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

Proceeding	91211414
Party	Defendant Purepharma ApS
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Date	09/09/2014
Attachments	Purepharma's REPLY IN FURTHER SUPPORT OF MOTION TO AMEND 9.8.2014.pdf(180040 bytes) EXHIBIT A - Applicant's Reply in Further Support of Motion to Amend.pdf(31638 bytes) EXHIBIT B - Applicant's Reply in Further Support of Motion to Amend.pdf(83300 bytes) EXHIBIT C - Applicant's Reply in Further Support of Motion to Amend.pdf(53463 bytes)

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

PURAPHARM INTERNATIONAL (H.K.)
LIMITED,

Opposer,

v.

PUREPHARMA APS,

Applicant.

Opposition No. 91211414

APPLICANT'S REPLY IN FURTHER SUPPORT OF MOTION FOR LEAVE TO AMEND THE ANSWER TO THE NOTICE OF OPPOSITION, TO DENY REOPENING OF DISCOVERY FOR OPPOSER, AND MEMORANDUM AND POINTS OF AUTHORITY IN SUPPORT THEREOF

Applicant moves the Board for Leave to Amend its Answer to: (1) add fraud, abandonment, non-use as grounds for cancellation of the pleaded registration and (2) add an alternative request for a remedy under Section 18 of the Lanham Act for restriction of Petitioner's pleaded registration and Applicant's application pursuant thereto.

Opposer argues that Applicant's Section 18 request and other claims were compulsory counterclaims and that Applicant had sufficient knowledge to plead its claims as of the time of answer, citing Rule 11. Applicant agrees that Rule 11 and the other rules of pleading under the federal rules, have a bearing on when Applicant could have asserted its claims but disagrees as to counsel's interpretation of its duties under that and the others rules of pleading.

First, Applicant respectfully submits, as will be shown below, that Opposer is incorrect that Applicant's Section 18 non-use claim is subject to the compulsory counterclaim Rule. It is well established that Section 18 is a remedy not a ground for cancellation. Thus it is not subject to the compulsory counterclaim rule.

However, even assuming arguendo that Applicant's Section 18 non-use claim, and its other claims were required to plead be promptly, Applicant did not have facts sufficient to plead those claims at the time of Answer or earlier.

The Supreme Court's opinion in two companion cases, *Iqbal and Twolmby*, govern counsel's rules of pleading. These hold that to plead a claim adequately, counsel must have more than a sheer possibility that defendant acted unlawfully. As these cases hold, "The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully." Ibid. "Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.' " Id., at 557, 127 S.Ct. 1955.

Applicant respectfully submits that for the reasons and facts that will be discussed below, Applicant could not have pled its additional grounds for cancellation and its Section 18 remedy until after it received Opposer's documents and analyzed them in July 2014.

A brief review of the facts is in order.

FACTS

Opposer affirmatively plead in the Notice of Opposition that "Opposer has been in the business of providing the products [listed in the registration] in commerce since at least as early as 2001" See, paragraph 6.

Prior to filing the Answer, Applicant sent a settlement offer to Opposer. By necessity, however, - and need- this letter was based only on a self-admittedly "limited investigation" of Opposer's websites only (" According to your website...")¹ Applicant did not and indeed could not conduct further investigations as to Opposer's use prior to the filing of the Statement of Use, or Opposer's use as of the filing of the Section 8 and 15 Declaration.

¹ Specifically, as the Board knows, once in a litigation context, counsel for a party may not contact the other side except through its lawyer, except to obtain information that is publicly available i.e. off the Internet.

Based on this limited investigation, Opposer's website appeared to allege use on four to six products only. However, Applicant lacked any knowledge as to whether Opposer also allegedly sells through other channels. Indeed, as will be discussed below, Opposer alleges sales of a majority of its products through channels other than the Internet. This is why Applicant's letter itself characterized the investigations as limited.

At 10 AM on October 10, 2013, Opposer, and prior to the late afternoon filing of Applicant's answer, Opposer rejected Applicant's offer. See, Exhibit A. This letter rejected Applicant's arguments. Further because of Opposer's duties under Rule 11 to plead only those facts which are supported in law, Applicant understood this letter to affirmatively represent to Applicant that Ms. Friedman's allegations based on her admittedly and self-described "limited investigations" only of Opposer's websites were wrong. Exhibit A. In reliance on Opposer's letter and having no real evidence that Opposer only alleges to sell goods through the Internet, later that day, Applicant filed its answer and served discovery.

Subsequent conversations with Opposer's counsel validated Applicant's interpretation of Opposer's October 10, 2013 letter. See, attached as Exhibit B. Time and time again, Opposer affirmatively represented that Applicant's understanding of the number and range of Opposer's products under the involved mark based on an analysis of its websites was wrong. On March 3, 2014 counsel for Opposer and the undersigned spoke. Counsel for Applicant affirmatively asked Opposer's counsel if the mark was in use only on the goods listed on the website. Again, Opposer's counsel affirmatively represented that Applicant's expressed concerns based only on Opposer's websites were wrong. Exhibit B. Opposer's counsel affirmatively represented that her client was using the mark in commerce on "hundreds of products" and not just the four or so products shown on the website. Exhibit B.

