

ESTTA Tracking number: **ESTTA253697**

Filing date: **12/08/2008**

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	Solvay Pharmaceuticals GmbH
Granted to Date of previous extension	12/07/2008
Address	Hans-Bockler-Allee 20 Hannover, 30173 GERMANY

Attorney information	Anthony Venturino and Elizabeth Pasquine Novak Druce + Quigg LLP 1300 I Street, NW1000 West Tower Washington, DC 20005 UNITED STATES trademark@novakdruce.com Phone:202.659.0100
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### Applicant Information

Application No	77391427	Publication date	06/10/2008
Opposition Filing Date	12/08/2008	Opposition Period Ends	12/07/2008
Applicant	Vital Pharmaceuticals, Inc. 15751 S.W. 41st Street, Suite 300 Davie, FL 33331 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritional supplements; Nutritionally fortified beverages
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### 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. Registration No.	1909701	Application Date	04/22/1994
Registration Date	08/08/1995	Foreign Priority Date	NONE
Word Mark	CREON		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: pharmaceutical and veterinary products, namely gastro-enteric preparations

U.S. Registration No.	3318553	Application Date	04/26/2006
Registration Date	10/23/2007	Foreign Priority Date	03/20/2006

Word Mark	CREON
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Description of Mark	The mark consists of the wording "Creon" and five spheres that are in various sizes, and which flow through three oval rings, which are separated by a similar distance.
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Goods/Services	<p>Class 005. First use: Pharmaceutical preparations and substances, namely a gastro-enteric preparation</p> <p>Class 016. First use: Printed educational materials related to gastro-enteric preparation, namely pancreatic exocrine insufficiency and related diseases and printed matter, namely, brochures, leaflets, and flyers related to gastro-enteric preparation, namely pancreatic exocrine insufficiency and related diseases</p> <p>Class 041. First use: Education, namely providing classes, seminars, and workshops in the field of the human body, namely in the field of pancreatic exocrine insufficiency and related diseases</p>
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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 Facsimile or email (by agreement only) on this date.

Signature	/EP/
Name	Anthony Venturino and Elizabeth Pasquine
Date	12/08/2008

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

SOLVAY PHARMACEUTICALS GMBH	)	
Opposers,	)	
	)	Serial No. 77/391,427
v.	)	Opposition No. _____
	)	
VITAL PHARMACEUTICALS, INC.	)	
Applicant.	)	
_____	)	_____

**NOTICE OF OPPOSITION**

Opposer, Solvay Pharmaceuticals GmbH (“Solvay”), a German company located and doing business at Hans-Böckler-Allee 20 30173 Hannover, Germany believes that it will be damaged by registration of the mark CREA-NO shown in U.S. Serial No. 77/391,427 and hereby opposes registration of the same. The grounds for opposition are as follows:

1. Solvay is the owner of US Registration Number 1,909,701 for CREON, registered on August 8, 1995 for “pharmaceutical preparations and substances, namely a gastro-enteric preparation,” and US Registration Number 3,318,553 for CREON and Design, registered on October 23, 2007 for “pharmaceutical preparations and substances, namely a gastro-enteric preparation” and related goods and services. These registrations are valid and subsisting, have not been abandoned, and are in full force and effect. Further, the CREON registration is incontestable pursuant to 15 U.S.C. § 1065 and provides conclusive evidence of Solvay’s ownership of the mark therein, and of the validity of the mark therein, and of Solvay’s exclusive right to use the CREON mark in commerce in connection with the goods identified in the registration.

2. The Solvay CREON product is one of the leading enzyme preparations and the most prescribed pancreatic enzyme preparation in the world. Solvay, its predecessors, related companies and/or licensees have been using the CREON mark in connection with pharmaceuticals for the treatment of pancreatic exocrine insufficiency in U.S. commerce since at

least as early as 1987. Through this use, Solvay has established valuable goodwill in the marks, and the relevant public has come to associate the CREON mark as an indication of products and services that emanate from Solvay.

3. Solvay has prior common law rights in the CREON mark as a trademark for pancreatic enzyme preparations by virtue of its long use in the United States.

4. Solvay has expended substantial amounts of money, time and effort to widely and extensively advertise and promote the goods it offers and sells under the CREON mark.

5. Notwithstanding Solvay's prior rights in the CREON mark, Vital Pharmaceuticals, Inc. filed its intent-to-use based trademark application to register CREA-NO for "nutritional supplements; nutritionally fortified beverages" on February 7, 2008. The application was assigned U.S. Serial No. 77/391,427. On information and belief, Applicant uses its CREA-NO mark in connection with an enzymatic nutritional supplement.

6. The Application for the CREA-NO mark was published for opposition on June 10, 2008. Extensions of time to oppose the Application were granted through Sunday, December 7, 2008.

7. Priority is not an issue as Solvay's valid registrations for CREON issued before the Application was filed on February 7, 2008.

8. Solvay will be damaged by the registration of Applicant's mark because the mark so closely resembles Solvay's CREON mark as to be likely to cause confusion, or to cause mistake, or to deceive consumers, particularly in view of the close similarity between Solvay's goods and Applicant's goods. Consumers familiar with Solvay's CREON mark would be likely to erroneously believe that Applicant's goods are products of Solvay or are associated with, approved, endorsed, authorized or sponsored by Solvay.

9. Registration of Applicant's mark will support and assist Applicant in the confusing and misleading use of the mark, will give color of exclusive statutory right to Applicant in violation and derogation of the pre-existing and superior rights of Solvay, and will cause Solvay

to lose control over the good and valuable reputation represented by and derived from the CREON mark, all causing irreparable harm and injury to Solvay.

WHEREFORE, Solvay respectfully requests that Application Serial No. 77/391,427 for CREA-NO be refused and that no registration issue thereon to Applicant, and, further, that this Opposition be sustained in favor of Solvay.

The Commissioner is authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 14-1437.

Respectfully submitted,

NOVAK DRUCE + QUIGG LLP



Anthony P. Venturino  
Elizabeth Pasquine  
Attorneys for Opposers

Dated: December 8, 2008

1300 I St., NW  
1000 West Tower  
Washington, DC 20005  
202.659.0100 (phone)  
202.659.0105 (fax)  
trademark@novakdruce.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Vital Pharmaceuticals, Inc. via electronic mail by agreement to:

ericas@vpxsports.com  
Erica W. Stump, Esq.  
VPX Sports  
15751 SW 41st St.  
Suite 300  
Davie, FL 33331-1520



Dated: December 8, 2008

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Elizabeth Pasquine