

ESTTA Tracking number: **ESTTA632941**

Filing date: **10/15/2014**

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    | Horus Pharma  |             |        |
| Entity  | societe par actions simpli-<br>fiee   | Citizenship | France |
| Address | 148 Avenue George Guynemer Cap Var<br>SAINT LAURENT DU VAR, F-06700<br>FRANCE |             |        |

|                           |  |  |  |
|---------------------------|--|--|--|
| Attorney informa-<br>tion | G MATHEW LOMBARD<br>LOMBARD & GELIEBTER LLP<br>1115 BROADWAY 12 FL<br>NEW YORK, NY 10010<br>UNITED STATES<br>mlombard@lgtrademark.com Phone:917.779.9967 |  |  |
|---------------------------|--|--|--|

**Applicant Information**

|                           |  |                             |            |
|---------------------------|--|-----------------------------|------------|
| Application No            | 86157681   | Publication date            | 09/16/2014 |
| Opposition Filing<br>Date | 10/15/2014   | Opposition Peri-<br>od Ends | 10/16/2014 |
| Applicant                 | Fuenmayor, Ricardo A.<br>6318 23 Ave.<br>Brooklyn, NY 11204<br>UNITED STATES |                             |            |

**Goods/Services Affected by Opposition**


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| Class 010. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Beautifying devices, namely, surgical and medical implant devices comprised of artificial materials for use in cosmeticsurgery for the stretching of the user's face, skin, thus minimizing his/her wrinkles, for the specific purpose of obtaining a younger look; medical devices, namely, surgical implant devices comprised primarily of artificial materials for use in plastic surgery as cosmetic devices for improving appearance |
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**Grounds for Opposition**

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

**Mark Cited by Opposer as Basis for Opposition**

|                         |              |                          |            |
|-------------------------|--------------|--------------------------|------------|
| U.S. Application<br>No. | 79128753     | Application Date         | 01/15/2013 |
| Registration Date       | NONE         | Foreign Priority<br>Date | 01/14/2013 |
| Word Mark               | HORUS PHARMA |                          |            |

|                     |   |
|---------------------|---|
| Design Mark         |   |
| Description of Mark | <p>The mark consists of a blue circle under a curved orange line, against a black horizontal line below which is a thick vertical orange line level with the circle and a black curved line; to the right is the word "HORUS" over the word "PHARMA" all in black; the color white represents background, shading, and/or outlining and is not claimed as a feature of themark.</p>   |
| Goods/Services      | <p>Class 003. First use: First Use: 0 First Use In Commerce: 0<br/>Soaps for personal use; essential oils; cosmetics; hair lotions; dentifrices</p> <p>Class 005. First use: First Use: 0 First Use In Commerce: 0<br/>Pharmaceutical and veterinary products and preparations for the treatment of ophthalmological and dermatological diseases; pharmaceutical and veterinary products and preparations for the treatment of allergies, glaucoma, inflammation, infections, viral diseases and conditions, keratoconjunctivitis sicca, dry eyes, and dermatological diseases and conditions; pharmaceutical and veterinary products and preparations for the promotion of ocular wound healing; chemical preparations for medical or pharmaceutical use, namely, chemical preparations for treatment of diseases, disorders and conditions of the eye and the skin; ophthalmic substances for medical use; food for babies; food and nutritional supplements for humans and animals for medical use; ophthalmic food, namely, dietary and nutritional supplements for eye and skin health and nutritional supplements for medical use; medical plasters, materials for dressings, namely, medical dressing; disinfectants, namely, all-purpose disinfectants; fungicides; solutions for contact lens care; eye drops for lubricating and moisturizing compositions and substances intended to relieve dryness and mild irritations of the eye; eye solutions for medical use, namely, irrigating, lubricating, rewetting and antibiotic solutions for eye care; eye washes; sanitary products for use in medicine, namely, sanitary preparations for medical use; sanitary preparations for medical ophthalmic use; creams, gels and lotions for ophthalmic use for medical use; cleansing medicinal creams, gels and lotions for soothing and decongesting the eyes and eye contours for medical use; eye solutions for medical use, namely, irrigating, lubricating, rewetting and antibiotic solutions for eye care; compresses for medical use, namely, surgical and medicated compresses; cotton for medical use; medicated bath preparations</p> <p>Class 009. First use: First Use: 0 First Use In Commerce: 0<br/>Contact lenses; pupillometers for measuring pupillary distance and eye position in the spectacle frame by digital capture of corneal reflections and for measuring lens/eye distance not for medical use; video pupillometers for measuring pupillary distance and eye position in the spectacle frame by digital capture of corneal reflections and for measuring lens/eye distance not for medical use</p> <p>Class 010. First use: First Use: 0 First Use In Commerce: 0<br/>Surgical apparatus and instruments; medical and veterinary apparatus and instruments for use in eye surgery, ophthalmic surgery; medical and veterinary apparatus and instruments, namely, pupillometers; apparatus and instruments for ophthalmology, namely, surgical apparatus and instruments for use in ophthalmic surgery, instruments for measuring the diameter of ophthalmic lenses, instruments for measuring the optical density of the macular pigment, instruments for measuring, recording and monitoring intraocular pressure, instruments for measuring and recording pupillary reactivity and pupillary distance, and instruments for dyeing and removing vitreous bodies and epiretinal membranes during vitrectomies; artificial limbs and eyes; ocular implants made from artificial materials; orthopedic articles, namely, ocular implants made of artificial materials, ocular</p> |