Notably in that email exchange, Opposer's counsel also corrected Applicant's understanding of the conversation. Opposer stated that it could not affirmatively state that the mark was used on each of the products listed in the registration. And, despite Opposer's express pleading that the mark was in use on each of the products listed in the registration, "Could not make that determination at that time".

Exhibit B. In other words, by Opposer's own direction, Applicant would be required to await Opposer's responses to discovery to determine which if any of the products were in use.

Thereafter, Opposer actively obstructed discovery. Applicant's first set of discovery requests consisted of its first and second set of interrogatories, requests for production and requests for admission. Opposer refused to answer any of Opposer's Interrogatories Numbered 1-15. Further, Opposer objected to most of Applicant's production requests.

Notably, among the discovery requests were Requests for Admissions as to Opposer's use of the mark on each of the goods recited in the registration. And, for each request to which Opposer responded with other than an unqualified denial, Applicant requested that Opposer produce documents reflecting use of the mark on goods in U.S. commerce. Applicant also asked for documents reflecting Opposer's sales figures, invoices reflecting first and continuing use and all FDA letters, as some of the products listed require such approval.

While Opposer responded to Applicant's Request for Admissions on March 24, 2014, Exhibit C, Opposer indicated it would not be able to produce its supporting documents until May 2, 2014, just before Applicant's trip to Asia. These documents told a far different story than Opposer's responses to the requests for admission. It was only upon receipt of Opposer's sales figures, invoices and FDA letters, and other Chinese language documents in May 2, 2014 that Applicant became aware that inter alia: (1) Opposer had no proof that it used its mark on ANY of the goods prior to the Statement of Use filing, giving rise to the abandonment and fraud claims (2) and that Opposer's nonuse was far wider in range than Opposer had admitted.

Upon analyzing these documents, Applicant contacted Opposer in July 2014 yet again in the hopes of achieving settlement and expressly pointing out the troubles with Opposer's use. A week later, Opposer rejected any settlement. Applicant thereupon promptly moved to amend its answer.

In short, Applicant has moved to amend promptly and the Board should deny Opposer's arguments as to Applicant's claims.

I. APPLICANT MOVED PROMPTLY TO AMEND TO PLEAD FRAUD AND ABANDONMENT ARISING FROM FAILING TO USE THE MARK PRIOR TO REGISTRATION

Applicant's fraud and abandonment claims are based on the fact that Opposer failed to use its mark ON ANY OF THE PRODUCTS listed in its registration until 2005 --- fully three years AFTER the filing of the Statement of Use.

The material facts forming the basis for this claim follow. Specifically, on June 14, 2002, Opposer filed a Statement of Use for the application that resulted in Opposer's pleaded registration. As required, Opposer swore under penalty of perjury that it had used the mark on the goods listed in its application in the United States. However, Opposer did not use the mark on any of the goods listed in the registration until 2005, nearly three years after the registration issued.

Applicant learned of these facts only during discovery. On February 13 2014, Applicant served interrogatories and document requests requesting information and documents to prove up Opposer's first use dates for each of the goods reflected in Opposer's registration.

Specifically, Applicant requested Opposer's sales figures, invoices and FDA approval letters. Opposer refused to answer any of Applicant's 15 interrogatories. Opposer served objections to most of Applicant's production requests.

Until this time, Applicant had no knowledge and had no reason to know that among its many other sins, Opposer had falsely stated its first use date for ANY of the goods in 2002 and in its Section 15 Declaration.

Thus Applicant first received information bearing on these claims on May 2, 2014, just before Applicant's counsel's trip to China. This is when Applicant received Opposer's documents. These documents and these documents alone showed that Opposer lacked any sales figures, any invoices, and any other documents reflecting use on ANY of the goods listed in Opposer's registration before the 2002 filing of the Statement of Use, and materially and intentionally lied to the USPTO about such use.

Because Opposer did not use the mark on ANY of the goods until 2005, three years after the registration issued, and materially and intentionally lied to the USPTO about such use, Opposer is guilty

of fraud in procuring the registration by filing the materially false Statement of Use. Opposer also is guilty of fraudulently attempting to procure the benefits of incontestability when filing the Section 8 and 15 affidavits in 2007.

As to the remaining allegations of fraud, that is fraud in the Section 8 and fraud in the renewal application, fraud requires a pleading of particularity and mere statements upon information and belief are not permitted without detailed factual support. Rule 9, Federal Rule of Civil Procedure. At the time Applicant filed its answer, Applicant had only Suppositions and guess work that the mark might not have been in use at all on certain goods at the time of the renewal application. However suppositions do not form a basis for fraud. Moreover, Applicant lacked any information as to intent. Thus, whatever its suppositions were, Applicant was not in a position to plead fraud.

II. APPLICANT IS NOT GUILTY OF UNDUE DELAY IN PLEADING NONUSE AND A LACK OF LIKELIHOOD OF CONFUSION, OR PARTIAL ABANDONMENT AFTER REGISTRATION

The third ground for the amendment is the Section 18 current non-use coupled with a lack of likelihood of confusion claim. Opposer alleges this is subject to compulsory counterclaim rule. Applicant respectfully disagrees.

