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

Proceeding	91205803
Party	Defendant Hercules Brand Corporation
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application:

Serial No.: 85,505,191  
Filed: December 28, 2011  
Applicant: Hercules Brand Corporation  
Mark: VERTOX  
Published: May 29, 2012

VERTEX PHARMACEUTICALS INCORPORATED,  Opposer,  -against-  HERCULES BRAND CORPORATION,  Applicant.
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**Opposition No. 91205803**

**Applicant's Answer to Notice of  
Opposition with Affirmative Defenses**

Applicant, Hercules Brand Corp. ("Hercules"), as and for its answer to the Notice of Opposition filed by Vertex Pharmaceuticals Inc. ("Vertex") against the application for registration of Hercules's trademark VERTOX, Serial No. 85,505,191, filed December 28, 2011 and published in the Official Gazette on May 29, 2012, pleads and avers as follows:

1. Hercules denies each and every allegation contained in paragraph 1 of Vertex's Notice of Opposition except admits that Application Serial Number: 85,505,191 was filed by Hercules on December 28, 2011, seeking registration of VERTOX in connection with "Multi-vitamin preparations; Vitamin and mineral supplements; Vitamins" in International Class 005, based on Hercules's bona fide intent to use the mark in commerce.

2. Hercules denies each and every allegation contained in paragraph 2 of Vertex's Notice of Opposition except admits that Application Serial Number: 85,505,191 was filed by Hercules on December 28, 2011, based on a bona fide intent to use the mark in commerce, and that an allegation of use was filed on February 22, 2012 which alleged first use anywhere at least as early as October 24, 2011 and first use in commerce at least as early at February 16, 2012.

3. Hercules does not have sufficient knowledge or information to form a belief as to each allegation contained in paragraph 3 of Vertex's Notice of Opposition.

4. Hercules does not have sufficient knowledge or information to form a belief as to each allegation contained in paragraph 4 of Vertex's Notice of Opposition.

5. Hercules does not have sufficient knowledge or information to form a belief as to each allegation contained in paragraph 5 of Vertex's Notice of Opposition and refers all questions of law to the Trademark Trial and Appeals Board.

6. Hercules does not have sufficient knowledge or information to form a belief as to each allegation contained in paragraph 6 of Vertex's Notice of Opposition.

7. Hercules does not have sufficient knowledge or information to form a belief as to each allegation contained in paragraph 7 of Vertex's Notice of Opposition.

8. Hercules denies each and every allegation contained in paragraph 8 of Vertex's Notice of Opposition.

9. Hercules denies each and every allegation contained in paragraph 9 of Vertex's Notice of Opposition.

10. Hercules denies each and every allegation contained in paragraph 10 of Vertex's Notice of Opposition.

In addition, Hercules sets forth the following affirmative defenses and statements in support of its position:

11. Hercules further affirmatively alleges that as a result of its continuous and substantial use of its VERTOX mark, the mark is a valuable asset of Hercules and carries considerable goodwill and consumer acceptance of the products sold under the VERTOX mark. Such goodwill and widespread usage has made the mark distinctive from Vertex's mark.

12. Hercules further affirmatively alleges that there is no likelihood of confusion, mistake, or deception due in large part to the fact that Vertex's pleaded marks are narrowly circumscribed to the goods or services plead in paragraph 4 of its Notice of Opposition and Vertex's pleaded marks are not used as a brand name for any one product on the market, thereby precluding the likelihood of confusion with Hercules's mark which is narrowly circumscribed to drastically different goods and services and is used as a brand name for its products.

13. Hercules further affirmatively alleges that there is no likelihood that prospective purchasers of Hercules's products would associate Hercules's mark with Vertex's mark as the goods and services offered in connection with Hercules's VERTOX mark would be sold through vastly different marketing channels to vastly different classes of purchasers, specifically, Vertex's mark is associated with pharmaceutical preparations for the diagnosis, treatment or prevention of hepatitis-C, autoimmune diseases, and HIV infection and AIDS; pharmaceutical research services for others, and Hercules's mark is used in connection with vitamins and multi-vitamins available for purchase to the general public through retailers. As such, prospective

purchasers and users of Vertex's products would never associate Hercules's mark with Vertex's mark or believe that Hercules's goods emanate from, are sponsored by, are related to, or were approved by Vertex.

**WHEREFORE**, Hercules prays that the Trademark Trial and Appeals Board deny the Notice of Opposition and permit registration of Hercules's proposed mark in Application Serial No. 85,505,191 in the U.S. Patent and Trademark Office.

Dated: September 5, 2012

HERCULES BRAND CORPORATION  
By its attorneys,



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