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|  | and ophthalmic inserts for medical or surgical use, namely, intraocular implants made of artificial materials, inserts for ocular and intraocular use, namely, intraocular implants made of artificial materials; suture materials |
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| Attachments | 79128753#TMSN.png( bytes )<br>20141015_0677_1230906.pdf(235354 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 | /g mathew lombard/ |
| Name      | G MATHEW LOMBARD   |
| Date      | 10/15/2014         |

**IN THE U.S. PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

In the matter of Application Serial No. 86157681  
Published in the *Official Gazette* of September 16, 2014

*Atty Ref.:* 123.0906

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|---|
| <p><b>HORUS PHARMA,</b><br/>Opposer,</p> <p>v.</p> <p><b>RICARDO A. FUENMAYOR,</b><br/>Applicant.</p> |
|---|

Opposition No. \_\_\_\_\_

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Attn: **BOX TTAB FEE**

**NOTICE OF OPPOSITION**

**HORUS PHARMA**, a French société par actions simplifiée, with a business address of 148, Avenue George Guynemer Cap Var, F-06700, Saint Laurent du Var, **FRANCE** (hereinafter “Opposer”), believes that it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 86157681, filed January 5, 2014, by **RICARDO A. FUENMAYOR** (hereinafter “Applicant”) and, hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer, Horus Pharma, individually and through its related companies, is a leading global pharmaceutical and medical device company and is in the business of researching, manufacturing and selling high-quality pharmaceutical, dermatological and medical device products at the interstate and international levels.

2. Opposer operates in the fields of ophthalmology, dermatology, virology, inflammation, infection treatment, allergies, vitamin and other supplements, contact lens care, and other fields.

3. On information and belief, Applicant is a Venezuelan individual with an address of 6318 23 Ave., Brooklyn, New York 11204, USA.

4. Opposer is the owner of the U.S. trademark Application Serial No. 79128753 for the mark **HORUS PHARMA** (“**HORUS PHARMA**”) for:

*Soaps for personal use; essential oils; cosmetics; hair lotions; dentifrices in Class 3;*