“A claim to partially cancel a registration by deleting some of the goods or services therein or by restricting the manner of use of the goods or services therein, or to restrict or rectify the register as to the registration, in order to avoid a likelihood of confusion is in the nature of an equitable remedy and does not constitute an attack on the validity of a registration or have to be tied to a properly pleaded ground for opposition or cancellation. TBMP313.01. *Embarcadero Technologies Inc. v. RStudio Inc.*, 105 USPQ2d 1825, 1829 (TTAB 2013) (Section 18 relief may be sought in the alternative); *Dak Industries, Inc. v. Daiichi Kosho Co.*, 35 USPQ2d 1434, 1437 (TTAB 1995); (“...a claim for partial cancellation by restriction or modification of the goods or services listed in a plaintiff’s pleaded registration is an equitable remedy under Section 18 of the Trademark Act, not tied to a ground to cancel.”). *Eurostar, Inc. v. “Euro-Star” Reitmoden GmbH & Co. KG*, 34 USPQ2d 1266, 1271 (TTAB 1995)

Thus, it is not subject to the compulsory counterclaim rule subject to the compulsory counterclaim rule recited by Opposer. *See Dak Industries, Inc. v. Daiichi Kosho Co.*, 35 USPQ2d 1434, 1437 (TTAB 1995) (“a claim for cancellation by restriction or modification ...is an equitable remedy ..., not tied to a ground to cancel”); *Eurostar, Inc. v. “Euro-Star” Reitmoden GmbH & Co. KG*, 34 USPQ2d 1266, 1271 n.3 (TTAB 1995) (“[t]he restriction provisions of Section 18 are in the nature of an equitable remedy”). Rather, it is subject to more liberal rules of Rule 15 of the Federal Rules of Civil Procedure.

As in the case of any other claim, a claim for partial opposition or partial cancellation ordinarily will be granted if pled prior to trial. See TBMP Section 313.01 [“as in the case of any other claim, a claim for partial opposition or partial cancellation ordinarily should be asserted prior to trial”].

Even assuming arguendo that Applicant’s Section 18 remedy were subject to Rule 13, Applicant still moved to plead non- use and abandonment after the issuance of the registration promptly after the grounds therefor were learned.²

It is Opposer’s position in essence that Applicant acted improperly when, failing to have any information other a few websites and relying on Opposer’s (now proven to be false) assertions in the Notice of Opposition, and its October 10, 2013 letter, Applicant did not plead non-use in its answer.

The Board’s rules on pleading are governed by the Supreme Court’s *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). See, e.g., *Johnson & Johnson v. Obschestvo s Ogranitchennoy*, 104 USPQ2d 2037, 2038 n.2, 2039 (TTAB 2012) S

These cases hold that to plead a claim adequately, counsel must have more than a sheer possibility that defendant acted unlawfully. As these cases hold, “The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ibid.* “Where a complaint pleads facts that are “merely consistent with” a defendant's

² Applicant concedes that it also seeks partial cancellation on the ground of abandonment, which is a counterclaim , but which was adequately and timely plead for the reasons stated in this brief.

liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’ ” *Id.*, at 557, 127 S.Ct. 1955.

Here for the reasons stated above, Applicant did not have sufficient facts to plead non-use. Applicant knew only what it failed to see on website; it had no evidence that Opposer also failed to use the mark on products in other trade channels. In fact, Opposer asserted the opposite. And, until Opposer’s Request For Admissions Responses were served, Opposer never let on that there was any impropriety in its registrations.

Further, to state a claim of non-use under Section 18 adequately, Applicant must specifically state the goods not in use and that the limitations sought will serve to avoid confusion. *See DAK Industries Inc. v. Daiichi Kosho Co.*, 35 USPQ2d 1434, 1437 (TTAB 1995) *Eurostar Inc. v. “Euro-Star” Reitmoden GmbH & Co. KG*, 34 USPQ2d 1266, 1271 (TTAB 1994) (discretion to limit a registration will only be exercised when such partial cancellation or restriction will avoid confusion).

Moreover, a party pleading such a claim must state the goods sought to be limited precisely and failure to do so may result in dismissal of the claim. *See Eurostar Inc. v. “Euro-Star” Reitmoden GmbH & Co. KG*, 34 USPQ2d 1266, 1272 (TTAB 1994) (party that seeks to restrict a registration or application should state with as much precision as possible the restriction it seeks, so that the issue is properly framed for trial); *Aries Systems Corp. v. World Book Inc.*, 23 USPQ2d 1742, 1749 (TTAB 1992) (counterclaim failed to specify the least restrictive language applicant would accept); *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216, 1218 (TTAB 1990) (counterclaim that opposer’s registration should be amended “to accurately describe the services” was vague).

Prior to Opposer’s Responses to the Requests for Admissions, Opposer’s own counsel stated she was not in a position to know which if any of Opposer’s goods were in use. If Opposer’s own counsel was not in a position to know then which of the goods it was in use, how was Applicant?

