

ESTTA Tracking number: **ESTTA206335**

Filing date: **04/22/2008**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Drugtech Corporation
Granted to Date of previous extension	04/23/2008
Address	300 Delaware Avenue, Suite 1270 Wilmington, DE 19801 UNITED STATES

Name	KV Pharmaceutical Company		
Entity	Corporation	Citizenship	Delaware
Address	2503 South Hanley Road St. Louis, MO 63144 UNITED STATES		

Attorney information	Bassam N. Ibrahim Buchanan Ingersoll & Rooney, P.C. P.O. Box 1404 Alexandria, VA 22313-1404 UNITED STATES bassam.ibrahim@bipc.com, colleen.hall@bipc.com, connie.fuentes@bipc.com Phone:703-836-6620
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Applicant Information

Application No	77227850	Publication date	12/25/2007
Opposition Filing Date	04/22/2008	Opposition Period Ends	04/23/2008
Applicant	Kennel Vaccine Vet Supply Company 3190 N Road David City, NE 68632 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: On-line retail store services featuring health care products for individuals and animal care products; Retail store services featuring health care products for individuals and animal care products; Catalog ordering service featuring health care products for individuals and animal care products

Grounds for Opposition

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

U.S. Application No.	78772952	Application Date	12/14/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KV/24		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: Pharmaceutical preparations, namely, a full line of controlled released drug delivery systems comprising nutritional supplements and vitamins and pharmaceutical and therapeutic substances for the treatment of a wide variety of illnesses, diseases and medical conditions, namely, hormones, analgesics, electrolytes, anti-infectives, cardiovascular preparations, fertility enhancement preparations, birth control preparations, neonatal care preparations, hormone replacement preparations, anti-aging preparations and preparations for the treatment of osteoporotic conditions, senility, nausea, inflammation, muscle pain, arthritis, migraines, hypokalemia, dehydration, fungal and microbial infections, viralogical infections, hypertension, circulation diseases, infertility, conception, osteoporosis, Alzheimer's disease, dementia, schizophrenia, panic disorders, central nervous system diseases, and tremors		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	KV		
Goods/Services	pharmaceutical goods		

Related Proceedings	Application Serial No. 77/227,838 Application Serial No. 77/227,845
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Attachments	78772952#TMSN.jpeg (1 page)(bytes) NOO-721.pdf (5 pages)(188552 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	/s. lloyd smith/
Name	S. Lloyd Smith
Date	04/22/2008

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

Drugtech Corporation and
KV Pharmaceutical Company,

Opposers,

v.

Kennel Vaccine Vet Supply Company,

Applicant.

Attorney Docket No. 1032058-721

Opposition No. _____

NOTICE OF OPPOSITION

Commissioner for Trademarks
BOX TTAB
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

Drugtech Corporation ("Drugtech") and KV Pharmaceutical Company ("KV") (collectively, Drugtech and KV are referred to herein as "Opposers") believe they will be damaged by the registration of Application Serial No. 77/227,850 for KV filed on July 12, 2007, by Kennel Vaccine Vet Supply Company ("Kennel Vaccine") published in the Official Gazette on December 25, 2007, and opposes the same. The grounds for this opposition are as follows:

1. Opposer Drugtech is a Delaware corporation, located and doing business at 300 Delaware Avenue, Suite 1270, Wilmington, Delaware, 19801.
2. Opposer KV Pharmaceutical Company is a Delaware corporation, located and doing business at 2503 South Hanley Road, St. Louis, Missouri 63144.

3. Applicant Kennel Vaccine is a Nebraska corporation located and doing business at 3190 N Road David City, Nebraska 68632.

