

ESTTA Tracking number: **ESTTA187529**

Filing date: **01/18/2008**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Wyeth
Granted to Date of previous extension	01/20/2008
Address	Five Giralda Farms Madison, NJ 07940 UNITED STATES

Correspondence information	Sudipta Rao Trademark and Copyright Counsel Wyeth Five Giralda Farms Madison, NJ 07940 UNITED STATES raos@wyeth.com Phone:973-660-7697
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**Applicant Information**

Application No	76642493	Publication date	07/24/2007
Opposition Filing Date	01/18/2008	Opposition Period Ends	01/20/2008
Applicant	Albaugh, Inc. 1525 NE 36th Street Ankeny, IA 50021 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Herbicides
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2065433	Application Date	08/25/1994
Registration Date	05/27/1997	Foreign Priority Date	NONE
Word Mark	PYRAMID		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1994/09/29 First Use In Commerce: 1994/09/29 full line of bovine vaccines

Attachments	PYRAMID opposition.pdf ( 9 pages )(203421 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Sudipta Rao/
Name	Sudipta Rao
Date	01/18/2008

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

In the Matter of Application Serial No.: 76/642493  
Published on July 24, 2007

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WYETH,	:	
Opposer,	:	
-against-	:	Opposition No.:
	:	
	:	<u>NOTICE OF OPPOSITION</u>
ALBAUGH INC.,	:	
	:	
Applicant.	:	
-----X	:	

Opposer Wyeth, a Delaware corporation having its principal place of business at Five Giralda Farms, Madison, New Jersey, believes it will be damaged by registration of the trademark PYRAMID for “herbicides,” in International Class 5 in Application Serial No. 76/642493, by Albaugh Inc. (hereinafter referred to as “Applicant”) and published in the Official Gazette on July 24, 2007. Wyeth has obtained the necessary extension of time to file this Notice of Opposition and such Notice is timely made.

As grounds of opposition, it is alleged that:

1. Opposer, Wyeth and its affiliated and predecessor companies (referred to collectively herein as “Wyeth”), are now, and for many years have been, engaged in the manufacture, distribution and sale of a wide variety of pharmaceutical, consumer healthcare and animal health products. Wyeth’s wide variety of prescription and over-the-counter animal health products for use on livestock and companion animals animal health products are sold in commerce throughout the United States by its animal health division, Fort Dodge Animal Health.

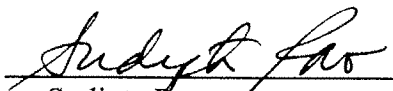
2. For many years, and prior to the filing date of the intent-to-use application herein opposed, the trademark PYRAMID has been used by Wyeth in connection with bovine vaccines.
3. On August 25, 1994, Wyeth applied for registration of the mark PYRAMID covering “a full line of bovine vaccines” with the United States Patent and Trademark Office, and on May 27, 1997 was granted Registration No. 2,065,433 for PYRAMID. Said Registration is owned by Wyeth and is valid and subsisting. The registration is incontestable pursuant to 15 U.S.C. §1065.
4. In accordance with Rule 2.122 of the Trademark Rules of Practice, a current printout of the registration from the TARR, electronic database of the U.S. Patent and Trademark Office showing the current status and title of the registration is attached herein as Exhibit A and submitted into evidence on behalf of Wyeth.
5. Since the adoption and first use of the PYRAMID trademark Wyeth has expended substantial amounts of money in marketing, advertising and promoting the PYRAMID trademark on or in connection with numerous goods and services relating to animals and the vaccination thereof in the United States. As such, Wyeth enjoys substantial sales of goods and services in the United States in connection with the use of the PYRAMID trademark.
6. By reason of the extensive marketing, advertising and promotion of goods and services connected with the PYRAMID mark and Wyeth has established substantial goodwill and valuable reputation in the PYRAMID mark.
7. On July 11, 2005, Applicant filed an application to register the mark PYRAMID for “Herbicides” in International Class 5. Applicant’s basis for filing is intent-to-use, pursuant to Section 1(b) of the Lanham Act.