As to the Requests for Admissions, while admitting that the mark was not used on some of the goods, based on Applicant’s analysis of Opposer’s documents, Opposer’s Request for Admissions Responses were inaccurate. While Opposer admitted that it had never used the mark on certain goods, it

expressly denied that it has used the mark on the other ten goods, seven of which form the basis for Applicant's non-use and abandonment claims. Exhibit C. As to these goods, Applicant was clearly entitled to wait until Opposer completed its responses to that set of discovery to double check Opposer's written response, before pleading non-use, especially as this claim required Applicant to state the non-used goods with specificity.

Finally, nothing in Ms. Friedman's letter or Opposer's Responses to Admission Requests bear on the claim that Opposer's "Chinese medicines" **are sold only to Chinese medical practitioner's for their medical dispensing**, further differentiating the channels of trade. Again, these facts were exclusively adduced from Opposer's production documents.

Further, as to abandonment, as the Board knows, this ground for cancellation is not current non-use. Rather it is nonuse coupled with an intent not to resume use. And to prove abandonment, prima facie, three prior consecutive-years of non-use is required. In 2013, before discovery, Ms. Friedman could hardly have had known the facts relating to intent or continuous non-use based solely on her limited investigation of a few websites.

In this regard, *Medline* is distinguishable and supports Applicant's position rather than negating it. The fraud claim was rejected on a motion to dismiss as insufficiently plead as it state: "the allegation that the respondent **currently** does not offer the services identified in the registration is insufficient (to plead fraud) because it lacks details regarding which statements made by Respondent ... **were false at the time Respondent filed its registration.**" *Id.* (emphasis added).

Further, in *Medline*, "Petitioner did not claim that it learned of these newly asserted claims through discovery or was unable to learn about the new claims prior to or filing or shortly after filing the complaint."

Here, unlike *Medline*, Applicant claims the exact opposite. Applicant learned of its newly asserted claims through discovery and as it did not have access to Opposer's invoices, sales figures, or FDA letters, was not in position to learn that Opposer had lied to the Office that its mark was in use in commerce until it got those documents.

IV THE BOARD SHOULD DENY OPPOSERS' REQUEST TO REOPEN DISCOVERY

The Board should not reopen discovery for Opposer. Opposer uniquely knows whether its registration is invalid for fraud or abandonment or non-use or otherwise, and reopening discovery for Opposer will only serve to allow Opposer to delay the case. After all, what can Applicant tell Opposer about its own use except what Opposer has disclosed to Applicant? For this reason, in such situations the Board usually does not reopen discovery. TBMP 507.02(a) [[E]specially true when the factual basis for the motion to amend was obtained by the moving party through discovery taken from the non-moving party.]

Further, doing so will prejudice Applicant. Applicant is a small company. It has limited resources. It has answered two sets of admission request and one set of production requests and produced documents, all at substantial expense. To require it to engage in further discovery will only delay the case, and serve to increase the costs of this case on Applicant. This is the true point of Opposer's request to reopen and should not be permitted. To the extent however that the Board does reopen discovery, it should do so for both parties.

II. CONCLUSION

Wherefore, as Applicant's Motion for Leave to Amend the Answer does not violate any settled law, as the request is timely, as it will not prejudice the rights of the Opposer, and as justice so requires. Applicant respectfully submits that Applicant's Motion for Leave to Amend the Answer should be granted and discovery should not be reopened except for Applicant's benefit.

Respectfully submitted,

Date: September 9, 2014

By: /Carla C. Calcagno/
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Suite 300
Washington, D.C. 20037
Telephone: (202) 466-0544

Attorneys for Purepharma APS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 9, 2014 a true and accurate copy of the foregoing:

APPLICANT'S REPLY IN FURTHER SUPPORT OF MOTION FOR LEAVE TO AMEND THE ANSWER TO OPPOSITION, AND EXHIBIT A-C

was served by agreement of the parties on Opposer by emailing a copy of the same to Melissa S. Rizzo, Attorney for Opposer, at melissa.rizzo@arlaw.com and trademarks@arlaw.com.

/Janet Ricciuti /



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October 10, 2013

Via E-Mail and U.S. Mail
baf@usiplaw.com

Barbara A. Friedman, Esq.
Edell Shapiro & Finnan LLC
9801 Washington Blvd., Suite 750
Gaithersburg, Maryland 20878

Re: PuraPharm International (H.K.) Limited v. Purepharma ApS
Opposition No. 91211414

Dear Ms. Friedman:

We are in receipt of your letter dated September 18, 2013 in the above matter. Our client is not persuaded by the arguments made in the letter and intends to proceed with the opposition.

Please do not hesitate to contact me with any questions.

Sincerely,

Melissa S. Rizzo

MSR:ma

From: Carla Calcagno [<mailto:carla.calcagno@calcagnolaw.com>]
Sent: Tuesday, March 04, 2014 3:34 PM
To: Melissa Rizzo
Subject: RE: Opposition Number 91211414, Purapharm v Purepharma

Dear Ms. Rizzo,

We write to confirm our telephone call yesterday which I initiated so we could arrange document production. As you know, I was not the attorney of record for Applicant during the discovery conference. It is our understanding that the parties did not discuss the timing, format, and mechanics of document production during their discovery conference.

