

ESTTA Tracking number: **ESTTA511590**

Filing date: **12/18/2012**

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	Jurox Pty Ltd		
Entity	proprietary limited company	Citizenship	Australia
Address	85 Gardiners Road Rutherford, NSW 2320 AUSTRALIA		

Attorney information	Charles G. Zug Nelson Mullins Riley & Scarborough, L.L.P. 1320 Main Street, 17th Floor Columbia, SC 29201 UNITED STATES ip@nelsonmullins.com, geordie.zug@nelsonmullins.com, john.mcelwaine@nelsonmullins.com Phone: 803-799-2000
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Applicant Information

Application No	79109770	Publication date	12/11/2012
Opposition Filing Date	12/18/2012	Opposition Period Ends	01/10/2013
International Registration No.	1108354	International Registration Date	01/10/2012
Applicant	Goodchild Investments Pty Ltd 38 Somers Avenue MALVERN VIC 3144 AUSTRALIA		

Goods/Services Affected by Opposition


Class 005. All goods and services in the class are opposed, namely: Pharmaceutical and medicinal preparations, namely, anaesthetics and sedatives; pharmaceutical and medicinal preparations, namely, anticonvulsants for use in the treatment of epilepsy or brain injury in humans; veterinary preparations, namely, anaesthetics and sedatives; veterinary preparations, namely, anticonvulsants for use in the treatment of head or brain injury

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.	2548739	Application Date	03/16/1999
Registration Date	03/19/2002	Foreign Priority	11/12/1998

		Date	
Word Mark	ALFAXAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: VETERINARY PREPARATIONS AND SUBSTANCES, NAMELY ANAESTHETIC PREPARTIONS FOR DOMESTIC AND FARM ANIMALS		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ALFAXAN (common law rights)		
Goods/Services	veterinary preparations		

Attachments	75661547#TMSN.gif (1 page)(bytes) Notice of Opposition - PHAXAN.pdf (10 pages)(95576 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	/Charles G. Zug/
Name	Charles G. Zug
Date	12/18/2012

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

Jurox Pty Ltd)		
	) Opposer,		
	) v.		Opposition No.: _____
	) Goodchild Investments Pty Ltd		Application Ser. No. 79/109,770
	) Applicant.		Mark: PHAXAN
<hr style="border: 0.5px solid black;"/>			

NOTICE OF OPPOSITION

Jurox Pty Ltd, a proprietary limited company of Australia ("Opposer"), having a principal place of business at 85 Gardiners Road, Rutherford, NSW 2320, Australia believing that it will be damaged by registration, hereby opposes Application Serial No. 79/109,770, filed January 10, 2012 in the name of Goodchild Investments Pty Ltd ("Applicant"), published for opposition in the Official Gazette of December 11, 2012, at Page TM 458, for the mark PHAXAN, reciting the goods "[p]harmaceutical and medicinal preparations, namely, anaesthetics and sedatives; pharmaceutical and medicinal preparations, namely, anticonvulsants for use in the treatment of epilepsy or brain injury in humans; veterinary preparations, namely, anaesthetics and sedatives; veterinary preparations, namely, anticonvulsants for use in the treatment of head or brain injury" in Class 5.

The grounds of Opposition are as follows:

1. Opposer is a proprietary limited company of Australia with principal place of business at 85 Gardiners Road, Rutherford, NSW 2320, Australia.

2. Opposer owns, and will rely in this Opposition upon, the following valid and subsisting U.S. trademark registration for mark ALFAXAN, with a priority date under Lanham Act Section 44(d) of November 12, 1998, and registration date of March 19, 2002, both dates being well prior to the filing date of Application Ser. No. 79/109,770:

Mark	Reg. No.	Reg. Date	Goods
ALFAXAN	2,548,739	March 19, 2002	"Veterinary preparations and substances, namely anaesthetic preparations for domestic and farm animals " (Class 5)

(hereinafter, the "ALFAXAN Registration"). Printouts from version 2.0 of the Trademark Status & Document Retrieval (TSDR) database and from the Assignments on the Web database, showing the current status and title of the ALFAXAN Registration, are attached hereto as Exhibit A.

3. Opposer will also rely in this Opposition on its common law rights resulting from its use of the mark ALFAXAN in commerce, or its use analogous to trademark use, for veterinary preparations well prior to the priority date of Application Ser. No. 79/109,770 (hereinafter, the "ALFAXAN Common Law Rights").

4. Upon information and belief, Applicant is a proprietary limited company of Australia with principal place of business at 38 Somers Avenue, Malvern VIC 3144, Australia.

5. Upon information and belief, Application Serial No. 79/109,770 was effectively filed on January 10, 2012, to register the alleged mark PHAXAN, and such application currently reciting the goods "[p]harmaceutical and medicinal preparations, namely, anaesthetics and sedatives; pharmaceutical and medicinal preparations, namely, anticonvulsants for use in the treatment of epilepsy or brain injury in humans; veterinary preparations, namely,

anaesthetics and sedatives; veterinary preparations, namely, anticonvulsants for use in the treatment of head or brain injury" in Class 5. Applicant's application is currently filed under Lanham Act Section 66(a), with a claimed priority date of July 11, 2011. Applicant's application was published for opposition in the Official Gazette of December 11, 2012, at Page TM 458.

6. When determining if a likelihood of confusion exists between marks used in connection with pharmaceutical or medicinal products, greater care must be taken to avoid confusion because mistakes in the selection and use of these goods may result in harmful consequences.

7. The goods recited Application Serial No. 79/109,770 are legally identical and/or related to the goods recited in the ALFAXAN Registration and the goods distributed in commerce under the ALFAXAN Common Law Rights.

