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

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|------------------------|--|
| Proceeding | 91179640 |
| Party | Defendant Johnson & Johnson |
| Correspondence Address | Peter J. Silverman Fross Zelnick Lehrman & Zissu PC 866 United Nations Plaza, One Johnson & Johnson Plaza New York, NY 10017 UNITED STATES |
| Submission | Answer |
| Filer's Name | Christen M. English |
| Filer's e-mail | christen.english@dbr.com, andrea.engel@dbr.com |
| Signature | /Christen M. English/ |
| Date | 10/31/2007 |
| Attachments | ANSWER TO AMENDED NOTICE OF OPP. - 91,179,640.pdf (3 pages)(89898 bytes) |

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

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|---------------------------------------|---|---------------------------|
| <u>TRIUMPH PHARMACEUTICALS, INC.,</u> | : | |
| | : | |
| Opposer, | : | |
| | : | |
| v. | : | Opposition No. 91/179,640 |
| | : | |
| JOHNSON & JOHNSON, | : | |
| | : | |
| <u>Applicant.</u> | : | |

ANSWER TO AMENDED NOTICE OF OPPOSITION

Johnson & Johnson, a New Jersey corporation, having a principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-7001 (“Applicant”), without waiving any right due to any insufficiency in the statement of the grounds of opposition, and saving to itself all defenses in law and equity, in answer to the Notice of Opposition, states:

1. With respect to the preamble to the Notice of Opposition, Applicant denies that Opposer will be damaged by the issuance of a registration maturing from application Ser. No. 77/013,209 – SMART RINSE. Applicant admits the remaining allegations.
2. Applicant is without sufficient knowledge of the allegations in Paragraphs 1 - 7 of the Notice of Opposition and, therefore, denies them.
3. Applicant admits that on October 4, 2006 Applicant’s predecessor-in-interest, Warner Lambert Company LLC, filed an intent-to-use application Ser. No. 77/013,209 for the mark SMART RINSE for “non-medicated pre-brush mouth rinse, non-medicated mouthwash and mouth rinse” in Class 3 and “medicated mouthwash” in Class 5 (the term “rinse” disclaimed) and thereafter assigned this application to Applicant. Applicant further admits

that it was aware of Opposer's SMART MOUTH mark and numerous third party marks incorporating the term "smart" for oral care products at the time it filed Ser No. 77/013,209. In all other respects, Applicant is without sufficient knowledge of the allegations in Paragraph 8 of the Notice of Opposition, and therefore, denies them.

4. Applicant denies the allegations in Paragraphs 9-12 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

5. Numerous marks incorporating the term "smart" coexist in the oral care field.
6. The marks of Opposer and Applicant are sufficiently different when considered in their entireties to avoid any likelihood of confusion, mistake or deception, as applied to the respective goods of Opposer and Applicant.
7. Opposer's claim is barred by laches.
8. Opposer's claim is barred by the principle of acquiescence.
9. Opposer's claim is barred by the principle of estoppel.

For the foregoing reasons, Applicant prays that this opposition be dismissed with prejudice.

Respectfully submitted,
JOHNSON & JOHNSON

By: 

Norm D. St. Lardau
Christen English
Drinker Biddle & Reath LLP
1500 K Street, N.W., Suite 1100
Washington, D.C. 20005-1209
Telephone: (202) 842-8800
Facsimile: (202) 842-8465
Attorneys for Applicant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER TO AMENDED NOTICE OF OPPOSITION was served on Thomas E. Nutter and Jeffrey Kass, Armstrong Teasdale LLP, Metropolitan Square Building, 211 North Broadway Blvd., Suite 2600, St. Louis, Missouri 63102 on this 31st day of October, 2007, by first class mail, postage prepaid.

Richard C. Clark