

ESTTA Tracking number: **ESTTA209314**

Filing date: **05/05/2008**

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

Proceeding	91183182
Party	Defendant Biovail Laboratories International SRL
Correspondence Address	James R. Menker Holley & Menker, P.A. PO Box 331937 Atlantic Beach, FL 32233  eastdocket@holleymenker.com
Submission	Answer
Filer's Name	James R. Menker
Filer's e-mail	eastdocket@holleymenker.com
Signature	/jmenker/
Date	05/05/2008
Attachments	5-5-2008 Answer Notice of Opposition 91183182 - ASOLZA.pdf ( 5 pages ) (181543 bytes )

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

ALZA Corporation,	)	
	)	
Opposer,	)	
	)	Opposition No. 91183182
v.	)	
	)	Ser. No. 78851378
Biovail Laboratories International SRL,	)	
	)	
Applicant.	)	

**ANSWER**

Applicant, Biovail Laboratories International SRL, through its undersigned attorneys, hereby answers the Notice of Opposition filed by Opposer, ALZA Corporation, filed in connection with the above-captioned opposition proceeding.

With respect to the preamble of the Notice of Opposition, Applicant denies that Opposer is being or will be damaged by the registration of U.S. trademark application Ser. No. 78851346 filed by Applicant on March 31, 2006. Applicant is a society with restricted liability organized under the laws of Barbados and has an address of Chelston Park, Building 2 Ground Floor, Collymore Rock, St. Michael, Barbados. Applicant is without sufficient information to admit or deny the remaining allegations of the preamble of the Notice of Opposition and, therefore, denies them.

1. Applicant is without sufficient information to admit or deny the allegations of Paragraph 1 of the Notice of Opposition and, therefore, denies them.

2. Applicant is without sufficient information to admit or deny the allegations of Paragraph 2 of the Notice of Opposition and, therefore, denies them.

3. Applicant is without sufficient information to admit or deny the allegations of Paragraph 3 of the Notice of Opposition and, therefore, denies them.

4. Applicant is without sufficient information to admit or deny the allegations of Paragraph 4 of the Notice of Opposition and, therefore, denies them.

5. Applicant is without sufficient information to admit or deny the allegations of Paragraph 5 of the Notice of Opposition and, therefore, denies them.

6. Applicant is without sufficient information to admit or deny the allegations of Paragraph 6 of the Notice of Opposition and, therefore, denies them.

7. Applicant is without sufficient information to admit or deny the allegations of Paragraph 7 of the Notice of Opposition and, therefore, denies them.

8. Admit.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

With respect to the unnumbered paragraph following Paragraph 15 of the Notice of Opposition, Applicant denies any allegation therein and respectfully requests that the Notice of Opposition be denied.

#### **AFFIRMATIVE DEFENSES**

Applicant asserts the following affirmative defenses.

##### **First Affirmative Defense**

16. Numerous marks incorporating the –ZA suffix coexist in the pharmaceutical field.

##### **Second Affirmative Defense**

17. Applicant alleges that there is no likelihood of confusion, mistake or deception due to the differences in sound, appearance and commercial impression between its mark and the marks asserted by Opposer in the Notice of Opposition.

##### **Third Affirmative Defense**

18. Opposer fails to state a claim upon which relief may be granted.

##### **Fourth Affirmative Defense**

19. Upon information and belief, Opposer’s claim is precluded by the doctrine of laches.

##### **Fifth Affirmative Defense**

20. Upon information and belief, Opposer’s claim is precluded by the doctrine of acquiescence.

**Sixth Affirmative Defense**

21. Upon information and belief, Opposer's claim is precluded by the doctrine of estoppels.


Applicant reserves the right to raise additional defenses as may become known during the discovery and/or testimony periods.

WHEREFORE, Applicant prays that the Notice of Opposition be immediately dismissed with prejudice and that the opposed application be promptly registered.

Respectfully submitted,

Biovail Laboratories International SRL

By:

  
\_\_\_\_\_  
James R. Menker

Applicant's Attorneys  
Holley & Menker, PA  
PO Box 331937  
Atlantic Beach, Florida 32233  
T: 904-247-2620  
F: 202-280-1177  
E-Mail: [eastdocket@holleymenker.com](mailto:eastdocket@holleymenker.com)

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing “ANSWER” was served on Opposer’s attorney, Christen M. English of Drinker Biddle & Reath LLP, with an address at 1500 K St., N.W., Suite 1100, Washington, DC 20005 via first class mail, postage prepaid, today **May 5, 2008.**

By:



---

James R. Menker