8. Applicant's alleged PHAXAN mark so resembles the marks in the ALFAXAN Registration and the ALFAXAN Common Law Rights as to be likely, when applied to the goods recited in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Lanham Act, resulting in injury to Opposer.

9. Opposer, upon information and belief, avers that it will be damaged by the registration of the alleged PHAXAN trademark by Applicant, as set forth in Application Ser. No. 79/109,770, in that the mark is substantially similar to the marks in the ALFAXAN Registration and the ALFAXAN Common Law Rights and will be used in connection with goods legally identical and/or related to those offered by Opposer.

WHEREFORE, Opposer requests that the opposition to Application Ser. No. 79/109,770 for PHAXAN be sustained in favor of Opposer, and that no registration be issued thereon to Applicant.

The filing fees required by 37 C.F.R. 2.6(a)(17) for filing this Notice of Opposition on behalf of Opposer are enclosed herewith.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

Dated: December 18, 2012

By: /Charles G. Zug/
Charles G. Zug
1320 Main Street, 17th Floor
Columbia, SC 29201
Tel. (803) 799-2000
Fax (803) 255-9831
Email: ip@nelsonmullins.com

John C. McElwaine
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401
Tel. (843) 853-5200
Fax (803) 255-9831

Attorneys for Jurox Pty Ltd

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

Jurox Pty Ltd)	
)	
	)	Opposer,
)	
v.	)	Opposition No.: _____
)	
Goodchild Investments Pty Ltd	)	Application Ser. No. 79/109,770
)	
	)	Applicant.
)	Mark: PHAXAN
)	
_____)	

OPPOSER'S EXHIBIT A
TO NOTICE OF OPPOSITION

STATUS DOCUMENTS

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Generated on: This page was generated by TSDR on 2012-12-17 16:41:56 EST**Mark:** ALFAXAN**ALFAXAN**

US Serial Number: 75661547 **Application Filing Date:** Mar. 16, 1999
US Registration Number: 2548739 **Registration Date:** Mar. 19, 2002
Register: Principal
Mark Type: Trademark
Status: The registration has been renewed.
Status Date: Jul. 23, 2012
Publication Date: Jun. 26, 2001

Mark Information**Mark Literal Elements:** ALFAXAN[expand all](#)**Standard Character Claim:** No**Mark Drawing Type:** 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)**Foreign Information****Priority Claimed:** Yes**Foreign Application Number:** 778203**Foreign Application Filing Date:** Nov. 12, 1998**Foreign Registration Number:** 778203**Foreign Registration Date:** Nov. 12, 1998**Foreign Application/Registration Country:** AUSTRALIA**Foreign Expiration Date:** Nov. 12, 2008**Goods and Services****Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: VETERINARY PREPARATIONS AND SUBSTANCES, NAMELY ANAESTHETIC PREPARTIONS FOR DOMESTIC AND FARM ANIMALS**International Class:** 005 - Primary Class**U.S Class:** 006, 018, 044, 046, 051, 052**Class Status:** ACTIVE**Basis:** 44(e)**Basis Information (Case Level)**

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: Yes	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: Yes	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information**Owner Name:** JUROX PTY LTD

Owner Address: 85 Gardiners Road
Rutherford NSW 2320
AUSTRALIA

Legal Entity Type: CORPORATION

State or Country Where Organized: AUSTRALIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Ronald E. Shapiro

Docket Number: CPA10347

Correspondent

Correspondent Name/Address: RONALD E. SHAPIRO
SHAPIRO AND SILVERSTEIN PLLC
11350 RANDOM HILLS ROAD
SUITE 740
FAIRFAX, VIRGINIA 22030
UNITED STATES

Phone: 703-273-7680

Fax: 703-273-7684

Correspondent e-mail: rshapiro@sasiplaw.com

Correspondent e-mail: Yes

Authorized:

Domestic Representative

Domestic Representative Name: Morrison & Foerster LLP

Prosecution History

Date	Description	Proceeding Number
Jul. 23, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Jul. 23, 2012	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	64591
Jul. 23, 2012	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	64591
Jul. 23, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	64591
Jul. 11, 2012	TEAS SECTION 8 & 9 RECEIVED	
Apr. 10, 2008	REGISTERED - SEC. 8 (6-YR) ACCEPTED	68335
Mar. 26, 2008	ASSIGNED TO PARALEGAL	68335
Mar. 19, 2008	TEAS SECTION 8 RECEIVED	
May 21, 2007	CASE FILE IN TICRS	
Mar. 19, 2002	REGISTERED-PRINCIPAL REGISTER	
Jul. 26, 2001	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jun. 26, 2001	PUBLISHED FOR OPPOSITION	
Jun. 13, 2001	NOTICE OF PUBLICATION	
Mar. 06, 2001	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 05, 2001	ASSIGNED TO EXAMINER	74284
Aug. 14, 2000	CORRESPONDENCE RECEIVED IN LAW OFFICE	
May 22, 2000	LETTER OF SUSPENSION MAILED	
Jan. 28, 2000	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Aug. 11, 1999	EXAMINER'S AMENDMENT MAILED	
Aug. 04, 1999	ASSIGNED TO EXAMINER	74284

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Renewal Date: Mar. 19, 2012

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: Not Found

Date in Location: Jul. 23, 2012



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No assignment has been recorded at the USPTO

For Registration Number: 2548739

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.3.2
Web interface last modified: July 10, 2012 v.2.3.2

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Goodchild Investments Pty Ltd, by causing such copy to be mailed, on December 18, 2012, via First Class Mail, postage prepaid, to the current attorney of record for Applicant for Application Ser. No. 79/109,770:

William E. Maguire
Law Offices of William E. Maguire
520 Broadway, Suite 350
Santa Monica, CA 90401

Dated: December 18, 2012

/Charles G. Zug/
Charles G. Zug