allegations contained in paragraph 10 of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE (DISSIMILAR MARKS)

There is no likelihood of confusion, mistake, or deception between Opposer's mark and XPI's mark because of the dissimilarity of XPI's mark and Opposer's mark when considered in their entireties as to appearance, sound, connotation, and commercial impression.

SECOND AFFIRMATIVE DEFENSE (DISSIMILAR GOODS AND SERVICES)

There is no likelihood of confusion, mistake, or deception between Opposer's marks and XPI's mark because of the dissimilarity of XPI's goods and Opposer's goods and/or services.

THIRD AFFIRMATIVE DEFENSE (NO LESSENING OF CAPACITY TO IDENTIFY AND DISTINGUISH GOODS OR SERVICES)

There is no dilution or likelihood of dilution of the alleged distinctive quality of Opposer's mark because XPI's use of its mark has not lessened, and registration of XPI's mark will not lessen, the capacity of Opposer's mark to identify and distinguish goods or services and is not likely to cause dilution by blurring or dilution by tarnishment.

FOURTH AFFIRMATIVE DEFENSE (NO FAMOUS MARK)

There is no dilution or likelihood of dilution of the alleged distinctive quality of Opposer's mark because Opposer's mark is not famous.

WHEREFORE, XPI prays:

1. That the Notice of Opposition be denied in its entirety, with prejudice.
2. That a registration on the Principal Register issue to XPI for the mark set forth in

Application No. 78/715,502.

DATED this 20th day of October, 2006.



Alan J. Howarth
Attorney for Applicant

Clayton, Howarth & Cannon, P.C.
P.O. Box 1909
Sandy, Utah 84091
Telephone: (801) 255-5335
Facsimile: (801) 255-5338

AJH/tet

S:\CHC Files\T10--VT107--VT10793\Answer.10202006.wpd

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER was served on Opposer by mailing a true copy thereof to its attorney of record, by first class mail, postage prepaid, this 20th day of October, 2006, in an envelope addressed as follows:

Marc T. Rasich
STOEL RIVES LLP
One Utah Center
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Counsel for Opposer


