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

Proceeding	91176041
Party	Defendant Shofu, Inc. Shofu, Inc. Higashiyama-ku 11 Kamitakamatsu-cho Fukuine JPX Kyoto, 605
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Attachments	SHOFU040M ANSWER.pdf (4 pages)(77052 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VINTAGE PHARMACEUTICALS, INC.

Opposer,

v.

SHOFU, INC.,

Applicant.

Opposition No. 91176041


Mark: **VINTAGE ZR**

Serial No.: 78/868,486

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through their web site located at <http://estta.uspto.gov> on

April 4, 2007

(Date)



Frederick S. Berretta (Reg. No. 38,004)

ANSWER TO OPPOSITION

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

Dear Sir or Madam:

Applicant Shofu, Inc. ("Shofu") hereby answers the Opposition of Opposer Vintage Pharmaceuticals, Inc. ("Opposer") as follows:

1. Shofu lacks sufficient knowledge and information to admit or deny the allegations of paragraph 1 of the Opposition, and on that basis denies those allegations.

2. Shofu lacks sufficient knowledge and information to admit or deny the allegations of paragraph 2 of the Opposition, and on that basis denies those allegations.

3. Shofu lacks sufficient knowledge and information to admit or deny the allegations of paragraph 3 of the Opposition, and on that basis denies those allegations.

4. In responding to paragraph 4 of the Opposition, Shofu admits that the records of the U.S. Patent and Trademark Office indicate that an entity called “Vintage Pharmaceuticals” registered a VINTAGE mark, Registration No. 1,994,771, in International Class 005. Shofu lacks sufficient knowledge and information to admit or deny the remaining allegations of paragraph 4 of the Opposition, and on that basis denies those allegations.

5. Shofu admits the allegations of paragraph 5 of the Opposition.

6. In responding to paragraph 6 of the Opposition, Shofu admits that the marks VINTAGE and VINTAGE ZR as used by Shofu in connection with porcelain for dental purposes are almost identical in sound and appearance and create the same continuing commercial impression. Shofu denies the remaining allegations of paragraph 6 of the Opposition.

7. Shofu denies the allegations of paragraph 7 of the Opposition.

8. In responding to paragraph 8 of the Opposition, Shofu denies that Opposer’s alleged goodwill has been or would be harmed by Shofu’s use of the VINTAGE ZR mark. Shofu lacks sufficient knowledge and information to admit or deny the remaining allegations of paragraph 8 of the Opposition, and on that basis denies those allegations.

9. Shofu denies the allegations of paragraph 9 of the Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Priority of Use)

10. The Opposition of Opposer fails because, as between Shofu and Opposer, Shofu was the first to use the VINTAGE mark and may claim priority of use of the VINTAGE ZR mark to its first use of the VINTAGE mark because both marks as used by Shofu in connection with porcelain for dental purposes are almost identical in sound and appearance and create the same continuing commercial impression.

Second Affirmative Defense

(Acquiescence)

11. The Opposition of Opposer is barred because Opposer has acquiesced in the use by Shofu of the VINTAGE and VINTAGE ZR trademarks.

Third Affirmative Defense

(Laches)

12. The Opposition of Opposer is barred by reason of equitable principles including, but not limited to, laches.

Fourth Affirmative Defense

(Waiver and Estoppel)

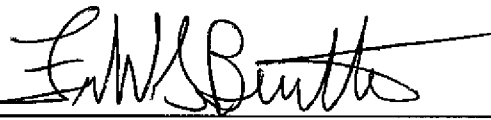
13. The Opposition of Opposer is barred by reason of equitable principles including, but not limited to, waiver and estoppel.

WHEREFORE, Applicant Shofu prays that this Opposition be denied and that Shofu's Application Serial No. 78/868,486 proceed to registration.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: April 4, 2007

By: 

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Attorneys for Applicant
SHOFU, INC.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **ANSWER TO OPPOSITION** upon Opposer's counsel by placing it in a sealed envelope, via First Class Mail, postage prepaid, on April 4, 2007, addressed as follows:

Frank M. Caprio, Esq.
J. Mark Bledsoe, Esq.
LANIER FORD SHAVER & PAYNE P.C.
200 West Side Square
Huntsville, Alabama 35804



Brenda R. Heavill

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