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

Proceeding	91176079
Party	Defendant Jay A. Altman Jay A. Altman 3021 W. County Road #64 Fort Collins, CO 80524
Correspondence Address	Jay A. Altman 3021 W. County Road #64 Fort Collins, CO 80524 UNITED STATES jayequet@hughes.net
Submission	Answer
Filer's Name	Jay Altman
Filer's e-mail	jayequet@hughes.net
Signature	/Jay Altman/
Date	04/12/2007
Attachments	Answer to Opposition and Motion to Consolidate Cover letter 91176079.pdf (1 page)(9353 bytes) Answer to Opposition Assure 91176079 With motion to consolidate.pdf (5 pages)(33584 bytes)

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

In the matter of Trademark Application Serial No. 78/881,000
Filed May 10, 2006
For the Mark ASSURE

Regarding: Opposition # 91176079

Please Note the Attached Document Contains:

ANSWER TO OPPOSITION
AND
MOTION TO CONSOLIDATE

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

In the matter of Trademark Application Serial No. 78/881,000
Filed May 10, 2006
For the Mark ASSURE

SYNBIOTICS CORPORATION,

Opposer,

v.

JAY ALTMAN,

Applicant.

Opposition No. 91176079

I hereby certify that this correspondence and all marked
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located at <http://estta.uspto.gov> on

April 12, 2007

(Date)

/Jay Altman/

Jay Altman

ANSWER TO NOTICE OF OPPOSITION
AND
MOTION TO CONSOLIDATE PROSECUTION

Applicant, Jay Altman, located and doing business at 3021 West County Road 64, Fort Collins, Colorado 80524, submits the following answer to the NOTICE OF OPPOSITION submitted by Knobbe, Martens, Olson, & Bear, LLP and filed by AnneMarie Kaiser Attorneys for the Opposer, Synbiotics Corporation.

SECTION 1: GENERAL DENIAL

The Applicant denies Opposer's claim to have substantial cause for opposition of the registration of the Mark Assure. Although, the Applicant affirms Applicant's Mark is similar to the Opposer's Mark, Applicant denies that there will be any confusion in the market or markets.

Therefore, Applicant denies that Opposer will suffer irreparable damage through loss or dilution of its goodwill as represented and symbolized by its registered mark Assure.

SECTION 2: SPECIFIC DENIAL

The answers to the grounds for opposition are as follows:

1. I affirm the applicant filed Application Serial No. 78/881,000 on or about May 11, 2006 to register the mark ASSURE in International Class 5 in connection with “feed supplement for horses designed to improve gastro-intestinal function.” (“Applicant’s Mark”) and that the Applicant’s Mark was published for opposition on December 12, 2006.
2. I deny that the registration of the Applicant’s Mark will cause damage to the Opposer.
3. I affirm that the Opposer is the owner of U.S. Trademark Registration No. 1,566,720 for the mark ASSURE, which application was filed on or about January 23, 1989 and registered November 21, 1989, for “veterinary diagnostic test kits comprising diagnostic reagents for diagnosing veterinary diseases and conditions” in International Class 5. I further affirm that Opposer is also the owner of U.S. Trademark Registration No. 1,570,521 for the mark ASSURE/CH, which application was filed on or about April 3, 1989 and registered December 12, 1989, and U.S. Registration No. 1,560,440 for the mark ASSURE/FELV, which application was filed on or about January 23, 1989 and registered on October 17, 1989, both of which are registered in International Class 5 for veterinary diagnostic test kits (Opposer’s Marks).
4. I affirm that the registration dates for Opposer’s Marks are all prior to the filing date and dates of first use claimed by Applicant in relation to Applicant’s Mark.

5. I affirm that the registered marks of Opposer are valid and subsisting and are *prima facie* evidence of Opposer's exclusive right to use the marks in commerce on the goods specified in the registration. I affirm the similarity of the respective marks, but I deny that the goods of the Opposer and the Applicant are related. Furthermore, I deny that the Applicant's Mark is likely to cause confusion or to cause mistake or to deceive, despite the resemblance of the Applicant's Mark to the Opposer's registered marks.
6. The applicant is without knowledge or information sufficient to form a belief as to the truth, therefore the applicant denies, that Opposer's use of Opposer's Marks has been valid and continuous since at least as early as 1989 in connection with the sale of its products, and has not been abandoned. The applicant is without knowledge or information sufficient to form a belief as to the truth, and therefore the applicant denies, that Opposer's Marks are symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion. Applicant denies that due to the similarity of the respective marks and the claimed related nature of the goods of the respective parties, the Applicant's Mark is likely to cause confusion or to cause mistake or to deceive.
7. The Applicant denies that purchasers and users and prospective purchasers and users, familiar with Opposer's goods and business identified by Opposer's Marks are likely to be misled into believing, that Applicant's goods and business conducted in conjunction with Applicant's Mark emanate from, or are in some way sponsored or endorsed by, or affiliated with, Opposer, to Opposer's irreparable damage through loss or dilution of its goodwill as symbolized by Opposer's Marks.

SECTION 3: MOTION TO CONSOLIDATE:

The Applicant asserts that that the Opposition No. 91176059 filed by the Opposer to the Applicants Mark ASSURE PLUS on or about March 7, 2007 is a related proceeding. Furthermore, the Applicant asserts that the Applicants Mark's both ASSURE and ASSURE PLUS are related Marks. The Applicant contends that the Opposer's Marks ASSURE, ASSURE/CH and ASSURE/FELV are also related Marks. The Applicant believes that Opposer's claims against both of the Applicant's Marks, involve similar questions of law and fact. Therefore, the Applicant requests that Opposition No. 91176059 be consolidated with Opposition no. 91176079 and if appropriate that Opposition no. 91176059 then be cancelled.

WHEREFORE, Applicant prays that said Application Serial No. 78,881,000 be accepted and that the registration be issued, and that the Opposition be denied in favor of the Applicant. Furthermore Applicant requests that the prosecution of the Opposition No. 91176079 be consolidated with the prosecution of Opposition No. 91176059.

Respectfully submitted,

Jay Altman

Dated April 12, 2007 By: /Jay Altman/

Jay Altman
3021 West County Road 64
Fort Collins, CO 80524
Telephone: (970) 568-9445
Email: jayequvet@hughes.net
Applicant

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to: AnneMarie Kaiser Esq., Knobbe, Martens, Olson, & Bear, LLP, 2040 Main Street, Fourteenth Floor, Irvine, CA 92614 on:

Date of Mailing Document: April 12, 2007

Name of applicant certifying mailing: Jay Altman

Signature: /Jay Altman/

Date of Signing: April 12, 2007

In the United States Patent and Trademark Office
Before the Trademark Trial and Appeal Board

In the matter of Application Serial No. 78,881,000
Filed On May 11, 2006

For the Mark ASSURE

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