*Pharmaceutical and veterinary products and preparations for the treatment of ophthalmological and dermatological diseases; pharmaceutical and veterinary products and preparations for the treatment of allergies, glaucoma, inflammation, infections, viral diseases and conditions, keratoconjunctivitis sicca, dry eyes, and dermatological diseases and conditions; pharmaceutical and veterinary products and preparations for the promotion of ocular wound healing; chemical preparations for medical or pharmaceutical use, namely, chemical preparations for treatment of diseases, disorders and conditions of the eye and the skin; ophthalmic substances for medical use; food for babies; food and nutritional supplements for humans and animals for medical use; ophthalmic food, namely, dietary and nutritional supplements for eye and skin health and nutritional supplements for medical use; medical plasters, materials for dressings, namely, medical dressing; disinfectants, namely, all-purpose disinfectants; fungicides; solutions for contact lens care; eye drops for lubricating and moisturizing compositions and substances intended to relieve dryness and mild irritations of the eye; eye solutions for medical use, namely, irrigating, lubricating, rewetting and antibiotic solutions for eye care; eye washes; sanitary products for use in medicine, namely, sanitary preparations for medical use; sanitary preparations for medical ophthalmic use; creams, gels and lotions for ophthalmic use for medical use; cleansing medicinal creams, gels and lotions for soothing and decongesting the eyes and eye contours for medical use; eye solutions for medical use, namely, irrigating, lubricating, rewetting and antibiotic solutions for eye care; compresses for medical use, namely, surgical and medicated compresses; cotton for medical use; medicated bath preparations in Class 5;*

*Contact lenses; pupillometers for measuring pupillary distance and eye position in the spectacle frame by digital capture of corneal reflections and for measuring*

*lens/eye distance not for medical use; video pupillometers for measuring pupillary distance and eye position in the spectacle frame by digital capture of corneal reflections and for measuring lens/eye distance not for medical use in Class 9; and*

*Surgical apparatus and instruments; medical and veterinary apparatus and instruments for use in eye surgery, ophthalmic surgery; medical and veterinary apparatus and instruments, namely, pupillometers; apparatus and instruments for ophthalmology, namely, surgical apparatus and instruments for use in ophthalmic surgery, instruments for measuring the diameter of ophthalmic lenses, instruments for measuring the optical density of the macular pigment, instruments for measuring, recording and monitoring intraocular pressure, instruments for measuring and recording pupillary reactivity and pupillary distance, and instruments for dyeing and removing vitreous bodies and epiretinal membranes during vitrectomies; artificial limbs and eyes; ocular implants made from artificial materials; orthopedic articles, namely, ocular implants made of artificial materials, ocular and ophthalmic inserts for medical or surgical use, namely, intraocular implants made of artificial materials, inserts for ocular and intraocular use, namely, intraocular implants made of artificial materials; suture materials in Class 10.*

5. Opposer's Application Serial No. 79128753, a § 66A Madrid Protocol extension application based on International (WIPO) Registration No. 1156732, with a priority claim/filing date of January 14, 2013, was extended to the U.S. Patent & Trademark Office on May 2, 2013.

6. Opposer has had and continues to have a *bona fide* intent to use the mark **HORUS PHARMA** in commerce Congress may regulate.

7. On January 5, 2014, Applicant filed Application Serial No. 86157681, for registration on the Principal Register of the trademark **THORUS**, based on § 1(b) intent-to-use.

8. The goods covered by Application Serial No. 86157681 currently are:  
*beautifying devices, namely, surgical and medical implant devices comprised of artificial materials for use in cosmetic surgery for the stretching of the user's face, skin, thus minimizing his/her wrinkles, for the specific purpose of obtaining a younger look; medical devices, namely, surgical implant devices comprised primarily of artificial materials for use in plastic surgery as*

*cosmetic devices for improving appearance* in Class 10.

9. On information and belief, Applicant has not – and has never – used its alleged **THORUS** mark as required by the Lanham Act for any product(s) or service(s) prior to January 5, 2014.

10. On information and belief, Applicant has not – and has never – used its alleged **THORUS** mark as required by the Lanham Act for any product(s) or service(s) prior to May 2, 2013.

11. On information and belief, Applicant has not – and has never – used its alleged **THORUS** mark as required by the Lanham Act for any product(s) or service(s) prior to January 14, 2013.

12. There is no issue of priority since the filing date of Applicant's aforementioned trademark application filing date is subsequent to both the actual filing date of Opposer's application, subsequent to Opposer's priority "effective filing date" of January 14, 2013, and Applicant's earliest date of constructive rights is January 5, 2014, which is subsequent to Opposer's filing date and priority date.