As I stated yesterday, it is Applicant's proposal that to facilitate discovery, and as the Board prefers, the parties produce documents by copying their documents and mailing their documents to the propounding party. We further propose that each party bear the cost of copying their own documents and mailing them to the propounding party. According to my notes, you will need time to consult with your client and to respond to us on the timing, format and mechanics of documents production and that this should take approximately one week to ten days.

We await your response so we can coordinate and finalize the timing, format, and mechanics of document production. In the meantime, (should the parties not reach an agreement) Applicant's documents will be made available for inspection and copying as they are kept in the usual course of business at a time and date convenient for both parties.

As we also discussed, many of Applicant's discovery requests are directed to determining whether Opposer has in fact continuously "used" its mark on the wide variety of goods listed in its registration. To the extent that Opposer neither sold nor transported in commerce any of the goods listed in the registration, Applicant would be willing to waive certain discovery requests based on a stipulation of facts. We understand however that it is Opposer's position that it has used its mark in the sense of Section 45 of the Lanham Act on each of the listed goods. Therefore, we look forward to receiving your documents.

Very Truly Yours

Carla Calcagno

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From: Melissa Rizzo [mailto:Melissa.Rizzo@arlaw.com]
Sent: Wednesday, March 05, 2014 3:46 PM
To: Carla Calcagno
Cc: Brittany Cramer
Subject: RE: Opposition Number 91211414, Purapharm v Purepharma

Carla, I have reached out to my client regarding the mechanics and format of the document production. Most likely, we will be copying the documents and mailing them directly to you. I do not recall discussing with you the timing of our production. Once I determine the quantity of documents I will be producing, I will be in a better position to discuss that. We would expect to receive your documents first, as we propounded our discovery on the applicant first. As soon as I get confirmation from my client that we will produce the documents in paper format (as opposed to making them available for inspection), I will let you know, and then you can let me know when I can expect to receive your client's documents.

Further, to clarify, I did not represent to you that my client has used its mark in the sense of Section 45 of the Lanham Act on each of the listed goods. I am still working on getting the necessary information from my client to make that determination, and I am not in a position to represent one way or the other at this time. I only stated that it was my understanding that my client has used its mark on hundreds of products for sale in the U.S.

Thanks,
Melissa

Melissa S. Rizzo, Esq.
Adams and Reese LLP
Phone: 813-227-5509
Internal: 222871

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

In the Matter of Trademark Application Serial No: 79/124353

Filed on: October 30, 2012

For the mark: **PURE**  **PHARMA**

Date of Publication in the Official Gazette: June 4, 2013

PURAPHARM INTERNATIONAL (H.K.)
LIMITED,

Opposer,

v.

PUREPHARMA APS,

Applicant.

Opposition No. 91211414

**PURAPHARM INTERNATIONAL'S RESPONSES TO
PUREPHARMA APS'S FIRST REQUEST FOR ADMISSIONS**

Opposer, Purapharm International (H.K.) Limited ("Purapharm" or "Opposer"), by and through its undersigned counsel, hereby responds and objects to Applicant, PurePharma ApS's ("Applicant" or "PurePharma") request for admissions.

GENERAL OBJECTIONS

The following general objections apply to each separate request for admission ("Request") and are incorporated by this reference, to the extent applicable, into each specific response, as if set forth in full in each numbered response.

1. Opposer has based its responses to each Request on the assumption that Applicant, in propounding these Requests, did not intend to seek information protected against discovery by the attorney-client privilege, the work product doctrine, or any other judicially recognized privileges or protections. To the extent that any Requests are intended to elicit such

information, Opposer objects to them and asserts all applicable privileges and protections to the fullest extent permitted by law. If any information is inadvertently disclosed in response to these Requests that is properly the subject of any applicable privilege or protection, such inadvertent disclosure is not to be construed as a waiver of such privilege or protection.

2. Opposer objects to each and every Request to the extent it seeks disclosure of information where such disclosure would violate any constitutional, statutory, or common law privacy right of any individual or entity; confidentiality agreement between Opposer and any individual or entity; confidentiality of settlement discussions or agreements; or court order restricting the disclosure of information.

3. In responding to Applicant's Requests, Opposer does not in any way intend to waive, but rather preserves, the right to object on any ground as to:

- a. competency, relevancy, materiality and admissibility;
- b. the use of any of the responses in any subsequent proceedings, including the trial of this or any other action; and
- c. any further Requests or other discovery.

4. Opposer objects to each and every Request to the extent it seeks information beyond the scope of discovery or as limited by Court order or by agreement of the parties.

5. Opposer objects to each and every Request to the extent that it seeks information presumptively within the custody or control of Applicant or in the public domain on the grounds that each such Request is unduly burdensome, harassing, and oppressive.

