

ESTTA Tracking number: **ESTTA431338**

Filing date: **09/20/2011**

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	Astellas Pharma Europe B.V.
Granted to Date of previous extension	11/16/2011
Address	Elisabethhof 19 Leiderdorp, 2353 EW NETHERLANDS

Attorney information	Maureen C. Kassner Panitch Schwarze Belisario & Nadel LLP 2005 Market Street - Suite 2200 Philadelphia, PA 19103 UNITED STATES usptotm@panitchlaw.com, mkassner@panitchlaw.com
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Applicant Information

Application No	85247066	Publication date	07/19/2011
Opposition Filing Date	09/20/2011	Opposition Period Ends	11/16/2011
Applicant	Russ Weinzimmer 614 Nashua Street, #53 Milford, NH 03055 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations, namely, topical preparations for treatment and prevention of oral allergy syndrome
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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.	2673514	Application Date	02/10/1999
Registration Date	01/14/2003	Foreign Priority Date	NONE
Word Mark	LIPOCREAM		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 2001/02/00 First Use In Commerce: 2001/02/00 MEDICATED TOPICAL SKIN CREAM FOR THE TREATMENT OF SKIN DISEASES

Attachments	LIPCROM signed NOO.pdf (3 pages)(285021 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	/Maureen C. Kassner/
Name	Maureen C. Kassner
Date	09/20/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Astellas Pharma Europe B.V.,	:	
	:	
Opposer,	:	
	:	Opposition No.
v.	:	
	:	Serial No. 85/247066
	:	Filed: February 20, 2011
Russ Weinzimmer,	:	Published: July 19, 2011
	:	Mark: LIPCROM
Applicant.	:	
	:	

NOTICE OF OPPOSITION

1. Astellas Pharma Europe B.V. (“Astellas”) is a corporation of The Netherlands with a place of business at Elisabethhof 19, Leiderdorp, 2353 EW, Netherlands.
2. Astellas, through its predecessors-in-interest, owns the LIPOCREAM trademark for use in connection with medicated topical skin cream for the treatment of skin diseases.
3. Astellas, through its predecessors-in-interest, owns U.S. Registration No. 2673514 issued January 14, 2003 for the mark LIPOCREAM for “medicated topical skin cream for the treatment of skin diseases.” This registration remains in full force and effect and is incontestable.
4. Astellas’ LIPOCREAM trademark has been used in commerce since at least as early as February 2001, and continues to be used in commerce.
5. Astellas’ LIPOCREAM trademark is well recognized among the public and trade and is inherently distinctive.

6. On February 20, 2011, Russ Weinzimmer (“Weinzimmer”) filed an application to register LIPCROM for “pharmaceutical preparations, namely, topical preparations for treatment and prevention of oral allergy syndrome” under Section 1(b) of the Lanham Act. This application was assigned Serial No. 85/247066.

7. Astellas’ LIPOCREAM mark is similar to Weinzimmer’s LIPCROM mark in sound, appearance, and meaning. The marks create the same commercial impression and are confusingly similar.

8. The goods in connection with which Weinzimmer intends to use his mark are identical and/or closely related to the goods in connection with which Astellas uses its LIPOCREAM trademark and which are covered by Astellas’ subsisting registration.

9. Weinzimmer knew or should have known of Astellas’ use of the LIPOCREAM trademark as the mark has been registered in the United States Patent and Trademark Office since 2003.

10. Weinzimmer’s use and registration of the mark LIPCROM is likely to cause confusion or mistake or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. The registration of LIPCROM would result in damage and injury to Astellas, who through its predecessors-in-interest and itself has invested and expended considerable sums and effort in manufacturing and promoting its LIPOCREAM trademark and obtaining approval for distribution of the same within the United States.

WHEREFORE, Astellas prays that Application Serial No. 85/247066 be refused registration and that this Opposition be sustained.

Respectfully submitted,

Dated: September 20, 2011

Maureen C. Kassner

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ATTORNEYS FOR ASTELLAS PHARMA
EUROPE B.V.

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2011, a true and correct copy of the Notice of Opposition was delivered by first class mail, postage prepaid, to:

Russ Weinzimmer
614 Nashua Street
No. 53
Milford, New Hampshire 03055

Maureen C. Kassner

Maureen C. Kassner