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

Proceeding	91251253
Party	Defendant Triumph Pharmaceuticals Inc.
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Submission	Answer
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Date	11/05/2019
Attachments	Answer to Notice of Opposition SMARTDOG.pdf(123501 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Innotek, Inc.,)	
)	
)	Opposition No. 91/251,253
Opposer,)	
)	
v.)	Application Serial No. 88/146,744
)	Mark: SMARTDOG
)	
Triumph Pharmaceuticals Inc.,)	Application Serial No. 88/146,759
)	Mark: SMARTDOG
Applicant.)	
)	

ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION

Comes now Triumph Pharmaceuticals Inc. (“Triumph” or “Applicant”), and for its Answer to the Consolidated Notice of Opposition filed by Innotek, Inc. (“Innotek” or “Opposer”), states as follows:

1. The allegation contained in Paragraph 1 of the Notice of Opposition are legal conclusions to which no response is required.
2. Triumph admits it has filed applications for the SMARTDOG mark covering products in Classes 3, 5, and 31.
3. Triumph admits that its intent-to-use Applications were filed on October 8, 2018 as stated in Paragraph 3.
4. Triumph admits that the ‘759 Application published for opposition on March 26, 2019, and that three extensions of time were obtained as stated in Paragraph 4.
5. Triumph admits that the ‘744 Application published for opposition on June 25, 2019, and that one extension of time was obtained as stated in Paragraph 5.
6. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 6 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 6.
7. Triumph admits that U.S. Trademark Application Serial No. 75/608,700 was filed on December 18, 1998, and identifies the following goods:

IC 009. US 021, 023, 026, 036, 038. G & S: ELECTRICAL ANIMAL BEHAVIOR TRAINING AND CONTROL SYSTEMS, NAMELY REMOTE TRAINING SYSTEMS CONSISTING OF ELECTRICAL RADIO FREQUENCY TRANSMITTERS AND REMOTE CONTROLLED ELECTRICAL RECEIVER ANIMAL COLLARS; ELECTRICAL BARKING CONTROL ANIMAL COLLARS; ELECTRONIC PET CONTAINMENT SYSTEMS CONSISTING OF ELECTRICAL TRANSMITTERS AND ELECTRICAL RECEIVER ANIMAL COLLARS; ELECTRICALLY CONTROLLED PET DOORS CONSISTING OF AN ELECTRICAL RECEIVER AND DOOR ACTUATOR; AND ELECTRICAL ANIMAL TRACKING AND LOCATING SYSTEMS CONSISTING OF ELECTRICAL RECEIVERS AND ELECTRICAL ANIMAL TRANSMITTER COLLARS.

Triumph believes U.S. Trademark Application Serial No. 75/608,700 stands for itself and denies all allegations of Paragraph 7 that are inconsistent with the face of U.S. Trademark Application Serial No. 75/608,700. Triumph denies any further remaining allegations of Paragraph 7.

8. Triumph admits that U.S. Trademark Registration No. 2,411,822 issued on December 12, 2000 for the mark SMART DOG. Triumph further admits that Exhibit A purports to be a copy of the TSDR records for U.S. Trademark Registration No. 2,411,822. Triumph believes U.S. Trademark Registration No. 2,411,822 stands for itself and denies all allegations of Paragraph 7 that are inconsistent with the face of U.S. Trademark Registration No. 2,411,822. Triumph denies any further remaining allegations of Paragraph 8.
9. The allegations contained in Paragraph 9 are legal conclusions to which no response is required. To the extent a response is required, Triumph states that it lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 9 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 9.
10. The allegations contained in Paragraph 10 are legal conclusions to which no response is required. To the extent a response is required, Triumph states that it lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 10 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 10.
11. The allegations contained in Paragraph 11 include legal conclusions to which no response is required. Further, Triumph lacks sufficient knowledge of information to ascertain the

truthfulness of the facts in Paragraph 11 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 11.