8. Applicant's intended adoption and use of the PYRAMID mark has been without Wyeth's consent or permission.
9. The PYRAMID trademark for which Applicant seeks registration is identical in appearance, sound and connotation to Wyeth's PYRAMID mark.
10. Applicant's PYRAMID mark so resembles Wyeth's PYRAMID mark as to be likely, when applied to Applicant's goods, to cause confusion, mistake, or deception as to the source of origin of Applicant's goods by creating the erroneous impression that Applicant's goods originate with, are sponsored by, approved or endorsed by, licensed, affiliated, associated or otherwise connected to Wyeth.
11. The goods for which Applicant seeks registration, "Herbicides" are sufficiently related to the goods and services marketed by Wyeth's PYRAMID mark as to likely cause confusion among purchasers and potential purchasers of Applicant's goods.
12. The goods for which Applicant seeks registration of the PYRAMID mark are likely to be sold in the same channels of trade and/or used by the same customers to whom Wyeth sells its goods and services under the PYRAMID mark.
13. Wyeth will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in confusing and misleading use of Applicant's identical mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Wyeth.

WHEREFORE Wyeth believes that it will be damaged by registration of Applicant's mark and prays that this opposition be sustained, and that Application Serial No. 76/642493 be denied.

Dated: January 18, 2008  
Madison, New Jersey

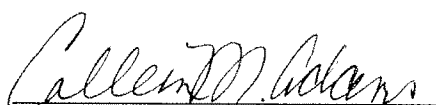
WYETH

By:   
Sudipta Rao  
Attorney for Opposer  
Five Giralda Farms  
Madison, New Jersey 07940  
(973) 660-7697  
raos@wyeth.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on counsel for Applicant by mailing such copy on January 18, 2007, via First Class mail, postage prepaid to:

Adam W. Jones  
Brown, Winick, Graves, Gross  
Regency West 5 4500 Westown Pkwy.  
West Des Moines, IA 50266



Colleen Adams  
Trademark Analyst

# **EXHIBIT A**



**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2008-01-18 13:15:09 ET**

**Serial Number:** [74565727 Assignment Information](#)      [Trademark Document Retrieval](#)

**Registration Number:** 2065433

**Mark (words only):** PYRAMID

**Standard Character claim:** No

**Current Status:** This registration has been renewed.

**Date of Status:** 2007-06-08

**Filing Date:** 1994-08-25

**Transformed into a National Application:** No

**Registration Date:** 1997-05-27

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 105

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 830 -Post Registration

**Date In Location:** 2007-06-08

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. WYETH

**Address:**

WYETH  
FIVE GIRALDA FARMS  
MADISON, NJ 07940  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

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**International Class:** 005

**Class Status:** Active

full line of bovine vaccines

**Basis:** 1(a)

**First Use Date:** 1994-09-29

**First Use in Commerce Date:** 1994-09-29

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-06-08 - First renewal 10 year

2007-06-08 - Section 8 (10-year) accepted/ Section 9 granted

2007-05-31 - Assigned To Paralegal

2007-05-04 - Combined Section 8 (10-year)/Section 9 filed

2007-05-04 - TEAS Section 8 & 9 Received

2006-12-13 - Case File In TICRS

2002-09-17 - Section 8 (6-year) accepted & Section 15 acknowledged

2002-08-08 - Section 8 (6-year) and Section 15 Filed

2002-08-08 - TEAS Section 8 & 15 Received

1997-05-27 - Registered - Principal Register

1997-04-04 - Allowed for Registration - Principal Register (SOU accepted)

1997-04-03 - Assigned To Examiner

1997-03-12 - Statement of use processing complete

1997-02-05 - Amendment to Use filed

1997-03-12 - Extension 3 granted

1997-01-31 - Extension 3 filed

1996-10-13 - Extension 2 granted

1996-07-13 - Extension 2 filed

1996-04-08 - Extension 1 granted

1996-01-31 - Extension 1 filed

1995-08-01 - Notice of allowance - mailed

1995-05-09 - Published for opposition

1995-04-07 - Notice of publication

1995-01-26 - Approved for Pub - Principal Register (Initial exam)

1995-01-24 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Sudipta Rao

**Correspondent**

Sudipta Rao

WYETH

Trademark Law Department

Five Giralda Farms

MADISON NJ 07940

Phone Number: 973-660-7697

Fax Number: 973-660-7978

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