13. On information and belief, Applicant did not use its alleged trademark **THORUS** anywhere in the United States, or in commerce, prior to the above-mentioned date(s).

14. There exists – or will exist – market interface between Opposer and Applicant.

15. On information and belief, Applicant's products, as identified in Application Serial No. 86157681 are identical to, substantially identical to, related to, or similar to Opposer's goods, namely, products in Classes 3, 5 and/or 10.

16. Opposer markets and sells corticosteroid products; eye compresses for treatment of skin surrounding the eye; creams and lotions to treat atopic dermatitis, blepharitis and similar conditions; and eye compresses for eye hygiene and eye surgery.

17. Specifically, Applicant's application covers devices for dermatological use, for use on user's faces and skin.

18. Based on the above allegation(s), there is significant market overlap and interface between Opposer and Applicant.

19. Likewise, the channels of trade are identical, similar or related.

20. Applicant's alleged trademark is so similar to Opposer's prior trademark in sound, appearance and/or commercial impression so as to be likely to cause confusion, mistake or deception.

21. The **HORUS** element of Opposer's mark is completely subsumed in Applicant's **THORUS** mark.

22. Both **HORUS** and **THORUS** comprise two (2) syllables.

23. **HORUS** and **THORUS** are phonetically very similar, if not nearly identical.

24. Opposer's pleaded goods in Classes 3, 5 and 10, and Applicant's applied-for goods in Class 10 are identical, similar and/or closely related.

25. Opposer's pleaded goods in Classes 3, 5 and 10, and Applicant's applied-for goods in Class 10 would target the same class of purchasers.

26. Applicant's appropriation of Opposer's mark for Class 10 goods would cause confusion, mistake or deception among the relevant consumers.

27. Opposer's pleaded goods in Classes 3, 5 and 10, and Applicant's applied-for goods in Class 10 are closely related and would be sold and/or promoted through the same



channels of trade to the same class(es) of purchasers and users.

28. Applicant's alleged trademark is likely to cause confusion, mistake or deception of purchasers as to the respective marks, and also as to the source of origin or sponsorship of the goods for which such marks are used.

29. Applicant's alleged trademark is calculated or likely to cause irreparable loss, injury and damage to Opposer's business and to the goodwill appertaining thereto.

30. Applicant's alleged trademark is a colorable imitation or misappropriation of Opposer's pleaded trademark and the concurrent use of the marks would be likely to cause confusion, mistake or deception.

31. Opposer's **HORUS PHARMA** mark is distinctive and represents an extremely valuable asset of its business.

32. The use by Applicant of its mark for the applied-for goods is likely to create the erroneous impression that Applicant's goods originate with, are sponsored or promoted by, come from, or are otherwise associated with Opposer or Opposer's goods provided under its **HORUS PHARMA** mark or that Applicant's goods are endorsed, sponsored, or in some way connected with Opposer.

33. Any use of Applicant's mark by the Applicant is, therefore, likely to cause confusion, cause mistake or to deceive the public into the belief that the products offered under Applicant's mark come from or are otherwise authorized or sponsored by Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

34. Applicant selected, adopted and applied to register its alleged trademark without consent of Opposer.

35. Accordingly, any registration of the mark **THORUS** would cause harm to  
Opposer.


**WHEREFORE**, it is respectfully requested that this opposition be sustained and that the  
registration sought by Application Serial No. 86157681 be **DENIED**.

Respectfully submitted,

**HORUS PHARMA**

Dated: October 15, 2014

By:



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G. Mathew Lombard  
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12<sup>th</sup> Floor  
New York, New York 10010  
917.779.9967  
*Attorneys for Opposer*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF OPPOSITION was served on the following individuals at the following addresses of record, by first class mail, postage prepaid, this 15<sup>th</sup> day of October 2014:

RICARDO A. FUENMAYOR  
6318 23RD AVE  
BROOKLYN, NEW YORK 11204-3305



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G. Mathew Lombard