4. Opposer Drugtech is the owner of U.S. Application Serial No. 78/772,952 for KV/24 for "Pharmaceutical preparations, namely, a full line of controlled release drug delivery systems comprising nutritional supplements and vitamins and pharmaceutical and therapeutic substances for the treatment of a wide variety of illnesses, diseases and medical conditions, namely, hormones, analgesics, electrolytes, anti-infectives, cardiovascular preparations, fertility enhancement preparations, birth control preparations, neonatal care preparations, hormone replacement preparations, anti-aging preparations and preparations for the treatment of osteoporotic conditions, senility, nausea, inflammation, muscle pain, arthritis, migraines, hypokalemia, dehydration, fungal and microbial infections, viralogical infections, hypertension, circulation diseases, infertility, conception, osteoporosis, Alzheimer's disease, dementia, schizophrenia, panic disorders, central nervous system diseases, and tremors" and Opposer KV is the owner of common law rights in the mark KV for "pharmaceutical goods" ("Opposers' KV Marks"). The goods for which Opposers' uses Opposers' KV Marks are referred to herein as "Opposers' Goods."

5. Applicant Kennel Vaccine is the owner of U.S. Application Serial No. 77/227,850 for the mark KV ("Applicant's KV Mark") for "On-line retail store services featuring health care products for individuals and animal care products; Retail store services featuring health care products for individuals and animal care products; Catalog ordering service featuring health care products for individuals and animal care products" ("Applicant's Goods").

6. Prior to Kennel Vaccine's filing date of its Application Serial No. 77/227,850 for its KV Mark for Applicant's Goods, Drugtech filed its U.S. Application Serial No. 78/772,952 for its KV/24 Mark.

7. Since long prior to any use of Applicant's KV Mark by Applicant for Applicant's Goods in commerce in the United States, Opposers have been and are now engaged in the business of advertising, offering for sale and selling Opposers' Goods under the Opposers' KV Marks in commerce in the United States. Further, Opposers' use of the KV Marks is long prior to Applicant's use of KV or related marks.

8. Due to Opposers' long, established and exclusive use of Opposers' KV Marks in connection with Opposers' Goods, the Opposers' KV Marks have become famous and well known as designating Opposers' Goods throughout the United States. Opposers' KV Marks became famous and well known for Opposers' Goods prior to the filing date of Application Serial No. 77/227,850 and any use of Applicant's KV Mark.

9. Opposers' goodwill and reputation will be harmed by the use and registration of the Applicant's KV Mark for Applicant's Goods.

10. Applicant's KV Mark so resembles Opposers' previously used Opposers' KV Marks as to be likely, when applied to the Applicant's Goods, to cause a likelihood of confusion, mistake or to deceive persons by creating the erroneous impression that the Applicant's Goods originate with or are associated with the Opposers, or that the Applicant's Goods are authorized, endorsed or sponsored by the Opposers.

11. Applicant's filing of U.S. Application Serial No. 77/227,850 for Applicant's KV Mark is without license, authorization or permission from Opposers.

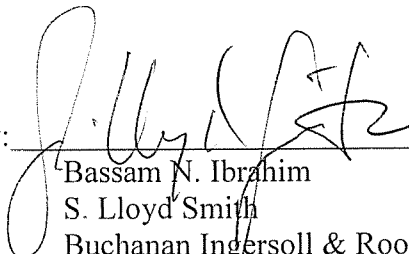
12. The granting of a trademark registration for Applicant's KV Mark to Applicant would cause a likelihood of confusion contrary to 15 U.S.C. § 1052(d) and would violate and diminish the prior and superior rights of Opposers in Opposers' KV Marks.

13. Opposers would be damaged if U.S. Application Serial No. 77/227,850 is granted because Applicant will obtain statutory rights in Applicant's KV Mark in violation and derogation of the established prior rights of Opposers in Opposers' KV Marks.

14. WHEREFORE, Opposers pray that the Opposition be sustained, that U.S. Application Serial No. 77/227,850 be rejected and the registration of Applicant's KV as a trademark to Applicant be refused, and for such other relief as may be deemed just and proper.

Respectfully submitted,

DRUGTECH CORPORATION and KV
PHARMACEUTICAL COMPANY

By: 
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Attorneys for Opposers

Date: April 22, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served this 22nd day of April, 2008 by first-class mail, postage prepaid, on:

Patrick C. Stephenson
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Colleen A. Hall