6. Opposer objects to each and every Request to the extent that it calls for disclosure of trade secrets or other confidential research, development, commercial or proprietary information. To the extent that such information is relevant to the subject matter of

this litigation, and no objection otherwise has been asserted, Opposer will provide such information pursuant to the terms of the Protective Order entered in this case.

7. Opposer objects to each and every Request, to the extent the information sought relates to Opposer's Mark and its use thereof. Such information is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, for the following reasons:

a. The only issue in this proceeding is whether registration of Applicant's confusingly similar mark should be allowed in light of a mark previously registered by Opposer.

b. Furthermore, in Opposition proceedings, the Board compares only the goods listed in Opposer's registration to the goods listed by Applicant in its application to determine likelihood of confusion.

c. Additionally, evidence showing that the listed goods are only bought by a particular class of customers, which is not reflected in Applicant's application or Opposer's registration, is not relevant in an Opposition proceeding. In the absence of express limitations in the identification of goods, the Board presumes that the goods move through all reasonable trade channels for such goods to all usual classes of consumers for such goods.

8. By submitting these responses and objections, Opposer does not in any way adopt Applicant's purported definitions of words and phrases contained in Applicant's Requests. In addition to specific objections to Applicant's defined terms as asserted herein, Opposer objects to those definitions to the extent that they are inconsistent with the ordinary and customary meaning of such words and phrases. Likewise, Opposer objects to Applicant's

purported definitions to the extent that they purport to impose upon Opposer any obligations broader than, or inconsistent with, applicable discovery rules or common law.

9. Opposer has not yet completed its investigation of the facts related to this litigation. Consequently, all of the responses contained herein are based only on such information and documentation that is presently available to Opposer and disclose only the information and contentions presently known to Opposer. Opposer reserves the right to amend these responses, and to offer related evidence, as additional facts are ascertained, analyses are made, research is completed, and contentions become apparent.

SPECIFIC RESPONSES & OBJECTIONS

Subject to and without waiving the foregoing objections, Opposer specifically responds to each of the correspondingly numbered requests as follows:

REQUEST NO. 1:

Admit that Opposer owns the domain name purapharm.com.

RESPONSE:

Admitted.

REQUEST NO. 2:

Admit that Opposer authorizes the content appearing on www.purapharm.com.

RESPONSE:

Admitted.

REQUEST NO. 3:

Admit that Exhibit A is a true and accurate copy of content appearing on www.purapharm.com.

RESPONSE:

Admitted that Exhibit A appears to be content accessed through the www.purapharm.com/en website on February 7, 2014. Otherwise, denied.

REQUEST NO. 4:

Admit that the products depicted on Exhibit A are the only products currently sold by or on behalf of Opposer in the United States or in commerce with the United States.

RESPONSE:

Denied.

REQUEST NO. 5:

Admit that the products depicted on Exhibit A are the only products now or ever sold by or on behalf of Opposer in the United States or in commerce with the United States.

RESPONSE:

Denied.

REQUEST NO. 6:

Admit that the products depicted on Exhibit A are the only products currently sold by or on behalf of Opposer under the mark PURAPHARM in the United States or in commerce with the United States.

RESPONSE:

Denied.

REQUEST NO. 7:

Admit that the products depicted on Exhibit A are the only products now or ever sold by or on behalf of Opposer under the mark PURAPHARM in the United States or in commerce with the United States.

RESPONSE:

Denied.

REQUEST NO. 8:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: Health food for medically restricted diets; food supplements, namely, herbal extract in the form of capsule tablet, powder and granule; food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations; dietary and nutritional supplements; nutritional supplements, namely, drink mixes in powder form; dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets; digestives for pharmaceutical purposes; appetite suppressants; pharmaceutical preparations and substances for appetite control and weight management; analgesics; sedatives; tranquilizers; sunburn ointments and sunburn preparations for medical use; pharmaceutical preparations for skin care; medicated mud for skin care, medicated skin care mud for baths; medicated mouth washes; medicines for dental purposes; Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system, gastrointestinal system, endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system; balms for medical purposes for the treatment of muscle pain, veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Opposer objects to this request, to the extent the request is confusing, making it impossible to formulate a response. Based on this objection, denied.

REQUEST NO. 9:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: Health food for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 10:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: food supplements, namely, herbal extract in the form of capsule tablet, powder and granule.

RESPONSE:

Denied.

REQUEST NO. 11:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations.

RESPONSE:

Denied.

REQUEST NO. 12:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: dietary and nutritional supplements.

RESPONSE:

Denied.

REQUEST NO. 13:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: nutritional supplements, namely, drink mixes in powder form.

RESPONSE:

Admitted.

REQUEST NO. 14:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 15:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: digestives for pharmaceutical purposes.

RESPONSE:

Denied.

REQUEST NO. 16:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: appetite suppressants.

RESPONSE:

Denied.

REQUEST NO. 17:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: pharmaceutical preparations and substances for appetite control and weight management.

RESPONSE:

Denied.

REQUEST NO. 18:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: analgesics.

RESPONSE:

Denied.

REQUEST NO. 19:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: sedatives.

RESPONSE:

Denied.

REQUEST NO. 20:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: tranquilizers.

