

ESTTA Tracking number: **ESTTA300177**

Filing date: **08/11/2009**

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	MSP Singapore Company LLC
Granted to Date of previous extension	08/12/2009
Address	300 Beach Road The Concourse No. 12-08, 199555 SINGAPORE

Attorney information	Robert Peverada Merck & Co., Inc. One Merck Drive, P.O. Box 100 Whitehouse Station, NJ 08889-0100 UNITED STATES robert_peverada@merck.com, thomas_mansfield@merck.com, florence_niel_henits@merck.com Phone:908-423-4262
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Applicant Information

Application No	76653809	Publication date	04/14/2009
Opposition Filing Date	08/11/2009	Opposition Period Ends	08/12/2009
Applicant	McDaniel, T. C. 7436 Vine Street Cincinnati, OH 45216 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 1965/00/00 First Use In Commerce: 1965/00/00
All goods and services in the class are opposed, namely: health supplements, namely, dissolvable mineral preparation

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.	2787086	Application Date	08/30/2001
Registration Date	11/25/2003	Foreign Priority Date	NONE
Word Mark	ZETIA		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2002/11/08 First Use In Commerce: 2002/11/08 Cardiovascular pharmaceutical preparations

Attachments	ZETIA v. ZETA AID.pdf (5 pages)(22708 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 Overnight Courier on this date.

Signature	/robert peverada/
Name	Robert Peverada
Date	08/11/2009

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

In the matter of application Serial No. 76653809 published in the Official Gazette
on April 14, 2009.

MSP Singapore Company LLC

Opposer,

Opposition No. _____

v.

T. C. McDaniel.

Applicant,

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

MSP Singapore Company LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business located at Sumneytown Pike, P. O. Box #4, West Point, PA 19486, believes it will be damaged by the registration of Application Serial No. 76653809 for the designation ZETA AID as a trademark for "Health supplements, namely, dissolvable mineral preparations (hereinafter "Applicant's Goods") filed January 23, 2006 by T. C. McDaniel and published in The Official Gazette of April 14, 2009, page 559, hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is a limited liability company and a leading research driven pharmaceutical products and services company which discovers, develops, manufactures and markets a broad range of innovative medical and pharmaceutical products and services designed to improve and preserve human health; such as, EZETROL, VYTORIN and INEGY in addition to ZETIA.
2. Prior to the filing date of the application herein opposed, Opposer has been a world business leader which distributes and sells medical and pharmaceutical preparations throughout the United States and the world.
3. Prior to the filing date of the application herein opposed, the trademark ZETIA has been used and continues to be used in interstate commerce for “cardiovascular pharmaceutical preparations”. Opposer is the owner on the Principal Register of the registered trademark ZETIA (Reg. No. 2,787,086) for “cardiovascular pharmaceutical preparations”. The registration, issued on November 25, 2003, is in full force and effect.

4. Prior to the filing date of the application herein opposed, Opposer has distributed and offered for sale and sold pharmaceutical preparations bearing the trademark ZETIA which identifies and distinguishes its pharmaceutical preparations from those of others.
5. Prior to the filing date of the Applicant, Opposer has made use of the trademark ZETIA by applying it to labeling, packaging, product literature and other materials distributed in interstate commerce.
6. As a result of the quality of Opposer's products and their widespread use in the healthcare industry, the trademark ZETIA has come to have great value to Opposer and the health care industry has come to use the mark to identify and distinguish Opposer's goods from those of others.
7. Upon information and belief, Applicant filed its application to register the designation ZETA AID as a trademark on January 23, 2006.
8. Upon information and belief, Applicant is no longer using the designation ZETA AID on or in connection with Applicants' goods identified in the application.

9. Upon information and belief, Applicant's goods set forth to be offered for sale under the trademark ZETA AID are related to the goods sold under Opposer's ZETIA trademark.
10. Applicant's goods, identified to be offered for sale and for distribution under the designation ZETA AID are intended for the same or similar class of purchasers and users as those already familiar with Opposer's registered trademark ZETIA.
11. Applicant's designation ZETA AID so resembles Opposer's previously registered trademark ZETIA as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake and to deceive with consequent injury to Opposer and the public.
12. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's mark, would be likely to cause confusion, or to cause mistake or to deceive or to cause confusion as to connection, association or sponsorship of the Opposer and would give color of exclusive statutory rights to Applicant.

WHEREFORE, Opposer respectfully requests that the opposition to the application for registration of the mark ZETA AID be sustained and that the registration sought by Applicant be refused. Please charge the requisite filing fee in the amount of \$300 from Deposit Account No. 13-2752 in the name of Merck & Co., Inc.

Opposer hereby appoints Debra A. Shelinsky Greene, Susan C. Mattson, each members of the Bar of the State of New York, and Robert Peverada, a member of the Bar of the District of Columbia, or any of them, the addresses of each being c/o Merck & Co., Inc., One Merck Drive, P.O. Box 100, Whitehouse Station, New Jersey 08889-0100, to file the foregoing Notice of Opposition, to prosecute this opposition, with full powers of substitution and revocation, to make all alterations and amendments therein, and to transact all business and acts in the United States Patent and Trademark Office in connection therewith.

Dated: Whitehouse Station, New Jersey
August 11, 2009

MSP Singapore Company LLC

BY: /robert peverada/
Robert Peverada

For: Opposer