12. The allegations contained in Paragraph 12 include legal conclusions to which no response is required. Further, Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 12 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 12. Additionally, Triumph states that Opposer has failed to sufficiently plead common law rights in the alleged SMART DOG mark. The Notice of Opposition fails to identify 1) how Opposer has purportedly used the asserted SMART DOG mark, 2) when Opposer used the SMART DOG mark and 3) on which goods and/or services Opposer used its SMART DOG mark. Instead, the Notice of Opposition states “various goods and services, including but not limited to dog training aids and related goods.”
13. Triumph denies the allegations of Paragraph 13 of the Notice of Opposition.
14. Triumph denies the allegations of Paragraph 14 of the Notice of Opposition. Further, Triumph notes that the United States Patent and Trademark Office approved the ‘744 Application and the ‘759 Application. Moreover, Opposer’s ‘822 Registration for SMART DOG was not cited against Triumph’s ‘744 Application or the ‘759 Application.
15. Triumph denies the allegations of Paragraph 15 of the Notice of Opposition.
16. Triumph denies the allegations of Paragraph 16 of the Notice of Opposition.
17. Triumph denies the allegations of Paragraph 17 of the Notice of Opposition.
18. Triumph denies the allegations of Paragraph 18 of the Notice of Opposition.
19. Triumph denies the allegations of Paragraph 19 of the Notice of Opposition.
20. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 20 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 20.
21. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 21 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 21.
22. Triumph denies the allegations of Paragraph 22 of the Notice of Opposition.

23. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 23 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 23.
24. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 24 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 24.
25. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 25 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 25.
26. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 26 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 26.
27. Triumph lacks sufficient knowledge of information to ascertain the truthfulness of the facts in Paragraph 27 of the Notice of Opposition, and on that basis denies the assertions of Paragraph 27.
28. Triumph denies the allegations of Paragraph 28 of the Notice of Opposition.
29. Triumph denies the allegations of Paragraph 29 of the Notice of Opposition.
30. Triumph denies the allegations of Paragraph 30 of the Notice of Opposition.
31. Triumph denies the allegations of Paragraph 31 of the Notice of Opposition.
32. Triumph denies the allegations of Paragraph 32 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

For its affirmative defenses, Triumph states as follows:

- A. Opposer lacks standing to assert the ‘822 Registration because according to the assignment records of the United States Patent Trademark Office, and upon information and belief, the ‘822 Registration is subject to ownership interests and/or security interests by third parties such as Fifth Third Bank, Radio Systems Corporation, and/or Invisible Fence, Inc., and therefore, Opposer does not have the right to enforce the ‘822 Registration.
- B. Opposer has failed to join necessary and dispensable parties because the ‘822 Registration is subject to ownership interests and/or security interests by third parties such as Fifth Third Bank, Radio Systems Corporation, and/or Invisible Fence, Inc.

- C. Triumph's use of SMARTDOG will not cause a likelihood of confusion with Opposer's SMART DOG mark or dilute Opposer's mark.
- D. Triumph's registration of SMARTDOG will not cause a likelihood of confusion with or dilute U.S. Trademark Registration No. 2,411,822.
- E. As set forth in the co-pending cancellation action (Cancellation No. 92/072,679), on information and belief, U.S. Registration No. 2,411,822 is invalid or unenforceable due to failure to use the mark in commerce on some, or all, of the identified goods and services.
- F. Opposer has failed to state a claim based on purported common law rights because the notice of Opposition fails to identify: 1) how Opposer has purportedly used the asserted common law SMART DOG mark, 2) when Opposer used the common law SMART DOG mark and 3) on which goods and/or services Opposer used its common law SMART DOG mark.
- G. Opposer's SMART DOG trademark covered by U.S. Registration No. 2,411,822 is not famous within the meaning of 15 U.S.C. § 1125(c).
- H. On information and belief, Opposer has no protectable rights in the term SMART DOG due to third party use.

WHEREFORE, Triumph prays that the Consolidated Notice of Opposition be denied, and that the '744 Application and '759 Application proceed to registration, and that registrations be issued.

Dated: November 5, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic mail on this 5th day of November 2019, upon the following:

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