RESPONSE:

Denied.

REQUEST NO. 21:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: sunburn ointments and sunburn preparations for medical use.

RESPONSE:

Admitted.

REQUEST NO. 22:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: pharmaceutical preparations for skin care.

RESPONSE:

Denied.

REQUEST NO. 23:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: medicated mud for skin care, medicated skin care mud for baths.

RESPONSE:

Admitted.

REQUEST NO. 24:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: medicated mouth washes.

RESPONSE:

Admitted.

REQUEST NO. 25:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: medicines for dental purposes.

RESPONSE:

Admitted.

REQUEST NO. 26:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system, gastrointestinal system, endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system.

RESPONSE:

Denied.

REQUEST NO. 27:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: balms for medical purposes for the treatment of muscle pain.

RESPONSE:

Admitted.

REQUEST NO. 28:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in the United States: veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Admitted.

REQUEST NO. 29:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: Health food for medically restricted diets; food supplements, namely, herbal extract in the form of capsule tablet, powder and granule; food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations; dietary and nutritional supplements; nutritional supplements, namely, drink mixes in powder form; dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets; digestives for pharmaceutical purposes; appetite suppressants; pharmaceutical preparations and substances for appetite control and weight management; analgesics; sedatives; tranquilizers; sunburn ointments and sunburn preparations for medical use; pharmaceutical preparations for skin care; medicated mud for skin care, medicated skin care mud for baths; medicated mouth washes; medicines for dental purposes; Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system,

gastrointestinal system, endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system; balms for medical purposes for the treatment of muscle pain, veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Opposer objects to this request, to the extent the request is confusing, making it impossible to formulate a response. Based on this objection, denied.

REQUEST NO. 30:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: Health food for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 31:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: food supplements, namely, herbal extract in the form of capsule tablet, powder and granule.

RESPONSE:

Denied.

REQUEST NO. 32:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations.

RESPONSE:

Denied.

REQUEST NO. 33:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: dietary and nutritional supplements.

RESPONSE:

Denied.

REQUEST NO. 34:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: nutritional supplements, namely, drink mixes in powder form.

RESPONSE:

Admitted.

REQUEST NO. 35:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 36:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: digestives for pharmaceutical purposes.

RESPONSE:

Denied.

REQUEST NO. 37:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: appetite suppressants.

RESPONSE:

Denied.

REQUEST NO. 38:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: pharmaceutical preparations and substances for appetite control and weight management.

RESPONSE:

Denied.

REQUEST NO. 39:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: analgesics.

RESPONSE:

Denied.

REQUEST NO. 40:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: sedatives.

RESPONSE:

Denied.

REQUEST NO. 41:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: tranquilizers.

RESPONSE:

Denied.

REQUEST NO. 42:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: sunburn ointments and sunburn preparations for medical use.

RESPONSE:

Admitted.

REQUEST NO. 43:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: pharmaceutical preparations for skin care.

RESPONSE:

Denied.

REQUEST NO. 44:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: medicated mud for skin care, medicated skin care mud for baths.

RESPONSE:

Admitted.

REQUEST NO. 45:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: medicated mouth washes.

RESPONSE:

Admitted.

REQUEST NO. 46:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: medicines for dental purposes.

RESPONSE:

Admitted.

REQUEST NO. 47:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system, gastrointestinal system,

endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system.

RESPONSE:

Denied.

REQUEST NO. 48:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: balms for medical purposes for the treatment of muscle pain.

RESPONSE:

Admitted.

REQUEST NO. 49:

Admit that Opposer does not transport, offer, distribute, promote or sell all of the following goods in commerce with the United States: veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Admitted.

REQUEST NO. 50:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: Health food for medically restricted diets; food supplements, namely, herbal extract in the form of capsule tablet, powder and granule; food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations; dietary and nutritional supplements; nutritional supplements, namely, drink mixes in powder form; dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets; digestives for pharmaceutical purposes; appetite suppressants; pharmaceutical preparations and substances for appetite control and weight management; analgesics; sedatives; tranquilizers; sunburn ointments and sunburn preparations for medical use; pharmaceutical preparations for skin care; medicated mud for skin care, medicated skin care mud for baths; medicated mouth washes; medicines for dental purposes; Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system, gastrointestinal system, endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system; balms for medical purposes for the treatment of muscle pain, veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Opposer objects to this request, to the extent the request is confusing, making it impossible to formulate a response. Based on this objection, denied.

REQUEST NO. 51:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: Health food for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 52:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: food supplements, namely, herbal extract in the form of capsule tablet, powder and granule.

RESPONSE:

Denied.

REQUEST NO. 53:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations.

RESPONSE:

Denied.

REQUEST NO. 54:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: dietary and nutritional supplements.

RESPONSE:

Denied.

REQUEST NO. 55:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: nutritional supplements, namely, drink mixes in powder form.

RESPONSE:

Admitted.

REQUEST NO. 56:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 57:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: digestives for pharmaceutical purposes.

RESPONSE:

Denied.

REQUEST NO. 58:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: appetite suppressants.

RESPONSE:

Denied.

REQUEST NO. 59:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: pharmaceutical preparations and substances for appetite control and weight management.

RESPONSE:

Denied.

REQUEST NO. 60:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: analgesics.

RESPONSE:

Denied.

REQUEST NO. 61:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: sedatives.

RESPONSE:

Denied.

REQUEST NO. 62:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: tranquilizers.

RESPONSE:

Denied.

REQUEST NO. 63:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: sunburn ointments and sunburn preparations for medical use.

RESPONSE:

Admitted.

REQUEST NO. 64:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: pharmaceutical preparations for skin care.

RESPONSE:

Denied.

REQUEST NO. 65:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: medicated mud for skin care, medicated skin care mud for baths.

RESPONSE:

Admitted.

REQUEST NO. 66:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: medicated mouth washes.

RESPONSE:

Admitted.

REQUEST NO. 67:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: medicines for dental purposes.

RESPONSE:

Admitted.

REQUEST NO. 68:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system, gastrointestinal system, endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system.

RESPONSE:

Denied.

REQUEST NO. 69:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: balms for medical purposes for the treatment of muscle pain.

RESPONSE:

Admitted.

REQUEST NO. 70:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in the United States: veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Denied.

REQUEST NO. 71:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: Health food for medically restricted diets; food supplements, namely, herbal extract in the form of capsule tablet, powder and granule; food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations; dietary and nutritional supplements; nutritional supplements, namely, drink mixes in powder form; dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets; digestives for pharmaceutical purposes; appetite suppressants; pharmaceutical preparations and substances for appetite control and weight management; analgesics; sedatives; tranquilizers; sunburn ointments and sunburn preparations for medical use; pharmaceutical preparations for skin care; medicated mud for skin care, medicated skin care mud for baths; medicated mouth washes; medicines for dental purposes; Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system, gastrointestinal system, endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system; balms for medical purposes for the treatment of muscle pain, veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Opposer objects to this request, to the extent the request is confusing, making it impossible to formulate a response. Based on this objection, denied.

REQUEST NO. 72:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: Health food for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 73:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: food supplements, namely, herbal extract in the form of capsule tablet, powder and granule.

RESPONSE:

Denied.

REQUEST NO. 74:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: food supplements, namely, vitamins, vitamin preparations, minerals, enzymes, and enzymes preparations.

RESPONSE:

Denied.

REQUEST NO. 75:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: dietary and nutritional supplements.

RESPONSE:

Denied.

REQUEST NO. 76:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: nutritional supplements, namely, drink mixes in powder form.

RESPONSE:

Admitted.

REQUEST NO. 77:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: dietetic food preparations, dietetic beverages, dietetic substances, and food preparations all for medically restricted diets.

RESPONSE:

Admitted.

REQUEST NO. 78:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: digestives for pharmaceutical purposes.

RESPONSE:

Denied.

REQUEST NO. 79:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: appetite suppressants.

RESPONSE:

Denied.

REQUEST NO. 80:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: pharmaceutical preparations and substances for appetite control and weight management.

RESPONSE:

Denied.

REQUEST NO. 81:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: analgesics.

RESPONSE:

Denied.

REQUEST NO. 82:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: sedatives.

RESPONSE:

Denied.

REQUEST NO. 83:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: tranquilizers.

RESPONSE:

Denied.

REQUEST NO. 84:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: sunburn ointments and sunburn preparations for medical use.

RESPONSE:

Admitted.

REQUEST NO. 85:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: pharmaceutical preparations for skin care.

RESPONSE:

Denied.

REQUEST NO. 86:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: medicated mud for skin care, medicated skin care mud for baths.

RESPONSE:

Admitted.

REQUEST NO. 87:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: medicated mouth washes.

RESPONSE:

Admitted.

REQUEST NO. 88:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: medicines for dental purposes.

RESPONSE:

Admitted.

REQUEST NO. 89:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: Chinese medicines, for use with human biological systems, namely, Chinese medicines for the respiratory system, gastrointestinal system, endocrine system, cardiovascular system, nervous system, musculoskeletal system, urinary system, integumentary system and reproductive system.

RESPONSE:

Denied.

REQUEST NO. 90:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: balms for medical purposes for the treatment of muscle pain.

RESPONSE:

Admitted.

REQUEST NO. 91:

Admit that Opposer has not transported, offered, distributed, promoted or sold all of the following goods in commerce with the United States: veterinary nutritional supplements for pets and livestock and medicated preparations for pet and livestock.

RESPONSE:

Denied.

Dated: March 24, 2014

Respectfully submitted,

ADAMS AND REESE LLP

/s/ Melissa S. Rizzo

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Limited*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2014, a true and correct copy of the foregoing has been served on the Applicant by e-mailing a copy thereof to Applicant's attorney of record, Carla Calcagno, Esq., Calcagno Law PLLC, 1250 24th Street, N.W., Suite 300, Washington, D.C. 20037, Carla.calcagno@calcagnolaw.com and cccalcagno@gmail.com.

/s/ Melissa S. Rizzo

Melissa S. Rizzo, Esq.